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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: January 24, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

LOS ANGELES, CA

WHEN: March 4, at 9:00 a.m.
WHERE: Federal Building,
300 N. Los Angeles St.
Conference Room 8544
Los Angeles, CA
RESERVATIONS: 1–800–726–4995

SAN DIEGO CA

WHEN: March 5, at 9:00 a.m.
WHERE: Federal Building,
880 Front St.
Conference Room 45–13
San Diego, CA
RESERVATIONS: 1–800–726–4995

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Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 56, No. 13
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-04-AD; Amendment 39-6867]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 series airplanes and C-9 (Military) series airplanes, which requires repetitive inspections and functional checks of the tailcone release system for proper operation. This amendment is prompted by a report that the tailcone failed to drop away when release activation was attempted. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

EFFECTIVE DATE: February 11, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, Attn: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Aerospace Engineer, Northwest Mountain Region, ANM-131L, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: During an emergency evacuation of a McDonnell Douglas Model DC-9-10 series airplane, the tailcone did not deploy. Extensive testing on the airplane determined that the system interlock cable did not release. Subsequent investigations have revealed that numerous tailcone release systems are not in proper working order. One fleet inspection of 140 airplanes revealed 8 discrepancies (excessive pull force, cable misrouted, etc.) which could prevent tailcone release. This condition, if not corrected, could result in failure of the tailcone to release, and could prevent passengers and crew members from exiting through the tail emergency exit during an emergency evacuation.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletins A53-242, dated December 20, 1990, which describes procedures for inspecting the tailcone release handle for cracks; and A53-243, dated January 10, 1991, which describes procedures for accomplishing a functional test of the tailcone release system.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive functional tests and inspections of the tailcone release system, in accordance with the service bulletins previously mentioned. Additionally, operators are required to submit a report of their inspection findings to the FAA.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-10, -20, -30, -40, and -50 series airplanes and C-9 (Military) series airplanes, operating in a passenger or passenger/cargo configuration; certificated in any category. Compliance required as indicated, unless previously accomplished.

Note.—The requirements of this AD become applicable at the time an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

To confirm proper operation and maintenance of the tailcone release system, accomplish the following:

A. Within 60 days after the effective date of this AD, unless previously accomplished within the last 60 days, inspect the interior and exterior tailcone release handles for cracks, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin, A53–242, dated December 20, 1990; and accomplish a tailcone release system functional test in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53–243, dated January 10, 1991.

1. Cracked or broken tailcone release handles must be replaced prior to further flight.

2. Discrepancies in the operation of the tailcone release system found as a result of the functional test must be repaired prior to further flight.

B. Repeat the inspection of the interior and exterior tailcone release handles and conduct the functional test required by paragraph A. of this AD at intervals not to exceed 3,000 flight hours or 15 months, whichever occurs first.

C. Report any cracked or broken tailcone release handles or any discrepancies found during the accomplishment of the inspection and functional tests required by paragraph A. of this AD, to the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425, within 30 days after discovery.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office.

Note.—The request should be submitted directly to the Manager, Los Angeles Aircraft Certification Office, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, Attn: Business Unit Manager, Technical Publications, C1–HCW (54–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective February 11, 1991.

Issued in Renton, Washington, on January 10, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–1270 Filed 1–15–91; 11:17 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 382

[Docket No. RM90–8–000 Order No. 529]

Amendments to FERC Form Nos. 1 and 1–F, and Annual Charges, and Fuel Cost and Purchased Economic Power Adjustment Clauses; Correction to Final Rule

January 10, 1991.

In the matter of Final Rule issued November 5, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule, correction.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is correcting an omission in 18 CFR 382.201, the regulation concerning annual charges under parts II and III of the Federal Power Act and related statutes. The omission occurred in the **Federal Register** on November 13, 1990 (55 FR 47322).

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Ann E. Gorton, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2137.

SUPPLEMENTARY INFORMATION: The Commission has promulgated regulations concerning annual charges assessed against public utilities under parts II and III of the Federal Power Act and related statutes. In Order No 529, issued November 5, 1990, the Commission stated that it was revising therein 18 CFR § 382.201, changing the term "kilowatt-hours" to "megawatt-hours". The change was not made in paragraph (c) of that section. That error is corrected by this notice.

Correction to Final Rule

On November 5, 1990, the Commission issued Order No. 529, a final rule amending FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others and FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (final rule). The final rule was published on November 13, 1990 (55 FR 47311). The final rule made minor conforming changes to the Commission's annual charges regulations in 18 CFR part 382 and the Commission's fuel cost and purchased economic power adjustment clause regulations in 18 CFR part 35. The final rule further provided that all instances where the term "kilowatt-hours" was used in 18 CFR 382.201 be changed to "megawatt-hours". This change was not made in paragraph (c) of that section. The change to paragraph (c) should have appeared at 55 FR 47322. Accordingly, amendatory instruction No. 5 is corrected and the omitted text for paragraph (c) is printed for 18 CFR 382.201 to read as follows:

5. In § 382.201 paragraphs (b)(1), (b)(2), (b)(4)(i)(A), (6)(4)(i)(B), (b)(4) (ii) and (c) are revised to read as follows:

§ 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.

* * * * *

(c) *Determination of annual charges to be assessed against power marketing agencies.* The adjusted costs of administration of the electric regulatory program as it applies to power marketing agencies will be assessed against each power marketing agency based on the proportion of the megawatt-hours of sales of each power marketing agency in the immediately preceding fiscal year to the sum of the megawatt-hours of sales in the immediately preceding fiscal year of all power marketing agencies being assessed annual charges.

Lois D. Cashell,

Secretary.

[FR Doc. 91–1098 Filed 1–17–91; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AB49

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule modifies Minerals Management Service (MMS) regulations governing drilling, well-completion, and well-workover operations under an oil and gas lease in the Outer Continental Shelf (OCS) to

identify with greater specificity the information that must be recorded by the lessee to describe tests of the lessee's blowout preventer (BOP) and auxiliary equipment and the pressure conditions during such tests. The change is necessary to allow MMS personnel to verify the adequacy of lessee-conducted tests that are needed to assure that BOP's and auxiliary well-control equipment, if needed, will operate effectively. This change will enable MMS personnel to better assess the effectiveness of a BOP system during their review of the documentation of the method and procedures used by a lessee to conduct a BOP test and the results obtained.

EFFECTIVE DATE: This rule is effective April 18, 1991.

FOR FURTHER INFORMATION CONTACT: John Mirabella, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: The MMS regulations at 30 CFR 250.57, 250.86, and 250.106 require that BOP systems be periodically tested and that the results of those tests be recorded in the driller's report or operations log, as appropriate. Because MMS representatives cannot witness all BOP pressure tests, it is necessary that the results of the tests, which are recorded in the driller's report or operations log, be sufficiently comprehensive to enable MMS personnel to accurately assess the operating condition of the BOP system during their review of the documentation of the test results contained in the driller's report or operations log. Most operators record detailed information documenting the testing sequence, pressures, control stations, and other test data, thus enabling reviewers of the driller's report or the operations log to have assurance that, based on the test that was conducted, the BOP system is operating effectively. However, a few operators simply note that the BOP and auxiliary equipment were tested. The entry of this minimal information into the driller's report or the operations log is insufficient to enable anyone to verify that all rams, valves, and auxiliary equipment were tested to required pressures. This type of recordkeeping has given little assurance that the BOP system is operating properly.

On May 3, 1990, MMS issued a notice of proposed rulemaking (NPR) in the Federal Register (55 FR 18639) to amend §§ 250.57, 250.86, and 250.106 to more specifically define the information that is to be included in the driller's report or operations log as documentation that a BOP test was properly conducted. The proposed modification specified the minimum information that must be entered into the driller's report or the operations log. In addition, the final rule includes a provision that requires a lessee to record additional information concerning pressure conditions during BOP testing.

The NPR published on May 3, 1990, provided for public comments to be received through July 2, 1990. A total of 10 comment letters were received during the comment period. The comments received were reviewed, and the requirements that had been in the NPR were modified, where warranted. A summary of the comments and responses follows.

Comment: Several comments were received concerning the specific documentation requirements. Some commenters recommended that the District Supervisor not be given unlimited authority to require additional documentation. Some recommended dropping the provision, and others recommended replacing the provision with specific documentation requirements. One commenter recommended that pressure charts be mandatory for all operators.

Response: The final rule has been modified to specify that BOP test documentation include pressure charts that show pressure for a sufficient period of time to assure that the component being tested is able to hold the required pressure. To allow for circumstances where the operator can justify using other methods for documenting the pressure conditions during the test, the rule provides the District Supervisor with the authority to approve other forms of documentation. The broad authority for the District Supervisor to require additional documentation that was included in the proposed rule has been removed from the final rule.

Comment: One commenter recommended that the pressure chart be annotated with the component tested and that the chart be certified as correct.

Response: A provision has been added to the final rule to require that when a driller's report or operations log references a pressure chart or other test documentation, the person responsible for the driller's report or operations log certify the pressure chart or other documentation being referenced. This provision is intended to ensure that the person referencing such information has firsthand knowledge of the information being referenced.

Comment: Several comments were received concerning retention of records. One commenter recommended that the operator be allowed to reference test results rather than entering actual results in the driller's report or operations log. One commenter recommended that operators of mobile offshore drilling units be allowed to store information at the operator's nearest field office.

Response: The final rule has been modified to allow the operator to reference test results, thus avoiding unnecessary and redundant records. The final rule has also been modified to allow that, following completion of the activity, required records be retained by the lessee at the facility, at the lessee's field office nearest the OCS facility, or at another location conveniently available to the District Supervisor.

Comment: One commenter recommended that pressure charts be retained for a period of 5 years. Another commenter recommended that requirements for record retention be deleted in favor of reliance on § 250.66.

Response: Requirements for record retention have been retained for pressure charts and test results. The period of retention has been set at 2 years to be consistent with requirements in § 250.66 for retention of driller's reports.

Comment: One commenter recommended that the rule not become effective until 90 days after publication.

Response: The rule will be effective 90 days after publication of the final rule. This will provide those lessees not already in compliance enough time to make necessary changes in procedures and equipment to bring their operation into compliance.

Comment: One commenter recommended that alternate means be adopted to correct problems of falsification of records.

Response: The potential for falsification of records is not the only problem being addressed. This rule is intended to improve the documentation of BOP tests and allow lessee management and MMS personnel to ensure that tests are properly conducted and to correct problems related to incomplete or erroneous documentation.

Comment: One commenter suggested that §§ 250.86 and 250.106 were duplicated in § 250.57.

Response: Section 250.57 is applicable to drilling operations, § 250.86 is applicable to well-completion operations, and § 250.106 is applicable to well-workover operations. All three are necessary.

Author

This document was prepared by John V. Mirabella, Offshore Rules and Operations Division, MMS.

Executive Order (E.O.) 12291

This amendment clarifies current regulations and proposes requirements with which most companies are already in compliance. Thus, economic effects of this rule change will be minor. Accordingly, the Department of the Interior (DOI) has determined that this rule will not have a significant effect on the economy and is not a major rule under E.O. 12291; therefore, a regulatory impact analysis is not required. The DOI has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Paperwork Reduction Act

The information collection requirements in this final rule have been approved by the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.* under authorization number 1010–0053.

Takings Implication Assessment

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: December 6, 1990.

Barry A. Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR part 250 is amended as follows:

PART 250—[AMENDED]

1. The authority for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. In § 250.0, an introductory paragraph is added and paragraphs (d), (e), and (f) are revised to read as follows:

§ 250.0 Authority for information collection.

The information collection requirements in part 250 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers as indicated in this section. Send comments regarding the burdens indicated for a specific information collection or any other aspect of the collection of information pursuant to provisions of this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070–4817 and the Office of Management and Budget; Paperwork Reduction Project 1010–XXXX; Washington, DC 20503.

* * * * *

(d) The information collection requirements in subpart D, Drilling Operations, have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0053. The information is being collected to inform MMS of the equipment and procedures lessees plan to use in drilling activities on the OCS. The information is used to ensure that drilling operations are safe and comply with standards to limit pollution. The requirement to respond is mandatory under 43 U.S.C. 1334. Public reporting burden for this collection of information is estimated to average 5.1 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0053.

(e) The information collection requirements in subpart E, Well-Completion Operations, have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0067. The information is being collected to inform MMS of the equipment and procedures lessees plan to use during well-completion operations. The information is used to ensure that well-completion operations are safe and comply with standards to limit pollution. The requirement to respond is mandatory under 43 U.S.C. 1334. Public reporting burden for this collection of information is estimated to average .5 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0067

(f) The information collection requirements in subpart F, Well-Workover Operations, have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0043. The information is being collected to inform MMS of the equipment and procedures lessees plan to use during well-workover operations. The information is used to ensure that well-workover operations are safe and comply with standards to limit pollution. The requirement to respond is mandatory under 43 U.S.C. 1334. Public reporting burden for this collection of information is estimated to average .5 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0043.

* * * * *

3. Section 250.57 is amended by revising paragraph (g) and adding a new paragraph (h) to read as follows:

§ 250.57 Blowout preventer systems tests, actuations, inspections, and maintenance.

* * * * *

(g) The lessee shall record pressure conditions during BOP tests on pressure charts, unless otherwise approved by the District Supervisor. The test interval for each BOP component tested shall be sufficient to demonstrate that the component is effectively holding pressure. The charts shall be certified as correct by the operator's representative at the facility.

(h) The time, date, and results of all pressure tests, actuations, and inspections of the BOP system, system components, and marine risers shall be recorded in the driller's report. The BOP tests shall be documented in accordance with the following:

(1) The documentation shall indicate the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. As

an alternate, the documentation in the driller's report may reference a BOP test plan that contains the required information and is retained on file at the facility.

(2) The control station used during the test shall be identified in the driller's report. For a subsea system, the pod used during the test shall be identified in the driller's report.

(3) Any problems or irregularities observed during BOP and auxiliary equipment testing and any actions taken to remedy such problems or irregularities shall be noted in the driller's report.

(4) Documentation required to be entered in the driller's report may instead be referenced in the driller's report. All records including pressure charts, driller's report, and referenced documents pertaining to BOP tests, actuations, and inspections, shall be available for MMS review at the facility for the duration of the drilling activity. Following completion of the drilling activity, all such records shall be retained for a period of 2 years at the facility, at the lessee's field office nearest the OCS facility, or at another location conveniently available to the District Supervisor.

4. Section 250.86 is amended by revising paragraph (d) and adding a new paragraph (e) to read as follows:

§ 250.86 Blowout preventer system testing, records, and drills.

* * * * *

(d) The lessee shall record pressure conditions during BOP tests on pressure charts, unless otherwise approved by the District Supervisor. The test interval for each BOP component tested shall be sufficient to demonstrate that the component is effectively holding pressure. The charts shall be certified as correct by the operator's representative at the facility.

(e) The time, date, and results of all pressure tests, actuations, inspections, and crew drills of the BOP system, system components, and marine risers shall be recorded in the operations log. The BOP tests shall be documented in accordance with the following:

(1) The documentation shall indicate the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. As an alternate, the documentation in the operations log may reference a BOP test plan that contains the required information and is retained on file at the facility.

(2) The control station used during the test shall be identified in the operations log. For a subsea system, the pod used during the test shall be identified in the operations log.

(3) Any problems or irregularities observed during BOP and auxiliary equipment testing and any actions taken to remedy such problems or irregularities shall be noted in the operations log.

(4) Documentation required to be entered in the operations log may instead be referenced in the operations log. All records including pressure charts, operations log, and referenced documents pertaining to BOP tests, actuations, and inspections shall be available for MMS review at the facility for the duration of the well-completion activity. Following completion of the well-completion activity, all such records shall be retained for a period of 2 years at the facility, at the lessee's field office nearest the OCS facility, or at another location conveniently available to the District Supervisor.

5. Section 250.106 is amended by revising paragraph (d) and adding a new paragraph (e) to read as follows:

§ 250.106 Blowout preventer system testing, records, and drills.

* * * * *

(d) The lessee shall record pressure conditions during BOP tests on pressure charts, unless otherwise approved by the District Supervisor. The test interval for each BOP component tested shall be sufficient to demonstrate that the component is effectively holding pressure. The charts shall be certified as correct by the operator's representative at the facility.

(e) The time, date, and results of all pressure tests, actuations, inspections, and crew drills of the BOP system, system components, and marine risers shall be recorded in the operations log. The BOP tests shall be documented in accordance with the following:

(1) The documentation shall indicate the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. As an alternate, the documentation in the operations log may reference a BOP test plan that contains the required information and is retained on file at the facility.

(2) The control station used during the test shall be identified in the operations log. For a subsea system, the pod used during the test shall be identified in the operations log.

(3) Any problems or irregularities observed during BOP and auxiliary equipment testing and any actions taken to remedy such problems or irregularities shall be noted in the operations log.

(4) Documentation required to be entered in the operation log may instead be referenced in the operations log. All records including pressure charts, operations log, and referenced documents pertaining to BOP tests, actuations, and inspections, shall be available for MMS review at the facility for the duration of well-workover activity. Following completion of the well-workover actity, all such records shall be retained for a period of 2 years at the facility, at the lessee's filed office nearest the OCS facility, or at another location conveniently available to the District Supervisor.

[FR Doc. 91-1213 Filed 1-17-91; 8:45 am]
BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of proposed amendments to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of proposed changes to the Indiana program concerning suspension or revocation of permits and adjudicative proceedings. The proposed rules are intended to govern proceedings under Indiana Code (IC) 4-21.5, Administrative Orders and Procedures.

EFFECTIVE DATE: January 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, Indiana 46204; Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

The Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982.

Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 914.10, 914.15 and 914.16.

II. Submission of Amendment

By letter dated August 15, 1989 (Administrative Record Number IND–0674), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 0.6–1–5 and 310 IAC 12–6–6.5. On September 29, 1989 (Administrative Record Number IND–0684), OSM received a letter from IDNR withdrawing the proposed amendment at 310 IAC 0.6–1–5 and requesting that OSM proceed with a review of the proposed changes at 310 IAC 12–6–6.5 concerning suspension or revocation of permits. The proposed rules at 310 IAC 0.6–1–5 were withdrawn because no rules at 310 IAC 0.6 concerning adjudicative proceedings and ever been formally submitted to OSM for approval as part of the Indiana program.

OSM announced receipt of the proposed amendment in the November 1, 1989, **Federal Register** (54 FR 46076), and invited public comment on its adequacy. The public comment period ended on December 1, 1989. The public hearing scheduled for November 26, 1989, was not held because no one requested an opportunity to testify.

By letter dated December 5, 1989, (Administrative Record No. IND–0723), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to add 310 IAC 0.6 to the Indiana program. OSM announced receipt of the proposed amendments in the January 25, 1990, **Federal Register** (55 FR 2536), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on their adequacy. The comment period closed on February 26, 1990. No hearing was held because no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendments. Only those revisions of particular interest are discussed below. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below concern nonsubstantive wording changes to improve clarity of the language or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. 310 IAC 12–6–6.5 Suspension or Revocation of Permits

(a) *310 IAC 12–6–6.5(a)(1).* This paragraph is being amended to delete the requirement to provide an opportunity for a public hearing "in accordance with IC 4–22–1" and to add that hearings shall be provided "under IC 4–21.5 and 310 IAC 0.6."

This proposed change reflects, in part, Indiana's Public Law 18–1986 which repealed IC 4–22–1 concerning administrative adjudication and replaced that law with a new law on administrative adjudication at IC 4–21.5. In effect, the proposed amendment revises the Indiana program to reflect the current statutes concerning administrative adjudication. In addition, the proposed reference to 310 IAC 0.6 concerns Indiana's adjudicative proceedings rules. The Director finds that the proposed revision which adds references to Indiana's administrative adjudicative laws at IC 4–21.5 is no less effective than the Federal regulations at 30 CFR 843.13(a)(1) concerning suspension or revocation of permits. The Director notes, however, that OSM's review of the proposed rules at 310 IAC 0.6–1 appears at Finding 2 in this notice and that the proposed rules at 310 IAC 0.6–1 concerning the suspension or revocation of permits under IC 13–4.1–11–6 have not been approved. Therefore, the Director is not approving the amendment to 310 IAC 12–6–6.5(a)(1) to the extent that it references the provisions at 310 IAC 0.6–1 that are not approved in this notice.

(b) *310 IAC 12–6–6.5(a)(2)(A).* This subparagraph is being amended to delete the words "the same or related" and to replace those words with the word "different." In a letter to Indiana dated January 24, 1990 (Administrative Record Number IND–0742), OSM stated that the proposed change at subparagraph (a)(2)(A) appeared to be an error, as the change rendered subparagraph (a)(2)(A) to be identical to subparagraph (a)(2)(B). In a letter dated March 7, 1990 (Administrative Record Number IND–0759), Indiana acknowledged the error and on April 1, 1990, the IDNR published in the Indiana Register an errata correcting the error (Administrative Record Number IND–0782). The Director finds that the Indiana provision at 310 IAC 12–6–6.5(a)(2)(A), as corrected in the Indiana Register remains substantively identical to and no less effective than the Federal provisions at 30 CFR 843.13(a)(2)(i).

(c) *310 IAC 12–6–6.5(a)(3).* This paragraph is being amended to require the Director of IDNR to issue a complaint and proposed show cause order as provided in 310 IAC 0.6–1–5(b) through 310 IAC 0.6–1–5(j) of the Indiana rules if the director determines that a pattern of violations exists or has existed. In effect, this amendment ties Indiana's review and response to an operator's history of violations to Indiana's administrative adjudication rules at 310 IAC 0.6. Prior to the proposed amendments, 310 IAC 12–6–6.5(a)(3) required that if the Director of IDNR determines that a pattern of violations exists or existed, the Director of IDNR shall issue an order to show cause as provided in paragraph (a)(1) of 310 IAC 12–6–6.5. As discussed below at Finding 2(e), the proposed rules at 310 IAC 0.6–1–5(b) through (j) provide for a two-tiered hearing process prior to any final decision regarding the suspension or revocation of a permit that is less effective than the Federal regulations at 30 CFR 843.13. Therefore, the Director is not approving the amendment to 310 IAC 12–6–6.5(a)(3) to the extent that it references the proposed provisions at 310 IAC 0.6–1 that are not approved in this notice.

(d) *310 IAC 12–6–6.5(b).* This paragraph is being amended to state that the Director of IDNR may decline to issue a complaint and proposed show cause order, or may dismiss an outstanding complaint and proposed order, if the Director finds that it would be demonstrably unjust to issue or to fail to dismiss the show cause order. The proposed amendment has added the words "complaint and proposed" in two places relating to show cause orders. The proposed amendment has also deleted the words "vacate" and replaced that word with the word "dismiss." As discussed in Finding 2(e) below and at Finding 1(c) above, the proposed rules at 310 IAC 0.6–1–5(b) through (j) concern the issuance of a complaint and proposed show cause order. The Director has determined that the proposed rules at 310 IAC 0.6–1–5(b) through (j) provide for a two-tiered hearing process that is less effective than the Federal regulations at 30 CFR 843.13. Therefore, the Director is not approving the proposed amendment to 310 IAC 12–6–6.5(b) to the extent that the amendment would add the words "complaint and proposed" to the rule.

(e) *310 IAC 12–6–6.5(c), (d), and (e).* Existing paragraphs (c), (d) and (e) are

proposed to be deleted and replaced by a new paragraph (c). New paragraph (c) references provisions at 310 IAC 0.6, and incorporates the requirements formerly contained in deleted paragraphs (c), (d), and (e). The Director finds that the proposed revisions do not render the Indiana rules to be less effective than the Federal rules at 30 CFR 843.13 with the exception of the proposed reference to 310 IAC 0.6–1–5(b) through (j). As discussed in Finding 2(e) below, the Director has determined that the proposed rules at 310 IAC 0.6–1–5(b) through (j) provide for a two-tiered hearing process that is less effective than the Federal regulations at 30 CFR 843.13. Therefore, the Director is not approving the proposed amendment to 310 IAC 12–6–6.5(c) to the extent that the amendment would add a reference to the proposed complaint and proposed show cause order provisions at 310 IAC 0.6–1–5(b) through (j).

2. 310 IAC 0.6 Adjudicative Proceedings

(a) *310 IAC 0.6–1–1: Definitions.* Indiana proposes several definitions of terms that are used in the proposed rules at 310 IAC 0.6. The proposed language states that the definitions are in addition to those definitions presented in IC 4–21.5–1, and apply throughout 310 IAC 0.6. The terms defined are advisory council, commission, delegate, department, director, hearing commissioner, and objections hearings. Although the Federal regulations do not contain similar definitions, the Director finds that the terms defined are not inconsistent with SMCRA and the Federal regulations and can be approved.

(b) *310 IAC 0.6–1–2: Applicability of rule.* The proposed rule at 310 IAC 0.6–1–2(a) states that 310 IAC 0.6–1 controls proceedings conducted by an administrative law judge for the Department of Natural Resources. Proposed 310 IAC 0.6–1–2(b) states that 310 IAC 0.6–1–8 concerning automatic change of an administrative law judge, and 310 IAC 0.6–1–12 concerning objections to recommendations of an administrative law judge do not apply if the administrative law judge is the ultimate authority for the department. However, the administrative law judge cannot be the ultimate authority under IC 14–3–3–21(b), which states that the Natural Resources Commission (the commission) cannot delegate its ultimate authority. Therefore, the Director is not approving the proposed provision at 310 IAC 0.6–1–2(b).

(c) *310 IAC 0.6–1–3: Review of actions taken by delegates of Natural Resources Commission.* The proposed rule at 310 IAC 0.6–1–3 states that an affected person who is aggreieved by a determination by a person who has been delegated authority under 310 IAC 0.7 may apply for administrative review under IC 4–21.5–3–7 of the determination by an administrative law judge (who shall make recommendations for final agency action to the commission). The Indiana statute at IC 4–21.5–3–7 governs the review of certain types of administrative decisions and establishes the provisions for preliminary hearings. On April 12, 1990, Indiana withdrew proposed rules concerning delegation of authority at 310 IAC 0.7 (Administrative Record Number IND–0777). Indiana stated that the newly adopted Senate Enrolled Act (SEA) 362 would have a great impact on 310 IAC 0.7 and that, therefore, proposed 310 IAC 0.7 should be withdrawn. Therefore, OSM cannot approve the reference to 310 IAC 0.7 at 310 IAC 0.6–1–3 until Indiana submits a program amendement concerning 310 IAC 0.7 and has received approval by OSM.

(d) *310 IAC 0.6–1–4: Petition for administrative review notice of appointment of administrative law judge.* The proposed language at 310 IAC 0.6–1–4(a) states that a person who applies for administrative review of an order shall file a petition with the department under IC 4–21.5–3–7. The proposed language at 310 IAC 0.6–1–4(b) presents the address that the petition described in subsection (a) or a written request for temporary relief under IC 13–4.1 should delivered. Although there are no direct counterparts to proposed subsections (a) and (b) in SMCRA or the Federal regulations, the Director finds those subsections to be consistent with the general requirements of the Federal regulations at 43 CFR 4.1100 *et seq.* governing surface coal mining hearings and appeals.

Subsection (c) states that the hearing commissioner shall appoint an administrative law judge as soon as practicable after the receipt of a complaint, petition for administrative review, written request for temporary relief, or other request for administrative review under IC 4–21.5. Further, the proposed rule states that where the administrative law judge is appointed to conduct a proceeding with respect to a request for temporary relief under IC 13–4.1, the administrative law judge is the ultimate authority for the Department of Natural Resources. As discussed above in Finding 2(b), an administrative law judge cannot be the ultimate authority under IC 14–3–3–21(b). The Director, therefore, is not approving 310 IAC 0.6–1–4(c) to the extent that the proposed rule states that the administrative law judge is the ultimate authority for the Department of Natural Resources.

(e) *310 IAC 0.6–1–5: Petition for review; response.* Proposed subsection (a) of 310 IAC 0.6–1–5 states that, except as provided in subsection (b) through (j), averments contained in a petition for review are deemed automatically denied by the responding party. Further, a responding party wishing to assert an affirmative defense, any counterclaim or cross-claim shall do so in writing filed and served not later than the initial prehearing conference, unless otherwise ordered by the administrative law judge. Although there is no direct Federal counterpart to the proposed 310 IAC 0.6–1–5(a), the Director finds that this provision is not inconsistent with SMCRA or the Federal regulations, except to the extent that it cross-references subsection (b) through (j) of 310 IAC 0.6–1–5. Therefore, the Director is not approving the cross-reference to subsections (b) through (j) contained in subsection (a).

Proposed subsection (b) states that subsections (c) through (j) govern the suspension or revocation of a permit under IC 13–4.1–11–6.

Proposed subsection (c) states that the proceeding is commenced when the Director of IDNR (or delegate of the Director) issues a complaint and proposed order to show cause why the permit should not be revoked or suspended under IC 4–21.5–3–8 against a permittee which alleges: (1) A pattern of violations of IC 13–4.1, 310 IAC 12, or any permit condition required by IC 13–4.1; and (2) the violations are either (A) willfully caused by the permittee; or (B) caused by the permittee's unwarranted failure to comply with IC 13–4.1, 310 IAC 12, or any permit condition required by IC 13–4.1.

Proposed 310 IAC 0.6–1–5 subsection (d) states that a permittee who desires to contest a complaint and proposed order must, within 30 days of service, file and answer specifically denying those allegations of the complaint and proposed order which the permittee desires to contest.

Proposed subsection (e) states that if a response is not filed by the permittee under subsection (d), the Director of IDNR shall submit a written recommendation to the commission that the permit be suspended or revoked. A written recommendation under this subsection is not a final agency action.

Proposed subsection (f) states that if a response is filed by the permittee under subsection (d), the matter shall be assigned to an administrative law judge for a proceeding under IC 4–21.5–3. In

the proceeding, the department has the burden of going forward with evidence of the facts alleged in the complaint and proposed order and the permittee has the ultimate burden of persuasion. If the Director of IDNR determines the facts alleged in the complaint and proposed order are true, the Director of IDNR shall submit a written recommendation to the commission that the permit be suspended or revoked. In making this recommendation, the Director of IDNR shall consider the factors set forth in 310 IAC 12–6–6.5. The proposed language also states that a written recommendation under subsection (f) is not a final agency action.

Proposed subsection (g) states that if the Director of IDNR recommends to the commission that a permit be revoked or suspended, the Director of IDNR shall also issue an order to show cause why the permit should not be revoked or suspended. Within 30 days of service of the order, the permittee may file a response setting forth any reasons why the permit should not be revoked or suspended. If the permittee does file a response, the matter shall be assigned to an administrative law judge for a proceeding under IC 4–21.5–3. During this proceeding, any matter alleged by the permittee is an affirmative defense and the permittee has the burden of persuasion and the burden of going forward with evidence of any matter raised in the response. In a proceeding under subsection (g), the permittee may not relitigate a matter determined by the Director of IDNR in a proceeding under subsection (f).

Proposed 310 IAC 0.6–1–5 subsection (h) provides for an order to be issued by an administrative law judge pursuant to IC 4–21.5–3–27 following the conclusion of evidence under subsection (g). Any objections to that order (or to the written recommendation filed by the Director of IDNR under subsection (e) or (f), if no proceeding is conducted under subsection (g)) shall conform with IC 4–21.5–3–29 and section 12 of this rule. Following completion of the proceeding, the commission shall enter a final order as to whether the permit should be suspended or revoked.

Proposed 310 IAC 0.6–1–5(i) states that the Department of Natural Resources shall serve the parties with a copy of the final order of the commission as provided in IC 4–21.5–3–28. Following notification under this subsection, a party may apply for judicial review of any matter determined under this subsection.

Proposed 310 IAC 0.6–1–5(j) states that subsection (j) does not make available more than one hearing before the Director of IDNR and one hearing before the commission on a decision to suspend or revoke a permit unless an additional hearing is ordered by the Director of IDNR or by the commission udner IC 4–21.5–3–29.

310 IAC 0.6–1–5 (b) through (j), as proposed, provide for a two-tiered hearing process prior to any final decision regarding suspension or revocation of a permit. Specifically, the Director of IDNR must begin the proceeding by filing a complaint and proposed show cause order. Only after an opportunity for hearing on said complaint and proposed order, and after a decision by an administrative law judge that the matters asserted in the complaint are true, may an acutal show cause order be issued. At this point, the permittee has yet another hearing opportunity which may be exercised regardless of whether or not the permittee availed itself of the opportunity for a hearing on the initial complaint and proposed order.

The two-tiered hearing procedure which includes issuance of a complaint and proposed show cause order is likely to result in undue delays in the issuance of show cause orders, thereby allowing violating permittees to continue to operate when their permits should be suspended or revoked. Indiana was asked, via an issue letter dated April 11, 1990 (Administrative Record Number IND–0769), to explain how the imposition of the revised hearing procedure, which includes issuance of a complaint and proposed show cause order prior to the issuance of a show cause order, is no less effective than the Federal regulations at 30 CFR 843.13 which only provide for one hearing opportunity. Indiana responded by letter dated August 10, 1990, (Administrative Record Number IND–0795) and stated that Indiana had no additional information to offer.

In addition, 310 IAC 0.6–1–5(h) states that following the conclusion of evidence under subsection (g) an order shall be issued under IC 4–21.5–3–27. IC 4–21.5–3–27(f) requires that an order be issued in writing within 90 days after conclusion of the hearing or after submission of proposed findings. This 90-day requirement conflicts with the language at IC 13–4.1–11–6(b) concerning a decision after a show cause hearing. IC 13–4.1–11–6(b) requires the Director of IDNR to issue a decision within 60 days following the hearing. The proposed rule is also less effective than Federal regulations at 30 CFR 843.13(c) which require that a written determination be issued with 60 days after the hearing.

The Director finds that the provisions at 310 IAC 0.6–1–5 (b) through (j) provide for the issuance of a complaint and proposed show cause order and thereby create a two-tiered hearing procedure concerning the suspension or revocation of permits that is less effective than the Federal regulations at 30 CFR 843.13 which only provide for one hearing opportunity. Therefore, the Director is not approving the proposed rules at 310 IAC 0.6–1–5 (b) through (j) and is requiring Indiana to submit further revisions to its program which provide for adjudicative proceedings for suspension and revocation of permits which are not less effective than the Federal regulations at 30 CFR 843.13 and 43 CFR 4.1190 through 4.1196.

(f) *310 IAC 0.6–1–6: Amendment of pleadings.* The proposed provisions at subsection (a) state that a complaint, petition for review or other document which initiates a proceeding may be amended once as a matter of course before a response is filed but not later than the initial prehearing conference or 15 days before a hearing (whichever occurs first) except by leave of the administrative law judge. Leave shall be granted where justice requires. The Director finds that the proposed rule is not inconsistent with SMCRA and the Federal regulations at 43 CFR 4.1100 *et seq.*

Proposed subsection (b) states that whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. The Director finds there is no Federal counterpart to the proposed rule at 310 IAC 0.6–1–6(b) but that the proposed rule is not inconsistent with SMCRA and the Federal regulations at 43 CFR 4.1100 *et seq.*

(g) *310 IAC 0.6–1–7: Filing and service of documents.* Proposed subsection (a) states that documents shall be filed with the administrative law judge and served on all other parties. Proposed subsection (b) states the authorized methods of filing of a document with the administrative law judge and when filing is deemed complete. Proposed subsection (c) identifies the authrozied methods of service if a party is represented by an attorney or another authorized representative. Proposed subsection (d) states that if an individual appears without spearate representation, service shall be made upon the individual. According to proposed subsection (e), nothing in 310 IAC 0.6–1–7 shall be construed to modify the time in which a party may file objections under IC 4–21.5–3–29 or a petition for judicial review under IC 4–21.5–5. The Director finds that the

proposed rules, except as noted below, contain procedures that are no less effective than the Federal regulations at 43 CFR 4.1107 and 4.1109. However, the proposed provisions at 310 IAC 0.6–1–7 (c) and (d), to the extent that the rules allow that service of the initial document of a proceeding may be completed by first class mail, are less effective than the Federal regulations at 43 CFR 1109(b) and cannot be approved.

(h) *310 IAC 0.6–1–8: Administrative law judge; automatic change.* This proposed section sets forth the reasons for which an automatic change in an administrative law judge may be made. Proposed subsections (b) and (c) set forth the procedures to follow for an automatic change in an administrative law judge. Subsection (d) sets forth the limitation to the proposed rule. The Director finds that the proposed rules are not inconsistent with the general provision sof the Federal regulations at 43 CFR 4.1100 *et seq.*

(i) *310 IAC 0.6–1–9: Dismissals.* Proposed subsection (a) sets forth the following criteria under which an administrative law judge may determine a proceeding may be dismissed: (1) If a party fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding, or (2) the person seeking administrative review does not qualify for review under IC 4–21.5–3–7. Proposed subsection (b) states that unless otherwise specified in the order, an order of dismissal is a final agency action of the department and is made with prejudice. The Director finds that the proposed rules are not inconsistent with the general provisions of the Federal regulations at 43 CFR 4.1100 *et seq.*

(j) *310 IAC 0.6–1–10: Applicability of rules of trial procedure.* This proposed rule states that where not inconsistent with IC 4–21.5 and 310 IAC 0.6–1, the administrative law judge may apply a provision of the Indiana Rules of Trial Procedure. The Director finds that there are no Federal counterparts to the proposed rule. The Director is approving the proposed rule to the extent that the rule allows an administrative law judge to apply provisions of the Indiana Rules of Trial Procedure which are not inconsistent with SMCRA and the Federal regulations.

(k) *310 IAC 0.6–1–11: Conduct of hearing.* The proposed rule states that an administrative law judge shall govern the conduct of a hearing and the order of proof. The rule also states that on motion by a party before the commencement of testimony, the administrative law judge shall provide for a separation of the witnesses. The Director finds that the proposed rule is not inconsistent with the Federal regulations at 43 CFR 4.1121 concerning powers of administrative law judges.

(l) *310 IAC 0.6–1–12: Objections to recommendations of an administrative law judge.* The proposed rule applies if a person files objections under IC 4–21.5–3–29. Proposed subsection (b) sets forth the procedure to follow if a party wishes to contest the timeliness of objections filed by another party. Subsection (c) sets forth the procedures for a party who wishes to contest whether objections provide reasonable particularity. Subsection (d) sets forth the procedures governing oral argument. While there are no direct Federal counterparts, the Director finds the proposed rules are not inconsistent with the Federal regulations at 43 CFR 4.1100 *et seq.*

(m) *310 IAC 0.6–1–13: Award of costs and attorney fees.* The proposed provisions at 310 IAC 0.6–1–13 concern the award of costs and attorney fees for a proceeding under the Indiana surface mine coal reclamation act or oil and gas code. Subsection (a) states that in determining whether to make an award for costs and expenses reasonably incurred, including attorney fees, under IC 13–4.1–11–9 or IC 13–8–5–7, the following factors may be considered: (1) Whether the person against whom the award is made acted for the purpose of harassing or embarrassing an opposing party. (2) Whether the person seeking the award other than a permittee under IC 13–4.1, an operator under IC 13–8, or the department made a substantial contribution to a full and fair determination of the issues.

The proposed provisions leave open the possibility for the award of costs to a permittee from another person under circumstances other than those which solely concern a finding of bad faith where the person acted for the purpose of harassing or embarrassing the permittee. The Federal regulations at 43 CFR 1294(d) authorize the award of costs to a permittee from any person only when the permittee demonstrates that the person initiated a proceeding under section 525 of SMCRA or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee. The proposed language at 310 IAC 0.6–1–13(a) states that the factors at (a) (1) and (2) "may" be considered in determining whether to make an award for costs and expenses reasonably incurred, including attorney fees. By making consideration of these factors optional, the factor at (a)(1) could be disregarded and an award made to a permittee from another person under circumstances other than of bad faith. The Director finds, therefore, that the proposed rule at 310 IAC 0.6–1–13(a) is less effective than the Federal regulations at 43 CFR 4.1294. In addition, the Director is requiring that Indiana further amend its program at 310 IAC 0.6–1–13(a) to be consistent with the Federal regulations at 43 CFR 4.1294.

Also, and similar to the item discussed above, the provision at 310 IAC 0.6–1–13(a) would allow an award of costs to the State from a person under circumstances other than those which solely concern a finding of bad faith where the person acted for the purpose of harassing or embarrassing the State. The provision, therefore, is less effective than the Federal regulations at 43 CFR 4.1294 which allows the award of costs and expenses to the State from another person only under circumstances which concern a finding of bad faith for the purpose of harassing or embarrassing the State. In addition, the Director is requiring that Indiana further amend its program at 310 IAC 0.6–1–13(a) to be consistent with the Federal regulations at 43 CFR 4.1294.

The proposed rules at 310 IAC 0.6–1–13(b) state that no award shall be made except to a party which has prevailed in whole or in part, achieving at least some degree of success on the merits. The Federal regulations at 43 CFR 4.1294(a)(1) state that an award of costs from a permittee to a person who participated in, but did not initiate a proceeding, must be based on a substantial contribution that is separate and distinct from the contribution made by a person initiating the proceeding. The proposed Indiana rules at 310 IAC 0.6–1–13 lack similar language concerning the award of costs from a permittee to a person who participated in but did not initiate a proceeding. The Director finds, therefore, that 310 IAC 0.6–1–13(b) is less effective than the Federal regulations at 43 CFR 4.1294(a)(1). In addition, the Director is requiring that Indiana further amend its program at 310 IAC 0.6–1–13(b) to be consistent with the Federal regulations at 43 CFR 4.1294(a)(1).

Proposed subparagraph (c) provides that the Director may require the person requesting a hearing to pay the cost of the court reporter if the person requesting the hearing fails, after proper notice, to appear at the hearing. Although there is no Federal counterpart to this rule, the Director finds the provision reasonable and not inconsistent with SMCRA and the Federal regulations.

Proposed subparagraph (d) sets forth criteria to be used when determining what is a reasonable amount of attorney fees under subsection (a). Although

there is no direct Federal counterpart, the Director finds that the provisions are reasonable and consistent with the Federal regulations at 43 CFR 4.1292(a)(3).

Proposed subparagraph (e) requires that a petition for award of costs and attorney fees shall be filed with the Director within 30 days of receipt of the final agency action. Subparagraph (e) also sets forth criteria for parties wishing to challenge the petition for an award. The Federal regulations at 43 CFR 4.1291 allow a petition for fees to be filed within 45 days of receipt of the final agency action. While the time limit for filing is shorter under the Indiana proposal, the Director finds that the proposed time period is still reasonable and, therefore, no less effective than the Federal regulations at 43 CFR 4.1291.

(n) *310 IAC 0.6–1–14: Court reporter; transcripts.* The proposed rule sets forth the requirement that the IDNR shall employ the services of a stenographer or court reporter to record evidence taken during a hearing. The proposed provisions at (b) and (c) set forth the procedures to obtain a copy of the transcript of the evidence. Proposed subsection (d) requires that a court reporter who is not an employee of the department will be engaged to record a hearing upon a written request by a party filed at least 48 hours before a hearing. The Director finds that the proposed rules contain provisions that are no less effective than the Federal regulations at 43 CFR 4.23.

(o) *310 IAC 0.6–1–15: Special status determinations.* This proposed rule authorizes and sets forth the procedures for obtaining an interpretation of a statute or a rule administered by IDNR as applicable to a specific factual circumstance. The Director finds that there are no Federal counterparts to the proposed rule but that the proposed rule is not inconsistent with SMCRA or the Federal regulations.

(p) *310 IAC 0.6–1–16: Continuances.* This proposed rule authorizes and sets forth the procedures for continuances upon a showing of good cause. The Director finds that the proposed rules are not inconsistent with the Federal regulations at 43 CFR 4.1121 concerning the powers of administrative law judges.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the November 1, 1989, **Federal Register** ended on December 1, 1989. The Indiana Coal Council, Incorporated responded and provided comments in support of proposed 310 IAC 12–6–6.5. In response, the Director notes that proposed provisions of 310 IAC 12–6–6.5 that were referenced by the Indiana Coal Council, Incorporated are being approved except for those that refer to the complaint and proposed show cause order rules at 310 IAC 0.6. As discussed in Finding 2, the proposed rules at 310 IAC 0.6 are not being approved to the extent that the rules would implement a two-tiered hearing procedure which includes issuance of a complaint and proposed show cause order prior to the issuance of a show cause order. The two-tiered procedure would allow violating permittees to continue to operate when their permits should be suspended or revoked and would be less effective than the Federal regulations at 30 CFR 843.13. In addition, and also explained in Finding 2, the proposed rules at 310 IAC 0.6 are not being approved to the extent that they would allow that an order be issued within 90 days after conclusion of the hearing or after submission of proposed findings. The 90-day provision is less effective than the Federal regulations at 30 CFR 843.13(c) which allows only 60 days.

The public comment period and opportunity to request a public hearing announced in the January 26, 1990, **Federal Register** ended on February 26, 1990. No public comments were received.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were also solicited from various Federal agencies with an actual or potential interest in the Indiana program. In response to the proposed amendments to 310 IAC 12–6–6.5, comments were received from the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service, and the U.S. Soil Conservation Service. The EPA stated that they have no comments on the proposed amendments. EPA also stated that the proposed amendments demonstrate the legal authority, administrative capability, and technical conformity with controlling Federal National Pollutant Discharge Elimination System (NPDES) regulations to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et. seq.*).

The U.S. Fish and Wildlife Service stated that it had no objections to the proposed amendments at 310 IAC 12–6–6.5. The U.S. Soil Conservation Service stated that it concurs with the amended rules.

In response to the proposed amendments to 310 IAC 0.6, comments were received from the EPA and the Mine Safety and Health Administration (MSHA). EPA stated that they have no comments on the proposed amendments. EPA concluded that the proposed amendments demonstrate the legal authority, administrative capability, and technical conformity with controlling NPDES regulations to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). The MSHA stated that the amendments did not impact on any of their programs.

V. Director's Decision

Based on the above finding, the Director is approving the Indiana program amendments submitted by Indiana on August 15, 1989, and amended on September 29, 1990, and the amendments submitted by Indiana on December 5, 1989, except as noted below.

As discussed in Finding 1(a), 310 IAC 12–6–6.5(a)(1) is not being approved to the extent that it references the provisions at 310 IAC 0.6–1 that are approved in this notice.

As discussed in Finding 1(c), 310 IAC 12–6–6.5(a)(3) is not approved to the extent that the rule references the provisions at 310 IAC 0.6–1 that are not approved in this notice.

As discussed in Finding 1(d), 310 IAC 12–6–6.5(b) is not approved to the extent that the amendment would add the words "complaint and proposed" to the rule.

As discussed in Finding 1(e), 310 IAC 12–6–6.5(c) is not approved to the extent that the amendment would add a reference to the proposed provisions at 310 IAC 0.6–1–5 (b) through (j) that are not approved in this notice.

As discussed in Finding 2(b), 310 IAC 0.6–1–2(b) concerning the ultimate authority of the administrative law judge is not approved.

As discussed in finding 2(c), in proposed 310 IAC 0.6–1–3, the reference to 310 IAC 0.7 is not approved.

As discussed in Finding 2(d), 310 IAC 0.6–1–4(c) to the extent that the proposed rule states that the administrative law judge is the ultimate authority for the Department of Natural Resources is not approved.

As discussed in Finding 2(e), the proposed rules at 310 IAC 0.6–1–5 (b) through (j) concerning complaint and proposed show cause orders are not approved and the cross-reference to subsections (b) through (j) contained in 310 IAC 0.6–1–5(a), is not approved. In addition, the Director is requiring

Indiana to further amend its program to provide for adjudicative proceedings for suspension and revocation of permits which are no less effective than the Federal regulations at 30 CFR 843.13 and 43 CFR 4.1190 through 4.1196.

As discussed in Finding 2(g), the proposed rules at 310 IAC 0.6–1–7 (c) and (d) are not approved to the extent that the rules allow that service of the initial document of a proceeding may be completed by first class mail.

As discussed in Finding 2(m), 310 IAC 0.6–1–13 (a) and (b) concerning the award of costs and attorney fees are not approved. In addition, the Director is requiring Indiana to further amend its program to provide for award of costs and attorney fees which are no less effective than the Federal regulations at 43 CFR 4.1294.

The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their program in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provision and that EPA concurrence is, therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 10, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 914.15, paragraph (cc) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(cc) With the exceptions of those provisions identified here, the Indiana program amendments to 310 IAC 12–6–6.5 concerning suspension or revocation of permits submitted to OSM on August 15, 1989, and the addition of 310 IAC 0.6–1 concerning adjudicative proceedings as submitted on December 5, 1989, are approved effective January 18, 1991. OSM is not approving the following amendments: 310 IAC 12–6–6.5(a)(1) to the extent that the amendment references the provisions at 310 IAC 0.6–1 that are not approved here; 310 IAC 12–6–6.5(a)(3) to the extent that the amendment references the provisions at 310 IAC 0.6–1 that are not approved here; 310 IAC 12–6–6.5 (b) to the extent that the amendment would add the words "complaint and proposed;" 310 IAC 12–6–6.5(c) to the extent that it references 310 IAC 0.6–1–5 (b) through (j); 310 IAC 0.6–1–2(b) concerning the ultimate authority of an administrative law judge; 310 IAC 0.6–1–3 to the extent that it references 310 IAC 0.7; 310 IAC 0.6–1–4(c) to the extent that it states that the administrative law judge is the ultimate authority for the Department of Natural Resources; 310 IAC 0.6–1–5 (b) through (j) and the cross-reference to subsections (b) through (j) contained in 310 IAC 0.6–1–5(a); 310 IAC 0.6–1–7 (c) and (d) to the extent that the rule allows that service of the initial document of a proceeding may be completed by first class mail; 310 IAC 0.6–1–13(a); and 310 IAC 0.6–1–13(b).

3. In § 914.16, new paragraphs (d) and (e) are added to read as follows:

§ 914.16 Required program amendments.

* * * * *

(d) By June 3, 1991, Indiana shall submit for OSM approval, an amendment to its permanent regulatory program which provides for adjudicative proceedings for suspension or revocation of permits which are no less effective than the Federal regulations at 30 CFR 843.13 and 43 CFR 4.1190 through 4.1196.

(e) By June 3, 1991, Indiana shall submit for OSM approval:

(1) An amendment to 310 IAC 0.6–1–13(a) which provides that an award of costs and expenses, including attorney fees, to a permittee or to the State of Indiana may only be assessed against a person who is not the permittee upon a finding of bad faith, where the person acted for the purpose of harassing or embarrassing the permittee or the State of Indiana.

(2) An amendment to 310 IAC 0.6–1–13(b) which requires that any award of costs and expenses, including attorney fees, from a permittee to a person who participated in but did not initiate a proceeding must be based on a substantial contribution that is separate and distinct from the contribution made

by the person that initiated the proceeding.

[FR Doc. 91-1277 Filed 1-17-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

35 CFR Parts 251 and 253

Regulations of the Secretary of the Army (Panama Canal Employment System); Employment and Personnel Policy

AGENCY: Department of the Army, Defense.

ACTION: Final rule.

SUMMARY: This final rule provides for a number of changes to the Panama Canal Employment System (PCES). The purpose of these changes is to exclude certain positions from coverage by the PCES as permitted by the Panama Canal Act. The first revision provides for the exclusion of officers and employees of the National Security Agency in the Republic of Panama from the PCES except to the extent necessary to permit eligibility for the recruitment and retention differential provided in the Panama Canal Act of 1979. Similarly, Department of Defense Civilian Intelligence Personnel Management System (CIPMS) personnel at or above the GS-6 grade are excluded from the PCES provisions except for those that relate to the differential authorized by the Panama Canal Act. These partial exclusions are necessary to ensure that positions in Panama covered by other personnel systems will still be eligible for the differential for service in Panama.

The final rule also excludes the positions of Chief Financial Officer and Inspector General of the Panama Canal Commission from the PCES except for those provisions relating to the differential provided by the Panama Canal Act. This rule is required to preserve the Panama differential for high level positions otherwise excluded from the merit selection provisions of the PCES.

Additionally, service employees assigned to the residence of the Administrator of the Panama Canal Commission are excluded from the PCES when so designated by the Administrator. This change is necessary to effect the exclusion of certain personal service positions from the merit principles of the PCES.

The PCES is also amended to increase to thirty-five (35) the permissible number of positions in the career intern program. The revisions also reflect the change in title for the area coordinator position which will now be entitled liaison services specialist. The final rule also permits an appointing officer, in specific instances, to select from the ten highest eligibles from a certificate of eligibles through an application of the rule of ten in addition to the existing rule of three. Finally, the rule provides procedures for the conversion of temporary employees to permanent appointments. These changes are intended to conform the PCES to the policies, principles and standards applicable to the competitive service to the extent practicable and consistent with the Panama Canal Treaty of 1977 and the Act. In these instances, the changes are necessary to conform the regulations with practices existing as a result of previously-approved deviations.

EFFECTIVE DATE: January 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW., Washington, DC 20036-4996 (telephone: 202-634-6441); LTC. George L. Cajigal, Military Assistant to the Assistant Secretary of the Army (Civil Works), room 2E569, Pentagon, Washington, DC 20301-0103 (telephone: 202-695-0482); or Mr. Robert H. Rupp, Executive Director, Panama Area Personnel Board, APO Miami 34011-5000 (telephone in Corozal, Republic of Panama: 011-507-52-7890).

SUPPLEMENTARY INFORMATION: The Panama Canal Employment System (PCES) was established in section 1212 of the Panama Canal Act of 1979, Public Law 96-70, 93 Stat. 464, 22 U.S.C. 3652. The PCES covers employees of the Panama Canal Commission and Department of Defense member agencies. Pursuant to 22 U.S.C. 3652 (c) and (d), the President may amend any provision of the PCES, may exclude any employee or position from PCES coverage and may extend to any employee the rights and privileges provided to employees in the competitive service. This authority has been delegated through the Secretary of Defense and the Secretary of the Army to the Chairman of the Panama Area Personnel Board. These regulations are promulgated pursuant to this authority. Issuance of a notice of proposed rulemaking under 5 U.S.C. 553 is not necessary because the final rule pertains only to personnel of agencies covered by these regulations.

The final rule addresses the applicability of the PCES to various positions. First, civilian officers and employees of the National Security Agency employed in the Republic of Panama who were excluded from all provisions of the PCES are now included for the limited purpose of obtaining eligibility for the recruitment and retention differential provided for in section 1217 of the Panama Canal Act (22 U.S.C. 3657). The provisions of 35 CFR 251.31 and 251.32 which fix the specific eligibility requirements of the differential are also made applicable to these employees. Similarly, the provisions of section 1218 (22 U.S.C. 3658) and of 35 CFR 251.25, which define basic pay as including the differential for the purposes of computing benefits based on basic pay, are also made applicable.

Previously, employees serving in these positions were eligible for the allowances provided in chapter 59 of title 5, but the relevance of those provisions has diminished as these employees are now residing on United States military bases within the Republic of Panama. The aforementioned differential has been determined to be a more suitable method of compensation in the current circumstances. As a result of these changing circumstances, on December 19, 1989, a deviation was granted pursuant to 35 CFR 251.6 enabling these employees to receive the tropical differential pending publication of this final rule.

This provision of the final rule does not affect the limited quarters allowance provided in 22 U.S.C. 3657a. As provided in 22 U.S.C. 3657a(d), a qualifying employee is eligible for the quarters allowance regardless of participation in the PCES by the employer agency.

The second revision to the applicability of the PCES affects employees in certain intelligence-related positions. Pursuant to 10 U.S.C. 1590, the Secretary of Defense has established the Civilian Intelligence Personnel Management System (CIPMS) with authority over certain positions for civilian intelligence officers and employees of the military departments carrying out intelligence functions. As a result, certain positions previously subject to the PCES are being shifted to the CIPMS. Only the positions at grades GS-6 and higher are being transferred to the CIPMS. While these positions and their incumbents will now be subject to the provisions of CIPMS, they will remain subject to the statutory and regulatory provisions of the PCES to the extent necessary to preserve eligibility for the differential provided therein.

Third, the positions of Chief Financial Officer and Inspector General within the

Panama Canal Commission are also excluded from the PCES except for those statutory and regulatory provisions relating to the recruitment or retention differential. These positions have been subject to the PCES to the extent provided in § 253.8(d), but now will be exempt from all provisions except those concerning the differential. This change reflects the decision of the Board of Directors which supervises the Panama Canal Commission to require the Chief Financial Officer and the Inspector General to report to and serve at the pleasure of the Board.

The final revision affecting the applicability of the PCES permits the exclusion, on an individual basis as determined by the Administrator of the Panama Canal Commission, of service employees assigned to the residence of the Administrator. The exclusion of these positions from the PCES is necessary to preserve flexibility in the selection and retention of these domestic and service employees. The necessity of assembling a compatible personal staff is deemed a sufficient consideration justifying the exclusion.

The final rule is also amended to provide for an increase in the number of positions at non-manual grades 5 and 7 designated for use by the Panama Canal Commission for filling positions in the Professional and Administrative Career Intern Program. The Panama Canal Treaty of 1979 requires the Commission to work toward a goal of increasing Panamanian participation at all levels and in all areas of the agency. The Career Intern Program was established to develop employees from entry level to full performance level in specific administrative and professional career fields The number of interns excepted from the PCES is increased from twenty-five (25) to thirty-five (35) to insure the participation and development of a sufficient number of high-potential Panamanians throughout the last decade of the Treaty transition period and beyond.

Additionally, the regulations are revised to reflect that the title of the area coordinator position has been changed to liaison services specialist. As such, the regulation which excludes area coordinators from certain provisions of the Panama Canal Act and from portions of the PCES is amended to designate these employees as liaison services specialists.

The changes also adopt the "rule of ten" on a permanent basis. The "rule of ten" is a procedure available for certain vacancies whereby an appointing official may select from among the ten best qualified applicants on a register, rather than being limited to select from among the top three applicants under the traditional "rule of three" concept. The expanded rule will provide appointing officers with greater flexibility in selecting employees for manual and entry-level positions from registers characterized by applicants often separated by only a few decimal points.

The "rule of ten" will not be available in every instance; it will only be utilized for positions for which applicants are certified from a pre-rated inventory of eligibles. In addition, its use will be limited to positions in the Canal Area Wage Base and to the United States Wage Base positions of apprentice, marine engineer trainees at the ME–7 level and floating equipment trainees at the FE–5 and FE–7 levels. Applicants for these positions are generally Panamanian, however the "rule of ten" will not be applied to the above positions in the event a United States citizen applicant is among the top three available candidates.

The expansion of the "rule of ten" to permit selection from among the ten highest eligibles does not conflict with existing civil service regulations because it will only be used for Panamanian applicants who cannot transfer into the competitive civil service. The regulation does not permit a United States citizen to benefit from a selection based on the "rule of ten" because that could jeopardize interchange agreements permitted in 5 CFR 6.7 concerning transfer of employees into title 5 civil service positions following employment under the PCES.

Finally, the revisions permit conversion of temporary employees to either Canal Area Career or Career-Conditional Appointments and set forth the eligibility limitations governing such conversions. This authority is provided in order to grant member agencies greater flexibility in converting the status of an employee from temporary to permanent. Such conversions are limited to employees with at least one year of continuous satisfactory performance immediately preceding the conversion. An employee may only be converted to a position in the same agency in which the temporary employment was performed. The conversion may only be to a position in the same wage category as that held prior to the conversion. In the case of a conversion to a manual category position in grades MG–1 through MG–9, the employee must be on the existing register and must rank in the top fifty percent, and in the case of a conversion to a non-manual category position filled from a pre-rated inventory in grades NM–1 through NM–5, the employee must rank in the top twenty-five percent of eligibles. A temporary employee may not be converted to fill a permanent position when a United States citizen is among the top three on the list of eligibles for that position or if the conversion would result in the passing over of a preference eligible. Finally, in order to maintain the integrity of interchange agreements with the Office of Personnel Management, the conversion procedure may not be utilized for temporary employees who are United States citizens.

This final rule is not a major rule as defined in Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is certified that this final rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 35 CFR Parts 251 and 253

Panama Canal Employment System, Army Secretary regulations, Employment policy, Personnel policy.

Accordingly, 35 CFR parts 251 and 253 are amended to read as follows:

PART 251—REGULATIONS OF THE SECRETARY OF THE ARMY (PANAMA CANAL EMPLOYMENT SYSTEM)—PERSONNEL POLICY

1. The authority citation for part 251 continues to read as follows:

Authority: 22 U.S.C. 3641–3701, E.O. 12173, 12215.

2. Section 251.4 is amended by revising paragraph (g) and adding paragraph (h) to read as follows:

§ 251.4 Adoption of Panama Canal Employment System by Department of Defense.

* * * * *

(g) Officers and employees of the National Security Agency appointed and compensated pursuant to the National Security Act of 1959, as amended, 50 U.S.C. 3402, note, are excluded from all provisions of subchapter II and the regulations contained in this part and part 253 of this chapter, except that such positions are not excluded from the provisions of sections 1217, 1217a and 1218 of subchapter II or the regulations in §§ 251.25, 251.31 and 251.32.

(h) Positions at or above GS–6 and equivalent subject to the Civilian Intelligence Personnel Management System (CIPMS) are excluded from all the provisions of subchapter II and the regulations contained in this part and part 253 of this chapter, except that such positions are not excluded from the

provisions of sections 1217 and 1218 of subchapter II or the regulations in §§ 251.25, 251.31 and 251.32.

PART 253—REGULATIONS OF THE SECRETARY OF THE ARMY—(PANAMA CANAL EMPLOYMENT SYSTEM)—EMPLOYMENT POLICY

3. The authority citation for part 253 continues to read as follows:

Authority: 22 U.S.C. 3641–3701, E.O. 12173, 12215.

4. Section 253.8 is amended by revising paragraphs (b) introductory text, (b)(1), (c)(9) and (c)(10) and by adding paragraph (c)(8) to read as follows:

§ 253.8 Exclusions.

* * * * *

(b) The following positions are excluded from all of the provisions of subchapter II (except sections 1217 and 1218) and from the regulations in this part and in part 251 of this chapter (except for §§ 251.25, 251.31 and 251.32, provided however that the limitations set forth in §§ 251.31(b)(4) and 251.32(b)(2) shall not be applicable):

(1) The Administrator, Deputy Administrator, Chief Engineer, Chief Financial Officer, Inspector General, Assistant to the Chairman and Secretary, and Assistant to the Secretary for Congressional Affairs of the Panama Canal Commission.

* * * * *

(c) * * *

(8) Any service employee assigned to the residence of the Administrator of the Panama Canal Commission when so designated by the Administrator.

(9) Liaison Services Specialists of the General Services Bureau of the Panama Canal Commission.

(10) Positions at non-manual grade 5 and grade 7 level (not to exceed 35 in number) designated for use by the Panama Canal Commission for filling positions in the Professional and Administrative Career Intern Program with high-potential Panamanian citizens.

5. Section 253.41 is revised to read as follows:

§ 253.41 Selection from certificates.

Selections from certificates are made by application of either the rule of three or the rule of ten.

(a) *Rule of three.* When selecting from a certificate of eligibles, an appointing official shall, with sole reference to merit and fitness, make the selection for the first vacancy from the highest three eligibles available for appointment on the certificate. For the second vacancy, the selecting official must make selection from the three highest eligibles remaining on the certificate. Each succeeding vacancy must be filled in like manner subject to the rules in § 253.40. The rule of three applies to selections involving:

(1) All United States Wage Base positions except those of apprentice, floating equipment trainees at the grade FE–5 and FE–7 levels and marine engineer trainees at the grade ME–7 level; and

(2) United States citizens.

(b) *Rule of ten.* When selecting from a certificate of eligibles, an appointing official shall, with sole reference to merit and fitness, make the selection for the first vacancy from the highest ten eligibles available for appointment on the certificate. For the second vacancy, the selecting official must make selection from the ten highest eligibles remaining on the certificate. Each succeeding vacancy must be filled in like manner subject to the rules in § 253.40. The rule of ten applies to selections involving:

(1) All Canal Area Wage Base positions filled from pre-rated inventories which includes the positions of firefighter and firefighter trainee, and

(2) United States Wage Base positions of apprentice, floating equipment trainees at the grade FE–5 and FE–7 levels and marine engineer trainees at the grade ME–7 level.

The rule of ten shall not be applied in any situation where a United States applicant is among the top three candidates available.

(c) An appointing officer is not required to consider any eligible:

(1) Who has been considered for three or ten separate appointments, as applicable, from the same or different certificates for the same position, or

(2) To whose certification for the particular position the officer makes an objection that is sustained by the CEO for any of the reasons stated in § 253.34 or for other reasons considered by the CEO to be disqualifying for the particular position. The length of a non-Panamanian candidate's previous service or residence in foreign areas may be a valid qualification and selection factor in filling positions in an agency having an established policy for periodic rotation of non-Panamanian citizens.

(d) When an appointing officer passes over a veteran-preference eligible and tentatively selects a non-preference eligible, the provisions of 5 CFR 332.406 apply except that the CEO shall exercise the authority vested in the Office of Personnel Management.

6. Subpart D is added consisting of §§ 253.76 and 253.77 to read as follows:

Subpart D—Conversion From Excluded and Temporary Appointments to Canal Area Career or Career-Conditional Appointments

§ 253.76 Eligibility.

A temporary employee may be converted to a Canal Area Career or Career-Conditional Appointment provided:

(a) He rendered at least one year of satisfactory continuous service with the agency in which he is to be converted and the service immediately preceded the conversion;

(b) The conversion is to a position in the same wage category as that held by the employee prior to the conversion;

(c) The conversion is to either:

(1) A manual category position at any grade from MG–1 to MG–9 and the employee to be converted ranks among the top 50% of the register of eligibles or;

(2) A non-manual category position filled from a pre-rated inventory at any grade from NM–1 to NM–5 provided the employee to be converted ranks among the top 25% of the register of eligibles;

(d) There is no United States citizen within reach in accordance with the rule of three, and no preference eligible would be passed over; and

(e) The employee is not a United States citizen.

§ 253.77 Procedure.

The employing agency shall obtain approval from the Central Examining Office prior to converting temporary employees to Canal Area Career or Career-Conditional Appointments. Employees converted under this subpart will be treated as if they had been appointed from a register as provided in § 253.42.

Dated: January 10, 1991.

M.P.W. Stone,

Chairman, Panama Area Personnel Board.

[FR Doc. 91–885 Filed 1–17–91; 8:45 am]

BILLING CODE 3710–02–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 5

[Docket No. 900531–0312]

RIN 0651–AA09

Patent Law Foreign Filing Amendments

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent cases to implement the Patent Law Foreign Filing Amendments Act of 1988, Subtitle B of Public Law 100–418. The rules reflect changes made to 35 U.S.C. 184 which specify that a license is not required to file amendments, modifications, and supplements containing additional subject matter to a previously licensed foreign patent application if such amendments, modifications, and supplements do not change the general nature of the invention disclosed in the application in a manner which would require a corresponding United States patent application to be made available for national security inspection under 35 U.S.C. 181. These regulatory changes are applicable to most existing foreign filing license holders if their patent application did not undergo security inspection under 35 U.S.C. 181. Also, under the rules, a retroactive foreign filing license may be granted in situations where a proscribed foreign filing occurred through error and without deceptive intent as opposed to the earlier standard of inadvertence.

EFFECTIVE DATE: February 19, 1991.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** at 55 FR 24270–24275 (June 15, 1990) and at 1116 Official Gazette 21–25 (July 10, 1990). No oral hearing was held. Three written comments on the proposed rulemaking were received. The comments received and replies thereto are listed below.

The rules are intended to implement the Patent Law Foreign Filing Amendments Act of 1988, subtitle B of Public Law 100–418 (hereinafter the Act), which amended sections 184, 185 and 186 of title 35, United States Code, in order to simplify the procedures for United States inventors filing and prosecuting patent applications in foreign countries. The Office has not made any rule changes to implement the amendments to 35 U.S.C. 185 or 186 since these changes affect matters outside its jurisdiction.

Section 184 of title 35 is intended to protect United States national security interests by preventing the disclosure of potentially sensitive inventions made in the United States to foreign nationals by the act of filing a patent application in foreign countries. An inventor may not apply for a foreign patent on an invention made in the United States until at least six (6) months after the inventor has filed a United States patent application unless the inventor receives a license from the Office permitting an earlier foreign filing. This six-month period assures the Office the opportunity to screen applications for information the disclosure of which might be detrimental to the national security. Also, section 184, as originally enacted, authorized the Office to grant a retroactive license for an unlicensed foreign filing of a patent application if the foreign filing was inadvertent and if the disclosure of the subject matter in the application would not be detrimental to United States security interests.

The original regulatory implementation of 35 U.S.C. 184 required applicants to obtain a license not only for the original foreign patent application but also for the filing of almost any information in support of the application, thereby creating administrative problems for United States inventors seeking foreign patent protection. For example, foreign patent offices often demand that additional technical data, such as the melting point of a chemical, be added to a patent application. An additional foreign filing license was usually required before the inventor could submit modifications, amendments, or supplements to a previously licensed foreign patent application, regardless of how trivial the change might be.

Recognizing the problems involved in obtaining these additional licenses, the Office promulgated rules in 1984 (see § 5.15(a) and 49 FR 13456 (April 4, 1984)) to streamline the licensing procedures. The 1984 rule change provided that an inventor could obtain in applications, the disclosure of the content of which is not potentially detrimental to United States security interests, a license which permitted the foreign filing of modifications, amendments, and supplements without further licensing if such changes were within the scope or character of the originally licensed invention (§ 5.15(a)). The 1984 rule change, however, could not be made retroactive, and therefore had no effect on licenses granted under the old system. If an applicant wished to broaden a pre-April 4, 1984, foreign filing license to the scope allowed by § 5.15(a), this involved filing a separate petition under § 5.15(c) in each application.

The present Act clarifies the statutory basis for the current Patent and Trademark Office rules by providing that inventors, in most circumstances, are not required to obtain an additional license to file modifications, amendments, and supplements to their foreign applications for which a foreign filing license has been obtained under § 5.15(a). Unlike the previous Office rules, these rules broaden the scope of most existing licenses, provided that the conditions contained in the Act are met.

The Act and these rules also address difficulties associated with attempts to procure a retroactive foreign filing license. Some applicants faced loss of their patent rights due to improper foreign filings even though they believed, in good faith, that a license was not necessary for certain minor changes to their foreign application. Court decisions have held that supplemental information filed abroad was exempt from the license requirement only when it was recited verbatim in the United States patent application, or was so commonly known that it could have been said to have been expressly disclosed in the United States application. *In re Gaertner*, 604 F.2d 1348, 202 USPQ 714 (CCPA 1979). If a patent applicant did not obtain a foreign filing license from the Office, any corresponding United States patent was at risk of being held invalid under 35 U.S.C. 185 if technical information was added to the foreign application, even if the technical information was completely unrelated to United States security interests.

Loss of United States patent rights subsequent to an "inadvertent" unlicensed foreign filing could be avoided if a retroactive license was obtained under 35 U.S.C. 184. *Twin Disc, Inc.* v. *United States*, 10 Cl. Ct. 713, 231 USPQ 417 (Ct. Cl. 1986) and *Minnesota Mining and Manufacturing Co.* v. *Norton Co.*, 366 F.2d 238, 151 USPQ 1 (6th Cir. 1966), *cert. denied*, 385 U.S. 1005 (1967). While the *Gaertner* decision defined a broad range of circumstances under which a foreign filing license would be required, other court decisions made correction of licensing errors difficult by setting forth various strict interpretations of the standard of "inadvertence." *Compare Iron Ore Co. of Canada* v. *Dow Chemical Co.*, 177 USPQ 34 (D. Utah 1972), *aff'd*, 500 F.2d 189, 182 USPQ 520 (10th Cir. 1974) and *Reese* v. *Dann*, 391 F. Supp. 12, 185 USPQ 492 (D.D.C. 1975). An inventor could fail to meet the standard of "inadvertence" even if the information disclosed was not significant in nature and did not contain any sensitive national security information. For example, one decision suggested that the filing of information abroad was intentional because the inventor first considered the applicability of Section 184. *Shelco, Inc.* v. *Dow Chemical Co.*, 322 F. Supp. 485, 168 USPQ 395 (N.D. Ill. 1970), *aff'd*, 466 F.2d 613, 173 USPQ 451 (7th Cir. 1972), *cert. denied*, 409 U.S. 876 (1972). Under the Shelco standard, if supplemental information had been filed

abroad as a considered, willful act, even though done through error in the belief that the information disclosed abroad did not exceed the scope of the disclosure in the United States patent application, the filing would not be "inadvertent"; and, therefore, the subject information could not qualify for a retroactive license.

The Act addresses these problems, and the rules implement the intention of the Act. The Act changes the language of the statute to provide that an inventor may receive a retroactive license if the inventor can show that the premature filing of a foreign patent application, or the submission of supplemental information in support of a foreign patent application, was made "through error and without deceptive intent." This criterion is equivalent to that for reissue of a patent under 35 U.S.C. 251 to correct errors made without any deceptive intention. The reissue error requirement has been considered by the courts. See, e.g., *In re Weiler*, 790 F.2d 1576, 229 USPQ 673 (Fed. Cir. 1986) and *In re Wadlinger*, 496 F.2d 1200, 181 USPQ 826 (CCPA 1974). The applicant for a retroactive license also must show that the foreign filing did not disclose any information detrimental to the national security and that diligence was exercised in seeking a retroactive license once the applicant became aware of the proscribed foreign filing.

The Act became effective on August 23, 1988, but it does not affect any final decision made by the Office or a court, nor the rights or liabilities of any party under a patent in a case pending before a court on the above date or under any subsequent patent deriving priority rights from such patent under 35 U.S.C. 120 or 121. Therefore, the retroactive effect of the Act and the rules is limited.

Comments on the Proposed Rules

Comment

One comment stated that the discussion in the proposed rulemaking of the modification of the standard for obtaining a retroactive license from inadvertence to "through error and without deceptive intent" should have included a reference to *In re Wadlinger*, 492 F.2d 1200, 181 USPQ 826 (CCPA 1974) rather than to *In re Weiler*, 790 F.2d 1576, 229 USPQ 673 (Fed. Cir. 1986). The comment stated that *Wadlinger* was a more appropriate and illustrative case because it discusses more fully the meaning of the term "error" as encompassing "inadvertence, accident or mistake" and as having a very broad meaning. The comment also noted that *Wadlinger* was referenced in comments made in the hearing on the proposed legislation as indicative of the reissue standard being applied to retroactive license requests.

Reply

A citation to *In re Wadlinger* has been added to the citation of *In re Weiler* in the discussion of the final rules. It was not the intent of the Office by citing the *Weiler* case to suggest that decisions on petitions for the grant of retroactive licenses would be limited by that case. Decisions are based on the particular facts in each case and the entire body of law with respect to the standard of "through error and without deceptive intent."

Comment

A comment stated that the Office should provide additional examples in the explanatory text in the final rule as to changes that may be made to foreign applications that have been licensed under 37 CFR 5.15(a) without obtaining any additional license. The comment pointed out that examples were given in the 1984 rulemaking.

Reply

The list of examples presented at the time that 37 CFR 5.15(a) was adopted in 1984 was not intended to be all-inclusive. The Office is not aware of any judicial decisions setting limits to changes that may be made under a § 5.15(a) license. Depending on the nature and the criticality, changes in temperature, portions, size, etc., outside of a previously disclosed value or range that do not change the general nature of the invention from what was previously disclosed are within the scope of a § 5.15(a) license. However, if the newly disclosed value or range does change the general nature of the invention from that of the originally disclosed value or range, then a separate license is required. Likewise, new species or subcombinations of a previously disclosed genus or combination would appear to require an additional license to include such a change in a foreign application.

Comment

One comment stated that the Office should provide clarification of the attorney's ability to make decisions as to whether or not the added subject matter, in his opinion, changes the general nature of the invention.

Reply

Not only does the attorney have the ability to make the decision as to whether or not the additional subject matter changes the general nature of the invention, the attorney has the responsibility to do so. The Office will not give advisory opinions on whether an additional license is necessary, and will treat any provisional requests for a prospective or retroactive license as a request for a license. The procedure of the Office resolving any questions as to the security inspection status of any changes to previously licensed material is intended to apply only to those changes that have been submitted to the Office, i.e., the Office will reply to any inquiry as to whether previously submitted subject matter underwent, or should have undergone, security review.

Comment

One comment questioned what would happen if an attorney, on considered judgment, honestly believed that a supplement did not change the general nature of a licensed invention, but that judgment later proved to be erroneous.

Reply

The Act and the rules now provide for a retroactive license to be granted in situations where it can be shown that a filing was made without a license through error and without deceptive intent. Thus, a retroactive license could be sought under § 5.25.

Discussion of Specific Rule Changes

Section 5.11(a), as amended, specifies when a license is required before filing any foreign application for patent, including any modifications, amendments and supplements or divisions thereof. Section 5.11(a) adopts the statutory definition of "application" in 35 U.S.C. 184. Also, the rule, as amended, clarifies that the provisions of this section apply only to inventions made in the United States as stated in 35 U.S.C. 184. However, where an improvement or modification to a foreign-origin invention is made in the United States, a license would be required for the additional subject matter. The language proposed for § 5.11(e)(3) has been redrafted for clarity but still provides that an inventor need not obtain a supplemental license to file modifications, amendments and supplements containing subject matter not disclosed in, or divisions of, a foreign application for which an initial foreign filing license was not required, as long as the corresponding United States application was not required to be made available for inspection under 35 U.S.C. 181 and § 5.1 and the changes did not alter the general nature of the invention in a manner which would require the United States application to have been made available for inspection under 35 U.S.C. 181 and § 5.1. The need

for a supplemental license depends on whether the changes altered the general nature of the invention, rather than the label applied to the changes, i.e., "Continuation", "Continuation-In-Part", and "Division", etc.

Authorized parties may determine whether a particular application was forwarded to the defense agencies for inspection under 35 U.S.C. 181 either by reviewing the filing receipt to determine if a license is or was granted, in which case security inspection did not occur, or by reviewing the file wrapper to determine if an access acknowledgment under 35 U.S.C. 181 is present, in which case security inspection did occur. If verification of the security inspection status of an application is needed, the authorized parties may submit a written request therefor to the Office, directed to the attention of Licensing and Review. A written response from the Office will be issued. In the event Office records are not available, a *de novo* determination by the Office will be made of the need for defense agency inspection under the present national security standards. If security inspection was not required under 35 U.S.C. 181, then the provisions of the Act will convert a previously granted or implied license into one having the scope of proposed § 5.15(a).

Section 5.15(a), as amended, adopts the specific provisions of the Act and clarifies the existing rules by expressly stating that the license provisions of the paragraph are applicable to United States applications which were not required to be made available for inspection under 35 U.S.C. 181 and § 5.1. The inspection provisions of 35 U.S.C. 181 delegate to the Commissioner of Patents and Trademarks the authority to decide which applications will be forwarded to United States defense agencies for national security inspection when the Government has no property interest in the invention. The fact that an application was forwarded to the defense agencies does not necessarily mean that the application was properly within the inspection scope of 35 U.S.C. 181. Thus, if an application was not required to be inspected but was inspected by mistake, it is eligible for such a license. The changes to the regulation expressly apply to modifications, amendments, and supplements to a previously licensed foreign application, and divisions thereof, provided the changes do not alter the general nature of the invention in a manner which would require a corresponding United States application to have been made available for inspection under 35 U.S.C. 181.

The language of § 5.15(a)(1) also has been clarified. If the filing of the foreign application was pursuant to a license granted under § 5.15 and issued prior to publication of the notice in the **Federal Register** at 49 FR 13456 (April 4, 1984) for subject matter which was not appropriate for inspection under 35 U.S.C. 181, the license is now expanded to cover amendments, modifications, and supplements thereto, or divisions thereof, which do not change the general nature of the invention in a manner which would require such application to be made available for security inspection under 35 U.S.C. 181. Also, paragraphs (a)(3) and (a)(4) of § 5.15 have been merged in order to more clearly define the type of subsequent changes to a previously licensed foreign patent application which may be filed without any additional license. In particular, it is made clear that these changes must not be such as to require the application to be made available for security inspection. Any questions about the security inspection status of any application or amendments, modifications, and supplements thereto, or divisions thereof, will be handled in the manner as described above.

Section 5.15(b), as amended, clarifies the existing rule by expressly stating that the license provisions of § 5.12(b) are applicable to United States applications which were required to be made available for inspection under 35 U.S.C. 181 and § 5.1. The amendments also clarify the language of the paragraph and indicate that the more restrictive license under this paragraph includes authority to take actions in the foreign or international application, provided subject matter additional to that covered by the license is not involved. Section 5.15(c), as amended, clarifies the existing rule by expressly stating that the granting of a § 5.15(a) scope to a license under § 5.15(b) and conversion provisions of this paragraph are only applicable to material submitted under § 5.13 or United States applications, which are not, or were not, required to be made available for inspection under 35 U.S.C. 181 and § 5.1.

Sections 5.15 (e) and (f), as amended, substitute a reference to § 5.15(a)(3) rather than to § 5.15(a)(4) which has been eliminated as a separate paragraph. Paragraph (e) also has been amended to state that changes to the general nature of the invention, which would require the application to have been made available for inspection under 35 U.S.C. 181 and § 5.1, require a separate license.

Section 5.25(a), as amended, provides that the inventor may receive a retroactive license if the inventor can show that the premature filing of papers in a foreign patent office was made through error and without deceptive intent. This criterion is the same as that for "error without any deceptive intention" for reissue of a patent and replaces the previous standard of inadvertence. This section also has been amended to clarify that each country in which a proscribed filing occurred must be listed in a petition for retroactive license. Also, the rule has been amended to define a verified statement as being in the form of either an oath or a declaration. Finally, the rule has been clarified by defining the period over which error without deceptive intent must be shown as being the time leading up to and including the proscribed foreign filing.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Acting Chief Counsel for Advocacy, Small Business Administration, that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)) because the rules simplify the procedures for all United States inventors who file and prosecute applications in foreign countries.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rules contain a collection of information requirement subject to the Paperwork Reduction Act which has previously been approved by the Office of Management and Budget under

Control No. 0651–0011 with an expiration date of March 31, 1993. The average time for each petition for license under § 5.12(b) or § 5.25 is estimated to be approximately thirty (30) minutes, including time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the petition submission. Send comments regarding this burden estimate to the Patent and Trademark Office, Office of Management and Organization, Washington, DC 20231, and the Office of Management and Budget, Washington, DC 20503 (Attention: Paperwork Reduction Project 0651–0011).

List of Subjects in 37 CFR Part 5

Classified information, Exports, Foreign relations, Inventions and patents.

For the reasons set forth in the preamble, 37 CFR part 5 is amended as set forth below.

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

1. The authority citation for part 5 is revised to read as follows:

Authority: 35 U.S.C. 6, 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*, the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, and the Nuclear Non-Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*, and the delegations in the regulations under these acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

2. Section 5.11, paragraphs (a) and (e), are revised to read as follows:

§ 5.11 License for filing in a foreign country an application on an invention made in the United States or for transmitting an international application.

(a) A license from the Commissioner of Patents and Trademarks under 35 U.S.C. 184 is required before filing any application for patent including any modifications, amendments, or supplements thereto or divisions thereof or for the registration of a utility model, industrial design, or model, in a foreign patent office or any foreign patent agency or any international agency other than the United States Receiving Office, if the invention was made in the United States and:

(1) An application on the invention has been on file in the United States less than six months prior to the date on which the application is to be filed, or

(2) No application on the invention has been filed in the United States.

* * * * *

(e) No license pursuant to paragraph (a) of this section is required:

(1) If the invention was not made in the United States, or

(2) If the corresponding United States application is not subject to a secrecy order under § 5.2, and was filed at least six months prior to the date on which the application is filed in a foreign country, or

(3) For subsequent modifications, amendments and supplements containing additional subject matter to, or divisions of, a foreign patent application if:

(i) A license is not, or was not, required under paragraph (e)(2) of this section for the foreign patent application;

(ii) The corresponding United States application was not required to be made available for inspection under 35 U.S.C. 181 and § 5.1; and

(iii) Such modifications, amendments, and supplements do not, or did not, change the general nature of the invention in a manner which would require any corresponding United States application to be or have been available for inspection under 35 U.S.C. 181 and § 5.1.

* * * * *

3. Section 5.15, paragraphs (a), (b), (c), (e) and (f), are revised to read as follows:

§ 5.15 Scope of license.

(a) Applications or other materials reviewed pursuant to §§ 5.12 through 5.14, which were not required to be made available for inspection by defense agencies under 35 U.S.C. 181 and § 5.1, will be eligible for a license of the scope provided in this paragraph. This license permits subsequent modifications, amendments, and supplements containing additional subject matter to, or divisions of, a foreign patent application, if such changes to the application do not alter the general nature of the invention in a manner which would require the United States application to have been made available for inspection under 35 U.S.C. 181 and § 5.1. This license also covers the inventions disclosed in foreign applications which had been granted a license under this part prior to April 4, 1984, and which were not subject to security inspection under 35 U.S.C. 181 and § 5.1. Grant of this license authorizes the export and filing of an application in a foreign country or the transmitting of an international application to any foreign patent agency or international patent agency when the subject matter of the foreign or international application corresponds to that of the domestic application. This license includes authority:

(1) To export and file all duplicate and formal application papers in foreign countries or with international agencies;

(2) To make amendments, modifications, and supplements, including divisions, changes or supporting matter consisting of the illustration, exemplification, comparison, or explanation of subject matter disclosed in the application; and

(3) To take any action in the prosecution of the foreign or international application provided that the adding of subject matter or taking of any action under paragraphs (a) (1) and (2) of this section does not change the general nature of the invention disclosed in the application in a manner which would require such application to have been made available for inspection under 35 U.S.C. 181 and § 5.1 by including technical data pertaining to:

(i) Defense services or articles designated in the United States Munitions List applicable at the time of foreign filing, the unlicensed exportation of which is prohibited pursuant to the Arms Export Control Act, as amended, and 22 CFR Parts 121 through 130; or

(ii) Restricted Data, sensitive nuclear technology or technology useful in the production or utilization of special nuclear material or atomic energy, the dissemination of which is subject to restrictions of the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as implemented by the regulations for Unclassified Activities in Foreign Atomic Energy Programs, 10 CFR part 810, in effect at the time of foreign filing.

(b) Applications or other materials which were required to be made available for inspection under 35 U.S.C. 181 and § 5.1 will be eligible for a license of the scope provided in this paragraph. Grant of this license authorizes the export and filing of an application in a foreign country or the transmitting of an international application to any foreign patent agency of international patent agency. Further, this license includes authority to export and file all duplicate and formal papers in foreign countries or with foreign and international patent agencies and to make amendments, modifications, and supplements to, file divisions of, and take any action in the prosecution of the foreign or international application, provided subject matter additional to that covered by the license is not involved.

(c) A license granted under § 5.12(b) pursuant to § 5.13 or § 5.14 shall have the scope indicated in paragraph (a) of this section, if it is so specified in the license. A petition, accompanied by the required fee (§ 1.17(h)), may also be filed to change a license having the scope indicated in paragraph (b) of this section to a license having the scope indicated in paragraph (a) of this section. No such petition will be granted if the copy of the material filed pursuant to § 5.13 or any corresponding United States application was required to be made available for inspection under 35 U.S.C. 181 and § 5.1. The change in the scope of a license will be effective as of the date of the grant of the petition.

* * * * *

(e) Any paper filed abroad or transmitted to an international patent agency following the filing of a foreign or international application which changes the general nature of the subject matter disclosed at the time of filing in a manner which would require such application to have been made available for inspection under 35 U.S.C. 181 and § 5.1 or which involves the disclosure of subject matter listed in paragraphs (a)(3) (i) or (ii) of this section must be separately licensed in the same manner as a foreign or international application. Further, if no license has been granted under § 5.12(a) on filing the corresponding United States application, any paper filed abroad or with an international patent agency which involves the disclosure of additional subject matter must be licensed in the same manner as a foreign or international application.

(f) Licenses separately granted in connection with two or more United States applications may be exercised by combining or dividing the disclosures, as desired, provided:

(1) Subject matter which changes the general nature of the subject matter disclosed at the time of filing or which involves subject matter listed in paragraph (a)(3) (i) or (ii) of this section is not introduced, and

(2) In the case where at least one of the licenses was obtained under § 5.12(b), additional subject matter is not introduced.

* * * * *

4. Section 5.25, paragraph (a), is revised to read as follows:

§ 5.25 Petition for retroactive license.

(a) A petition for a retroactive license under 35 U.S.C. 184 shall be presented in accordance with § 5.13 or § 5.14(a), and shall include:

(1) A listing of each of the foreign countries in which the unlicensed patent application material was filed,

(2) The dates on which the material was filed in each country,

(3) A verified statement (oath or declaration) containing:

(i) An averment that the subject matter in question was not under a secrecy order at the time it was filed aboard, and that it is not currently under a secrecy order,

(ii) A showing that the license has been diligently sought after discovery of the proscribed foreign filing, and

(iii) An explanation of why the material was filed abroad through error and without deceptive intent without the required license under § 5.11 first having been obtained, and

(4) The required fee (§ 1.17(h)).

The above explanation must include a showing of facts rather than a mere allegation of action through error and without deceptive intent. The showing of facts as to the nature of the error should include statements by those persons having personal knowledge of the acts regarding filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing. The acts which are alleged to constitute error without deceptive intent should cover the period leading up to and including each of the proscribed foreign filings.

* * * * *

Dated: November 28, 1990.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91–1293 Filed 1–17–91; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–3898–2]

North Carolina; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: North Carolina has applied for final authorization of a revision to its authorized hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). North Carolina's revision consists of a recodification of the Hazardous Waste Management Rules and a reorganization of the Hazardous Waste Management Program under a new Department. The Department now responsible for the North Carolina Hazardous Waste Management Program is the Department of Environment, Health and Natural Resources. The Environmental Protection Agency (EPA) has reviewed North Carolina's application and has reached a decision, subject to public review and comment, that North Carolina's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to North Carolina to operate its revised program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA").

EFFECTIVE DATE: Final authorization for North Carolina's application shall be effective March 19, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on North Carolina's Final authorization must be received by 4:30 p.m. on February 19, 1991.

ADDRESSES: Copies of North Carolina's program revision application are available from 8:30 a.m. to 4:30 p.m., at the following addresses for inspection and copying: North Carolina Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, Hazardous Waste Section, P.O. Box 27687, Raleigh, North Carolina 27611, (919) 733–2178; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, (202) 382–5926; U.S. EPA Region IV Library, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347–4216.

Written comments on North Carolina's application should be sent to Narindar Kumar, at the address below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is at least 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 allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. A State exercising this latter option receives "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later applies for final authorization for the HSWA requirements.

In accordance with part 271, § 271.21(a) of title 40 of the Code of Federal Regulations (40 CFR 271.21(a)), 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 in 40 CFR part 124, 260–268 and 270.

B. North Carolina

North Carolina initially received final authorization for its base RCRA program on December 31, 1984 (49 FR 48694). North Carolina received authorization for revisions to its program on March 25, 1986 (51 FR 10211), October 4, 1988 (53 FR 29460), and April 10, 1989 (54 FR 6290). On November 11, 1990, North Carolina submitted a progam revision application seeking approval for an additional revision to its authorized program. This program revision is due to a reorganization of the Hazardous Waste Management program, formerly under the Department of Human Resources, to the new Department of Environment, Health, and Natural Resources (DEHNR). The North Carolina DEHNR became the State Agency responsible for administering the authorized RCRA hazardous waste management program as of July 1, 1989. Those rules which were codified at NCAC, title 10, chapter 10, subchapter F are now recodified at NCAC title 15A, chapter 13A. This program revision reflects the recodified rules that became effective October 1, 1990. No substantive changes were made to the rules, only the rule numbers changed. The recodified rules effectively replace the original 10 NCAC 10F rules and in no way alters the State's regulatory and statutory equivalence to the Federal RCRA program. On October 10, 1990, the North Carolina Attorney General certified that North Carolina's hazardous waste management rules do not affect DEHNR's authority to implement the State's authorized RCRA program.

EPA has reviewed North Carolina's application and has made an immediate final decision, subject to public review and comment, that North Carolina's hazardous waste management program revision does reflect the State's equivalence with the Federal program and satisfies all the requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization to North Carolina for its program revision. The public may submit written comments on EPA's immediate final decision up until February 19, 1991. Copies of North Carolina's application for this program revision are available for inspection at the locations indicated in the "ADDRESSES" section of this notice.

Approval of North Carolina's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

North Carolina will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which were recodified at title 15A NCAC chapter 13A, and which provide authority for the following Resource Conservation and Recovery Act rules found at title 40 of the Code of Federal Regulations:

Federal parts	Recodified NCDERHNR (Title)	Former NCDHR
40 CFR Part 260	15A NCAC 13A.0003	10 NCAC 10F.0028
General	15A NCAC 13A.0001	10 NCAC 10F.0001
Definitions	15A NCAC 13A.0002	10 NCAC 10F.0002
40 CFR Part 2	15A NCAC 13A.0004	10 NCAC 10F.0040
40 CFR Part 124	15A NCAC 13A.0005	10 NCAC 10F.0035
40 CFR Part 261	15A NCAC 13A.0006	10 NCAC 10F.0029
40 CFR Part 262	15A NCAC 13A.0007	10 NCAC 10F.0030
40 CFR Part 263	15A NCAC 13A.0008	10 NCAC 10F.0031
40 CFR Part 264	15A NCAC 13A.0009	10 NCAC 10F.0032
40 CFR Part 265	15A NCAC 13A.0010	10 NCAC 10F.0033
40 CFR Part 266	15A NCAC 13A.0011	10 NCAC 10F.0039
40 CFR Part 268	15A NCAC 13A.0012	10 NCAC 10F.0042
40 CFR Part 270	15A NCAC 13A.0013	10 NCAC 10F.0034
40 CFR Part 271	15A NCAC 13A.0014	10 NCAC 10F.0041

C. Decision

I conclude that North Carolina's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants North Carolina final authorization to operate its hazardous waste program as revised. North Carolina now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities.

North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under section 3008, 3013, and 7003 of RCRA.

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 effectively suspends the applicability of certain Federal regulations in favor of North Carolina's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This

rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

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 Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended (42 U.S.C. 6912(a), 6926 and 6974(b)).

Dated: January 9, 1991.

Patrick M. Tobin,

Deputy Regional Administrator.

[FR Doc. 91–1296 Filed 1–17–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[MM Docket No. 89–35; FCC 90–340]

Definition of a Cable Television System

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: The Commission interprets the definition of a cable television system to include video delivery systems that use cable, wire, or other physically closed or shielded transmission paths to provide service to subscribers. Satellite Master Antenna (SMATV) and Master Antenna (MATV) systems that use cable or wire only within the premises of an individual multiple unit building are not cable systems, nor are SMATV or MATV systems serving more than one multiple unit dwelling interconnected by radio facilities alone. However, video delivery systems serving multiple unit dwellings connected by physically closed transmission paths are cable systems, unless the buildings are under common ownership, control, or management and do not use a public right-of-way. The Commission takes this action in response to two federal court decisions concerning the definition of a cable system. The Commission intends that this action clarify the definition of a cable system.

EFFECTIVE DATE: January 18, 1991.

FOR FURTHER INFORMATION CONTACT: Barrett L. Brick, (202) 632–7480.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in MM Docket No. 89–35, FCC 90–340, adopted October 11, 1990, and released December 21, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street NW., Suite 15, Washington, DC 20036.

Summary of Report and Order

1. In this *Report and Order*, the Commission clarifies its interpretation of the statutory term "cable system" as defined in the Cable Communications Policy Act of 1984, Public Law 98–549, 98 Stat. 2779 (1984) (Cable Act). This clarification responds to issues raised by two federal district courts in *City of Fargo* v. *Prime Time Entertainment, Inc.*, Case No. A3–87–47 (D.N.D. March 28, 1988) and in *Pacific & Southern Co., Inc.* v. *Satellite Broadcast Networks, Inc.*, 694 F. Supp. 1565 (N.D. Ga. 1988).

2. The Commission interprets the term "cable system" to include video delivery systems that use physically closed or shielded transmission paths to provide service to subscribers. This would include, for example, cable or wire, but not radio waves. This comports with Congressional intent that alternative delivery systems such as multipoint distribution service (MDS), multichannel multipoint distribution service (MMDS), instructional television fixed service (ITFS), operational fixed service (OFS), direct broadcast service (DBS), and subscription television (STV) not be considered cable systems. This further comports with the established regulatory scheme for cable television which contemplates a strong nexus with individual local communities through franchising process, and is consistent with the Commission's historic view of the characteristics of cable systems against which Congress acted in adopting the Cable Act.

3. In view of the conclusion above, the Commission further concludes that satellite master antenna (SMATV) and master antenna (MATV) systems that use cable or wire solely within the premises of an individual multiple unit dwelling building are not cable systems, for this is fundamentally different than the use of wire or cable outside of a building. The Commission similarly concludes that MATV or SMATV buildings interconnected by radio facilities alone are not cable systems.

4. The Commission finally concludes, with respect to the Cable Act's private cable exclusion, that video delivery systems serving multiple unit dwellings connected by physically closed transmission paths are cable systems, unless the buildings are both (a) under common ownership, control, or management and (b) do not use a public right-of-way. The Cable Act clearly requires that both elements of the exclusion must be met for the exclusion to apply. However, the Commission concludes that the crossing of a public right-of-way by radio waves, including infrared transmissions, is not a "use" of a public right-of-way within the meaning of the Cable Act. These conclusions comport both with the language of the Cable Act and its legislative history, which leave unaffected Commission decisions limiting State authority to license or regulate MATV- or SMATV-type facilities not using public rights-of-way.

Regulatory Flexibility Act Final Analysis

5. Pursuant to the Regulatory Flexibility Act of 1980, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

6. Accordingly, it is ordered that, under the authority contained in 47 U.S.C. 154(i), 303(r), and 522(6), the interpretations of the term "cable system" set forth in this proceeding are adopted.

7. It is further ordered that this proceeding is terminated.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–1316 Filed 1–17–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant Silene polypetala (Fringed campion)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Silene polypetala* (fringed campion), a plant belonging to the pink (carnation) family, to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Fringed campion occurs in two separate geographic areas. One is a four-county area in central Georgia, west of Macon. The second is a three-county area near the confluence of the Flint and Apalachicola Rivers on both sides of the Georgia-Florida border. In recent years the fringed campion has been found at 15 sites. Threats to this plant include logging or its side effects, encroachment by Japanese honeysuckle, and residential development. This final rule implements the protection and recovery provisions afforded by the Act for fringed campion.

EFFECTIVE DATE: February 19, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Silena polypetala (fringed campion) is a perennial herb belonging to the pink or carnation family (Caryophyllaceae). It was first collected in central Georgia by Walter (1788), who named it *Cucubalus polypetalus*. Unfortunately, because most of Walter's specimens were destroyed, botanists mistakenly applied this name to other plants until 1948. The Delaware physician William Baldwin collected specimens that Nuttall (1818) named *Silene Baldwynii* (sic), giving the locality as "* * * the banks of Flint River, Florida * * *" perhaps actually in central Georgia (Faust 1980, Allison 1988). Small (1933) and Hitchcock and Maguire (1947) spelled the name *Silene baldwinii*. Fernald and Schubert (1948) created the new combination *Silene polypetala* after they examined Walter's surviving specimens and determined that Walter's specific epithet has priority over Nuttall's. The common name "fringed campion" is from Duncan and Foote (1975), who illustrated this species with a color photograph.

Fringed campion is a perennial herb that spreads vegetatively by long, slender, stolon-like rhizomes and leafy offshoots, both terminating in overwintering rosettes. Rosette and lower stem leaves are opposite, obovate, 3–9 centimeters (1–4 inches) long. Each rosette produces one to several flowering shoots, each of which is unbranched or sparingly branched, erect or ascending, up to 40 centimeters (16 inches) tall. The flowers are arranged in groups of 3–5 in a terminal cyme with leafy bracts. The calyx is tubular, 2–3 centimeters long, 5-lobed, and covered with long, weak hairs. The 5 separate petals are each divided into a lower part about as long as the calyx and a triangular upper part that extends 3–4 centimeters from the calyx. The wide apex of each petal is fimbriate (divided into slender segments) giving the flower a fringed appearance. The petals are pink or white. Flowering is from late March to May (Kral 1983, Hitchcock and Maguire 1947, Faust 1980).

This handsome wildflower is cultivated as a garden plant. At Callaway Gardens during the 1950's, F.C. Galle (*in litt.* 1977) found that fringed campion is "* * * very easy to propagate from cuttings * * *," collected cuttings from a wild population, maintained nursery stock, established the plant on their wildflower trail, and distributed plants to other gardens around the United States. Callaway Gardens continues to grow fringed campion "* * * with limited success * * *" (Patricia L. Collins, Director of Education, *in litt.* 1990). Linda G. Chafin (Chief Biologist, Garrow and Associates, Inc., Atlanta, *in litt.* 1990), an experienced gardener, noted that attempts to maintain this species in gardens over the long term have not been very successful. Armitage (1989) considers fringed campion useful for the front of the garden border or the rock garden; Armitage also notes that Dr. Jim Ault developed a horticultural hybrid between *Silene polypetala* and *Silene virginica* with garden potential. The hybrid is sold commercially by at least one nursery, in Aiken, S.C. Fringed campion is cultivated in England (the Royal Botanic Gardens, Kew) and probably elsewhere. Pinnell (1987) confirmed that this plant is easily propagated by tissue culture techniques as well as by cuttings.

The Georgia Department of Natural Resources reports success in a cooperative effort with the University of Georgia to establish new populations in two Wildlife Management Areas, in Monroe County and Troup/Heard Counties. The Monroe County population has been "* * * spreading steadily since its establishment * * *" (T.W. Johnson, Georgia Department of Natural Resources, Nongame-Endangered Species Program, Forsyth, Georgia, *in litt.* 1990).

By 1843, both A.W. Chapman and F. Rugel had collected fringed campion near the Florida-Georgia boundary at the confluence of the Flint and Apalachicola Rivers. In 1894, E.F. Andrews discovered a locality for fringed campion in the drainage of the Ocmulgee River near Macon, Georgia. By 1956, botanists including R. McVaugh, R. Thorne, W. Duncan, H. Hume, and R.K. Godfrey had approximately established the current known distribution of the fringed campion; subsequently, Henry Daniel, Robert Lane, Angus Gholson, Jr., and W. Zack Faust (1980) conducted field work on the plant (summary in Kruckeberg and Rabinowitz 1985). Allison's (1988) survey was intended to find new localities for this and other plants of rich woods on and near north-facing slopes along the Flint and Chattahoochee river systems in southwestern Georgia. Allison found new localities for *Rhododendron prunifolium* (plumleaf azalea) and the endangered *Trillium reliquum* (relict trillium), but did not substantially expand the known range of fringed campion, which is clearly a rare and narrowly distributed species. Allison's search was aided by responses to a call for information placed by Thomas Patrick (Georgia Freshwater Wetlands and Heritage Inventory) in the newsletter of the Garden Club of Georgia.

Fringed campion occurs in two distinct geographic areas. The northern portion of its range is in central Georgia, from Macon in Bibb County west through Crawford, Taylor, and Talbot Counties, where the Piedmont meets the Coastal Plain's Fall Line Sandhills. All the known sites are on Piedmont soils, even though one site (in western Taylor County) appears to be in the sandhills on a standard physiographic map (Wharton 1978, fig. 1). The sites are near Pine Mountain, but separate from it.

Allison (1988) counted at least 610 fringed campion rosette-clusters at nine sites in the Georgia Piedmont; the largest site had at least 225 rosette-

clusters. Because the plant spreads vegetatively, the number of rosette clusters probably far exceeds the number of genotypes in any population. In central Georgia, fringed campion occurs "* * * in various situations within hardwood forest. Often on fairly steep slopes of deep ravines or north-facing hillsides. Sometimes on nearly level ground, particularly in 'flatwoods' developed on Iredell soils * * *." (Allison 1988). Piedmont "flatwoods" are bottomland hardwood forests on level sites, with basic or circumneutral soils on mafic or ultramafic volcanic rock. Three sites are on "flatwoods", six sites are on gentle to strongly north-facing slopes, and one site is on a gentle east-facing slope. All of the sites where fringed campion occurs appear to be consistently moist, either from downslope seepage or from location in a bottomland.

The Georgia Piedmont deciduous hardwood forests where fringed campion occur have northern red and white oaks, mockernut and pignut hickories, tulip tree, beech, maples, and loblolly and shortleaf pines. Understory species include oak-leaf hydrangea, blue palmetto (*Sabal minor*), and *Rhododendron minus* (Faust 1980). At one site in Talbot County, Georgia, fringed campion occurs with the endangered relict trillium (*Trillium reliquum*) (Allison 1988). At another site, fringed campion occurs with *Scutellaria ocmulgee*, a candidate for listing.

The southern portion of fringed campion's range is primarily along the east side of the Flint and Apalachicola Rivers at the boundary between Decatur County, Georgia, and Gadsden County, Florida, with two sites in Georgia (Faust 1980, Allison 1988), and two in Gadsden County, Florida, in and south of the town of Chattahoochee. Fringed campion occurs west of the Apalachicola River in Jackson County, Florida (Angus Gholson *in litt.* 1990; also a specimen collected in 1937 cited by Faust 1980 and Kent Perkins, Herbarium, Univ. of Florida, *in litt.* 1990). A distribution map (Hitchcock and Maguire 1947) that places the Florida distribution of fringed campion near the Suwannee River rather than the Apalachicola River is evidently incorrect; no herbarium specimens are known to support such a distribution (the New York Botanical Garden herbarium was checked by W. Thomas, *in litt.* 1990).

Near the Georgia-Florida border, fringed campion occurs in rich wooded ravines with southern magnolia, tulip tree, maples, beech, spruce pine (*Pinus glabra*), and sugarberry (*Celtis laevigata*). Understory trees include oakleaf hydrangea and redbud. Herbs include giant chickweed (*Stellaria pubera*) and bloodroot (*Sanguinaria canadensis*), both northern species. The endangered Florida torreya (*Torreya taxifolia*) occurs in these ravines. Allison (1988) counted at least 250 rosette-clusters of fringed campion at the two southwest Georgia sites, where Faust (1980) had found about 625 plants; the difference in numbers may be due to severe drought in 1988. One Florida population of fringed campion had about 250 plants in 1980, and was normally about this size (Faust 1980, reporting data from A. Gholson, Jr.). The sizes of the two other Florida populations are not available.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. On June 16, 1976, the Service published a proposed rule (41 FR 24524) to determine some 1,700 U.S. vascular plant species recommended by the Smithsonian report to be endangered species pursuant to section 4 of the Act. This proposal was withdrawn in 1979 (44 FR 12382). *Silene polypetala* was included in the Smithsonian report; the July 1, 1975 notice; the June 16, 1976 proposal; and the 1979 withdrawal.

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Silene polypetala* as a category 2 candidate (a taxon for which data in the Service's possession indicated listing is possibly appropriate). A supplement to the notice of review published on November 28, 1983 (48 FR 53640) changed *Silene polypetala* to a category 1 candidate (a taxon for which data in the Service's possession indicates listing is warranted), based on the status survey by Faust (1980). Updated notices of review published September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184) retained *Silene polypetala* as a category 1 candidate. A proposal to list *Silene polypetala* as an endangered species was published in the **Federal Register** on July 11, 1990 (55 FR 28577).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Silene polypetala* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1989, the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of the proposal constituted the final petition finding for *Silene polypetala*.

Summary of Comments and Recommendations

In the July 11, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published on July 21 in *The Bainbridge Post-Searchlight* and the *Macon Telegraph and News*, and on July 26 in the *Gadsden County Times* (Quincy, Florida), *Georgia Post* (Roberta, Crawford County), *Talbotton New Era* (Talbot County, Georgia), and the *Taylor County News* (Butler, Georgia).

Twenty-three comments and two petitions were received. Twenty-two comments supported the proposal; one letter, from a division of the Georgia Department of Natural Resources, provided information without expressing an opinion on the proposal; the Department's Commissioner supported the proposal, as did the Florida Department of Agriculture, the Florida Game and Fresh Water Fish Commission, the Director of Education and one other employee of Callaway Gardens, an environmental group, an environmental public interest law firm, and private individuals, including a botanist familiar with fringed campion.

Letters from the public interest law firm and two individuals, and petitions signed by 222 persons urged designation of critical habitat. The law firm gave three reasons to designate critical habitat. Each of these reasons is addressed individually below.

(1) The proposal's assertions that publication of critical habitat maps would make the fringed campion more

vulnerable due to take or excessive visitors are contradicted by the proposal's statements that fringed campion is not known to have been harmed by overcollection for scientific or educational purposes. Selected habitat descriptions and maps have already been circulated by the Georgia Botanical Society and in a report by Linda Chafin. Such material is also on file at the Georgia Wetlands and Natural Heritage Inventory, which is subject to public disclosure pursuant to State law.

Service response: The known distribution of fringed campion in Georgia is available from the Georgia Freshwater Wetlands and Heritage Inventory Program. The Inventory's policy is to not copy sensitive data, which is available only by visiting the Inventory's office. The Florida Natural Areas Inventory (which is operated by The Nature Conservancy) can protect sensitive data. The Service concurs that designation of critical habitat for fringed campion might not greatly increase the availability of information on the plant's distribution, but it would make such information available without the personal attention and supplemental information that is likely to be provided by Heritage Inventory personnel or by members of groups such as the Georgia Botanical Society. Because designation of critical habitat is a regulatory action (albeit one that does not protect endangered plants on private property from private activity), such a designation is different from compiling distribution maps or databases. Adverse landowner reactions to designation of critical habitat are also possible.

(2) "By failing to designate the critical habitats of fringed campion, the Fish and Wildlife Service has increased the likelihood that persons ignorant of the location of the species will intrude into and harm the habitats. Most notably, a consultant for the Georgia Hazardous Waste Management Authority which plans to construct a hazardous waste facility in Taylor County has reported 'no positive identification' of fringed campion at the site, despite contrary evidence submitted to the Authority * * * without a formal designation of habitat by the Fish and Wildlife Service, the Georgia Hazardous Waste Management Authority may continue to deny that the habitat of the fringed campion is located on the site being considered for the hazardous waste facility." The petitions supporting designation of critical habitat also made this point.

Service response: Designating critical habitat would not make the Georgia Hazardous Waste Management Authority more aware of the presence of fringed campion. The Georgia Freshwater Wetlands and Heritage Inventory and similar organizations are major sources of such information, and are routinely contacted when projects are planned. Critical habitat is an unwieldy method for making information on distributions available, because as new information becomes available, revising critical habitat to reflect it adds to the administrative workload and usually would be given low priority over other listing activity. Additionally, if a site is not included in critical habitat, this can give the incorrect impression that the site is not important for conserving the species. The alleged failure of a consultant to the Georgia Hazardous Waste Management Authority to acknowledge the existence of this plant at the Authority's proposed facility site could be remedied by simpler methods than determining critical habitat.

(3) Designation of critical habitat will help to inform logging interest and landowners so they can avoid disturbances, and so that local citizens may report any disturbances in or near the critical habitat.

Service response: Other methods of landowner contact by government agencies or private organizations can inform landowners and others more effectively and with less hazard of antagonizing landowners.

The petitions received urging designation of critical habitat for fringed campion are invalid under the Endangered Species Act, since the Act does not include critical habitat designation as a petitionable action. However, the petitions, as well as associated letters, clearly intend to prompt the Service to conduct a review of the need for critical habitat designation and take appropriate action. Because the petitions and letters do not contain new information beyond what was available when the Service published the fringed campion listing proposal, conducting a review limited to designation of critical habitat would be unproductive; instead, the Service will review the designation of critical habitat for fringed campion as part of the preparation of the plant's recovery plan. For the reasons given above, and below in the "Critical Habitat" section, the Service may continue to find designation of critical habitat to be not prudent.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Silene polypetala* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Silene polypetala* (Walter) Fernald & Schubert (fringed campion) are as follows:

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

Three sites are in residential areas. One is carefully conserved by the present homeowners, but another is likely to be lost to house construction or landscaping, if it is not lost already. Two sites are threatened by recent logging upslope from the populations, which may disrupt downslope seepage of water or decrease summer shade, leading to loss of at least some plants. Six more sites appear to be subject to eventual clearcutting, two of them by a paper company. Three sites, including the well-managed residential lot, can be considered secure.

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

Although two secure sites are moderately well known among botanists, there is no evidence of overcollection for scientific or educational purposes, even though the numbers of plants reported at these sites were much higher in 1980 than in 1988 (650 plants vs. 250) (Faust 1980, Allison 1988). Although fringed campion is a desirable garden plant, overutilization of fringed campion for horticultural purposes is not known to have occurred, perhaps because the plant is easily propagated, making digging up of wild plants unnecessary and unproductive.

C. Disease or Predation

Several populations in Talbot and Taylor Counties, Georgia "* * * displayed moderate to heavy grazing, presumably by deer. This could greatly limit the potential for population expansion and dispersal by sexual means, particularly as most of these populations are rather small." (Allison 1988).

D. The Inadequacy of Existing Regulatory Mechanisms

Georgia's Wildflower Preservation Act of 1973 protects fringed campion as an endangered species (McCollum and Ettman 1989); the act prohibits cutting, digging, pulling up, or otherwise removing any protected plant from public land without a permit from the Georgia Department of Natural Resources, and provides for permits for transporting, carrying, or conveying protected plants taken from private land belonging to another person. Violations are punishable as a misdemeanor.

Silene polypetala is listed as endangered by the Preservation of Native Flora of Florida Act (section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection.

The only occurrences of this plant on public land are at two sites administered by the U.S. Army Corps of Engineers in southern Georgia; the Corps is capable of prohibiting take of this plant from its lands by regulation. Listing fringed campion as an endangered species will add the substantial penalties provided by the Endangered Species Act to State and agency penalties.

E. Other Natural or Manmade Factors Affecting its Continued Existence

At four sites that are vulnerable to logging, Japanese honeysuckle (*Lonicera japonica*), an invasive weed, is already present or is encroaching. Japanese honeysuckle often destroys populations of forest-floor herbs; in addition, because Japanese honeysuckle can thrive in the wake of logging, its presence in these areas appears to greatly exacerbate the threat from logging.

The small number of populations of fringed campion, and the likelihood that each population contains few individuals and fewer genotypes greatly exacerbate the degree of threat to fringed campion from the other factors.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Silene polypetala* (fringed campion) as endangered, based on threats to its habitat posed by logging, residential development, and invasion by Japanese honeysuckle.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not currently prudent for fringed campion. As discussed under Factor B in the "Summary of Factors Affecting the Species", fringed campion is a handsome wildflower and a desirable garden plant. Although overutilization and take are not currently considered to threaten this species, the protected populations are small and share their habitat with other sensitive species that could be adversely affected by take or by excessive numbers of visitors. For example, fringed campion shares one unprotected site with the federally endangered *Trillium reliquum* (relict trillium), which is vulnerable to take (U.S. Fish and Wildlife Service 1988). Publication of critical habitat descriptions and maps would make fringed campion and other plant species in the habitat more vulnerable and increase enforcement problems. Involved parties and principal landowners have been notified of the locations of this species and the importance of protecting its habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard, which will almost certainly include provisions to ensure that this species is not harmed by herbicide use. Therefore, it would not be prudent to determine critical habitat for fringed campion.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Environmental Protection Agency (EPA) is establishing a national system to prevent the use of herbicides (including herbicides used in forestry) from jeopardizing endangered species; the State of Florida's Department of Agriculture and Consumer Services is establishing its own herbicide regulatory system under a program approved by the EPA. Herbicide restrictions, if they are adopted to protect fringed campion, may have some impact on private landowners in this area.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments to the Act (Pub. L. 100–478) prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that trade permits will be sought and issued because the species has a limited popularity in cultivation. Requests for copies of the regulations on plants and inquiries

regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

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

References Cited

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Author

The primary author of this final rule is Mr. David Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

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

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Caryophyllaceae—Pink family:						
*	* *	*	*	*	*	
Silene polypetala	Fringed campion	U.S.A. (FL, GA)	E	418	NA	NA
*	* *	*	*	*	*	

Dated: December 27, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–1280 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184–0284]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure to directed fishing in the Gulf of Alaska area; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director) has determined that the shares of the total allowable catch amounts (TACs) for sablefish allocated to trawl gear in the Western and Central Regulatory Areas of the Gulf of Alaska for the 1991 fishing year are needed as bycatch amounts to support directed fisheries in those areas for remaining groundfish species. The Secretary of Commerce is prohibiting further directed fishing for sablefish by vessels using trawl gear in the Western and Central Regulatory Areas of the Gulf of Alaska from 12 noon, Alaska local time (A.1.t.), January 15, 1991, through 24:00, A.1.t., December 31, 1991. This action is necessary to prevent the trawl shares of sablefish in the Western and Central Regulatory Areas from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving sablefish stocks.

DATES: *Effective:* 12 noon, A.1.t., January 15, 1991, through 24:00, A.1.t., December 31, 1991. *Comments* are invited for 15 days following the effective date of this notice.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP) governs the groundfish fishery in the

exclusive economic zone within the Gulf of Alaska management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and was implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Under § 672.20(c)(2), if the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is TAC, as defined in § 672.20(c)(1)(i). In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for that species or species group in the specified regulatory area or district.

Regulations implementing the FMP provide that one-fourth of the preliminary groundfish specifications and one-fourth of the preliminary halibut prohibited species catch (PSC) amounts will be in effect on January 1 of the new fishing year on an interim basis until superseded (§ 672.20(c)(1)(i)) by a Federal Register notice of final specifications. The notice of preliminary specifications for the 1991 fishing year proposed sablefish TACs of 3,770 mt for the Western Regulatory Area and 11,700 mt for the Central Regulatory Area. Trawl gear shares are 750 mt for the Western Regulatory Area and 2,340 mt for the Central Regulatory Area (55 FR 47897; November 16, 1990).

The Regional Director has determined that the interim trawl gear shares of sablefish in the Western and Central Regulatory Areas, 188 mt and 585 mt, respectively, will be necessary as bycatch to support remaining groundfish fisheries in those regulatory areas. With this action the Regional Director is establishing directed fishing allowances of 0 mt for each of the two regulatory areas and is closing the directed fisheries for sablefish taken with trawl gear in the Western and Central Regulatory Areas, effective 12 noon, A.l.t., January 15, 1991. After the closure, in accordance with § 672.20(g)(1), amounts of sablefish retained on board trawl vessels in the Western and Central Regulatory Areas at any time during a trip must be less than 15 percent of the aggregate amount of deepwater flatfish species, and all rockfish species of the genera *Sebastes* and *Sebastolobus* retained at the same time by the vessel during the same trip, plus 5 percent of the total amount of all other fish species retained at the time by the vessel during the same trip.

Classification

This action is taken under § 672.20 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent excessive wastage of groundfish that will occur if TACs are exceeded and retention of sablefish is prohibited. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

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

Dated: January 15, 1991.

David S. Crestin,

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

[FR Doc. 91-1273 Filed 1-15-91; 11:18 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 13
Friday, January 18, 1991

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. AO-341-A5; FV-89-109]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Recommended Decision and Opportunity to File Written Exceptions to Proposed Further Amendment of Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The proposed amendment would: (1) Authorize the Cranberry Marketing Committee (Committee) to conduct production research and development projects; (2) provide a method whereby annual allotments are calculated on the basis of sales histories and add provisions regarding excess cranberries; (3) limit tenure provisions for Committee members; (4) require handlers to pay assessments on the weight of acquired cranberries; (5) add a definition of barrel; and (6) make other miscellaneous changes that would be consistent with the proposed amendments. The proposals are designed to improve the administration, operation and functioning of the cranberry marketing order program.

DATES: Written exceptions must be filed by February 19, 1991.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1079–S, Washington, DC 20050–9200. Four copies of all written exceptions should be submitted and they should reference the docket number and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–8139.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on January 2, 1990, and published in the January 4, 1990, issue of the **Federal Register** (55 FR 295). This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of Marketing Agreement and Marketing Order No. 929, regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and of the opportunity to file written exceptions thereto. Copies of this decision may be obtained from Patricia A. Petrella, whose address is listed above.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed further amendment of Marketing Agreement and Order No. 929 is based on the record of a public hearing held in Plymouth, Massachusetts, on January 17, 1990; Cherry Hill, New Jersey, on February 6, 1990; Wisconsin Rapids, Wisconsin, on February 13, 1990; and Portland, Oregon, on February 15, 1990. Notice of this hearing was published in the **Federal Register** on January 4, 1990. The notice of hearing contained 19 proposals submitted by the Cranberry Marketing Committee (Committee), which locally administers the order. Those proposals pertained to authorizing the Committee to conduct production research and development projects; calculating annual allotments on the basis of sales histories and establishing provisions regarding excess cranberries; limiting tenure for Committee members; requiring handlers to pay assessments on the weight of acquired cranberries; and adding a definition of barrel. The notice also included one proposal by the Fruit and Vegetable Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (Department), which would provide authority to make any necessary conforming changes if any or all of the above amendments are adopted.

At the conclusion of the hearing, the Administrator Law Judge fixed March 15, 1990, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs based on the evidence received at the hearing. On March 9, 1990, the Administrative Law Judge extended the deadline to March 30, 1990, in response to a request from the Committee. The following persons submitted documents; Carolyn C. Gilmore of Gilmore Cranberry Co., Inc. (Gilmore); John Hart and Arthur Poole of the Oregon State University Extension Service (Hart); Frederick W. Wright (Wright); Charles S. Thompson (Thompson); Andrew H. Wright (A. Wright); and the Committee. Gilmore's, Hart's, and the Committee's briefs fully supported the proposed amendments to the cranberry marketing order. Thompson's, A. Wright's, and Wright's briefs objected to all or portions of the proposed amendments. Their objections will be discussed in the findings and conclusions below.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural growers have been defined by the Small Business

Administration (SBA) (13 CFR 121.2) as those having annual receipts for the last three years of less than $500,000. Small agricultural service firms, which include handlers regulated under this agreement and order, are defined as those with annual receipts of less than $3,500,000.

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. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that most handlers would meet the SBA definition of small agricultural service firms. The record also indicates that most cranberry growers meet the definition of small agricultural producers.

During the 1988–89 crop year, approximately 30 handlers were regulated under Marketing Order No. 929. In addition, there are about 950 growers of cranberries in the regulated area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the cranberry marketing order are predominantly small businesses, the order itself is tailored to the size and nature of small businesses. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.Thus, both the RFA and the Act are compatible with respect to small entities.

The proposed amendments to the marketing agreement and order include a provision authorizing the Committee to conduct production research and development projects. Presently, the cranberry marketing order authorizes only marketing research and development projects which are designed to assist, improve or promote the distribution and consumption of cranberries. Production-related research conducted on cranberries is usually performed through agricultural extension stations of universities and colleges. Recent cutbacks in state funding to universities have caused concern within the cranberry industry that production research could be jeopardized, severely restricted or delegated to a lower priority in the future.

Cranberry growers today are encountering increased problems related to production yields. These include not only weather-related problems and diseases caused by fungi and insects, but also increasing environmental concerns, e.g., water and chemical usage and expansion into wetlands. More and more, Federal and state laws have been implemented which restrict the use of chemicals and oversee water use. In addition, it is becoming more difficult to expand production in wetlands which are protected by Federal and state laws. Research projects which address these concerns would benefit all cranberry growers and could help ensure adequate supplies and increased quality of cranberries to consumers.

The proposed changes to replace the current allotment base program with a sales history program are intended to reduce values currently associated with allotment base and reduce barriers to entry to cranberry production and sales. The changes which are intended to reduce barriers to entry are consistent with the Department's 1982 Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines). Also included under this issue are definitions of sales history, established cranberry acreage and the term handle; modification of the sections of the marketing order regarding transfers, interhandler transfers, and annual allotment; and the addition of new order sections concerning excess cranberries.

Under this proposal, a grower's sales history would be calculated based on such grower's sales, expressed as an average of the best four of the previous six years. Each year, a grower's sales history would be automatically recalculated by the Committee with the newest crop year's sales being added and the oldest crop year's sales being dropped from the six-year period. Sales history would be transferred with the acreage on which it was earned, thus ensuring that a buyer or lessee receives sales history on acreage which is bought or leased. If there is no sales history or less then four years of sales history, sales history would be computed based on the number of years of actual sales until four years of sales is reached or the Committee would use the state average yield multiplied by the grower's cranberry acreage to calculate the grower's allotment. There are also provisions to not penalize a grower who loses a crop for three consecutive years because of natural disasters.

Under the proposed allotment program, when a marketable quantity and an allotment percentage have been established, growers would deliver all of their cranberries to handlers. Handlers could handle only the total of the annual allotments of all growers delivering cranberries to them. Cranberries in excess of those received under allotment would be called excess cranberries and would be able to be used only in noncommercial and/or noncompetitive markets.

The proposal to limit tenure for Committee members would allow for different and more contemporary ideas to be represented on the Committee and would be consistent with the Department's Guidelines. Currently, Committee members may serve for unlimited terms of office. This proposal would limit the terms of office that Committee members may serve to three consecutive two-year terms of office. The terms of alternate members would not be limited. Members serving three consecutive terms would again become eligible to serve on the Committee by not serving for one full term as either a member or an alternate member. This proposal could encourage and foster, to the maximum extent possible, broad-based participation by all industry members of the regulated community in the administration of the marketing order.

The proposal to add a requirement for handlers to pay assessments on the weight of acquired cranberries would require that all cranberries delivered to a handler, with the exception of excess cranberries, be assessed. Currently an assessment rate per 100-pound barrel is applied to the total barrels of cranberries a handler handled, i.e., canned, froze or dehydrated. However, fresh cranberries usually experience a loss in weight, called shrinkage, between the time they are received by the handler and the time they are actually handled. Therefore, the weight lost to shrinkage is not assessed. The Committee recommended that cranberries be assessed based on their weight when acquired by the handler prior to shrinkage. Thus, handlers would be assessed on all cranberries received, with the exception of excess cranberries, and assessments due to shrinkage would not be lost.

The proposal to add a definition of barrel would reflect current usage of this term in the industry. The marketing order does not include a definition of the term barrel. The term "barrel," which is equal to 100 pounds of cranberries, is used and understood by growers, processors, and handlers. Growers report their sales on a yearly basis in barrels and handlers report the number of cranberries acquired from growers and the disposition of such cranberries during the crop year in barrels.

The proposal to make other miscellaneous changes that would be consistent with the proposed amendments is necessary so that all sections of the order would be consistent if any or all of the

amendments are adopted. These changes include deleting and redesignating certain sections of the order.

All these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, it is determined that the proposed revisions of the order would not have a significant economic impact on handlers or growers.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the reporting and recordkeeping provisions that are included in the proposed amendments will be submitted to the Office of Management and Budget (OMB). They would not become effective prior to OMB approval.

Material Issues

The material issues of record addressed in this decision are: (1) Whether a provision should be added to permit the Committee to conduct production research and development projects; (2) whether to calculate annual allotments on the basis of sales histories and establish provisions regarding excess cranberries; (3) whether to limit tenure of Committee members; (4) whether to require handlers to pay assessments on the weight of acquired cranberries; (5) whether to add a definition of barrel; and (6) whether any conforming changes should be made to the order if any or all of these proposals were to become effective.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence adduced at the hearing and the record thereof are:

(1) Section 929.45 of the cranberry marketing order should be amended to authorize the Committee to conduct production research and development projects. Currently, the cranberry marketing order provides authority only for the establishment of marketing research and development projects which are designed to assist, improve, or promote the marketing, distribution, and consumption of cranberries. Production-related research conducted on cranberries is usually performed through agricultural extension stations of universities and colleges. Recent cutbacks in state funding to universities have caused concern within the cranberry industry that production research could be jeopardized, severely restricted or delegated to a lower priority in the future. Therefore, additional sources of funding may be necessary to ensure a sufficient degree of production research.

Record evidence indicates that cranberry growers today are encountering increased problems related to production yields. These include not only weather-related problems and diseases caused by fungi and insects, but also increasing environmental concerns, e.g., water and chemical usage and expansion of cranberry acreage into wetlands. For example, cranberries are considered a "minor use crop" for fungicides and other chemicals, and chemical companies have been reluctant to expend the funds necessary to register chemicals for minor use crops. Therefore, it is less economical in light of expected returns to register certain fungicides, herbicides, or insecticides for use on cranberries or other minor crops compared to registration of such chemicals for use on major crops such as corn or soy beans.

The record also indicates that it is becoming more difficult to expand production into wetlands which are protected by Federal and state laws. Thus, bogs cannot be developed or expanded not only because of the escalating cost of investment in land, labor and materials but also because additional land is not available. Further testimony indicated that because of Environmental Protection Agency regulations and the added cost of maintaining long-standing pesticide product registration, chemicals such as miticides and fungicides are being removed from the market. In addition, at the same time pest management tools are decreasing, the consumers' demand for high-quality, low-cost food is creating a demand for new and effective pest management programs. Thus, there has been a major thrust on the part of plant pathologists, entomologists, and weed specialists for the past 10 years to pursue more research slanted toward biological controls. Research projects which address these concerns would benefit all cranberry growers and could help ensure adequate supplies and a better quality of cranberries to consumers.

The record indicates that there are some problems common to the entire production area covered by the marketing order. These include: The lack of registered herbicides; herbicides with marginal efficacy; phytotoxicity resulting from herbicide use; and berry rot caused by fungal organisms. In addition, there are also other problems affecting the production area. For example, the coastal areas of Washington State usually have mild winters, and cranberries do not achieve the level of bud dormancy that occurs in colder climates. Unusually cold spells result in bud damage with resultant lower or erratic yields of fruit. Other problems are cottonball disease which is of primary importance in Wisconsin and phytophora root rot which is a major problem in Massachusetts.

Currently, there is limited research on these problems. Additional funding could be used to fund such research projects. Funds for production-related research would come from assessments on handlers and processors. The hearing evidence indicated that costs to growers would not be increased. However, costs to handlers may slightly increase.

Evidence presented at the hearing indicates that the Committee intends to allocate a portion of the assessments collected in each geographic area to production research projects and maintain a research fund for each growing area to be used in funding production or development projects specifically for that area. For example, a portion of the assessments collected from Wisconsin handlers could be returned to a researcher at the University of Wisconsin in the form of a grant to conduct production and development projects specifically related to Wisconsin. However, there would still be flexibility to use any or all of the research funds for projects that affect all growers in all geographic areas.

The record indicates that an advisory subcommittee may be created, consisting of growers, industry and academic representatives, and Committee members or other groups, to review proposed projects submitted by individuals or institutions. This advisory subcommittee would solicit, review, and recommend projects for funding to the Committee. Based on such recommendations and other pertinent information, the Committee, with the approval of the Secretary, would determine which projects would be funded.

Authorizing the Committee to fund production research and development projects through the state extension services or private laboratories and establishing a method of disbursing such funds appear to be in the best interests of the cranberry industry. This proposal would enable the cranberry industry to continue research on field problems and expand research in areas of pesticide registration and water quality. In addition, making funds available to address production-related problems would assist growers in maintaining the consistency or increasing the quality and quantity of their production yields. Handlers and processors would benefit by increases in the quality and quantity of cranberries to meet sales demands

and consumers would benefit from an increased supply of good quality cranberries and products containing cranberries.

Opposing testimony was presented at the Portland, Oregon, hearing session by Mr. Robert Hitt, a cranberry grower from Gartland, Washington. Mr. Hitt opposed Committee-funded production research. In addition, Thompson's brief opposed Committee funding of research projects. Mr. Hitt was against additional assessments for production research and government interference in general. He opined that Committee-funded research projects constituted government interference and that such research was best left to private industry and the growers. Mr. Hitt's testimony, however, offered no evidence that contradicted the factual assertions of the Committee or the testimony supplied by the research scientists. In addition, both Mr. Hitt's testimony and Thompson's brief reflected their view that the Committee's proposal in connection with the research portion of the assessments would result in significantly increased assessments. However, record evidence indicates that assessments are likely to increase only slightly in order to fund research projects.

Thompson stated in his brief that assessments designated for research projects would be used for lobbying the U.S. Army Corps of Engineers to expand cranberry cultivation in wetlands. This is incorrect. Funds expended under this authority could only be used for production research, marketing research, and market development projects. Lobbying the U.S. Army Corps of Engineers, as suggested, does not fall within the scope of permissible activities under this section and therefore would not be allowed.

The Committee offered a modification of the proposal to authorize the Committee to conduct production research and development projects at the Massachusetts hearing session and in its brief. This modification would add detailed guidelines to ensure that the entire industry has ample access to, and free use of, the results of any Committee-sponsored research. The modified proposal also contains reporting and accounting requirements for researchers conducting research on behalf of the Committee, utilizing Committee funds. In addition, the Committee was of the view that any patent rights or potential patent rights resulting from such research and development projects conducted with Committee funds would belong to the Committee.

In its brief and testimony, the Committee stated that the Committee's proposed guidelines would not impede the ability of the Committee to contract for appropriate research and that such guidelines are necessary to ensure the Committee's and industry's access to Committee-sponsored research.

Committee witnesses offered testimony supporting this modification. However, the weight of testimony from research scientists at the hearing did not favor the Committee's revision. It was evident from the testimony presented by the research scientists that contractual arrangements for research projects should be flexible in order to accommodate a variety of contracting procedures. The proposals in the Notice of Hearing would authorize the Committee, with the approval of the Secretary, to establish rules and regulations, as necessary, for the implementation and operation of this proposed amendment. Therefore, the Committee's modified proposal should not be adopted as it would not allow adequate flexibility in connection with research and promotion projects.

(2) The order should be amended to provide a method whereby growers' annual allotments would be calculated on the basis of sales histories, and provisions would be established regarding excess cranberries. The following describes which sections of the current marketing order would be amended or deleted and which new sections would be added in order to update the program.

The cranberry marketing order presently authorizes two types of programs that can be used to limit the amount of the total crop that can be marketed for normal uses during the periods when the crop exceeds market demands. The objective of these volume regulations is to stabilize cranberry supplies and prices so as to promote stronger marketing conditions and improve grower returns. Based on current information, with respect to the factors affecting the supply of and demand for cranberries, the Committee may recommend to the Secretary a marketable quantity established through either fixed free and restricted percentages (a setaside program) or an allotment percentage (an allotment base program). The marketable quantity is described in the marketing order as the number of pounds of cranberries necessary to meet total market demand and to provide for an adequate carryover of cranberries into the following season.

Neither program has been activated in recent years. A setaside program was implemented during the 1962–63 crop year to help stabilize the cranberry market.

Under a setaside program, handlers can market only a certain (free) percentage of the cranberries they handle. This percentage is the same for each handler. All cranberries in excess of that percentage are set aside in storage by handlers. The provisions in the marketing order and regulations regarding a setaside program require no changes at this time.

Under current provisions of the marketing order and the regulations, an allotment base program could also be used to limit the amount of an annual cranberry crop that can be marketed for normal uses. Under an allotment base program, growers are issued base quantities. A base quantity is the quantity of cranberries equal to a grower's established cranberry acreage multiplied by such grower's average per acre sales made from that acreage during the 1968 to 1974 time period.

If the allotment base program were activated, each handler would be allowed to acquire for normal marketing only a certain percentage of each grower's base quantity. This percentage, called an allotment percentage, is equal to the marketable quantity divided by the total of all growers' base quantities. The allotment percentage would be the same for all growers and, when applied to a grower's base quantity, would result in the grower's annual allotment for that crop year. For example, if a grower has a base quantity of 10,000 barrels of cranberries and the allotment percentage for a particular crop year is 50 percent, then that grower's annual allotment for that crop year would be 5,000 barrels.

Testimony at the hearing indicated that, if the allotment base program were activated, there could be disruption in the industry; for example, some growers have expanded their production without requesting more base quantity from the Committee. Thus, these growers' base quantities do not reflect their actual levels of sales.

Testimony also indicated that other growers' sales have declined over the years without a corresponding decrease in their base quantities because the method to reduce a grower's base quantity is cumbersome. The record indicates the overall effect of this program statistically has been to increase the total base quantity under the marketing order rather than have the total base quantity expand and contract in relation to total annual sales.

The current base quantity program also allows growers to sell or lease

cranberry acreage without transferring base quantity, or vice versa. Therefore, a buyer could obtain producing cranberry acreage but would not be able to market the cranberries during a year of volume regulation because such buyer does not have allotment base. In addition, growers can apply base quantity to cranberry acreage on which the base quantity was not established. In some instances, growers and financial institutions have perceived base as having a monetary value attached to it.

Over the last several years, the Committee has focused attention on a review of the allotment base program in order to identify and correct problems which might arise if the program were activated. At the hearing, the Committee proposed to replace the current allotment base program with a sales history program. Under this proposal, a grower's sales history would be calculated based on a grower's actual sales, expressed as an average of the best four of the previous six years of sales. The Secretary determines that the previous six years from the date of any implementation of volume regulation is the appropriate representative period because it reflects as closely as possible the current production levels from the growers' acreage.

The record indicates that, if this amendment is adopted, growers' sales histories would be calculated using all commercial sales from the first complete year following adoption of this amendment and the five previous years' sales histories. This information is readily available in the Committee's files. Each year, a grower's sales history would be automatically recalculated by the Committee in the same manner as for the initial sales history except that the newest crop year would be added and the oldest crop year would be dropped from the six-year period. If production and sales began from new bogs or marshes, the sales history would be computed based on the number of years of actual sales until four years of sales are reached or, when there is no sales history, the Committee would use the state average yield multiplied by the grower's cranberry acreage to calculate the grower's allotment. Therefore, during a year of regulation, a grower would be able to have a sales history on all cranberry producing acreage.

This method of calculating sales history differs from the method of calculating allotment base as it would be automatically performed by the Committee each year. Under the current allotment base program, a grower can only update allotment base by requesting it from the Committee each year. Further evidence presented by the Committee indicated that the current method for reducing a grower's allotment base (bonafide effort requirements) is unwieldy. In addition, allotment base was initially issued based on a representative period 20 years ago. Under the proposed sales history program, sales history would be continually updated and based on more current and accurate information.

During a year of volume regulation, the Committee, with the approval of the Secretary, would use a formula to calculate growers' sales histories for the crop year. Proponents discussed several options for determining sales history during a year of volume regulation. However, it was concluded that the appropriate time to formulate a method to determine sales history during a year of volume regulation would be when an allotment program is implemented. Such a method would be implemented through the issuance of rules and regulations with the approval of the Secretary.

The record shows that if a grower who has a six-year sales history then has no commercial sales from such grower's acreage for three consecutive years due to forces beyond the grower's control, the Committee, after consideration of all relevant factors, would compute a sales history for the fourth year for that acreage using an estimated production determined by crediting the grower with the average sales from the preceding three years during which sales occurred. Forces beyond a grower's control could include inclement weather, diseases and other natural phenomena. Disaster such as fire and vandalism could also be considered as forces beyond a grower's control.

Evidence presented at the hearing indicates that if a grower has no sales history during a crop year when volume regulation has been established, the Committee would compute an sales history for the grower by using whichever of the two following methods yields the greater sales history: (1) The total estimated commercial sales from a grower's cranberry acreage for that crop year; or (2) the state average yield per acre multiplied by the grower's cranberry producing acreage. The state average yield per acre is based on the most recent average yield per acre from the state in which the grower produces cranberries as determined by dividing the total production from such a state by the total acreage on which cranberries are harvested within that state during the previous crop year.

In addition, growers' production and eligibility reports would be filed by January 15 instead of the current February 1 filing date. Production and eligibility reports indicate new acreage planted and sales of cranberries from such acreage. Failure of a grower to submit this report by January 15 could result in the grower not receiving credit for barrels sold during the crop year. The record evidence indicates that earlier submission of this information is required to ensure that the Committee has the necessary information to develop its marketing policy. In addition, this information is not available from other sources.

Evidence presented at the hearing showed that, if the sales history concept is adopted, the majority of growers' sales histories would only differ by plus or minus one percent from their current base quantities. Evidence also indicated that the adoption of this proposal would not impact handlers or growers negatively.

Currently, the rules and regulations of the order define a new grower as any person who does not hold a base quantity certificate or any interest in a base quantity certificate, financial or otherwise and includes any grower who in the judgment of the Committee has made firm and substantial commitments for the production of cranberries or any grower whose acreage did not previously qualify as established cranberry acreage. An existing grower is currently defined as any person who is engaged in producing cranberries on established cranberry acreage or now holds a base quantity certificate. Under the proposed sales history program, sales history would be applied to any cranberry acreage, no matter if it produces cranberries in its first, fifth, or any year of production. Thus, it would not be necessary to differentiate between new and existing growers as all growers with cranberry acreage could have an annual allotment. Record evidence supports this finding.

In addition, the record indicates that it would no longer be necessary for the Committee to determine if a grower is making a bona fide effort to produce and sell cranberries. Under the current order, if a grower makes no bona fide effort to produce and sell cranberries for five consecutive seasons, such grower's base quantity may be reduced or declared invalid due to lack of use and canceled at the end of the fifth season of nonproduction. Under the proposed sales history program, a grower's sales history would be based on actual commercial sales, expressed as an average of the best four of the previous

six years. Thus, if a grower's sales decreased for two or more seasons, such grower's sales history would automatically be decreased.

Therefore, § 929.13 which defines "base quantity" should be deleted, and a new § 929.13 should be added which defines "sales history." Section 929.15 should be amended to reflect the use of sales history in determining a grower's annual allotment. Section 929.48 which outlines the determination of growers' base quantities should be deleted, and a new § 929.48 should be added to reflect the method of determining a grower's sales history.

Currently, growers may transfer their base quantity from cranberry acreage on which the grower's base quantity was established to other acreage or growers. While this procedure provides a measure of flexibility, it in effect limits entry into the business of cranberry production to those who acquire base quantity from others in possession of such bases by purchase or other means. The proposed new procedure for determining producers' allotments would be a substantial departure from the existing limiting procedure. Under the new approach, there would be free entry to new producers, either through acquisition of existing cranberry acreage, or on the basis of acquiring suitable land, producing cranberries and marketing the fruit.

In the case of the sale of producing acreage, the proposed sales history program would provide for a producer's sales history to remain with the acreage on which it is earned, thus ensuring that a buyer or lessee would receive sales history on acreage which is bought or leased. Therefore, buyers and lessees would be protected as they would be assured that the acreage they buy or lease has sales history and they would be eligible for an annual allotment immediately which enables them to sell their cranberries during a year when a marketable quantity has been established. In addition, the proposal would also enhance the normal economic growth of the industry, since sales history would be based on actual sales from cranberry acreage in a recent period, unlike the base quantity which was based on an outdated representative period. Further, the system used to update a producer's base quantity would be less burdensome.

Evidence at the hearing indicated that this change would be responsive to the Department's Guidelines as there would be no barriers to entry under the sales history program. A grower would acquire sales history for a piece of land simply by growing cranberries on that land and marketing the fruit. Thus, the fact that sales history would be transferred only with the land would not artificially increase the value of the land beyond its normal productivity, would not guarantee any future level of sales history to one acquiring the lands, and would not require anyone to use or acquire only land with an established sales history.

Whenever there is a total sale or lease of a grower's cranberry acreage, a completed transfer form should be filed with the Committee so that the buyer or lessee would have immediate access to the sales history of that land. Whenever a partial sale or lease of cranberry acreage occurs, the sales history attributable to the acreage being sold or leased would be transferred along with the acreage.

Therefore, § 929.50 should be amended to provide for procedures for the transfer of sales history between growers.

Under the proposed allotment program, when a marketable quantity and allotment percentage have been established by the Secretary, an annual allotment would be computed for each grower by multiplying a grower's sales history by the allotment percentage. The allotment percentage would be equal to the marketable quantity divided by the total of all growers' sales histories. The record shows that growers would apply for their annual allotments by filing a form with the Committee before April 15 of each year. This form, which is a modification of a previous form, would include the following information: The location of their cranberry producing acreage from which their annual allotment will be produced; the amount of acreage which will be harvested; changes in location, if any, of annual allotment; and such other information, including a copy of any lease agreement, as is necessary for the Committee to administer the program. The record indicates that this form is necessary as it provides information concerning the crop to be produced. The April 15 date for submission of this form is necessary to ensure that the Committee has adequate time to determine each grower's annual allotment.

Evidence presented at the hearing demonstrated that on or before June 1 of each year in which volume regulation is in effect, the Committee would issue to each grower an annual allotment determined by applying the allotment percentage to the grower's base quantity. In addition, handlers would be notified of the annual allotments of all growers who deliver their total crops to them. The record shows that, if a grower delivers a crop to more than one handler, the grower would notify the Committee of the amount of annual allotment apportioned to each handler. If the grower does not inform the Committee, then the Committee would equitably apportion the grower's annual allotment amount the handlers to whom the grower delivers cranberries.

Therefore, § 929.49 should be amended to reflect the replacement of the current allotment base program with a sales history program. Section 929.52 should be amended to provide for the issuance of regulations using the proposed sales history concept. Section 929.55 should be amended to provide for notification of the Committee when an interhandler transfer of cranberries has occurred during a period when a volume regulation has been established.

Under the proposed sales history program, growers could deliver all of their cranberries to their handlers. However, handlers would handle only the total annual allotments of all their growers. Cranberries received in excess of the sum of a handler's growers' total allotments are called "excess cranberries." These excess cranberries could be temporarily stored (cold storage or freezing) prior to their disposal as outlined below. Such excess cranberries, stored in cold storage or by freezing, would not be considered to be handled.

Evidence presented at the hearing indicated that at the beginning of a season, cranberries acquired by handlers may not be the most desirable for use in the fresh or processed markets. Early cranberries may not have adequate size or color. However, as the season progresses, the quality of later deliveries to handlers often improves. Therefore, handlers would want to acquire all of their growers' cranberries in order to select the best quality for their marketing purposes. In addition, handlers are responsible for the disposition of excess cranberries.

The record shows that growers who do not produce enough cranberries to fill their annual allotments may transfer their unused allotment to their handlers. Handlers would then equitably allocate the unused annual allotment to their growers who have excess cranberries. If a handler has unused annual allotment remaining after all such transfers have occurred, the handler is "deficient" and would transfer the unused annual allotment to the Committee who would equitably allocate the unused allotment to all handlers who have excess cranberries remaining. The record further shows that such apportionment by the Committee would be prorated based on the amount of cranberries a handler has handled that crop year. The

record indicates that the distribution of unused allotment through the Committee would ensure equity and control of distribution and accountability of unused allotment. Excess cranberries used to fill annual allotment would be subject to assessments and sales of such cranberries would be credited to the grower whose excess cranberries were used.

Evidence at the hearing indicates that excess cranberries due to volume regulation should not be subject to assessments except when they are used to fill a deficiency, i.e., when handlers use excess cranberries to fill their growers' total annual allotments or, to fill unused allotment distributed by the Committee to handlers. Therefore, all marketable cranberries would be assessed.

The record evidence shows that, during a period of volume regulation, inter-handler transfers would not be allowed without notifying the Committee. The record indicates that if handlers were allowed to conduct inter-handler transfers without prior notification to the Committee, it would be difficult for the Committee to maintain inventory and administrative control of the volume control program. Inter-handler transfers of excess cranberries would not be permitted to be used to fill deficiencies since a handler who has a deficiency has unused allotment. All unused allotment would revert to the Committee for distribution to handlers with excess cranberries. The record further indicates that excess cranberries should only be transferred for disposal in the outlets prescribed in § 929.61.

New reporting requirements would be utilized as handlers would be required to report inter-handler transfers four times a year instead of the current two times a year. These additional reports are needed to provide the Committee with essential information to allow for tracking the disposition and assessment obligation of handler-held cranberry inventories throughout the crop year. The record indicates that these additional reporting requirements would not impact handlers negatively.

After all unused allotment has been allocated, excess cranberries withheld buy a handler would be made available for inspection by the Committee until final disposition is completed. The Committee wishes to monitor any excess cranberry inventory, so there would not be any unauthorized movement or any distribution of such inventory without its knowledge or consent. These cranberries would be stored temporarily by freezing or cold storage and exempt from assessment obligations. Excess cranberries would be identified and labeled as such for inspection by Committee staff. Handlers are responsible for submitting a written plan to the Committee prior to January 1, or another date recommended by the Committee and approved by the Secretary, which outlines procedures for the systematic disposal of excess cranberries in noncompetitive or noncommercial outlets. The January 1 date is necessary in order for the Committee to have time to review the plan in advance of handler disposition of all excess cranberries by March 1.

The record indicates that the March 1 date for disposition of all excess cranberries is necessary in order that excess fruit would not be available to possibly disrupt the marketing of the next year's crop. The cranberry marketing season begins on September 1.

The record shows that the written plan submitted to the Committee by the handler would outline the noncommercial or noncompetitive outlets to which a handler wishes to divert excess cranberries. In addition, the date and method of final disposition of the cranberries would be detailed. Such information is necessary to ensure that handlers do not maintain a large carry-over that could have a potentially disruptive effect on the market. Noncommercial outlets include charitable institutions and research and development projects approved by the Department for the development of foreign and domestic markets. These research and development projects could involve dehydration, radiation, freeze drying, or freezing of cranberries. Noncompetitive outlets include any non-human food use and foreign markets, except Canada. Canada is excluded as significant sales of cranberries to Canada could result in transshipment back to the United States of the cranberries exported there which could, in turn, disrupt the U.S. market.

Handlers diverting excess cranberries to these outlets would provide documentation from the outlets or, in the case of nonhuman food use, 48 hours notification to the Committee prior to disposal. Notification of the Committee 48 hours in advance of disposition should give the Committee sufficient time to be available to observe the disposition of such cranberries.

Therefore, § 929.10 should be amended to allow handlers to temporarily freeze or place cranberries in cold storage facilities for a specified period of time during periods when a marketable quantity has been established by the Secretary. Section 929.41 should be amended to provide that excess cranberries are exempt from assessments. Section 929.55 should be amended to provide for prior notification of the Committee when an interhandler transfer of cranberries has occurred during a period when a volume regulation has been established. A new § 929.59 should be added to provide for the disposition of excess cranberries New §§ 929.60 and 929.61 should be added to provide for the handling of excess cranberries.

One of the Committee's proposals which is included in the Notice of Hearing was the modification of the definition of "established cranberry acreage" for the sake of clarification. However, the record evidence does not support the need for any definition of "established cranberry acreage" and indicated that the term would not be necessary for the administration of the marketing order if the proposed amendments are adopted. Under the proposed allotment program, sales history would be established for any cranberry acreage, not just established cranberry acreage. Therefore, § 929.16 which defines established cranberry acreage should be deleted. In addition, proposed § 929.48(a)(4) should be modified to reflect the deletion of the term "established cranberry acreage."

Opposition to the proposed sales history program was presented at by Charles S. Thompson at the Plymouth, Massachusetts, hearing session, Mr. Robert Hitt at the Portland, Oregon, hearing session, and in Thompson's, Wright's, and A. Wright's briefs.

Wright's and Thompson's briefs opposed the potential impact the amendments would have on independent cranberry growers. Both stated that the amendments favor the large cooperatives in that unused annual allotment could be "traded" within the large cooperatives, and independent growers would be discriminated against because they would not be allocated any of the unused allotment.

It should be emphasized that any grower's unused allotment would be used equitably by the grower's handler for excess cranberries held by the handler. Furthermore, any unused allotment still remaining would revert to the Committee, which would then distribute such excess equitably to handlers who are requesting unused allotment. This is supported throughout the record. Thus, these provisions eliminate the type of potential unfairness that was of concern to the opposition witnesses and commenters.

Wright also did not favor the provision which stated that if the yield on new bogs is less than that estimated,

the grower would not be credited with the unused portion of such grower's annual allotment. According to Wright, this would discriminate against the grower in that, if the grower's total commercial sales exceed the state average, such grower would never be able to bring new bogs into production since there would never be adequate annual allotment to do so.

The proposed procedure for computing sales history for cranberry acreage provides otherwise. Record evidence on this proposal indicates that a grower's sales history would be calculated on the grower's actual sales which would be expressed as an average of the best four of the previous six years of sales. Each year, a grower's sales history would be automatically recalculated by the Committee with the newest crop year's sales being added and the oldest crop year's sales being dropped from the six-year period. As described earlier, if production and sales began from new bogs or marshes, the sales history would be computed based on the number of years of actual sales until four years of sales are reached or, when there is no sales history, the Committee would use the state average yield multiplied by the grower's cranberry acreage to calculate the grower's allotment. Therefore, during a year of regulation, a grower would be able to have a sales history on all cranberry producing acreage.

Wright added that the marketing order should contain a clear definition of the Act so that an annual allotment is not implemented capriciously and illegally. The Act is clearly defined in § 929.2 of the order. Federal marketing orders are authorized by the Act and rules and regulations issued under the orders are specifically authorized under that Act. In addition, the cranberry marketing order is administered by growers who are nominated by the industry and selected by the Secretary of Agriculture. The Committee members represent the cranberry industry and make recommendations, which include establishing volume regulation, to the Secretary. All recommendations must be approved by the Secretary before they are implemented by the Committee. Each recommendation made by the Committee is individually reviewed and evaluated by the Department. In issuing regulations, the Department adheres to the requirements of the cranberry marketing order, and applicable statutes and Departmental policies. These procedures are sufficient to prevent the arbitrary and capricious implementation of volume control regulations.

Wright, Thompson, and A. Wright discussed additional concerns which did not specifically address the substance of the proposals, but were generally opposed to large handlers, the Department, and allotment programs.

These provisions, if adopted, would be more equitable to all growers and would reduce barriers to entry. Record evidence indicates that the adoption of the sales history concept would have a negligible impact on the majority of growers. In addition, the changes represented by this issue was supported by the record evidence.

The sales history concept has been widely endorsed by all segments of the industry. Witnesses from the West Coast, Wisconsin, and the East Coast, major cooperative handlers and independent handlers, growers for the major cooperative, and small independent handlers all testified that the sales history program as proposed by the Committee would best serve the interest of all segments of the industry and effectuate the declared purposes of the Act.

(3) Section 929.21 should be amended to provide that Committee members be limited to serving three consecutive two-year terms of office. This change is consistent with Department's Guidelines which provide for limiting committee tenure for members and alternates. Currently, the order does not limit the tenure of Committee members. Thus, the Committee recommended that Committee members be limited to serving three consecutive two-year terms of office. The terms of alternates would not be limited. Members serving three consecutive terms would again become eligible to serve on the Committee by not serving for one full term as either a member or an alternate member. The Committee also proposed that the Secretary of Agriculture retain discretion to waive this limitation if a situation arises when no other qualified candidate can be found.

Record evidence indicates that this proposal would allow for different and more contemporary ideas to be represented on the Committee and would be consistent with the Department's 1982 Guidelines. The Department's policy stated in the Guidelines is that a Committee member's consecutive service should be limited to a total of six years. The Guidelines' goal is to encourage and foster to the maximum extent possible, broad-based participation by all members of the regulated community in the administration of the marketing order. This objective is best met by such a limitation.

Record evidence also supported authority for staggered implementation of tenure requirements which would allow a gradual turnover of Committee members. The record suggests that, if this proposed amendment is adopted and tenure limitations were to be applied to all Committee members at once, most, if not all, of the Committee members would be ineligible to serve for the next term of office. This could cause difficulties if no other qualified candidates could be found.

Therefore, in accordance with record evidence, the Committee's proposal is modified to provide for staggered implementation of tenure requirements for Committee members to preclude the loss of all or most of the Committee members at one time due to tenure limitations. Members selected to represent Districts 1 and 2 for the initial term following adoption of this proposed amendment would be eligible to serve two consecutive terms of office before becoming ineligible to serve on the Committee. Members selected to represent Districts 3 and 4 and the public would become ineligible after serving three consecutive terms of office. Thereafter, all Committee members would become ineligible to serve on the Committee after serving three consecutive terms of office. Such individuals could again become eligible to serve on the Committee by not serving on the Committee for one full term as either a member or an alternate member.

Thompson's brief opposed limiting Committee tenure as he believed that it would not alleviate his perceived "misalignment of representation on the Committee" i.e., large growers who are part of the large cooperative and are not eligible to serve for a fourth term of office could still be represented on the Committee through their cooperative. In addition, he believes that continuity in Committee membership ensures that Committee "history" is retained over the years. Thompson states that Committee-related events since the inception of the marketing order are part of the "collective memory" of Committee members who have served on the Committee for a lengthy period of time.

The Department disagrees with Mr. Thompson's view that there is misalignment of representation on the Committee. The Committee consists of seven grower members and one public member, each with an alternate. The cranberry production area is divided into four districts and each district is represented by at least one member and one alternate member. The marketing order provides for nomination and

selection procedures for Committee members and their alternates. These procedures also provide that a cooperative marketing organization that handles more than two-thirds of the total volume of cranberries during the fiscal period during which nominations for membership on the Committee are made shall nominate four or more qualified persons each for members and alternate members. This authority was established through a formal rulemaking process which included a hearing and a grower referendum in which growers voted in favor of the Committee's membership.

In reference to the "history" of the order, the records and files in the Committee's office and the Department contain a record of rulemaking actions, Committee meetings, and correspondence since the inception of the order. This record provides adequate institutional memory to provide continuity of marketing order administration if limits to Committee tenure are adopted.

(4) Section 929.41 should be amended to provide that cranberries are to be assessed based on their weight when acquired by the handler prior to shrinkage and that, in the event of volume regulation, excess cranberries would not be assessed unless and until they are used to fill allotment deficiencies of growers.

Currently, an assessment rate per 100-pound barrel is applied to the total barrels of cranberries when a handler handles them—not when cranberries are received from the grower. The record indicates that fresh cranberries usually experience a loss in weight between the time received by the handler and when they are actually handled. This loss, which is referred to as shrinkage. is due to a combination of factors, e.g., the cleaning and screening process, spillage, quality deterioration, and damage during the period between receipt and handling. Thus, shrinkage is the difference between the weight of cranberries received by the handler from a grower and the weight of cranberries actually handled by the handler. Shrinkage does not account for non-cranberry material such as twigs, leaves, and dirt. The Committee recommended that cranberries be assessed based on their weight when acquired by the handler prior to shrinkage. Thus, handlers would be assessed on all cranberries received, at the time they are received, so that assessment income would not be lost due to shrinkage. The record shows that this proposed amendment would also result in assessments being calculated on the basis of the actual weight of the berries prior to shrinkage, excluding the leaves, twigs, sticks, rocks, and other non-cranberry materials.

Record evidence shows that all cranberries are obtained by a handler for the purpose of handling, no matter what actual use the handler eventually chooses for the cranberries. Thus, during a period when volume controls are not in effect, all cranberries should be subject to assessment. However, during a period of volume regulation, all cranberries, with the exception of excess cranberries, should be subject to assessment. Excess cranberries would not fit the proposed change in the definition of "handle" and, thus, could not be assessed.

Record evidence and the testimony support this proposal. Under this proposal, assessments would be applied to the weight of the cranberries as delivered. In addition, excess cranberries would not be subject to assessments.

(5) A new § 929.17 should be added to define "barrel." Currently, the marketing order does not include a definition of the term "barrel." The term "barrel," which is 100 pounds of cranberries, is used and understood by growers and handlers. Growers report their sales on a yearly basis in barrels. Handlers report the amount of cranberries acquired from growers and the disposition of such cranberries during the crop year in barrels. The Committee maintains records of all cranberries acquired, sold and otherwise disposed of using the term "barrel" or "barrels." Under this proposal, a "barrel" would be defined as "a quantity of cranberries equivalent to 100 pounds of cranberries."

The hearing record supports the use of the term barrel. Handlers, growers and processors routinely measure amounts of cranberries in barrels and fractions thereof, and a barrel refers to a 100-pound barrel of cranberries. The inclusion of a definition of barrel meaning 100 pounds of cranberries would reflect current usage in the cranberry industry.

(6) The marketing order should be amended to make other miscellaneous changes that would be consistent with the proposed changes, if adopted. The miscellaneous changes would include redesignating §§ 929.60, 929.61, 929.62, and 929.63 of Reports and Records as §§ 929.62, 929.63, 929.64, and 929.65, respectively. In addition, §§ 929.65, 929.66, 929.67, 929.68, 929.69, 929.70, 929.71, 929.72, 929.73, 929.74, and 929.75 of Miscellaneous Provisions would be redesignating as §§ 929.67, 929.78, 929.79, 929.70, 929.71, 929.72, 929.73, 929.74, 929.75, 929.76, and 929.77, respectively. Further, if the proposed changes are adopted, §§ 929.107, 929.108, 929.109, 929.110, 929.148, 929.150, 929.151, and 929.153 of the rules and regulations of the cranberry marketing order would be deleted.

Testimony was presented at the hearing which supported the deletion of certain sections of the order and the redesignation of certain other sections of the order so that all sections of the order, if amended, would be consistent. In addition, certain sections of the rules and regulations of the marketing order would also be deleted.

The record evidence supports these changes. Also, making these changes is necessary so that all sections of the order would be consistent if the amendments are adopted and so that all sections of the rules and regulations would be consistent with the order provisions.

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

Upon the basis of the record it is found that:

(1) The findings hereinafter set forth are supplementary to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of the said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of cranberries grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity

specified in the marketing agreement and order upon which a hearing has been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(5) All handling of cranberries grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

List of subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recording requirements

Recommended Further Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order, both as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

1. The authority citation for 7 CFR part 929 continues to read as follows:

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

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.10 is revised as follows:

§ 929.10 Handle.

(a) *Handle* means (1) To can, freeze, or dehydrate cranberries within the production area or (2) to sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way to place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof in the United States or Canada.

(b) The term *handle* shall not include: (1) The sale of nonharvested cranberries; (2) the delivery of cranberries by the grower thereof to a handler having packing or processing facilities located within the production area; (3) the transportation of cranberries from the bog where grown to a packing or processing facility located within the production area; or (4) the cold storage or freezing of excess cranberries for the purpose of temporary storage during periods when an annual allotment percentage is in effect prior to their disposal, pursuant to § 929.59.

§ 929.13 [Removed]

3. Section 929.13 is removed.

4. A new § 929.13 is added to read as follows:

§ 929.13 Sales history.

Sales history means the number of barrels of cranberries established for a grower by the committee pursuant to § 929.48.

5. Section 929.15 is revised to read as follows:

§ 929.15 Annual allotment.

A grower's annual allotment for a particular crop year is the number of barrels of cranberries determined by multiplying such grower's sales history by the allotment percentage established pursuant to § 929.49 for such crop year.

§ 929.16 [Removed]

6. Section 929.16 is removed.

7. A new § 929.17 is added to read as follows:

§ 929.17 Barrel.

Barrel means a quantity of cranberries equivalent to 100 pounds of cranberries.

8. Section 929.21 is revised to read as follows:

§ 929.21 Term of office.

The term of office for each member and alternate member of the committee shall be for two years, beginning on August 1 of each even-numbered year and ending on the second succeeding July 31. Members and alternate members shall serve the term of office for which they are selected and have been qualified or until their respective successors are selected and have been qualified. Beginning on August 1 of the even-numbered year following the adoption of this amendment, committee members shall be limited to three consecutive terms: *Provided*, That committee members representing Districts 1 and 2 shall be limited to two consecutive terms of office for the initial period following adoption of this amendment. The consecutive terms of office for alternate members shall not be limited. Members serving three consecutive terms may become eligible to serve on the committee by not serving for one full term as either a member or an alternate member, unless specifically exempted by the Secretary.

9. Section 929.41 is revised to read as follows;

§ 929.41 Assessments.

(a) As a handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, a handler shall pay to the committee assessments on all cranberries acquired as the first handler thereof during such period, except as provided in § 929.55: Provided, That no handler shall pay assessments on excess cranberries as provided in § 929.57. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each handler during a fiscal period in an amount designated to secure funds sufficient to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the assessment rate in order to secure funds sufficient to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cranberries acquired during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year, before sufficient operating income is available from assessments, the committee may accept the payment of assessments in advance and may also borrow money for such purposes.

(c) If a handler does not pay such assessment within the period of time prescribed by the committee, the assessment may be increased by either a late payment charge, or an interest charge, or both, at rates prescribed by the committee, with the approval of the Secretary.

10. Section 929.45 is revised to read as follows:

§ 929.45 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of

cranberries. The expense of such projects shall be paid from funds collected pursuant to § 929.41, or from such other funds as approved by the Secretary.

(b) The committee may, with the approval of the Secretary, establish rules and regulations as necessary for the implementation and operation of this section.

§ 929.48 [Removed]

11. Section 929.48 is removed.

12. A new § 929.48 is added to read as follows:

§ 929.48 Sales history.

(a) *Determination of sales history.* (1) The initial sales history shall be computed by the committee for each grower using the best four out of six years of such grower's sales history, which shall include all commercial sales from the first complete crop year following adoption of this amendment, plus the prior five years history of commercial sales, except as otherwise provided in paragraph (a)(5) of this section. For a grower with four years or less of commercial sales history, the initial sales history shall be computed by the committee using all available years of such grower's commercial sales history.

(2) A new sales history shall be computed for each grower after each crop year during which no volume regulation was established, in the same manner as for the initial sales history, except that the most recent crop year shall be used instead of the earliest crop year, and except as otherwise provided in paragraph (a)(4) of this section. The committee, with the approval of the Secretary, may, by regulation, alter the number and identity of years to be used in computing these subsequent sales histories.

(3) A new sales history shall be calculated for each grower after each crop year, during which a volume regulation has been established, using a formula determined by the committee, with the approval of the Secretary.

(4) Beginning with the first complete crop year following the adoption of this section, if a grower has no commercial sales from such grower's established cranberry acreage for three consecutive crop years, due to forces beyond the grower's control, the committee shall compute a level of commercial sales for the fourth year for that acreage using an estimated production, obtained by crediting the grower with the average sales from the preceding three years during which sales occurred. Any and all relevant factors regarding the grower's lost production may be considered by the committee prior to establishing a sales history for such acreage.

(5) The committee shall compute a sales history for a grower who has no history of sales associated with such grower's cranberry acreage, during a period when a volume regulation has been established, using the greater of the following: (i) The total estimated commercial sales from a grower's cranberry acreage, or (ii) The state average yield per acre multiplied by the grower's cranberry producing acreage. *Provided,* That a grower receiving a sales history computed under either of these methods shall not be eligible to have deficiencies filled.

(b) *Grower report.* Each grower who wishes to market cranberries under the marketing order shall file a report with the committee by January 15 of each crop year, indicating the total acreage harvested, the total commercial cranberry sales in barrels from such acreage, and the amount of any new or renovated acreage planted.

(c) The committee may establish with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

13. Section 929.49 is revised to read as follows:

§ 929.49 Marketable quantity, allotment percentage and annual allotment.

(a) *Marketable quantity and allotment percentage.* If the Secretary finds, from the recommendation of the committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish a marketable quantity for that crop year.

(b) The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's sales history, established pursuant to § 929.48. Such allotment percentage shall be established by the Secretary and shall equal the marketable quantity divided by the total of all growers' sales histories. Except as provided in paragraph (f) of this section, no handler shall purchase or handle on behalf of any grower cranberries not within such grower's annual allotment.

(c) In any crop year in which the production of cranberries is estimated by the committee to be equal to or less than its recommended marketable quantity, the committee may recommend and the Secretary may increase or suspend the allotment percentage applicable to that year. In the event it is found that the market demand is greater than the marketable quantity previously set, the committee may recommend and the Secretary may increase such quantity.

(d) *Issuance of annual allotments.* The committee shall require all growers to qualify for their allotment by filing with the committee, on or before April 15 of each year, a form wherein growers include the following information: The location of their cranberry producing acreage from which their annual allotment will be produced; the amount of acreage which will be harvested; changes in location, if any, of annual allotment; and such other information, including a copy of any lease agreement, as is necessary for the committee to administer this part. On or before June 1, the committee shall issue to each grower an annual allotment determined by applying the allotment percentage established pursuant to paragraph (b) of this section to the grower's sales history.

(e) On or before June 1 of any year in which an allotment percentage is established by the Secretary, the committee shall notify each handler of the annual allotment that can be handled for each grower whose total crop will be delivered to that handler. In cases where a grower delivers a crop to more than one handler, such grower's annual allotment will be apportioned equitably among the handlers.

(f) Growers who do not produce cranberries computed annual allotment shall transfer their unused allotment to the grower's handler. The handler shall equitably allocate the unused annual allotment to growers with excess cranberries who deliver to such handler. Growers may enter into an agreement with the handler as to the disposition of their unused annual allotment. Unused annual allotment remaining after all such transfers have occurred shall be transferred to the committee pursuant to paragraph (g) of this section.

(g) Handlers who receive cranberries more than the sum of their growers' annual allotments have "excess cranberries," pursuant to § 929.59, and shall so notify the committee. Handlers who have remaining unused allotment pursuant to paragraph (f) of this section are "deficient" and shall so notify the committee. The committee shall equitably distribute unused allotment to all handlers having excess cranberries.

(h) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

14. Section 929.50 is revised to read as follows:

§ 929.50 Transfers.

(a) *Transfers to another grower.* A grower who owns cranberry acreage on which a sales history has been established may transfer the acreage and sales history to another grower. When transfer of acreage occur, transfers of sales history will be made under the following conditions:

(1) A lease agreement between the owner of the cranberry producing acreage and a lessee: Terms of such lease agreement shall be filed with the committee prior to the committee recognizing such transfer. The lease agreement filed with the committee shall include the following information:

(i) Name of owner and lessee; (ii) Starting and ending dates of lease; (iii) Amount of acreage transferred; and (iv) The amount of sales history transferred.

(2) *Total sale of cranberry acreage.* When there is a sale of a grower's total cranberry producing acreage, the seller and buyer shall file a completed transfer form with the committee and the buyer will have immediate access to the sales history computation process.

(3) *Partial sale or lease of cranberry acreage.* When less than the total cranberry producing acreage is sold or leased, sales history associated with the portion of the acreage being sold or leased shall be transferred with the acreage. The seller or lessor shall provide the committee with a completed transfer or lease form outlining such distribution of acreage and sales history between the parties. Such transfer or lease form shall include that percentage of the sales history, as defined in § 929.48(a)(1), attributable to the acreage being transferred or leased.

(4) Not transfer shall be recognized by the committee unless the transferee and transferor notify the committee in writing.

(5) In a year of nonregulation, in the absence of any sales history associated with the cranberry acreage being transferred or leased, the committee shall determine the buyer's or lessee's sales history by using the state average yield per acre times the cransberry producing acreage.

(6) During a year when a volume regulation has been established, no transfer or lease of cranberry producing acreage, without accompanying sales history, shall be recognized until the committee is in receipt of a completed transfer or lease form.

(b) The committee may establish, with the approval of the Secretary, rules and regulations, as needed, for the implementation and operation of this section.

15. Amend § 929.52 by revising paragraph (a) to read as follows:

§ 929.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cranberries whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the Act. Such regulation shall limit the total quantity of cranberries which may be handled during any fiscal period either by fixing the free and restricted percentage, which percentages shall be applied to cranberries acquired by handlers during such fiscal period in accordance with § 929.54, or by establishing and allotment percentage in accordance with § 929.49.

* * * * *

16. Section 929.55 is revised to read as follows:

§ 929.55 Interhandler transfer.

(a) Transfer of cranberriers from one handler to another may be made without prior notice to the committee, except during a period when a volume regulation has been established. If such transfer is made between handlers who have packing or processing facilities located within the production area, the assessment and withholding obligations provided under this part shall be assumed by the handler who agrees to meet such obligation. If such transfer is to a handler whose packing or processing facilities are outside of the production area, such assessment with withholding obligation shall be met by the handler residing within the production area.

(b) All handlers shall report all such transfers to the committee on a form provided by the committee four times a year or at other such times as may be recommended by the committee and approved by the Secretary.

(c) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

17. A new § 29.59 is added to read as follows:

§ 929.59 Excess cranberries.

(a) Whenever the Secretary establishes an allotment percentage, pursuant to § 929.52, handlers shall be notified by the committee of such allotment percentage and shall withhold from handling such cranberries in excess of the total of their growers' annual allotments obtained during such period. Such withheld cranberries shall be defined as "excess cranberries" after all unused allotment has been allocated.

(1) Excess cranberries received by a handler shall be made available for inspection by the committee or its representatives from the time they are received until final disposition is completed. Such excess cranberries shall be identified in such manner as the committee may specify in its rules and regulations with the approval of the Secretary.

(2) All matters dealing with handler-held excess cranberries shall be in accordance with such rules and regulations established by the committee, with the approval of the Secretary.

(b) Prior to January 1, or such other date as recommended by the committee and approved by the Secretary, handlers holding excess cranberries shall submit to the committee a written plan outlining procedures for the systematic disposal of such cranberries in the outlets prescribed in § 929.61.

(c) Prior to March 1, or such other date as recommended by the committee and approved by the Secretary, all excess cranberries shall be disposed of pursuant to § 929.61.

§§ 929.65—929.75 [Redesignated as §§ 929.67—929.77]

§§ 929.60—929.63 [Redesignated as §§ 929.62—929.65]

18. Redesignate §§ 929.65, 929.66, 929.67, 929.68, 929.69, 929.70, 929.71, 929.72, 929.73, 929.74, and 929.75 of Miscellaneous Provisions as §§ 929.67, 929.68, 929.69, 929.70, 929.71, 929.72, 929.73, 929.74, 929.75, 929.76, and 929.77, respectively and redesignate §§ 929.60, 929.61 and 929.63 of Reports and Records as §§ 929.62, 929.63, 929.64 and 929.65 respectively.

19. A new § 929.60 is added to read as follows:

§ 929.60 Handling for special purposes.

Regulations in effect pursuant to §§ 929.10, 929.41, 929.47, 929.48, 929.49, 929.51, 929.52, or 929.53 or any combination thereof, may be modified, suspended, or terminated to facilitate handling of excess cranberries for the following purposes:

(a) Charitable institutions;

(b) Research and development projects described pursuant to section 929.61;

(c) Any nonhuman food use;

(d) Foreign markets, except Canada; and

(e) Other purposes which may be recommended by the committee and approved by the Secretary.

20. A new § 929.61 is added to read as follows:

§ 929.61 Outlets for excess cranberries.

(a) *Noncommercial outlets.* Excess cranberries may be disposed of only in the following noncommercial outlets that the committee finds, with the approval of the Secretary, meet the requirements outlined in paragraph (c) of this section:

(1) Charitable institutions; and

(2) Research and development projects approved by the U.S. Department of Agriculture for the development of foreign and domestic markets, including, but not limited to, dehydration, radiation, freeze drying, or freezing of cranberries.

(b) *Noncompetitive outlets.* Excess cranberries may be sold to outlets that the committee finds, with the approval of the Secretary, are noncompetitive with established markets for regulated cranberries and meet the requirements outlined in paragraph (c) of this section. These outlets include: (1) Any nonhuman food use; and (2) Foreign markets, except Canada.

(c) *Requirements for diversion.* The following requirements, as applicable, shall be met by the handler diverting excess cranberries into noncompetitive or noncommercial outlets:

(1) *Diversion to charitable institutions.* A statement from the charitable institution shall be submitted to the committee showing the quantity of cranberries received and certifying that the cranberries will be utilized by the institution;

(2) *Diversion to research and development projects.* A report shall be given to the committee describing the project, quantity of cranberries diverted, and date of disposition;

(3) *Diversion to a nonhuman food use.* Notification shall be given to the committee at least 48 hours prior to such disposition; and

(4) *Diversion to foreign markets, except Canada.* A copy of the on-board bill of lading shall be submitted to the committee showing the amount of cranberries loaded for export.

(d) The storage and disposition of all excess cranberries withheld from handling shall be subject to the supervision and accounting control of the committee.

(e) The committee, with the approval of the Secretary, may establish as needed rules and regulations for the implementation and operation of this section.

Dated: January 15, 1991.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 91-1302 Filed 1-17-91; 8:45 am]

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7 CFR Part 1046

[Docket No. AO-123-A60; DA-90-002]

Milk in the Louisville-Lexington-Evansville Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

January 10, 1991.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would change the pooling requirements for a city plant and a country plant under the Louisville-Lexington-Evansville milk order. The proposed amendments were proposed or supported by several dairy farmer cooperatives that pool a substantial amount of milk on the market. One change would count milk diverted from a city plant to other plants as a receipt of the city plant in determining the city plant's Class I utilization for pool plant status. Another amendment would apply a "net shipment" concept to movements of milk between a country plant and a city plant in determining whether the country plant qualifies to be a pool plant. The changes are based on the record of a public hearing held in Louisville, Kentucky, on March 13-14, 1990. These changes are needed in order to make more milk available to meet the fluid needs of the market. A referendum will be conducted to determine whether producers who supplied milk for the marketing area during October 1990 favor the issuance of the proposed amendments.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Armour Dairy and Food Oils Company (Armour Dairy) contended that, contrary to the assertion by the Administrator of the Agricultural Marketing Service, adoption of the amendments proposed in the recommended decision would have a significant economic impact on a substantial number of small entities (the small Kentucky dairy producer).

Armour Dairy qualifies as a country plant under the current provisions of the Louisville-Lexington-Evansville milk order. The plant receives milk from a number of small Kentucky dairy farmers. The company delivers milk to the Dean Foods Company on days that it bottles milk. On nonbottling days, the Dean Foods Company does not require milk from Armour Dairy and sometimes needs to divert other milk supplies that are surplus to the fluid milk needs of the Dean plant to the Armour Dairy.

It may well be that the receipt of fluid milk from the Dean plant may preclude Armour Dairy from qualifying as a country plant under the revised pool qualification standards for a country plant. In that revised pool qualification standards for a country plant. Dairy farmers associated with Armour would not be able to share in the pool proceeds if this were to happen. In that event one of the options available to the Armour and Dean plants is to qualify the dairy farmers now shipping to the Armour plant as producers of the Dean plant. Then on the days when milk is bottled at the Dean plant, the milk of such producers could be delivered directly to the Dean plant. On the nonbottling days the milk of such producers could be diverted to the Armour plant. Such method of operation would retain producer status for the current dairy farmers who are supplying the Armour Dairy. In further support of such an arrangement, the representative of the Dean Foods Company testified that his company was capable of pooling the milk of the dairy farmers associated with the Armour plant.

A second option would be for Armour Dairy to retain the dairy farmers currently supplying the plant and request a cooperative to pool the milk of such dairy farmers as nonmember of the cooperative association.

The use of either option would result in no significant economic impact on small Kentucky dairy farmers. Accordingly, it was appropriate for the Administrator of the Agricultural Marketing Service to certify in the

recommended decision that the adoption of the proposed amendments will not have a significant impact on a substantial number of small entities.

Prior documents in this proceeding:

Notice of Hearing: Issued February 13, 1990; published February 20, 1990 (55 FR 5852).

Recommended Decision: Issued October 1, 1990; published October 4, 1990 (55 FR 40670).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR part 900), at Louisville, Kentucky, on March 13–14, 1990. Notice of such hearing was issued on February 13, 1990 and published February 20, 1990 (55 FR 5852).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on October 1, 1990, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "1. Pooling standards for a city plant.", five new paragraphs are added after paragraph 20.

2. Under the heading "2. Pooling standards for a country plant.", six new paragraphs are added at the end of the discussion.

The material issues on the record of the hearing relate to:

1. Pooling standards for a city plant, and

2. Pooling standards for a country plant.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pooling standards for a city plant.* The order should be amended to provide that for a city plant to qualify as a pool plant its fluid milk disposition, must be not less than 50 percent in each of the months of August through November and January and February and 40 percent in each of the other months of the plant's receipts of fluid milk products. The percentages should be based on the total quantity of milk received during the month at the plant, except filled milk, and should include milk diverted from the plant.

The current pool plant provisions require a city plant to dispose of as Class I milk not less than 30 percent during the months of May through October and not less than 50 percent in all other months of the plant's receipts of fluid milk products during the 2 months immediately preceding or the current month if the percentages cannot be ascertained for the 2 preceding months.

Dairymen, Inc. (DI), proposed the changes to the city plant pooling requirements that are adopted herein. A witness for DI, who was also authorized to represent Southern Milk Sales, Inc. (SMS), testified that DI supplies about 40 percent of the milk and SMS supplies about 5 to 6 percent of the milk pooled on the Louisville-Lexington-Evansville order. He said that DI supplies milk to all the city plants in the market and SMS delivers milk only to the Kroger plant at Winchester, Kentucky.

The witness for DI said that the basic proposed changes to the city plant provisions are the inclusion of diversions from the city plant in computing the city plant's Class I overall utilization percentage and the increased Class I percentage requirements during the months of May through October. In addition, DI's proposal would switch the qualifying period from the previous two months to the current month. Also, the Class I utilization for December would be lowered from 50 percent to 40 percent in recognition of the impact of Christmas on the need for Class I milk at city plants.

The spokesman for DI testified that while the current order does not contain any specific provisions that limit overall diversions of producer milk to nonpool plants, the "touch base" provision does place some limit on diversions. He said that under the current provisions over 70 percent of the milk pooled by a city plant can be diverted to nonpool plants.

The witness for DI said that the Secretary of Agriculture in developing the Federal milk marketing order system decided to regulate only milk suitable for human consumption in fluid form. He testified that since Federal milk orders are designed primarily to regulate milk for fluid use, it is necessary to establish standards for determining which milk is eligible to participate in the higher returns for milk sold for Class I use.

The spokesman for DI said that the association of Grade A milk supplies with the fluid milk market does require resolution of conflicting interests. Pooling standards for milk should not be so high that they force uneconomic shipments to plants for the sole purpose of qualifying such milk in the marketwide pool. At the same time, he said appropriate minimum standards are needed to avoid the possibility that milk will share in the Class I use even though it will not be available or delivered to the fluid market when needed.

The DI witness said that, historically, this marketing area has functioned as a reserve supply area for Federal and State order areas to the east and south. He said that marketing conditions in this area have changed and there has been an increase in demand for milk as a result of increased consumption in the area and in nearby areas. Also, there has been an increase in demand for milk, he said, because of the new Kroger plant at Winchester, Kentucky, and to some extent the new Kroger plant at Murfreesboro, Tennessee.

The spokesman for DI stated that data for prior years is misleading because of a number of changes in the market that have taken place. He indicated that the Haywood Dairy, a city plant in Louisville, Kentucky, closed in July 1988, the Borden city plant at Lexington, Kentucky, became a city plant in August 1988 and the Southern Belle Dairy plant at Somerset, Kentucky, shifted regulation to the Tennessee Valley order in July 1989.

The spokesman for DI said that the record shows that the Class I utilization for the market for the months of August through November and January and February exceeds 70 percent. He said that the proposed city plant's utilization percentages are about 20 percentage points below the market's Class I utilization for such period. He indicated that a 40 percent requirement for the months of March through July and December would be substantially below the market's average Class I utilization during such months. City plants, he said, should not have any difficulty meeting the proposed Class I utilization requirements.

Milk Marketing Inc. (MMI), proposed that the city plant pooling requirements be changed to include milk diverted from the plant as receipts of the plant. MMI's proposal in the notice of hearing would have required Class I disposition of not less than 50 percent in each of the months of November through April and 30 percent in each of the other months. At the hearing MMI withdrew their proposal and supported DI's proposal.

The witness for MMI testified that the qualifying percentages for a city plant should be based upon market

experience and should be designed to prevent abuses of the marketwide pooling system. He indicated that DI's proposal more nearly equates provisions of the order with the actual marketing practices of the market over the last several years.

The Kroger Company (Kroger) which operates a city plant at Winchester, Kentucky, testified in support of DI's city plant proposal. Kroger's witness stated that increased performance standards are needed especially during the months of August and September when the market experiences a substantial increase in demand for milk for fluid use. He also indicated that an increase in performance requirements from 30 percent to 40 percent for the months of May through July is warranted due to the increased need for Class I milk in the last 4 years.

Dean Foods Company (Dean) also proposed that the city plant pooling requirements be changed. Dean's proposal would require Class I disposition of not less than 50 percent in each of the months of August through November and January and February and 30 percent in each of the other months of a city plant's receipts of fluid milk products.

As the witness for Dean indicated, the only difference between DI's proposal for city plants and Dean's proposal is that for the months of March through July and December, Dean's requirement is 10 percentage points less. He testified that Dean's proposal reflected the 20 points in variation in the Class I disposition standards for a pool distributing plant for the months of short production and the months of flush production that exists under the Tennessee Valley order.

A representative of the National Farmers Organization, Inc. (NFO) participated in the public hearing and filed a brief in support of Dean's proposed city plant Class I disposition percentages. NFO also supported that part of DI's proposal that included milk diverted from a city plant as well as physical receipts at the plant in the volume of milk upon which the city plant's Class I percentage is calculated.

The Class I utilization percentages of producer receipts for 1987, 1988, and 1989 averaged 66, 67 and 66, respectively. For the 3-year period the monthly Class I utilization percentages for the months of August–November and January and February ranged from a low of 63 to a high of 76. During the same 3-year period the monthly Class I utilization percentages for the months of March–July and December ranged from a low of 58 to a high of 71.

There was no objection to the 50 percent standard for the months of August through November and January and February by any of the participants at the hearing. Such standard is from 13 to 26 percentage points less than the average Class I utilization for such months during 1987 through 1989. The 50 percent requirement is warranted in view of the market's Class I utilization during the months of August through November and January and February and is hereby adopted.

The 40 percent standard for the months of March through July and the month of December is a reasonable requirement in view of the market's Class I utilization in such months. The requirement is from 18 to 31 percentage points less than the average Class I utilization for such months during 1987 through 1989. In that regard, the 40 percent requirement for the months of March through July and December is less stringent than the 50 percent requirement during other months of the year. Accordingly, the 40 percent standard appears to be a reasonable requirement for the months of March through July and December and is hereby adopted.

The proposal by DI to include diverted milk from a city plant in the overall Class I disposition standard for pooling such plant should be adopted. In the absence of such requirement the pooling standards adopted herein for a city plant would be virtually meaningless. Unless diversions to another plant are included in the city plant's receipts, the city plant could meet the established pooling standard by reducing the volume of milk physically received at the plant and diverting such milk to a nonpool plant for manufacturing use.

The Midwest Dairies Group which operates Holland Dairies, Inc., at Holland, Indiana, filed exceptions to the recommended decision. Holland Dairies is a pool distributing plant, a city plant.

The Midwest Dairies Group opposed specifically counting milk diverted from a city plant to other plants as a receipt of the city plant in determining the city plant's Class I utilization for pool plant status. The Group contended that in most cases diversions from a city plant due to surplus milk would be made to nonpool plants located north of the marketing area. Because such diverted milk would be subject to reduced location adjustments, the Group indicated that it would not be economical to divert milk off this market for the purpose of qualifying such milk for pooling.

As previously noted, milk diverted from a city plant should be counted as a receipt of the city plant in determining the city plant's overall Class I disposition percentage. Otherwise, a city plant could meet the established pooling standards by reducing the volume of milk physically received at the plant and diverting such milk to a nonpool plant for manufacturing use.

In exceptions to the recommended decision, Dean Foods Company indicated that its proposal for a 30 percent Class I disposition standard for city plants for December and March through July should be adopted due to the surplus milk now available in the market.

The standards adopted herein for a city plant are based on evidence contained in the hearing record. Data regarding the supply and demand situation in the market following the close of the hearing on March 14, 1990, to which Dean Foods Company makes references is not a part of the record of this proceeding. Accordingly, the requested change cannot be made on the basis of this record and the exception is hereby denied.

The DI proposal to switch the qualifying period for city plants from the previous two-month period to the current month should also be adopted. Under the current order, the overall Class I disposition percentage requirements are based on receipts of milk received at the city plant for the previous two months. Basing the qualifying period on the current month is a more straight forward method of determining if a plant qualifies as a city plant.

2. *Pooling standards for a country plant.* The order should be amended to provide that for a country plant to qualify as a pool plant it must deliver milk or skim milk to city plants during any of the months of August through November and January and February in an amount not less than 50 percent and during other months of the year in an amount not less than 40 percent of the country plant's receipts of fluid milk. These percentages should be based on milk that is physically received at the plant as well as milk diverted from the plant but should not include milk diverted to the country plant from other plants.

The country plant pooling requirements should also provide that in determining whether a country plant has met the required shipments, milk or skim milk transferred or diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) shall be offset against the country plant's transfers or diversions to such city plant. This offset shall apply to the

extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. The order should continue to provide that a country plant may include diverted milk from the country plant to the city plant in meeting up to one-half of its shipping requirements.

The order should also be amended to provide for automatic pooling for a country plant during the period of March through July if the plant qualifies as a pool plant during each of the preceding months of August through February. Pool status would continue to be automatic unless the operator of such country plant notifies the market administrator in writing on or before February 15 of the withdrawal of the plant from the pool for the following months of March through July.

The order currently provides for a 50 percent shipping requirement for the months of September through February and a 40 percent shipping requirement for the other months of the year. The order also provides for automatic pooling of a country plant for the months of March through August provided that the plant qualified as a pool plant in each month during the preceding September through February.

DI proposed a 50 percent minimum shipping requirement for a country plant for the months of August through November, January, and February and 40 percent in the other months. The witness for DI indicated such standards would be consistent with the performance standards proposed for city plants. Also, he said, the 40 percent requirement is consistent with the fact that additional milk is produced during this period. He indicated, too, that the country plant provisions should be modified to provide for automatic pooling for the months of March through July rather than February through July.

DI originally proposed, with respect to a country plant, that a 50 percent shipping requirement apply to the month of December. At the hearing, this 50 percent shipping requirement for the month of December was reduced to 40 percent. DI also proposed a net shipment offset provision that would apply to a country plant. Such proposal would offset milk or skim milk transferred or diverted from a city plant to a country plant against the country plant's transfers or diversions to the city plant.

On cross-examination with respect to the "net shipment offset" provision, DI's spokesman clarified the application of such provision. If the plant operates both a Grade A receiving facility and a nonpool processing plant at the same location and the order recognized the two facilities as separate plants for pooling purposes, he said that the intent of the DI proposal is to apply the offset when the city plant transfers or diverts milk back to the country plant or to the nonpool plant.

The witness for DI testified that it is essential to the proper operation of the marketwide pool that minimum standards of performance be established to distinguish between those milk supplies that are primarily serving the fluid needs of the marketing area and those milk supplies that do not serve the fluid market in any way or to a degree that warrants their sharing in the Class I utilization. He indicated that performance standards should be such that Grade A milk supplies, a substantial proportion of which is associated with the fluid market, should be pooled and share in the marketwide equalization associated with the Class I sales. On the other hand, milk supplies casually or incidentally associated with the Class I needs should not be subject to complete regulation of the order or fully share in the Class I sales of plants serving the marketing area. In DI's view, permitting milk that is only casually or incidentally associated with the Class I needs of the market to participate in the marketwide pool does not assure milk being available when needed for Class I use. Also, the pooling of unneeded milk, primarily for manufacturing uses, reduces the blend price of other Grade A producers. It was DI's position that such pooling is contrary to the objectives of the Agricultural Marketing Agreement Act of 1937, as amended, and the history of the federal milk marketing order system.

The DI witness stated that the record shows there has been an increased demand for milk by Louisville city plants. He indicated that during the last half of 1988 and to a greater extent in the last half of 1989, there was not an adequate supply of locally produced milk made available to meet the fluid needs of city plants in the marketing area. He said that over 35 percent of the milk that had to be imported into the marketing area during 1988 and 1989 was acquired by DI from Michigan, Wisconsin and Minnesota. At the same time, he said, the Carnation country plant at Maysville, Kentucky, made little of its Grade A milk available to meet the market's fluid needs.

MMI supported DI's proposed changes to the country plant pooling requirements. The MMI witness said that MMI has pooled about 12 million pounds monthly on this market. All of this milk is delivered to the Kroger plant at Winchester.

The witness for MMI said that his organization had lost about 30 members to the Carnation plant at Maysville. This has required MMI to go outside the market, at an additional cost, in order to supply the Kroger plant at Winchester. The MMI spokesman said that for the period of January 1989 through January 1990, MMI brought in about 1.5 million pounds of outside supplemental milk for delivery to the Kroger plant at Winchester. He said that the record shows that for September 1989, 10 million pounds of other source milk were brought into the market of which 5 million pounds were classified as Class I while 18 million pounds of producer milk were classified as Class III.

A witness for Kroger testified in support of DI's proposed revision of the country plant pooling requirements. He stated that the pooling requirements should be revised because more milk is needed for the fluid market. He said that during the fall months of 1989, Kroger was not able to acquire all of the milk that was needed to supply the Winchester plant.

The Carnation Company (Carnation) proposed that a "call" provision be added to the country plant pooling provisions. Their proposal was intended as an additional method for pooling a country plant in the event of the adoption of DI's "net shipment" concept for a country plant.

The Carnation proposal would require that the country plant be located in the marketing area or if it is outside the marketing area, it would have to be located in the States of Kentucky or Indiana. In addition, the country plant must (1) receive a daily average of at least 25,000 pounds of milk from producers; (2) have shipped at least 45,000 pounds of milk to city plants in the previous 12 months; (3) have been a pool plant during the previous September–February period; and (4) agree to ship milk to city plants as requested by the market administrator. Carnation's "call" provision would provide that the market administrator could not require the country plant to ship milk in any given month that such shipments would exceed 25 percent of the country plant's milk receipts for the previous month unless the market administrator holds a meeting at which all interested parties are given the opportunity to appear and participate. Even though a meeting is held, the amount of milk that the country plant could be required to ship to city plants would be limited to 50 percent during the months of September through February and 40 percent in other months. Carnation's proposal provides

that if the market administrator, after holding a public meeting, deems it necessary to require the country plant to ship more than 25 percent of its milk, such requested shipments would be limited to 3 months (month of the meeting plus the 2 following months).

The Carnation plant manager for the Maysville plant testified that the plant acquires about half of its milk supply from their own dairy farmers and the balance from Huntington Interstate Milk Producers Association. He said that most of their producers are small and that their milk (approximately 4 million pounds per month) is picked up in small tank trucks.

The Carnation witness said that if DI's proposed revision is adopted and Carnation has to give up half of its milk supply, they could not complete with other manufacturers of evaporated milk. He said that most of their competitors are pool plants in other markets.

The Carnation witness testified that Carnation's Maysville plant had been a pool plant on this order from September 1987 until January 1990 when the Borden distributing plant at Lexington closed. He said that Carnation now operates the Maysville plant as a nonpool plant but finds it difficult to compete with proprietary handlers and cooperatives that are able to pay a blend price of milk. The witness for Carnation said that for 1988, the average difference between the market's blend price and the Class III price was $1.27 and for 1989 it was $1.10. He said that for January and February 1990, the difference was $2.15 and $1.72, respectively.

The Carnation witness states that their proposal would allow a plant, such as the Carnation plant, to serve the fluid market as needed and participate in the marketwide pool and still be able to use its milk supply most of the year for its own manufacturing requirement. He said that the "call" provision has worked reasonable well in other markets.

A witness for Armour, a country plant that also qualifies as a pool plant, testified in support of the Carnation proposal. He said that the Armour plant at Springfield, Kentucky, receives monthly about 6 million pounds of Grade A milk plus about 1 million pounds of manufacturing grade milk.

The Armour witness said that Armour has never failed to deliver milk upon request by a city plant that they were using for qualification purposes. Armour, he said, purchased milk last fall from Wisconsin, Minnesota and Michigan in order to supply the Armour plant at Springfield and to honor commitments to the city plant that Armour was supplying.

The witness for Armour said that last fall the Dean city plant in Louisville, at times, was receiving 70 to 75 percent of Armour's milk. He indicated that last fall Armour net shipped about 26 percent of their milk for a 6-month period and that this fall the amount could be higher.

A witness for Dean said that his company has been purchasing milk from Armour for about 7 years and there are months when Dean returns about as much milk as they received from Armour. He said that Dean bottles milk only 4 days a week and that they purchase milk from Armour on the days that milk is needed for bottling. On weekends when Dean does not need its full supply of milk, Dean diverts milk to the Armour plant. It was his opinion that Armour was fulfilling its obligation as a country pool plant by making milk available for fluid use.

The Dean spokesman said that if DI's net shipment proposal is adopted that Dean could qualify Armour for pooling purposes.

DI's witness testified that he was authorized by MMI and SMS to testify in opposition to the Carnation proposal. He said that his testimony in support of DI's city plant and country plant proposals should be taken as opposition testimony to Carnation's proposal.

The DI witness said that there are cooperatives supplying the fluid needs of city plants pooled on this market that also operate manufacturing facilities. He indicated that such cooperatives would also like to operate their manufacturing plants when commodity market prices are favorable. It was his opinion that if the cooperatives took the same attitude as Armour or Carnation, the Louisville city plants would find it very difficult to attract an adequate supply of local milk for fluid use.

The DI witness said that marketing conditions in this market are very different from the New York-New Jersey marketing area that has a"call" provision. He said marketing conditions in this market do not require milk to be channeled through country plants for delivery to city plants. In his view, the only purpose of country plant facilities has been to pool milk on the order that it intended primarily for Class III use at the manufacturing plants which such country plants operate in conjunction with their Grade A receiving operations. He said that DI would support the elimination of the country plant pooling provisions.

The National Farmers Organization, Inc. (NFO), filed a brief opposing Carnation's proposal. NFO indicated that the record demonstrated that country plants had qualified for pool plant status by shipping certain volumes of milk to city plants and then receiving milk back from the city plants. The brief states that the order should not encourage this practice which is wasteful and uneconomic.

NFO stated that Carnation's proposed call provision is inconsistent with the overall marketing conditions in the area. The provision would establish a reserve supply plant situation where county plants would only ship milk if the market administrator required such shipments via a call for additional fluid milk. It was NFO's position that in a market with Class I utilization in excess of 60 percent, an open-ended call provision is inappropriate.

In NFO's view, the country plant language should be amended to include the "net shipment" language proposed by DI. However, NFO suggested that the percentages should be adjusted during the shipping months to establish a range of a minimum of 25 percent to a maximum of 50 percent. The market administrator would have the discretion to direct more than the minimum of about 25 percent to be shipped on the basis of information available to him after giving all interested parties the opportunity to submit information on the need for additional milk. Such shipments to city plans would be solely for Class I usage.

Since September 1987 the Carnation plant at Maysville, Kentucky, has operated at one location both a Grade A receiving operation and a nonpool plant operation. From September 1987–December 1989 the plant's Grade A operation was pooled as a country plant under the Louisville order. Carnation qualified its country plant as a pool plant by shipments from the Grade A facility to a city plant at Lexington, Kentucky, operated by the Borden Company. Then, in January 1990 Borden closed its Lexington plant. As a consequence of the Borden plant closing, the Carnation plant lost its pooling base and became a nonpool plant.

The Carnation plant during the time that it was a pool plant under the order supplied city plants with less than 1 percent of the milk that the country plant was pooling under the order. The remainder of the milk that the Carnation plant supplied to the Borden plant was transferred or diverted from the Carnation plant to the Borden city plant at Lexington, and was then reloaded for shipment back to the Carnation plant. The milk was then processed into manufactured products.

In addition to the milk that the Carnation plant pooled on the Louisville order, the plant also obtained milk from

Huntington Interstate, a cooperative association. The milk supplied by the cooperative represented about one-half of the Carnation plant's milk supply.

It is obvious that the Carnation plant when it was pooled under the Louisville order was furnishing only minimal amounts of milk to city plants for fluid use. The plant's primary purpose in becoming a pool plant was to obtain a milk supply that the plant could utilize for manufacturing. As a pool plant, it was able to return a blend price to its dairy farmers for milk that was used almost exclusively in manufacturing uses.

The Armour Company operates a Grade A receiving operation as well as a manufacturing plant at Springfield, Kentucky. The Grade A receiving operation qualifies as a country pool plant under the Louisville order by deliveries of milk to the Dean plant at Louisville. Armour also operates another nonpool plant at Elizabethtown, Kentucky.

The Armour country plant at Springfield supplies milk to the Dean plant primarily when milk is needed for bottling. Usually, Dean bottles milk 4 days out of the week (Monday, Tuesday, Thursday and Friday). On Dean's nonbottling days, the Armour plant receives milk that is diverted from the Dean plant and manufactures such milk.

The Armour plant functions primarily as a balancing plant. On a "net shipments" basis, the Armour plant delivers during the fall months about 25 percent of the milk that it pools under the order. On days when the Armour plant's milk is needed by the Dean plant as much as 75 percent of the country plant's milk is delivered to the city plant.

The Louisville order like other Federal milk orders is designed primarily to assure an adequate supply of milk for fluid use. Consequently, standards must be developed to determine which milk is eligible to participate in the higher revenues generated by classified pricing. Under such pricing method, the highest price is paid for milk sold for Class I use. Minimum standards of performance are needed to distinguish between those milk supplies that are primarily serving the fluid needs of the regulated area and those supplies that do not serve the fluid market to a degree that warrants their sharing in the Class I utilization of the market.

Milk supplies that are casually or incidentally associated with the Class I needs should not be subject to complete regulation of the order or fully share in the Class I sales of plants serving the marketing area. Unless appropriate minimum standards are established, handlers have no assurance that milk will be made available to the fluid market when needed.

The proposed shipping percentages for pooling a country plant that were proposed by DI should be adopted based on this record. The requirement that a country plant deliver milk or skim milk in an amount not less than 50 percent during the months of August through November and January and February and 40 percent in other months is reasonable in view of the market's Class I utilization of producer receipts. These percentages are consistent with the adopted Class I disposition requirements for a city plant as discussed previously. Furthermore, the proposed shipping standards represent no change from the current shipping standards for a country plant except for the months of August and December. For the month of August, the standard adopted represents an increase of 10 percentage points while the standard for the month of December represents a decrease of 10 percentage points. The changes in standards for the 2 months are warranted in view of the increased demand for fluid milk products during August and the decreased demand for such items during December.

The primary problem with the current performance standards for pooling a country plant is that such standards provide no assurance that any of the country plant's receipts will be made available to city plants to meet their fluid milk requirements. The only way that city plants can be assured of receiving milk from a country plant and retaining such milk for fluid use is to establish a "net shipment" requirement.

Unless a "net shipment" requirement is adopted, a performance standard for a country plant is meaningless. As evidence of this, the Carnation plant that was pooled as a country plant for more than 2 years on the Louisville-Lexington-Evansville order delivered enough of its milk supply to a city plant to qualify as a pool plant. However, less than 1 percent of the milk pooled by Carnation was utilized by the city plant for fluid use while the remainder of such milk was returned to the country plant for use in its manufacturing operation. To forestall such pooling practices, a "net shipment" provision is needed and is adopted herein.

In determining whether a country plant has met the required shipments, milk or skim milk transferred or diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) that also receives milk or skim milk as a transfer or diversion from such city plant should be offset against the country plant's transfers or diversions to the city plant.

This decision provides that the offset shall apply to the extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. This modification allows for the return to the country plant of a limited amount of milk that may be unfit to process into fluid milk products but could be used in manufacturing by a nonpool plant. The hearing record does not reveal the volume of milk that is unfit for use at city plants but indicates that occasionally there is a need for a load of milk to be sent to a manufacturing plant because of a quality problem.

The "call provision" proposed by Carnation should not be adopted. To merit pooling status, a country plant should be required to make some meaningful contribution towards meeting the fluid milk demands of the city plants that they serve. A requirement that a country plant ship at least 40 percent of its receipts during the months of March-July and December and 50 percent of its receipts in other months is necessary to indentify those plants that are sufficiently associated with the market to qualify those plants that are sufficiently associated with the market to qualify as pool plants.

The "call provision" proposed by Carnation may have applicability in a market where the milk from country plants is needed on an intermittent basis to fulfill the fluid needs of city plants. In the Louisville-Lexington-Evansville market, however, two-thirds of the producer receipts are utilized for Class I purposes. In addition about 10 percent of the producer receipts is utilized for Class II purposes. In view of the market's fluid milk needs for Class I and Class II milk, it is likely that milk shipments will be needed on a month-to-month basis. Furthermore, from an operational standpoint, it would seem that a country plant operator would be in a better position to meet production goals knowing that the country plant must supply a specified percentage of its milk on a month-to-month basis instead of a percentage that could vary from 0 percent one month to 40 or 50 percent in the following month.

For the reasons previously set forth, the proposal to add a "call provision" to the Louisville-Lexington-Evansville order is hereby denied.

Dairymen, Inc. in its exceptions requested that the amended order not be made effective until March 1, 1991. The cooperative association indicated that such delay would permit a country plant

that qualifies for automatic pooling on either the present provisions of the order, or on the basis of the recommended amendments to the order, to retain pool status for the March through July 1991 period.

Dean Foods Company and Armour Dairy and Food Oils Company also requested that the amend order not be made effective until March 1, 1991.

The order currently provides for automatic pooling of a country plant for the months of March through August provided that the plant qualified as a pool plant in each month during the preceding September through February period. Under the proposed amended order, a country plant would qualify for automatic pooling during the months of March through July provided that the plant qualified as a pool in each of the preceding months of August through February.

As noted in the exceptions, it would be unfair to change the pooling standards during the period when country plants are attempting to qualify their plants for automatic pooling. It is concluded, therefore, that any country plant that qualifies as a pool plant during each of the preceding months of September through February may continue to be a pool plant during the months of March through July 1991.

Dean Foods Company in its exceptions raises the question of why is it necessary to change the pooling standards for a country plant if the producers associated with Armour Dairy can be pooled under the order by either Dean Foods or DI by utilizing an alternative method of pooling.

Cooperative associations contended that country plants were more interested in retaining a milk supplying for manufacturing use than in supplying the fluid market. Presumably, if the producers involved are pooled by a city plant or by a cooperative association, then the fluid milk demands of the city plant or the cooperative association, respectively, will have first call upon such milk supply before any of it is diverted to a nonpool plant for manufacturing use.

As previously noted, the current country plant provisions provide little, if any, assurance that milk associated with a country plant will be made available to meet the fluid milk demand of the market.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Louisville-Lexington-Evansville order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tenative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, amd an Order amending the order regulating the handling of milk in Louisville-Lexington-Evansville marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the Louisville-Lexington-Evansville marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be October 1990.

The agent of the Secretary to conduct such referendum is hereby designated to be Arnold M. Stallings.

List of Subjects in 7 CFR Part 1046

Milk marketing orders.

Signed at Washington, DC, on: January 10, 1991.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Louisville-Lexington-Evansville Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date thereof, the handling of milk in the Louisville-Lexington-Evansville marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on October 1, 1990 and published in the **Federal Register** on October 4, 1990 (55 FR 40670), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein subject to modifications in § 1046.7(c).

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. The authority citation for 7 CFR part 1046 continues to read as follows:

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

2. In § 1046.7, paragraphs (a)(1), (b) and (c) are revised to read as follows:

§ 1046.7 Pool plant.

(a) A city plant which meets the following requirements:

(1) The total quantity of fluid products, except filled milk, disposed of in Class I is not less than 50 percent in each of the months of August through November and January and February, and is not less than 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1046.13; and

(2) * * *

(b) A country which delivers milk or skim milk to city plants during any of the months of August through November and January and February equal to not less than 50 percent, and during other months of the year equal to not less than 40 percent, of the milk from persons described in § 1046.12(a)(1) and from handlers described in § 1046.9(c) that is physically received at such country plant (except by diversion from other plants) or diverted therefrom pursuant to § 1046.13. In determining whether a country plant has met the required shipments, milk or skim milk transferred or diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) that receives milk or skim milk as a transfer or diversion from such city plant shall be offset against the country plant's transfer or diversion from such city plant to the extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. The operator of a country plant may include milk diverted pursuant to § 1046.13(b) from such plant to a city plant in meeting up to one-half of the shipping percentage(s) specified in this paragraph.

(c) Except for March through July 1991 a country plant that was a pool plant pursuant to paragraph (b) of this section each month during the preceding August through February shall continue to be a pool plant during each of the months of March through July, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through July next following. A country plant that qualified as a pool plant during each of the months of September 1990 through February 1991 shall be a pool plant for the months of March through July 1991, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through July next following.

* * * * *

United States Department of Agriculture
Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Milk in the Louisville-Lexington-Evansville Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to is paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of the marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1046.1 to 1046.94, all inclusive, of the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area (7 CFR part 1046) which is annexed hereto; and

II. The following provisions:

§ 1046.94 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of October 1990, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Services, to correct any typographical errors which may have been made in this marketing agreement.

§ 1046.96 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have here into set their respective hands and seals.

_____

(Signature)
By _____
(Name)
(Title)

_____

(Address)

Attest
Date

[FR Doc. 91-1303 Filed 1-17-91 8:45 am]

BILLING CODE 3410-03-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AAL-4]

Proposed Amendment to Adak Control Zone and Transition Areas; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the descriptions of the control zone and transition areas of the Adak, AK, Naval Air Station (NAS). This action is due to a change in the airport reference point (ARP) and relocation of the tactical air navigational aid (TACAN) for Adak, AK, NAS.

DATES: Comments must be received on or before February 19, 1991.

ADDRESSES: Second comments on the proposal in triplicate to:

Manager, Air Traffic Division, AAL-500, Docket No. 90-AAL-4, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587.

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

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

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AAL-4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for commenters will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the descriptions of the Adak, AK, Control Zone and Transition Areas. A new survey contracted by the Department of the Navy resulted in a new ARP for Adak Airport and relocation to the TACAN. As a result, the current descriptions of the Adak, AK, Control Zone and the 700-foot and the 1,200-foot Transition Areas are technically incorrect and need to be revised to reflect these changes. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promote the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil aircraft operations on international air routes are carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state wherein air traffic services are provided and when a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply ICAO's Standards and Recommended Practices in a manner consistent with that adopted for airspace under its jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a

contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Adak, AK [Revised]

Within a 5-mile radius of the Naval Air Station (NAS) Adak Airport (lat. 51°52'46"N., long. 176°38'37"W.); within 2 miles either side of the 052°T(043°M) bearing from the Adak RBN (lat. 51°55'06"N., long. 176°33'52"W.) extending from the 5-mile radius zone to 7 miles northeast of the airport, within 2 miles either side of the NAS Adak TACAN (lat. 51°52'22"N., long. 176°40'18"W.) 059°T(050°M) radial extending from the 5-mile radius zone to 7 miles northeast of the airport; and within 2 miles either side of the NAS Adak TACAN 250°T(241°M) radial extending from the 5-mile radius zone to 7 miles southwest of the airport.

§ 71.181 [Amended]

3. § 71.181 is amended as follows:

Adak, AK [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Naval Air Station (NAS) Adak Airport (lat. 51°52'46"N., long. 176°38'37"W.); within 2 miles either side of the 052°T(043°M) bearing from the Adak RBN (lat. 51°55'06"N., long. 176°33'52"W.) extending from the 5-mile airport radius to 8.5 miles northeast of the airport, within 2 miles either side of the NAS Adak TACAN (lat. 51°52'22"N., long. 176°40'18"W.) 059°T(050°M) radial extending from the 5-mile radius to 8.5 miles northeast of the airport, within 2 miles either side of the NAS Adak TACAN 250°T(241°M) radial extending from the 5-mile radius to 8.5 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 5 miles either side of the 052°T(043°M) bearing from the Adak RBN extending from the 5-mile airport radius to 15 miles northeast of the airport, within 5 miles either side of the NAS Adak TACAN 059°T(050°M) radial extending from the 5-mile radius to 15 miles northeast of the airport, within 5 miles either side of the NAS Adak TACAN 250°T(241°M) radial extending from the 5-mile radius to 15 miles southwest of the airport, excluding that airspace contained in the Adak, AK, Control Zone.

Issued in Washington, DC, on December 13, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91–1272 Filed 1–17–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program; Definitions

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment is intended to restructure the Definition section of the State rules and to satisfy a required program amendment concerning coal preparation plants to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on Feburary 19, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on February 12, 1991; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on February 4, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contracting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Telephone (317) 226–6166; (FTS) 331–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditons of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditons of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated December 11, 1990 (Administrative Record No. IND–0811), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana Administative Code (IAC). The proposed amendment deletes the existing State definitions at 310 IAC 12–1–3 and adds those definitions to new 310 IAC 12–0.5. 310 IAC 12–0.5 has been structured to allow for more expeditious future changes to and additions of

definitions. The proposed amendment also responds to the OSM required amendment identified at 30 CFR 914.16(a) which requires that clarification be added to the definition of "coal preparation plant" to make it clear that crushing, screening, and sizing facilities will be regulated as coal preparation plants whenever they are operated in connection with a coal mine.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on February 4, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons schedued to comment have been heard. Persons in the audience who have not been schedued to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 11, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–1278 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Indiana Permanent Regulatory Program; Intervention in Hearings

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to the Indiana Surface Mining Statute provisions concerning intervention in hearings. The amendment provides the statutory authority to allow intervention by a person who has an interest which is or may be adversely affected by the outcome of the proceeding and is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on February 19, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on February 12, 1991; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on February 4, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Telephone (317) 226–6166; (FTS) 331–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated October 24, 1990, (Administrative Record No. IND–0802), the Indiana Department of Natural Resources (IDNR) responded to an OSM inquiry for either an explanation from the State regulatory authority about how the State program satisfied the required amendment at 30 CFR 914.16(c) or a program amendment submittal to resolve the outstanding requirement. The State response referenced State statutes at Indiana Code (IC) 4–21.5–3 and IC 13–4.1–4–5 and explained how

the existing program allows intervention by a person who has an interest which is or may be adversely affected by the outcome of the proceeding.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on February 4, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES**". A written summary of each meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 11, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–1279 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 938

Pennsylvania Regulatory Program

AGENCY: Office of the Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of proposed preemption of State program provisions.

SUMMARY: OSM is seeking public comment on a proposed action to preempt certain provisions of the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The provisions proposed for preemption involve subsidence-related material damage to structures. This action is intended to ensure that the Pennsylvania program remains consistent with the requirements of SMCRA as interpreted by the U.S. District Court for the District of Columbia.

DATES: Written comments or other information relevant to this matter must be received by 4 p.m. on February 19, 1991. Comments received after this date will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Fourth and Market Streets, Third Floor, Suite 3C, Harrisburg, Pennsylavnia 19101. Copies of the Pennsylvania program and its administrative record are available for public review and copying at this office Monday through Friday, 9 a.m. to 4 p.m., excluding holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Fourth and Market Streets, Third Floor, Suite 3C, Harrisburg, Pennsylvania 19101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Action

As promulgated on February 17, 1987 (52 FR 4868), the Federal regulation at 30 CFR 817.121(c)(2) required correction of subsidence-related material damage to structures only to the extent required by State law. On February 12, 1990, the U.S. District Court for the District of Columbia remanded this rule to the Secretary of the Interior with instructions to revised it by striking the reference to State law (*In re: National Wildlife Federation* v. *Lujan*, Civil Actions 87–1051, 87–1814 and 88–2788). Section 102(b) of SMCRA requires that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto be fully protected and section 516(b)(1) specifies that the operator shall maintain the value and reasonably foreseeable use of surface lands underlain by underground mining operations. The court found that, under these statutory provisions, an operator has the obligation to repair or compensate the owner for subsidence-caused material damage to structures without regard to any limitations placed on this liability by State law.

The Commonwealth's rules at 25 Pa. Code 89.141(d), 89.142(a)(6), 89.143 (a) and (b), 89.145(b) and 89.146 generally require the correction of subsidence-related material damage to structures only if such structures are protected under the Commonwealth's Bituminous Mine Subsidence and Land Conservation Act (52 P.S. 1406). Section 4 of this act protects only public buildings, inhabited dwellings and noncommercial buildings customarily used by the public, and then ony if they were in place on April 27, 1966. Section 15 extends protection to similar structures built after that date if the owner of the structure purchases the amount of coal that the operator finds necessary to leave in place to support the structure. To be consistent with sections 102(b) and 516(b)(1) of SMCRA and the court's decision concerning 30 CFR 817.121(c)(2), the State program must extend complete protection or full compensation requirements to all structures and facilities, regardless of their nature or when they were built.

By letter dated June 22, 1990, OSM, as required by 30 CFR 732.17(d), notified the Pennsylvania regulatory authority of the court's decision and identified the provisions of the Pennsylvania program requiring revision to be consistent with SMCRA. By letter dated August 3, 1990, Pennsylvania advised OSM that it would most likely be unable to revise its program to correct the inconsistencies within the 6-month timeframe

established by OSM. Hence, the Director is proposing to exercise his responsibility under section 505(b) of SMCRA to set forth (preempt) any State law or regulation which is construed to be inconsistent with SMCRA. As required by 30 CFR 730.11(a), this notice seeks public comment on the Director's proposal.

Specifically, the Director finds the State regulations at 25 Pa. Code 89.141(d), 89.142(a)(6), 89.143 (a) and (b), 89.145(b) and 89.146 to be inconsistent with SMCRA in that they do not require complete repair of or full compensation for subsidence-caused material damage to structures and facilities in all cases, and he is proposing to preempt and set them aside to the extent that they fail to do so. No specific language would be removed and these rules would remain in effect for all other purposes. The Director is also proposing to preempt and set aside those provisions of the Commonwealth's Bituminous Mine Subsidence and Land Conservation Act which likewise limit the operator's responsibility in a manner inconsistent with SMCRA. Specifically, in section 4, which reads as follows, the italicized language would be removed by the Director's action:

> In order to guard the health, safety and general welfare of the public, no owner, operator, lessor, lessee, or general manager, superintendent or other person in charge of or having supervision over any bituminous coal mine shall mine bituminous coal so as to cause damage as a result of caving-in, collapse or subsidence of *the following surface* structures *in place on April 27, 1966,* overlying or in the proximity of the mine: *(1) Any public building or any noncommercial structure customarily used by the public, including but not being limited to churches, schools, hospitals, and municipal utilities* or *municipal public service operations: (2) Any dwelling used for human habitation; and (3)* [a]ny cemetery or public burial ground; unless the current owner of the structure consents and the resulting damage is fully repaired or compensated.

Section 15, which requires owners of structures built after April 27, 1966, to purchase support rights to receive protection from subsidence damage, would be removed in its entirety. Section 14, which requires that deeds contain certain language specifying whether they convey the right of support, would thus be rendered meaningless. No other provisions of this State law would be affected by the proposed action.

II. Public Comment Procedures

In accordance with the provisions of 30 CFR 730.11(a), OSM is soliciting public comment on its proposal to preempt and set aside the State program provisions listed above. If no evidence is received demonstrating why these provisions should not be preempted and set aside, a final notice will be published to effect such action and to require that Pennsylvania administer and enforce its approved program in a manner consistent with SMCRA and that action.

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final decision or included in the administrative record.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 10, 1991.

W. Hord Tipton,

Deputy Director Operations and Technical Services.

[FR Doc. 91–1276 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls: Proposed Revision

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Authority is proposing to the Corporation that the commodity tolls and vessel charges be increased by approximately 5.75 percent each year for the 1991, 1992, and 1993 navigation seasons at the Welland Canal section and at the Montreal-Lake Ontario section of the St. Lawrence Seaway. All the Welland Canal revenues accrue to the Authority. The Authority is proposing that the Corporation continue to receive 25% of the Montreal-Lake Ontario revenues. All of the Corporation's share of these revenues, however, will be returned to the person paying the toll or charge in accordance with section 805 of the Water Resources Development Act of 1986.

The Authority also is proposing to the Corporation that the definition of bulk cargo be amended to remove the reference to its not limiting the generality of the term since, as a practical matter, the cargo is strictly defined. The Authority further proposes changing the references to "domestic package freight" to "domestic cargo" to more accurately reflect current cargo of this type.

The Authority additionally proposes to the Corporation that, as a result of the highly successful pilot new business incentive tolls program in the 1990 season, new toll discount and rebate programs be established in the 1991, 1992, and 1993 seasons. These consist of: A new business incentive toll program that will give shipowners who move qualifying cargoes toll rebates of 25 and 50 percent; a 20 percent volume discount to movers of commodities that exceed a base level equal to the previous five year average; and reductions in tolls of up to 65 percent for owners of U.S. and Canadian laker fleets that primarily are used for grain, but use those fleets for moving general cargo through the Seaway.

DATES: Any party wishing to present views or data on the proposed revision may file comments with the Corporation on or before February 19, 1991.

ADDRESSES: Send comments to Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0091.

SUPPLEMENTARY INFORMATION: It is proposed to amend the definition of "bulk cargo" (at 33 CFR 402.3(b)) to delete the phrase, "without limiting the generality of the term or otherwise affecting its meaning", since, as a practical matter, the cargo is strictly defined. It is further proposed to amend the definition of "bulk cargo" by substituting the term "domestic cargo" for the term "domestic package freight" in § 402.3, subparagraph (b)(3), to more accurately reflect current cargo of this type. Similarly, it is proposed to amend the definition of "domestic package freight" (at 33 CFR 402.3(f)) to change the term "domestic package freight" to "domestic cargo".

It also is proposed to amend § 402.9 to provide: A new business 25 percent

discount for qualifying upbound and downbound cargoes for transits beginning within the Seaway after the opening of navigation and prior to July 1 or beginning on or after October 1 in the years 1991, 1992, and 1993 and ending at the closing of navigation in those years; and a new business 50 percent discount for qualifying upbound and downbound cargoes for transits beginning on or after July 1 and prior to October 1 in the years 1991, 1992, and 1993. It is further proposed to add a new section 402.11 to provide a 20 percent volume discount to movers of commodities that exceed a base level equal to the previous five year average. It also is proposed to add a new § 402.13 to provide a reduction in tolls of up to 65 percent for owners of U.S. and Canadian laker fleets that primarily are used for grain, but are also used for moving general cargo through the Seaway.

Finally, it is proposed that, except for lack of tolls charged for government aid cargo, the Tolls Schedule for the Welland Canal Section and the Montreal-Lake Ontario Section be revised (33 CFR 402.8). The increase in tolls will be approximately 5.75 percent each year for 1991, 1992, and 1993 on both the Welland Canal and Montreal-Lake Ontario Sections. For example, the current toll for bulk cargo for the Welland section is $0.46 and for the Montreal-Lake Ontario Section is $0.93. Under the proposed changes, the 1991 charges would be $0.49 and $0.98, the 1992 charges would be $0.52 and $1.04, and the 1993 charges would be $0.55 and $1.10 for the Welland and Montreal-Lake Ontario Sections respectively.

As provided in the 1978 Tolls Agreement between the Authority and the Corporation, the Joint Tolls Review Board has reviewed the estimated expenditures for 1991 and the projected revenues from tolls and other sources to determine the adequacy of the current toll structure and division in meeting the financial requirements of the Authority and the Corporation during fiscal year 1991. In addition, the Canadian Federal Government initiated a new large corporation tax in 1989, which has added an estimated $1.0 million expense in 1991 for the Authority.

In the Montreal-Lake Ontario Section, the cargo forecast used for 1991 was 42.3 million tons. The tonnage projection for Canadian grain, however, may be optimistic due to grain export volume. Based upon this 1991 forecast, the present toll structure and division would result in a 1.9 million dollar shortfall to the Authority and a 0.2 million shortfall to the Corporation, or 6% and 1.5% respectively. In the Welland Canal Section, the cargo forecast was 44.51 million tons in 1991. Based upon this, the Authority is forecasting a 1991 $4.1 million dollar 10.9% shortfall.

To avoid these shortfalls, in 1991, the Authority needs an additional 8.6% in tolls revenue from both sections and the Corporation needs an additional 1.5% on the Montreal-Lake Ontario Section. Accordingly, the Authority and the Corporation are proposing the new toll increase described in the foregoing and set forth below.

The Corporation invites comments on the proposed revision to the Tariff of Tolls from any interested person(s) or organization(s). It is requested that, for comments concerning the tariff increases, data provided in written comments include total transportation costs for the movements of cargo via the St. Lawrence Seaway and should detail individually all pertinent components, including all inland freight costs (rail, truck, or water), terminal or elevator charges and handling costs, ocean freight costs and other significant transportation costs. It would be very helpful if each of these analyses also detailed similar transportation costs by alternative routes in order to adequately evaluate the potential for diversion.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States, and therefore, Executive Order 12291 does not apply. This regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

PART 402—[AMENDED]

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend Part 402—Tariff of Tolls (33 CFR part 402) as follows:

1. The authority citation for 33 CFR part 402 is revised to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981–990.

§ 402.3 [Amended]

2. In § 402.3, paragraph (b) introductory text, remove the words ", without limiting the generality of the term or otherwise affecting its meaning,".

§ 402.3 [Amended]

3. In § 402.3, paragraphs (b)(3) and (f), remove the words "package freight" and add, in their place, the word "cargo".

4. Section 402.8 would be revised to read as follows:

§ 402.8 Schedule of tolls.

	Tolls					
	Montreal to or from Lake Ontario			Lake Ontario to or from Lake Erie		
	1991	1992	1993	1991	1992	1993
(a) For transit of the Seaway, a composite toll, comprising:						
(1) A charge in dollars per gross registered ton according to national registry of the vessel, applicable whether the vessel is wholly or partially laden, or is in ballast. (All vessels shall have an option to calculate gross registered tonnage according to prescribed rules for measurement in either Canada or the United States):	0.10	0.10	0.11	0.12	0.12	0.13
(2) A charge in dollars per metric ton of cargo as certified on ship's manifest or other document, as follows:						
—Bulk cargo	0.98	1.04	1.10	0.49	0.52	0.55
—General cargo	2.38	2.52	2.66	0.78	0.83	0.88

	Tolls					
	Montreal to or from Lake Ontario			Lake Ontario to or from Lake Erie		
	1991	1992	1993	1991	1992	1993
—Containerized cargo	0.99	1.04	1.10	0.49	0.52	0.55
—Government aid cargo	0.00	0.00	0.00	0.00	0.00	0.00
—Food grains	0.60	0.64	0.68	0.49	0.52	0.55
—Feed grains	0.60	0.64	0.68	.049	0.52	0.55
(3) A charge in dollars per passenger per lock: 1.06	1.06	1.12	1.18	1.06	1.12	1.18
(4) A charge in dollars per lock for complete or partial transit of the Welland Canal in either direction by cargo vessels, which may be shared by cargo vessels in tandem:						
(i) loaded: Per Lock	NA	NA	NA	390.00	415.00	440.00
(ii) in ballast: Per Lock	NA	NA	NA	290.00	310.00	325.00
(b) For partial transit of the Seaway:						
(1) Between Montreal and Lake Ontario, in either direction, 15 percent per lock of the applicable toll.						
(2) Between Lake Ontario and Lake Erie, in either direction, (Welland Canal), 13 percent per lock of the applicable toll.						
(c) Minimum charge in dollars per vessel per lock transited for full or partial transit of the Seaway:						
—Pleasure craft [1]	10.00	10.00	10.00	10.00	10.00	10.00
—Other vessels	14.00	15.00	15.00	14.00	15.00	15.00

[1] Includes Federal taxes where applicable.

5. A new § 402.9 would be added to read as follows:

§ 402.9 Incentive tolls.

(a) Notwithstanding anything contained in this Tariff, the portion of the composite toll related to charges per metric ton of cargo charged on new upbound business and new downbound business shall be reduced by:

(1) Twenty-five percent for a transit beginning within the Seaway after the opening of navigation and prior to July 1 or the beginning on or after October 1 in the years 1991, 1992, and 1993 and ending at the closing of navigation in the years 1991, 1992, and 1993; or

(2) Fifty percent for a transit beginning on or after July 1 and prior to October 1 in the years 1991, 1992, and 1993.

(b) The reduction mentioned in paragraph (a) of this section shall be granted at the end of the applicable navigation season after payment of the full toll specified in the schedule under the tariff in § 402.8 of this part if:

(1) A vessel carries, for each consignee, 1,000 metric tons or more of new downbound or upbound business; and

(2) An application for a new downbound or new upbound business refund is submitted to the Authority or the Corporation for audit by the Authority or the Corporation.

(c) For the purposes of this section, *new downbound business means*:

(1) Downbound cargo that has not moved through a Seaway lock during the three navigation seasons of 1987 through 1989 or the three navigation seasons immediately preceding the season in which a new downbound business refund is submitted; or

(2) Downbound cargo that has moved through a Seaway lock in quantities representing less than five percent of the average of Seaway traffic to the particular destination during the three navigation seasons of 1987 through 1989 or the three navigation seasons immediately preceding the season in which a new downbound business refund is submitted. For the purposes of this paragraph (c)(2) "destination" means the country in which the cargo is unloaded, but if the cargo is unloaded in North America, "destination" means the port at which the cargo is unloaded.

(d) For the purposes of this section, *new upbound business* means:

(1) Upbound cargo that has not moved through a Seaway lock during the three navigation seasons immediately preceding the season in which a new upbound business refund is submitted; or

(2) Upbound cargo that has moved through a Seaway lock in quantities representing less than five percent of the average of Seaway traffic to the particular origin during the three navigation seasons immediately preceding the season in which a new upbound business refund is submitted. For the purposes of this paragraph (d)(2), "origin" means the country in which the cargo is loaded, but if the cargo is loaded in North America, "origin" means the port at which the cargo is loaded.

(e) When a particular cargo becomes new downbound business or new upbound business at any time during 1991, 1992, or 1993, it shall be considered as new downbound or new upbound business until the end of the 1993 navigation season.

6. A new § 402.11 would be added to read as follows:

§ 402.11 Volume discount.

(a) A volume discount shall be granted to carriers at the end of the 1991, 1992, and 1993 navigation seasons after payment of the full toll specified in the schedule under the tariff § 402.8 of this part if shipments of a commodity exceed the average amount of shipments for that commodity in the Seaway during the five navigation seasons immediately preceding the season in which the volume discount is applied. The volume discount shall be equal to a 20 percent reduction of the portion of the composite toll related to charges per metric ton of cargo paid for the shipments that surpass the average for the five preceding seasons. The volume discount shall be applied on a pro rata basis to all carriers of the particular commodity within one navigation season.

(b) If the conditions in paragraph (a) of this section are met, a volume discount shall be granted with respect to the following commodities: (1) Grain; (2) Other agricultural products; (3) Iron ore; (4) Other mine products; (5) Coal; (6) Coke; (7) Petroleum products; (8) Chemicals; (9) Stone; (10) Salt; (11) Other bulk cargo; (12) Iron and steel; (13) Other general cargo; (14) Containers.

(c) Notwithstanding anything in this Tariff, a carrier shall not obtain, at the end of a navigation season, both a volume discount and a new downbound or upbound business refund with respect to the same shipment, but a carrier shall obtain the greater of the said discount or refund.

7. A new § 402.13 would be added to read as follows:

§ 402.13 Vessels engaged primarily in the bulk trade.

Notwithstanding anything contained in this Tariff, the toll for general or containerized cargo for any vessel documented under the laws of the United States or registered in Canada in accordance with the laws of Canada that has been engaged primarily in the bulk trade exclusively within the St. Lawrence Seaway/Great Lakes system during the three navigation seasons immediately preceding the applicable season, shall be the toll charged for food grains specified in the schedule under the tariff in § 402.8 of this Part.

Issued at Washington, DC on January 14, 1991.

Saint Lawrence Seaway Development Corporation

James L. Emery,

Acting Administrator.

[FR Doc. 91-1189 Filed 1-17-91; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-610-89-4111-02; Circular No. 2613]

RIN 1004-AB21

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations; Clarification

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend Onshore Oil and Gas Order No. 2 Drilling Operations to clarify certain well control, casing, mud program, and drilling abandonment requirements, and to specify the circumstances when used casing may be utilized.

DATES: Comments on the proposed rule should be submitted by March 19, 1991. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of a final rule.

ADDRESSES: Comments should be sent to: Director (140) Bureau of Land Management, room 5555, Main Interior Bldg., 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Kent (202) 653-2174 or Howard A. Lemm (801) 539-4032.

SUPPLEMENTARY INFORMATION: Onshore Oil and Gas Order No. 2 of the Bureau of Land Management on Drilling Operations was published in the **Federal Register** on November 18, 1988 (53 FR 46798). Experience with and further consideration of the Order have shown that certain provisions need to be amended to improve their clarity and workability, and to elaborate on conditions for applying them.

The minimum standards and enforcement provisions for the pressure accumulator system would be amended to make it clear that the fluid reservoir capacity is to be double the usable fluid volume of the accumulator system as opposed to the total volume of the system, in order to clairfy the intent of the Order and accommodate standard reservoir sizes now in use.

The casing requirements would be amended to add the provisos that used casing may be employed only in situations involving shallow depth and low pressures, and that the used casing is required to be at least 87½ percent of the nominal wall thickness of new casing. This will eliminate the safety risk of used casing being used under circumstances posing a substantial risk of casing failure and resulting environmental degradation and loss of resources. The requirements would also be amended to state that centralizers shall be placed on the bottom 3 joints of surface casing rather than on every fourth joint, with a minimum of 1 centralizer per joint, starting with the shoe joint, in order to allow remedial cementing of the upper part of the casing string.

This order would be amended to include a reference to Onshore Oil and Gas Order No. 6—Hydrogen Sulfide Operations, for requirements as to the availability and use of hydrogen sulfide safety and monitoring equipment.

The definition for "Tagging the Plug" when abandoning drilling operations would be amended to remove the requirement that the plug be tagged by placing the weight of the string of tubing or drill pipe, but instead to place a weight on the plug sufficient to show that the plug is in place and properly set. This may be the entire unbuoyed weight of the drill string in many cases, but in some cases due to plug setting depth and compressive strength, excessive weight may cause string fill up and/or plug damage.

The principal author of this proposed rulemaking is Robert Kent of the Division of Fluid Mineral Lease and Regulatory Management, all of the Bureau of Land Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

The information collection requirements contained in 43 CFR part 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004-0134 and 1004-0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, part 3160, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: The Mineral Leasing Act as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Act of May 21, 1930 (30 U.S.C. 301-306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927, (25 U.S.C. 398a-398c), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457). See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

§ 3164.1 [Amended]

2. Section 3164.1(b) is amended by revising the second entry of the table to read as follows:

Order No.	Subject	Effective date	Federal Register reference	Supersedes
*	*	*	*	*
2	Drilling operations Amended	December 19, 1988	53 FR 46798	None.
*	*	*	*	*

Note.—Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Note.—These amendments to the appendix published at 53 FR 46804, Nov. 18, 1988, for information only and will not appear in the Code of Federal Regulations.

Appendix—Text of Oil and Gas Order No. 2 [Amended]

3. Article II.V. is revised to read as follows:

* * * * *

V. Tagging the Plug means running in the hole with a string of tubing or drill pipe and placing sufficient weight on the plug to insure its integrity. Other methods of tagging the plug may be approved by the authorized officer.

4. Article III.A.2.b.ii. is amended by adding the following sentence at the end of the first paragraph thereof:

ii. * * * The configuration of the chokes may vary.

5. Article III.A.2.c. is amended by revising the third sentence of paragraph ii. and the second sentence of paragraph iii. thereof to read as follows, respectively:

ii. * * * The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level shall be maintained at manufacturer's recommendations. * * *

* * * * *

iii. * * * The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level shall be maintained at manufacturer's recommendations. * * *

6. Article III.B.1.a. is amended by adding at the end of the first paragraph thereof and before the paragraph "Violation: Major" the following sentence:

a. * * * Used casing that meets or exceeds API standards for new casing shall only be approved by the authorized officer under circumstances that involve shallow depths and low pressures, and when the wall thickness of the proposed casing is verified to be at least 87½ percent of the nominal wall thickness of new casing.

* * * * *

7. Article III.B.1.f. is amended by revising the first paragraph thereof to read:

f. Surface casing shall have centralizers on the bottom 3 joints of the casing (a minimum of 1 centralizer per joint, starting with the shoe joint). * * *

8. Article III.C.6.b. is revised to read as follows:

b. Hydrogen sulfide safety and monitoring equipment requirements may be found in Onshore Oil and Gas Order No. 6—Hydrogen Sulfide Operations.

Dated: July 31, 1990.

James M. Hughes,

Assistant Secretary of the Interior.

[FR Doc. 91-1274 Filed 1-17-91; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 560 and 572

[Docket No. 91-2]

Electronic Filing of Agreement Reports and Minutes

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules regarding filing reports and minutes by agreement parties to permit direct electronic transmission. This proposal is an accommodation to the continuing growth of electronic data interchange and should benefit filers and the Commission.

DATES: Comments due March 15, 1991.

ADDRESSES: Comments (Original and fifteen [15] copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission's rules regarding agreement filings (Parts 560 and 572 of title 46 CFR) contain requirements for filing of various reports including minutes, shipper requests and complaints and indices of documents. The current rules contemplate such filings being made in hard paper copy.

Given the general proliferation of the use of electronic data interchange both at the Commission and in the industry, the Commission is proposing to permit, but not mandate, the filing of such agreement reports and minutes through direct electronic transmission to Commission headquarters. The proposal contemplates modem to modem transfer of ASCII text. The Commission would use an AT class personal computer, 2400 baud modem and FMC-developed communication software which would be compatible with any communications software used by filers. Transmission would be limited to certain hours of Commission business days; *viz.* after 2 p.m. Eastern time, but would be allowed during non-business hours of the Commission. This arrangement should accommodate filing parties located in different time zones and would avoid the need for the Commission to dedicate a terminal full time for this purpose.

The Commission's rules currently provide that certain agreement report filings are to be certified by an agreement official. This requires inclusion of the signature of the certifying official. It is proposed that a Personal Identification Number (PIN) be utilized to satisfy the signature requirement. Parties seeking to use the electronic filing system would submit a statement in advance agreeing that inclusion of the PIN in the transmission constitutes the signature of the certifying official.

It is also contemplated that passwords would be used to prevent unauthorized filings. The password would be unique to each electronic filer. Complete details about the technical aspects of electronic filing would be available from the Commission in the form of a user manual upon finalization of this proposed rule.

A clarification of the requirements for hard copy filings in 46 CFR part 572 is also included in this proposal to reflect the current division of responsibility at the Commission for terminal agreement filings and other agreement filings.

The Federal Maritime Commission has determined that this Proposed Rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 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 effect 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 Federal Maritime Commission certifies, pursuant to section 605(b), of

the Regulatory Flexibility Act, 5 U.S.C. 605(b) that this Proposed Rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The proposed rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.) as implemented by regulations prescribed within 5 CFR part 1320. Accordingly, OMB approval of the proposed rule is not required.

List of Subjects in 46 CFR Part 560

Administrative practice and procedure, Antitrust, Maritime carriers, Reporting and recordkeeping requirements.

List of Subjects in 46 CFR Part 572

Administrative practice and procedure, Antitrust, Maritime carriers, Reporting and recordkeeping requirements.

Therefore, the Federal maritime Commission proposes to amend parts 560 and 572 of title 46 of the code of Federal Regulations as follows:

1. The authority citation for part 560 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a.

2. Section 560.701 is amended by adding a new paragraph (c) reading as follows:

§ 560.701 General requirements.

* * * * *

(c) Reports and minutes required to be filed by this subpart may be filed by direct electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Trade Monitoring. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained from the Commission. PINs can be obtained by an official of the filing party by submitting a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Direct electronic transmission filings may be made after 2 p.m. Eastern time of Commission business days and at any time during non-business hours of the Commission.

3. The authority citation for part 572 continues to read:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

4. In § 572.701, paragraph (a) is revised to read as follows:

§ 572.701 General requirements.

(a)(1) *Address.* Reports required by this subpart should be addressed to the Commission as follows:

(i) Marine terminal operator agreement reports.

Director, Bureau of Domestic Regulation, Federal Maritime Commission, Washington, DC 20573–0001.

(ii) All other agreement reports.

Director, Bureau of Trade Monitoring, Federal Maritime Commission, Washington, DC 20573–0001.

The lower left-hand corner of the envelope in which each report is forwarded should indicate the subject of the report and the related agreement number. For example: "Minutes, Agreement 5000."

(2) *Electronic filing.* Reports and minutes required to be filed by this subpart may be filed direct electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Trade Monitoring. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained from the Commission. PINs can be obtained by submission by an official of the filing party of a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Direct electronic transmission filings may be made after 2 p.m. Eastern time on Commission business days and at any time during non-business hours of the Commission.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–1322 Filed 1–17–91; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Plant Conradina verticillata (Cumberland rosemary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine threatened status for *Conradina verticillata* (Cumberland rosemary). This rare woody plant is presently known from only 3 populations (44 colonies) in Tennessee and 1 population (4 colonies) in Kentucky. Most colonies are small and are threatened by activities that degrade water quality, and by habitat destruction by campers, hikers, white-water enthusiasts, and off-road vehicles. This proposal, if made final, would extend the protection of the Endangered Species Act (Act) of 1973, as amended, to Cumberland rosemary. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by March 19, 1991. Public hearing requests must be received by March 4, 1991.

ADDRESSES: Comments, materials, and requests for a public hearing concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Conradina verticillata Jennison (Cumberland rosemary) is a small shrub in the mint family (Lamiaceae) only known from the banks of short reaches of three river systems in north-central Tennessee and adjacent Kentucky. Cumberland rosemary is about 1.5 feet high with reclining branches that spread over the sandy or gravelly surface of sandbars and stream banks. The leaves are about 1 inch long, very narrow, and arranged in tight bunches that appear as whorls around the stems. The one-half-inch-long flowers are purple, lavender, or occasionally white in color and are borne in leaf-like clusters of bracts at the ends of the stems. Flowers appear from mid-May to early June. After flowering four small, dark brown nutlets develop as the fruit matures (Patrick and Wofford 1981).

Cumberland rosemary was first collected by Albert Ruth in 1894 from the banks of the Clear Fork River near Rugby, Tennessee. Until its recognition as a distinct species by H.M. Jennison (Jennison 1933), it was considered to be a disjunct population of the coastal

plain species *Conradina canescens* (Torr. & Gray) Gray. J.K. Small also recognized the species as distinct and named it *Conradina montana* (Small 1933). However, Small's description of the species was published several months after Jennison's, therefore, it is a nomenclatural synonym of *C. verticillata.*

Gray (1965) considered *Conradina verticillata* to be an old species that is now represented by relict populations that are widely disjunct from the four other members of the genus. It is triploid (three sets of chromosomes) while the other species are diploid (two sets of chromosomes). Consequently, it has reduced seed germination and a reduced ability to reproduce and disperse sexually. It, like the other members of the genus, is adapted to a narrow range of environmental conditions. The current distribution, ecological adaptations, and evolutionary history of the species of the genus *Conradina* increase the importance of protecting this species from extinction. Future studies of this species and the other members of the genus may provide important information on the mechanisms of evolution. In addition to these important scientific values, the species is an attractive ornamental (Patrick and Wofford 1981).

Somers (*in litt.*) reported that there are 44 occurrences of Cumberland rosemary in Tennessee. He further recommended that these be considered part of three distinct populations: one along the South Fork Cumberland River and its tributaries in Morgan, Scott and Fentress Counties; and, one along the Caney Fork River in Cumberland and White Counties, and, one along the Obed River System in Morgan and Cumberland Counties. Somers indicated that, although the colonies in each of these populations are scattered along extended reaches of their respective river systems, the pollinators for each population can travel readily between colonies. Since all colonies within each river system can interbreed, they are biologically just one population. Patrick and Wofford (1981) reported that there are four colonies of Cumberland rosemary in Kentucky. All of the Kentucky colonies are along the South Fork Cumberland River in McCreary County. The Kentucky colonies therefore should, if the population definition used in Tennessee is followed, be considered part of the South Fork Cumberland River population of Tennessee.

Cumberland rosemary's habitat as described by Patrick and Wofford (1981) is always in close association with the floodplain of watercourses. Specific areas supporting the species include boulder bars, sand bars, gravel bars, terraces of sand on gradually sloping river banks and islands and pockets of sand between large boulders on islands and stream banks. All sites exhibit the following characteristics:

1. Open to slightly shaded conditions. Plants growing in full sun always produce more flowers.

2. Moderately deep, well drained soils, consisting of pure sand or a mixture of sand and gravel with no visible organic matter.

3. Periodic flooding that is forceful enough to maintain the open condition of the sites.

4. Topographic features such as long, narrow channels or depressions on gravel bars, bank terraces, or large boulders that enhance sand deposition and to some degree protect the plants from the full force of the flooding and help in their establishment.

Woody plants growing in the shrubby vegetation adjacent to the sites supporting Cumberland rosemary include *Alnus, Cephalanthus, Chionanthus, Cornus, Hamamelis, Itea, Kalmia, Lyonia, Rhododendron,* and *Viburnum.* The herbaceous associates growing with the species include the grass *Calamovilva arcuata* and the herb *Marshallia grandiflora* which are category 2 plants on the Service's list of species under review for possible addition to the Federal list of endangered and threatened species. Other herbaceous associates include: the common grasses *Andropogon gerardii, Elymus virginicus,* and *Sorghasturm nutans;* and the herbs *Aster linariifolius, Coreopsis pubescens, Hypericum* spp., *Liatris microcephala, Phlox glaberrima, Pycnanthemum tenuifolium, Silphium trifoliatum, Thalictrium revolutium* and *Veronicastrum virginicum.*

Federal government actions for this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Conradina verticillata* was included in the Smithsonian report and the July 1, 1975, Notice of Review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act; *Conradina verticillata* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. *Conradina verticillata* was included as a category 1 species in the revised Notice of Review for Native Plants published on December 15, 1980 (45 FR 82480). Category 1 species are those for which the Service has information that indicates that proposing to list them as endangered or threatened is appropriate. The Service funded a survey in 1979 to determine the status of *Conradina verticillata* in Tennessee and Kentucky; a final report on this survey was accepted by the Service in 1981. Based upon the information provided in the report, this species was included as a category 1 species when the Notice of Review for Native Plants was revised in 1983 (48 FR 53640), in 1985 (50 FR 39526), and in 1990 (55 FR 6184). A notification of an additional status review for Cumberland rosemary was prepared and distributed by the Service on June 22, 1990. This notice was sent to all Federal, State and county agencies having jurisdiction over the areas in which the species occurs, to State and private conservation agencies and organizations, and to knowledgeable botanists and other scientists. Four responses to this notice supported the protection of *Conradina verticillata* under the Act and/or provided more information on the current status and distribution of the species. The Federal Energy Regulatory Commission provided information on hydropower licenses and pending applications for exemptions from or for licenses. The portion of the Obed River supporting the species has two potential hydropower sites; however, development of these sites is precluded by the inclusion of the River in the National Wild and Scenic River System. There are three potential hydropower sites on the South Fork Cumberland River. Development of these sites is precluded by the River's inclusion in the Big South Fork National River and Recreation Area. The Caney Fork River has one potential hydropower site; however, there are no current applications for a license or for an

exemption from a license on the reach of the river supporting *Conradina verticillata*. No objections to the possible addition of the species to the Federal List of Endangered and Threatened Wildlife and Plants were received.

All plants included in the comprehensive plant notices that were also included in the 1975 Smithsonian report are treated as under petition. Section 4(b)(3)(B) of the act, as amended in 1982, requires the Secretary to make certain findings on pending petitions with 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Conradina verticillata* because of the acceptance of the 1975 Smithsonian report as a petition. In each October of 1983 through 1990 the Service found that the petitioned listing of *Conradina verticillata* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. Publication of this proposal constitutes the final 1-year finding.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Conradina verticillata* Jennison (Cumberland rosemary) (Synonym: *Conradina montana* Small) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The three known naturally occurring populations of Cumberland rosemary all occur in close proximity to rivers on the Cumberland Plateau in north-central Tennessee and adjacent Kentucky. Patrick and Wofford (1981) noted that this species' distribution has probably been reduced by such factors as dam construction and the general deterioration of water quality resulting from silt and other pollutants contributed by coal mining, poor land use practices, and waste discharges. Many of these factors continue to impact the species and its habitat. Because the colonies inhabit only short river reaches, they are vulnerable to extirpation from accidental toxic chemical spills. Direct habitat destruction by recreational visitors to the species habitat is a significant threat to its survival. Hikers, campers, white-water enthusiasts, and off-road vehicle users all impact the species and its habitat. Visitation to the Big South Fork National River and Recreation Area has increased dramatically in the past few years. W. B. Dickinson, Superintendent of the Recreation Area, reports (*in litt.*) that visitors to the Recreation Area increased from 120,000 in 1986 to 730,000 in 1989. The Superintendent anticipates that use of the area will continue to increase and that additional adverse impacts to aquatic and riparian species may accompany this increase.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is commercial trade in *Conradina verticillata* at this time. McCartney (*in litt.*) reports that this species, as well as all the other species within the genus *Conradina*, are easily propagated and are in cultivation. This commercial trade, provided that it is dependent upon plants propagated from plants in cultivation, should not adversely affect the species in the wild. Many of the wild colonies are small and cannot support collection of plants for scientific or other purposes. Inappropriate collecting from plants in the wild is a threat to the species.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms. Conradina verticillata* is listed as an endangered plant in Tennessee under that State's Rare Plant Protection and Conservation Act of 1985. This protects the species from taking without the permission of the landowner or land manager. This species is included on Kentucky's unofficial list of endangered, threatened, and rare species prepared by the Kentucky Academy of Science, but receives no additional protection from this recognition. Should the species be added to the Federal list of endangered and threatened species, additional protection from taking will be provided by the Act when the taking is of plants located on Federal lands. Protection from inappropriate commercial trade would also be provided.

E. *Other natural or manmade factors affecting its continued existence.* No other additional factors adversely affecting the survival of Cumberland rosemary are known at this time.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Conradina verticillata* as a threatened species. The plant is not in imminent danger of extinction, but its status is deteriorating due to declines in water quality, and impacts to its habitat from campers, hikers, white-water enthusiasts, and off-road vehicles. Classification of *Conradina verticillata* as a threatened species, as defined under section 3(19) of the Act, would be appropriate under current circumstances and would help to protect the plant from further losses. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. Many of the populations of this species are small, and loss of even a few individuals to inappropriate activities could extirpate the species from some its sites. Taking, without permits, would be prohibited by the Act from locations under Federal jurisdiction; however, many of the sites are in isolated locations and the taking prohibitions would be difficult to enforce. Therefore, publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of the federally and State-owned colonies of *Conradina verticillata* have been made aware of the plant's locations and of the importance of protecting the plant and its habitat. Owners of the privately owned sites will be contacted by the appropriate State plant conservation agencies or the Service. No additional benefits would result from a determination of critical habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Conradina verticillata*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the

States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up,or damaging or destroying of endangered plants in knowing violation of an State law or regulation, including State criminal trespass law. Section 4f(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is unknown to what extent trade permits would be sought or issued for this species. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Conradina verticillata*;

(2) The location of any additional populations of *Conradina verticillata* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Conradina verticillata*.

Final promulgation of the regulation on *Conradina verticillata* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

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

References Cited

Gray, T. C. 1965. A Monograph of the Genus *Conradina* A. Gray (Labiatae). Unpublished Ph.D. Dissertation, Vanderbilt University, Nashville, Tennessee. 189 pp.

Jennison, H.M. 1933. A new species of *Conradina* from Tennessee. Journal of the Elisha Mitchell Scientific Society 48:268–269.

Patrick, T. S. and B. E. Wofford. 1981. Status Report *Conradina verticillata* Jennison. Unpublished report to the Southeast Region U.S. Fish and Wildlife Service. 49 pp.

Small, J.K. 1933. Manual of the Southeastern Flora. Published by the author. New York. Pp. 1166–1167.

Author

The primary author of this proposed rule is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order under Lamiaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Lamiaceae—Mint family:						
Conradina verticillata (=*C* montana.	Cumberland rosemary	U.S.A. (KY, TN)	T		NA	NA

Dated: December 7, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–1281 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 13
Friday, January 18, 1991

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

Food Safety and Inspection Service

[Docket No. 90-031N]

Hazard Analysis and Critical Control Point (HACCP) Pilot Plant Testing—Solicitation of Volunteers

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: In cooperation with the meat and poultry industry, the Food Safety and Inspection Service (FSIS) is soliciting volunteers for in-plant pilot testing of generic model Hazard Analysis and Critical Control Point (HACCP) plans developed jointly by the Agency and the industry at workshops. Volunteer plants selected to participate in the pilot study will be requested to sign a letter of commitment pledging their full cooperation during the course of the test.

DATES: Letters of inquiry from interested participants must be submitted by February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Catherine M. DeRoever, United States Department of Agriculture, FSIS, Executive Secretariat, room 3175, South Building, 14th & Independence Avenue, SW., Washington, DC 20250 (202) 447-9150.

SUPPLEMENTARY INFORMATION: FSIS recognizes the merits of the HACCP system as a system for sanitation and process control. FSIS wishes to assist the meat and poultry industry in its efforts to incorporate (HACCP) into the safe production of meat and poultry products. Workshops are being conducted to develop model HACCP plans for specific products and processes. At these workshops, FSIS is facilitating the industry in preparing model HACCP plans. HACCP plans are being developed for refrigerated foods, cooked sausage, poultry slaughter—young chickens, fresh ground beef and swine slaughter—market hogs.

It is the intention of FSIS to evaulate and monitor the pilot testing of those model HACCP plans. Volunteers need not have previous experiences in HACCP-based operations. In fact, it is desirable to include firms with varying degrees of prior HACCP experience.

Plants wishing to participate must indicate their willingness to commit to the project during the course of the study. It is anticipated that the pilot test will run approximately 6 months after implementation. Prior to implementation, site evaluations will be conducted, as will various data collection activities, i.e., microbiological, chemical, etc. During the course of the pilot test the product and processes used in production will be closely monitored. Establishments must agree to operate using only the HACCP model including all monitoring and verification tasks, maintain all required documentation and perform any identified corrective action. Further, plants must be willing to assure that key personnel are trained in HACCP.

If you are interested in participating as a pilot test plant or receiving more information on the pilot study, written requests must be submitted noting the following:

(1) Name, address, phone number and establishment number,

(2) Which HACCP model is the plant volunteering to pilot test,

(3) What products in the category are produced,

(4) Affiliation, i.e., national and/or local trade association(s), if any,

(5) An indication of product volume, i.e., small, medium, or large,

(6) Type(s) of inspection (Traditional, Partial Quality Control, Total Quality Control, Streamlined Inspection System, etc.), and

(7) Hours of operation and number of shifts. Requests should be addressed to Ms. Catherine M. DeRoever (address above).

For technical information on the Agency's HACCP initiative, letters of inquiry should be addressed to Dr. Wallace I. Leary, Director, HACCP Special Team, room 0139 South Building, 14th & Independence Avenue, SW., Washington, DC 20250.

(Authority: 9 CFR 303.1(g), 381.3(b).

Done at Washington, DC on January 14, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-1287 Filed 1-17-91; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 900945-1014]

Foreign Availability Determination: Certain Horizontally Operated Side-Looking or Forward-Looking Sonar With or Without a Sub-Bottom Profiler

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Department of Commerce.

ACTION: Notice of positive determination.

SUMMARY: Under section 791 of the Export Administration Regulations (EAR), the Department of Commerce determined that foreign availability of single beam side scan sonar and sub-bottom profilers controlled under ECCN 1510A (a) of the Commodity Control List (CCL) (15 CFR 799.1, Supp. 1), exists to controlled destinations. This determination was made on December 17, 1990, and modified on January 10, 1991, because of new information which became available. As a result of the new information, the Department of Commerce has determined that foreign availability of certain horizontally operated side-looking or forward-looking sonar systems and sub-bottom profilers controlled under ECCN 1510A (a) of the Commodity Control List (CCL) (15 CFR 799.1, Supplement 1), exists to controlled destinations. The Commerce Department has initiated action to amend the CCL and to submit the determination for multilateral view.

FOR FURTHER INFORMATION CONTACT: Steve Goldman, Director, Office of Foreign Availability, room SB-097, Department of Commerce, Washington, DC 20230; Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION: .

Background

Although the Export Administration Act (EAA) expired on September 30, 1990, the President, invoking the

International Emergency Economic Powers Act, continued in effect the powers of the EAA and the Export Administration Regulations (EAR), to the extent permitted by law, in Executive Order 12730 of September 30, 1990.

Part 791 of the EAR (15 CFR Part 730 *et seq.*) implements and establishes the procedures and criteria for determining the foreign availability of goods and technology whose export is controlled for national security purposes. The Secretary of Commerce or his designee determines whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to affected countries if the Secretary or his designee determines that items of comparable quality are available in fact to such contries from a foreign source in quantities sufficient to render the controls ineffective in achieving their purpose.

On August 15, 1990, OFA initiated a foreign availability assessment of general purpose single beam side scan sonars with or without a sub-bottom profiler to controlled destinations. These items are controlled under ECCN 1510A (a) of the CCL. The Department published a notice of the initiation of this assessment in the **Federal Register** (55 FR 42043) on October 27, 1990.

OFA provided its assessment and recommendation to the Deputy Assistant Secretary for Export Administration. The Deputy Assistant Secretary considered the assessment and other relevant information and determined that foreign availability exists to controlled destinations within the meaning of section 791 of the EAR for certain horizontally operated side-looking or forward-looking sonars, as well as sub-bottom profliers used solely for providing a profile of the bottom contour or layers. Foreign availability was found for horizontally operated, side-looking or forward-looling sonar systems designed for depths greater than 1000 meters having certain characteristics. All interested government agencies, including the Departments of State and Defense, were provided an opportunity to review and comment on the assessment and determination. The technical specifications for side scan sonar systems found to be foreign available will be detailed in a subsequent **Federal Register** notice.

The Department has initiated action to submit this determination for multilateral review in accordance with the agreement of the Coordinating Committee for Multilateral Export Controls (COCOM). Within four months beginning on the date of the publication of this notice, the Department will take appropriate action under section 5(f)(3)(B) of the EAA and 791.7 of the EAR. The Department intends to amend the EAR by removing national security controls from exports of these items to noncontrolled destinations as soon as possible. Until such time, current export controls will remain in effect.

If OFA new evidence concerning this foreign availability determination, OFA may reevaluate its assessment. Inquiries concerning the scope of this assessment should be sent to the Director of the Office of Foreign Availability at the above address.

Dated: January 15, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91–1306 Filed 1–17–91; 8:45 am]

BILLING CODE 3510–DT–M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held February 19 & 20, 1991. The General Session of the meeting will convene at 9 a.m., February 19, in the Mesa Verde Room, Westin South Coast Plaza, 666 Anton Boulevard, Costa Mesa, California. The General Session will adjourn at 5 p.m. The Executive Session will convene at 9 a.m., February 20, in the Bureau of Export Administration Western Region Office, 3300 Irvine Avenue, suite 345, Newport Beach, California. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems or technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Review of accomplishments in 1990 and discussion of work plan for 1991.
3. Election of officers.
4. Presentation of papers or comments by the public.
5. Discussion of Core List Category 7 (Computers).
   - Structure of this Category
   - Composite Theoretical Performance (CTP)
6. Discussion of changes/progress in the supercomputer control regime.
7. Discussion of revisions to the non-proliferation controls.
8. Discussion of new and pending regulatory changes, including G-TEMP and electronic licensing.

Executive Session

9. Discussion of matters properly classified under Executive Order 2356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date the the following address: Lee Ann Carpenter, Technical Support Staff, OPTA/BXA, room 1600, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated: January 14, 1991.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 91–1307 Filed 1–17–91; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 505]

Resolution and Order Approving the Application of the Massachusetts Port Authority for Seven Special-Purpose Subzones for the Polaroid Corp. in the Boston/New Bedford, MA, 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 (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Massachusetts Port Authority, grantee of FTZ 27, filed with the Foreign-Trade Zones Board (the Board) on November 8, 1989, requesting special-purpose subzone status for the Polaroid Corporation's seven manufacturing and distribution facilities (7 sites) in the Boston/New Bedford, Massachusetts, area within and adjacent to the Boston and New Bedford, Massachusetts Customs ports of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to the condition that Polaroid shall provide the FTZ Board and the District Director of Customs annually with a list of merchandise admitted to the zone in non-privileged status for manufacturing, and the resulting products, which merchandise had not been specifically mentioned in the application, approves the application, subject to the foregoing condition.

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.

To Establish Special-Purpose Subzones for the Polaroid Corp. Facilities in the Boston/New Bedford, MA, 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 Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Massachusetts Port Authority, grantee of Foreign-Trade Zone 27, has made application (filed November 8, 1989, FTZ Docket 29–89, 54 FR 48793, 11/27/89), in due and proper form to the Board for authority to establish special-purpose subzones at the Polaroid Corporation's manufacturing and distribution facilities (7 sites) in the Boston/New Bedford, Massachusetts, area;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restriction in the resolution accompanying this action;

Now, therefore, in accordance with the application filed November 8, 1989, the Board hereby authorizes special-purpose subzone status at seven facilities of the Polaroid Corporation in the Boston/New Bedford, Massachusetts area, designated on the records, of the Board as Foreign-Trade Subzones: 27E (Norwood); 27F (Needham); 27G (New Bedford); 27H (Waltham); 27I (Freetown); 27J (Boston); 27K (Cambridge), and as described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, and to the condition in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone sites shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall all necessary permit from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone facilities in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and 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 or his delegate at Washington, DC, this 14th day of January 1991, pursuant to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–1308 Filed 1–17–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 30–89]

Foreign-Trade Zone 84—Harris County, TX; Withdrawal of Application for Subzone Status for Zeon Chemicals Texas, Inc.

Notice is hereby given of the withdrawal of the application submitted by the Port of Houston Authority, grantee of FTZ 84, requesting authority for subzone status for the synthetic rubber manufacturing plant of Zeon Chemicals Texas, Inc., in Pasadena, Texas. The application was filed on November 27, 1989 (54 FR 49321, 11/30/89).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: January 14, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–1309 Filed 1–17–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[C–331–601]

Certain Fresh Cut Flowers From Ecuador; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain

fresh cut flowers from Ecuador. We preliminarily determine the total bounty or grant to be zero for six companies and 2.62 percent *ad valorem* for all other companies during the period January 1, 1988 through December 31, 1988. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 18, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5260.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1989, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (54 FR 993) for the countervailing duty order on certain fresh cut flowers from Ecuador. On January 30, 1989, the petitioner, the Floral Trade Council, requested an administrative review of the order. We initiated the review, covering the period January 1, 1989 through December 31, 1988, on March 8, 1989 (54 FR 9869). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review of this order were published in the Federal Register on September 4, 1990 (55 FR 35922).

Scope of Review

Imported products covered by this review are Ecuadorian fresh cut miniature (spray) carnations, provided for during the review period under item 192.17 of the Tariff Schedules of the United States (TSUS), and standard carnations, standard chrysanthemums and pompon chrysanthemums, provided for during the review period under item 192.21 of the TSUS. This merchandise is currently classified under items 0603.10.30, 0630.10.70 and 0603.10.80 of the Harmonized Tariff Schedule (HTS). Daisies are excluded from the scope of the order. The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers the period January 1, 1988 through December 31, 1988 and nine programs.

Analysis of Programs

(1) FOPEX Export Credit

The Fund for the Promotion of Exports (FOPEX) is a line of financing of the National Finance Corporation, a governmental financing source responsible for industrial development financing operations. FOPEX provides both short- and long-term credit. Because FOPEX loans are available only for export-related purposes, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

a. Short-term FOPEX Export Credit

Under FOPEX, the government grants short-term loans to promote the export of non-traditional goods through the financing of export transactions. Such loans are provided for up to 180 days, with interest and principal due at maturity.

Three companies received short-term FOPEX loans that matured during the review period. To calculate the benefit from the short-term FOPEX loans, we used the predominant source of short-term financing, the rate published in the IL&T Ecuador, International Corp., November 1988, as our benchmark. We compared the benchmark rate to the preferential interest rates in effect for each FOPEX loan interest payment made during the review period and allocated the benefit over the companies' exports of subject merchandise to all markets. We then weight-averaged the results by each company's share of exports of the subject merchandise to the United States, excluding those companies with significantly different benefits. On this basis, we preliminarily determine the benefit from short-term FOPEX loans to be zero for for Armizo, S.A.; Flores La Antonio, S.A.; Florestrade, S.A.; Inversiones Floricola, S.A.; Jardines Del Ecuador, S.A.; and Mundiflor, S.A.; and 1.92 percent *ad valorem* for all other companies.

b. Long-term FOPEX Loans

Flower exporters are eligible to receive loans of two years or more to finance fixed assets and invest in the expansion or modernization of existing companies in agriculture, agro-industry, and industrial sectors whose sales are destined for export. Interest is due every calendar quarter. Two companies received long-term, variable-rate FOPEX loans with interest payments due in 1988. The loans were received in three disbursements.

Effective August 12, 1986, Monetary Board Regulation No. 463–87 authorized lending institutions to lend at variable interest rates on all loans of two years or more. Long-term commercial loans exceeding two years are uncommon in Ecuador. The predominant source for long-term financing available in Ecuador is long-term financing under the Bonos de Fomento loan program. Although our preferred benchmark for long-term variable-rate government loans is a long-term variable-rate loan commonly available in the country, no such loans are offered in Ecuador. Therefore, we have used as our benchmark the long-term fixed-rate loan commonly available under the Bonos de Fomento Program. In our final determination on Certain Fresh Cut Flowers from Ecuador (52 FR 1361; January 13, 1987), we determined that Bonos de Fomento loans are not limited to a specific enterprise or industry, or group of enterprises or industries. We are, therefore, using the Bonos de Fomento rate as our benchmark for long-term FOPEX loans.

To calculate the benefit from the long-term FOPEX loans, we compared the benchmark rate to the preferential interest rates in effect for each FOPEX loan interest payment made during the review period and allocated the benefit over each company's exports to all markets. We then weight-averaged the results by each company's share of exports of the subject merchandise to the United States, excluding those companies with significantly different benefits. On this basis, we preliminarily determine the benefit from long-term FOPEX loans to be zero for Armizo, S.A.; Flores La Antonia, S.A.; Florestrade, S.A.; Inversiones Floricola, S.A.; Jardines Del Ecuador, S.A.; and Mundiflor, S.A.; and 0.26 percent *ad valorem* for all other companies.

(2) Fund for the Development of Exportable Production The Fund for the Development of Exportable Production (FDEP), under the Fondos Financieros program established by decree on April 12, 1973, provides short- and long-term loans to exporters to finance investments in new, or expansion of existing, companies that gear their production to exportation of non-traditional goods. Such loans are provided for up to seven years with grace periods of up to two years. In all instances, loan recipients must self-finance at least ten percent of the project. Where a loan greater than 3,000,000 sucres is sought, the recipient must self-finance at least 20 percent of the project. Because these loans are available only to exporters, we preliminary determine that they are countervailable to the extent that they are provided at preferential rates.

Four companies had long-term fixed-rate FDEP loans with terms exceeding one year and with principal outstanding during the review period. Ordinarily, for long-term, fixed-rate loans we use as a benchmark interest rates of other long-term, fixed-rate loans received at commercial rates by the companies in the same year. As our benchmark for

fixed-rate loans of one to two years, we are using the individual company's commercial interest rate for fixed-rate loans of one to two years, where such loans exist. For any company that did not receive one- to two-year commercial loans in the year they received the FDEP loans, we used as best information available the rate published in the IL&T Ecuador, International Corp., November 1988, for loans of one to two years. We are using the Bonos de Fomento rate as our benchmark for long-term loans of two years or more.

To calculate the benefit, we found the difference between the annual amounts or principal and interest the companies actually paid and the annual amounts of principal and interest the companies would have paid if they had received the loans at our benchmark rate. We then calculated the "grant equivalent" of each loan by determining the present value (at the time the preferential loan was made) of these annual payment differentials that would occur during the life of the loan. Using our declining balance methodology with the long-term benchmark as the discount rate, we allocated the grant equivalents over the life of each loan to yield the annual benefits. We then allocated the benefits from the loans over the value of each company's total exports and weight-averaged the result by each company's share of exports of the subject merchandise to the United States, excluding those companies with significantly different benefits. On this basis, we preliminarily determine the benefit from long-term FDEP loans to be zero for Armizo, S.A.; Flores La Antonia, S.A.; Florestrade, S.A.; Inversiones Floricola, S.A.; Jardines Del Ecuador, S.A.; and Mundiflor, S.A.; and 0.45 percent *ad valorem* for all other companies.

(3) Other Programs

We also examined the following programs and preliminarily determine that flower exporters did not use them during the period of review:

a. Short-term FDEP Loans
b. Tax Deductions for New Investment
c. Tax Holidays
d. Tax Exemptions for Transfer of Real Estate
e. Sales and Income Tax Exemptions
f. Government Refinancing of Private Debt

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be zero for Armizo, S.A.; Flores La Antonia, S.A.; Florestrade, S.A.; Inversiones Floricola, S.A.; Jardines Del Ecuador, S.A.; and Mundiflor, S.A.; and 2.62 percent *ad valorem* for all other companies during the period January 1, 1988 through December 31, 1988.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Armizo, S.A.; Flores La Antonia, S.A.; Florestrade, S.A.; Inversiones Floricola, S.A.; Jardines Del Ecuador, S.A.; and Mundiflor, S.A.; and to assess countervailing duties of 2.62 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies exported on or after January 1, 1988 and on or before December 31, 1988.

Further, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from Armizo, S.A.; Flores La Antonia, S.A.; Florestrade, S.A.; Inversiones Floricola, S.A.; Jardines Del Ecuador, S.A.; and Mundiflor, S.A., and to collect a cash deposit of 2.62 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 335.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later that the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 11, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-1310 Filed 1-17-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-533-063]

Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that net subsidies are being provided to manufacturers or exporters in India of certain iron-metal castings (castings), as described in the "Scope of the Review" section of this notice.

EFFECTIVE DATE: January 18, 1991.

FOR FURTHER INFORMATION CONTACT: Carole Showers or Margot Paijmans, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230 on (202) 377-3217 or (202) 377-1442.

SUPPLEMENTARY INFORMATION:

Final Results

We determine that net subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers or exporters in India of certain iron-metal castings. This review covers the period of January 1, 1986 through December 31, 1986 and the following programs:

- International Price Reimbursement Scheme
- Cash Compensatory Support Scheme
- Pre-Shipment Export Loans
- Income Tax Reductions
- Market Development Assistance Grants
- Sales of Import Replenishment Licenses
- Extension of Free Trade Zones
- Preferential Freight Rates
- Import Duty Exemptions Available to 100 Percent Export-Oriented Units
- Post-Shipment Financing

The weighted-average net subsidies are shown in the "Final Results of Administrative Review" section of this notice.

Case History

On October 16, 1980, the Department published its countervailing duty order

in its investigation of certain iron-metal castings from India. On December 10, 1990, the Department published the final results of its most recently completed administrative review for the period January 1, 1985 through December 31, 1985 (55 FR 50747).

Since the preliminary results of the review in this case (55 FR 46699, November 6, 1990), the Department held a hearing on December 11, 1990. The Department has now completed the 1986 administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act.)

Scope of Review

The imports covered by this review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or for drainage for public utility, water, and sanitary systems. During the review period, this merchandise was classifiable under Tariff Schedules of the United States Annotated (TSUSA) item numbers 657.0950 and 657.0990. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010 and 7325.10.0050. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We afforded interested parties an opportunity to comment on the preliminary results. We received comments from the Indian exporters, two separate groups of U.S. importers and the petitioners.

The issues raised by the parties with respect to the International Price Reimbursement Scheme (IPRS) program in the case and rebuttal briefs were in essence identical to those raised by the parties in their briefs for the 1985 review. The final results of that review were published in December 1990. The information on the record and the Department's position with respect to these comments have not changed. Therefore, we have restated here those comments and "Department Positions" that were in the 1985 review that pertain to the instant review.

Comment 1: The exporters and importers argue that IPRS payments are not countervailable subsidies. In intent and practice, the IPRS refunds to exporters of castings the difference between the price they must pay for certain raw materials purchased from government-owned Indian producers and the price they would otherwise pay on the world market. The program was operated in a manner consistent with item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the List) which states:

> The delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favorable than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption, *if (in the case of products) such terms or conditions are more favorable than those commercially available on world markets to their exporters* (emphasis added).

Item (d) of the List is thus explicit that the provision of raw materials at world market prices to exporters is not a subsidy. The Department recognized this in previous countervailing duty cases, namely in Final Negative Countervailing Duty Determination; Certain Steel Wire Nails from the Republic of Korea (47 FR 39549; September 8, 1982) (Korea Nails), the Department held that "price preferences for inputs to be used in the production of export goods constitute a subsidy only if the preference lowers the price of that input below that which the input purchaser would pay on world markets." Similarly, in Final Negative Countervailing Duty Determination; Oil Country Tubular Goods from Taiwan (51 FR 19583; May 30, 1986) (Taiwanese OCTG), the Department stated that:

> Based on an examination of China Steel's second-tier prices for hot-rolled coil used in the production of OCTG, and of the world market prices for such coil, we found that China Steel's prices were at world market levels; therefore, we determine that China Steel's two-tiered pricing policy does not confer a countervailable benefit within the meaning of the countervailing duty law.

Furthermore, the exporters state that there is no evidence in the statutes or in the legislative history to support a theory that Congress intended to reject the principle embodied in item (d) of the List when it enacted the Trade Agreements Act of 1979 (the TAA). In fact, the importers claim that this issue was examined by the U.S. Treasury Department in a countervailing duty investigation that predates the 1979 statute (*see*, Final Countervailing Duty Determination; Leather Wearing Apparel from Uruguay (43 FR 3974; January 30, 1978) (Uruguayan Leather Apparel). According to the importers, Treasury determined that direct payments to exporters of apparel that lowered the price of their primary input, hides, to the "readily available price of hides the other markets" was not a subsidy.

The exporters also argue that the IPRS benefits not the exporter of castings, but rather the Indian pig iron producers. Castings exporters can import pig iron or purchase domestic pig iron at the relatively high price that is set by the Indian government and receive IPRS rebates. The net effects of these two alternatives are the same.

In addition, exporters argue that the Department is attempting to use an unauthorized interpretation of U.S. law to find the Indian IPRS program countervailable. In Certain Cotton Yarn Products from Brazil; Final Results of Countervailing Duty Administrative Review (55 FR 3442; February 1, 1990) (Cotton Yarn), the Department determined as countervailable a similar Brazilian dual pricing scheme, the Price Equalization Program (PEP). In Cotton Yarn, the Department advanced the theory that the List is not controlling on the identification of subsidies: "It is irrelevant whether the PEP is consistent with item (d) or whether cotton yarn exporters could have exported raw cotton at world market prices. We are concerned with the alternative price commercially available in the domestic market" (55 FR 3446). Importers argue that such a theory is untenable because Congress incorporated the List into U.S. countervailing duty law and the Department has no authority to claim item (d) as "irrelevant." The Court of International Trade (CIT) has acknowledged the adoption of the List in U.S. law in its decision in *Fabricas El Carmen, S.A. de C.V., et al.*. v. *United States*, Slip Op. 87-113 (CIT October 7, 1987), as did the U.S. Court of Appeals in its decision of the 1984 review of this countervailing duty order (*see RSI (India) Pvt., Ltd.* v. *United States*, 687 F.2d 1571 (Fed. Cir. 1989)). The legislative history confirms that the sole reservation expressed by Congress in adopting the List was that it not be regarded as a permanent, exhaustive listing of all export subsidies countervailable under U.S. law. The Department is empowered only to supplement or expand the existing List, not alter or ignore established principles of the List. Consequently, in the case of item (d), U.S. law specifically excludes from countervailability any such programs which do not result in the provision of inputs on terms more favorable than those obtainable on world markets. Furthermore, the Department's failure to observe the principle of the statutory language and item (d) also directly conflicts with its efforts to codify item (d) in its own

regulations. Commerce's proposed Regulation 355.44(h) in 19 CFR part 355 Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (54 FR 23366; May 31, 1989) clearly states that price preferences for inputs used in the production of goods for export are subsidies only if they are provided on terms or conditions "are more favorable than those commercially available on world markets to their exporters."

Conversely, petitioners argue that the IPRS is a countervailable subsidy because the exception in item (d) applies only to the preferential pricing of inputs and not to payments contingent upon the exportation of finished goods. Petitioner maintains that the Department's interpretation of item (d) has always been a narrow one, *i.e.*, the exception in item (d) applies only to inputs, not monetary payments. Such an interpretation of item (d) is consistent with a panel report of the GATT Committee on Subsidies and Countervailing Measures that examined item (d) in conjunction with an investigation of European Community pasta export payments. See GATT Panel Report on EEC Subsidies on Export Pasta Products, SCM/433 (May 19, 1983). The Department's determination in Cotton Yarn, that the Brazilian PEP program is countervailable, is consistent with past Department determinations that reflect a narrow interpretation of the exception in item (d). The Department's preliminary determination that IPRS payments are countervailable implicitly recognizes that the exception in item (d) does not apply because item (d) clearly encompasses the IPRS within its definition of an export subsidy.

Department's Position: We disagree with the importers and exporters. The Indian government's decision to insulate its pig iron producers from foreign competition placed users of domestic pig iron at a disadvantage vis-a-vis competitors abroad by raising the price of domestic pig iron. During the review period, Indian castings exporters could have overcome this competitive disadvantage in two days: Duty drawback and the IPRS. Imported pig iron in India is subject to normal customs duties. Had Indian castings exporters imported foreign pig iron for use as an input and processed it into castings for export, they could have been exempted from the normal customs duties on pig iron by using duty drawback, a practice acceptable under U.S. countervailing duty law and the GATT. Alternatively, under the IPRS, the Indian government created a benchmark price for pig iron and made cash payments to exporters based on the difference between the benchmark price and the domestic price. These cash payments were made exclusively to castings exporters, with the net effect being a reduction in the price of pig iron to a level well below the price commercially available in the domestic market. The IPRS was an instrument used by the Indian government to ameliorate the deleterious effects of high-priced pig iron on a specific group of downstream users.

The circumstances in both Korean Nails and Taiwanese OCTG differ from those in this case. In Korean Nails, the Korean producers of nails for export had access to wire iron from foreign as well as domestic sources at comparable prices. Although afforded the opportunity through tariff protection to charge high prices for wire rod used in the manufacture of products sold domestically, POSCO (an integrated steel producer which is largely government-owned) and other Korean producers of wire rod chose to lower their prices to exporters of nails and compete with foreign-sourced wire rod purchased under duty drawback. We concluded that "the different prices for purchasers do not arise from a scheme to subsidize exports, but rather are a commercial response to a segmented market, one segment being protected and the other fully open to foreign competition." We further stated that "this dual pricing system reflects strictly economic motivations [of the wire rod producers] rather than a desire of the Government of Korea (the owners of POSCO) to subsidize nail exports" (47 FR 39552).

We noted in addition that our conclusion regarding the dual pricing system was consistent with the principle contained in item (d). However, our decision not to countervail the Korean pricing scheme was not made solely on the basis of item (d). Rather, our decision was based in large part on a determination that POSCO was acting in a commercially reasonable fashion by instituting a dual-pricing system. As support for this, we stated that two privately-owned Korean wire rod producers also had dual-pricing systems in place. These facts led us to conclude that the Korean government was not acting to subsidize exports.

Similarly, in Taiwanese OCTG, we found that China Steel, a state-owned corporation and a supplier of pipe and tube inputs, maintained a two-tiered pricing policy. Accordingly, in determining whether China Steel's prices were preferential, we compared not only the actual prices FEMCO (an OCTG producer) paid China Steel to the actual prices FEMCO paid for imported coil, but we also compared the prices FEMCO paid China Steel to generally available world market prices for coil. In doing so, we found that China Steel's prices were at world market levels. Once again, our decision was based on a determination that China Steel was acting in a commercially reasonable manner.

In this case, the fact pattern is different. The Steel Authority of India, Ltd. (SAIL), an Indian government entity that supplied all of the pig iron used by the castings exporters, did not institute a dual-pricing scheme for pig iron. Instead, the Indian government intervened to ensure that Indian castings exporters could continue to use domestically-sourced pig iron while pig iron producers continued to enjoy the full benefits of tariff protection. Thus, the Indian government's decision to establish the IPRS and make cash payments to castings producers made possible exports that otherwise would not have occurred. Without this direct government action, castings exporters would have had to pay the high domestic price for Indian pig iron.

The fact that the Illustrative List is incorporated into U.S. law has no bearing on our decision. In determining whether item (d) is applicable to the identification and measurement of an export subsidy from this type of program, we have examined the law and its legislative history. Section 771(5) of the Tariff Act states, in relevant part: "The term 'subsidy' has the same meaning as the term 'bounty or grant' as that term is used in section 1303 * * *, and includes, but is not limited to, the following: (A) Any export subsidy described in Annex A to the Agreement (relating to the illustrative list of export subsidies) * * *" (emphasis added). While Congress incorporated the Illustrative List into the statute, it did not limit the definition of export subsidy to the practices outlined in the List. The legislative history of the Trade Agreements Act of 1979 (TAA) explains, "The reference to specific subsidies in the definition is not all inclusive, but rather is illustrative of practices which are subsidies within the meaning of the word as used in the bill. The administering authority may expand upon the list of specified subsidies consistent with the basic definition." S. Rep. No. 96–249, 96th Cong., 1st Sess. 85 (1979). See also Trade Agreements Act of 1979: Statements of Administrative Action, H.R. Doc. No. 96–153, Pt. II, 96th Cong., 1st Sess. 432 (1979). The Illustrative List is not, therefore,

controlling of the identification and measurement of export subsidies, but must be considered along with other provisions of the statute and its legislative history, administrative practice and judicial precedent. In light of the foregoing reasons, the inclusion of proposed regulation 355.44(h), which corresponds to item (d) on the List, in no way supports the importers' position. Finally, contrary to the exporter's claim regarding administrative practice prior to 1979, Uruguayan Leather Apparel is not relevant to the exception in item (d). There was no provision of hides to apparel manufacturers by the Uruguayan government, nor did the Uruguayan government intervene to manipulate the domestic price of hides. Uruguayan leather tanners were provided payments upon the export of finished leather wearing apparel, and Treasury offset the amount of the payment to the extent that it consisted of a rebate of value-added and other indirect taxes.

We consider a government program that results in the provision of an input to exporters at a price lower than to producers of domestically-sold products to confer a subsidy within the meaning of section 771(5) of the Tariff Act. It is irrelevant whether the IPRS is consistent with item (d) because we are not concerned with world market prices but with the alternative price of pig iron commercially available in the domestic market. Thus, we determine the IPRS program to be countervailable.

An analogy to the IPRS is the case of export loans. In this case, as in many others, we have determined that export loans at preferential interest rates constitute a subsidy. In measuring the subsidy, we do not concern ourselves with whether firms could have borrowed money at commercial rates in international credit markets. The fact that, as a result of a government program, they borrowed from domestic sources at rates below those commercially available in the domestic market leads us to determine that a subsidy is bestowed.

Comment 2: The exporters argue that the benefit from the IPRS program is overstated, claiming that it should be offset by the Engineering Goods Export Assistance Fund (EGEAF) and Freight Equalization Fee (FEF) levies which are included in the price of pig iron. Because IPRS payments include the refund of both the EGEAF and the FEF, the amounts paid for these two levies should be deducted from IPRS receipts to determine the net subsidy from this program.

Conversely, petitioners argue that the EGEAF and the FEF levies are not allowable offsets under section 771(6) of the Tariff Act. These levies are included in the price of pig iron and are paid regardless of whether the castings produced from the purchased pig iron is sold domestically or exported.

Department's Position: We agree with petitioners. Section 771(6)(A) of the Tariff Act states that to determine the net subsidy the Department may subtract from the gross subsidy the amount of "any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy * * *" Both levies are paid by all consumers of Indian pig iron, not just exporters. Therefore, they do not constitute offsets to the IPRS benefit as defined in the statute.

Comment 3: The petitioners argue that a single country-wide rate should be applied to all exporters. Section 706(a) of the Tariff Act states, in part, that "the order *may* provide for differing countervailing duties," 19 U.S.C. 1671e(a) (emphasis added). Thus, Congress created a presumption in favor of country-wide rates. The exporters add that the Department's discretion to apply separate company-specific rates should not be exercised because all the companies benefit from the IPRS program to the same degree. The varying rates of subsidy attributable to the IPRS program led to the application of individual company rates not because the companies received differing rates of benefits under the IPRS program, but rather because the Department used IPRS payments received in 1986, rather than the amounts claimed on 1986 exports. Therefore, it is inappropriate to assign individual company rates solely because some companies, as a result of happenstance, received IPRS payments during the review period that were substantially different from the amounts claimed for exports made during the review period.

Conversely, the importers argue that the Department correctly assigned company-specific rates, rather than a single country-wide rate. The Department is required by its regulations to issue company-specific rates if significant differentials exist between the weighted-average country-wide rate and individual company rates.

Department's Position: We disagree with the petitioners and the exporters. Section 607 of the Tariff and Trade Act of 1984 establishes a statutory presumption in favor of country-wide countervailing duty rates, with the possibility of company-specific rates if the Department determines that a "significant differential" exists between companies receiving subsidies benefits. 19 U.S.C. § 1671e(a)(2). Pursuant to that section, the Department promulgated regulations to use a single weighted-average country-wide rate unless there is a significant differential between an individual company rate and the weighted-average country-wide rate. Under § 355.20(d)(3) of our regulations, a significant differential is a "difference of the greater of at least five percentage points or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis." In this review, five companies met the standard in the regulations for being significantly different; therefore, we assigned them company-specific rates.

Regarding the exporters' argument that it is appropriate to assign company-specific rates solely because lagged receipts of IPRS payments resulted in varying subsidies for individual companies, the Department has consistently used receipts and not claims filed during the review period to measure the subsidy from the IPRS program. We use receipts because they represent a tangible measure of benefits received. Claims, on the other hand, are tenuous in nature and have the potential to be rejected.

Comment 4: The exporters argue that it is inappropriate to calculate IPRS benefits based on when benefits are received because, even though payment is not received for months after shipment, the program provides known payments on a sale-by-sale basis. The Department should calculate the benefit from the IPRS using payments claimed during the review period, rather than payments received during the review period.

Conversely, the petitioners argues that the Department should be consistent from one review to the next and continue to use the total amount of IPRS payments received during the review period in calculating the benefit from this program.

Department's Position: We agree with petitioners. It has been our general practice to compute benefits received by a firm during the review period (in this case the 1986 calendar year), and apply them to the total value of exports for the same period. There are a few exceptions to this practice, such as when a benefit is earned on a shipment-by-shipment basis and the exact amount of the benefit is known at the time of export (see e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails from New Zealand (52 FR 37196; October 5, 1987)). Even if we were to consider the IPRS such an exception, the exporters did not make such a claim when we first determined

in the 1984 review of this order that the IPRS provided a countervailable subsidy. In that review, we calculated the subsidy from the IPRS program by allocating receipts over exports. The use of the lag in payments from this new program resulted in lower benefits than would have been the case if we had measured the subsidy based on IPRS claims during the 1984 review period. Furthermore, a shift in methodology at this time would result in a substantial gap in the measurement of subsidies from this program (*i.e.*, IPRS payments claimed in 1985 but received in 1986 would be excluded from not only 1985 but 1986 as well).

Comment 5: The petitioners argue that the Department incorrectly determined that the benefit from the IPRS program is zero for purposes of the cash deposit of estimated countervailing duties. While it is the Department's policy to adjust the deposit rate if a program-wide change has taken place since the review period but prior to publication of the preliminary results of administrative review, the exporters' renunciation of IPRS payments on exports of the subject merchandise to the United States does not constitute a program-wide change because it was not effectuated by an official act, statute, regulation or decree, and the exporters could resume receiving IPRS payments if they chose.

The exporters respond that the Department verified that no exporter was permitted to receive IPRS payments on sales to the United States of the subject merchandise and that this change applied to all exporters without exception. The Engineering Export Promotion Council (EEPC) issued a decree, verified by the Department, terminating IPRS payments for exports of subject castings to the United States. The EEPC is an official body legally sanctioned by the Indian Ministry of Commerce. A change that affects the entire program and affects equally all exporters under that program is a program-wide change. Accordingly, the exporters argue that the Department correctly determined that this program-wide change meets the Department's requirements for setting a deposit rate different from the net subsidy determined for the review period.

Department's Position: We agree with the exporters. At verification in the 1985 review, we established that the EEPC stopped accepting any IPRS claims filed on shipments of the subject merchandise exported to the United States after July 1, 1987. The Ministry of Commerce has subsequently enforced the renunciation. Allowing for the normal lag of a few months between the filing of IPRS claims and the receipt of payment, there is no evidence or reason to believe that IPRS payments will be received by any exporters after publication of the preliminary results. Therefore, for purposes of the cash deposit of estimated countervailing duties, we determine the benefit from this program to be zero.

Comment 6: Exporters argue that Govind's IPRS benefits were overstated in the preliminary determination due to the use of an incorrect denominator. Exporters state that Govind reported IPRS benefits received on all sales, not only subject castings exported to the United States. Therefore, the denominator should reflect all sales of castings to the United States as well as other countries.

Department's Position: We agree and have adjusted the denominator for purposes of the final calculations.

Comment 7: Petitioners argue that, given the fungible nature of pig iron in the production of castings and the possibility of claim-shifting by producers, producers may receive indirect IPRS benefits on the production of non-subject castings. Therefore, petitioners argue that these benefits should be included in the calculation of the countervailable benefits. Petitioners liken the IPRS rebates on non-subject castings to direct tax benefits—just as the Department determines the taxes a firm otherwise would have paid absent the existence of the tax subsidy, the Department should determine the price the respondents otherwise would pay for pig iron incorporated into subject castings, absent the subsidy on non-subject castings.

Respondents argue that non-subject castings are outside the scope of the order and that the Department has no authority to impose countervailing duties on such castings. Respondents continue by stating that petitioners' methodology is premised on the assumption that claims on non-subject castings could be doubled, which was not supported by the findings at verification in the 1985 review. Respondents argue that the IPRS is a rebate upon export and does not constitute a reduction of a company's liabilities.

Importers agree with respondents and argue that the statute only allows for the assessment of duties "upon importation of such articles or merchandise which have benefitted from the bounty or grant, whether directly or indirectly." Therefore, importers argue that the Department has no authority to countervail goods that are similar to goods being subsidized, but which do not benefit themselves. Furthermore, importers state that § 355.47(b) of the proposed regulations does not provide for fungibility arguments with respect to countervailable benefits, and that this is consistent with the Department's practice.

Department's Position: We disagree with petitioners. The scope of the order does not cover the castings in question. As such, any IPRS rebates allegedly received on non-subject castings are not countervailable with respect to this order.

Comment 8: Petitioners state that the Department incorrectly used the average domestic pig iron price as best information available (BIA) to calculate Super Castings' and Govind's CCS benefit amount. Petitioners argue that both companies failed to report the information requested by the Department, necessary to calculate the companies' respective average pig iron price during the review period. Therefore, petitioners argue that these companies should not be rewarded for their failure to comply and that the Department should use as BIA, the overrebate amount found in the administrative review period for January 1, 1982 to December 31, 1982, the most recent review in which an overrebate was found under this program.

Exporters argue that BIA should not be used for Govind and Super Castings because these companies have not been uncooperative. Furthermore, in calculating these companies' tax incidence the Department used BIA and found that there was no overrebate.

Department's Position: We agree with exporters. Super Castings and Govind were not uncooperative in this review. Therefore, we have not altered our treatment from the preliminary determination of the CCS program with respect to these two companies.

Comment 9: Exporters argue that the CCS program did not provide an overrebate to Select Steels. As an exporter, Select Steels does not have access to the tax incidence information on inputs requested by the Department in its questionnaire. Exporters state that the Department should have requested additional clarification if this was unclear. In addition, exporters state that the Department's use of BIA in the previous review was inconsistent with that at the preliminary in this review because BIA in the 1985 review was the tax incidence for all other companies which was higher than five percent. Therefore, exporters argue that the Department should determine that Select Steels did not receive a

countervailable subsidy from an overrebate of the CCS.

Importers agree with exporters and argue that Select should not receive a BIA rate if the Department failed to request clarification of information on the record. Furthermore, importers argue that Select's BIA rate should not be included in the calculation in the "all others" rate since the Department has found, in the last three reviews, that there was no overrebate.

Including Select's BIA rate in the calculation of the "all others" rate would unnecessarily penalize other companies.

Department's Position: We have reviewed the information on the record and the clarification provided in the exporters' case brief. Based on this information and based on the calculation of a benefit amount using the average domestic price of one metric tonne of pig iron, we find, as for Govind and Super Castings, that Select does not receive an overrebate.

Comment 10: Exporters argue that there is a clerical error in the calculation of the tax benefits for Uma and Commex which should be corrected at the final.

Department's Position: We agree and have recalculated Uma and Commex's tax benefits for purposes of the final.

Comment 11: Exporters argue that the denominator used in calculating the benefit from pre-shipment loans for Govind was incorrect. Exporters state that the denominator used for purposes of the preliminary results reflected only Govind's sales of the subject castings to the United States while the loan data provided was for exports of all castings, not only subject castings.

Department's Position: We agree and have adjusted the denominator to reflect exports to the United States of all castings.

Comment 12: Petitioners state that adjustment for RSI's cost of ECGC insurance in the preliminary results was incorrect, because the premium does not meet the criteria for an allowable offset and because it was disallowed in the previous review.

Exporters argue that the insurance premium is a legitimate offset because the premium increases the cost of the financing to the Indian exporter.

Importers concur that the insurance premium is an allowable offset because it represents a cost of obtaining financing. *Department's Position:* We have again reviewed the information on the record and have reconsidered the position taken in the preliminary results. As a result, we have disallowed the insurance premium as an offset. Verification in the 1985 review established that the insurance fee is a risk premium. Section 771(6)(A) of the Act defines those fees that may be considered offsets and they do not include risk premiums.

Comment 13: Petitioners state that the Department should use BIA to calculate Select Steels' pre-shipment financing benefit because the company failed to submit requested information to the Department. As a result, petitioners argue that the Department made certain incorrect assumptions when calculating the benefit. Therefore, Select Steels should not be rewarded for its failure to comply and the Department should calculate the benefit based on BIA, which is the lowest reported preferential borrowing rate available during the review period.

Exporters argue that Select borrows on a revolving line of credit and that the information provided the Department was sufficient to permit the calculation of Select's interest expense.

Department's Position: We agree with exporters and have not altered our treatment of Select's pre-shipment financing for the final.

Comment 14: Petitioners state that the Department should correct a clerical error made in calculating the net central excise tax amount for two companies under the CCS program.

Department's Position: We agree with petitioners and have made the adjustment.

Final Results of Review

After reviewing all of the comments received, we determine that the following net subsidies exist for the period January 1, 1986 through December 31, 1986:

Manufacturer/exporter	Net ad valorem subsidy (percent)
R.B. Agarwalla and Company	17.34
Crescent Foundry Co. Pvt. Ltd.	18.07
Govind Steel Co. Ltd.	180.23
Kejriwal Iron and Steel Works	44.85
Select Steels	17.64
All Other Manufacturers or Exporters	25.50

The Department will instruct the Customs Service to assess countervailing duties at the above percentages of the f.o.b. invoice price on shipments of the subject merchandise exported on or after January 1, 1986, and on or before December 31, 1986.

As a result of the termination of benefits attributable to the IPRS program, the Department will also instruct the Customs Service to collect the cash deposits of estimated countervailing duties for the following, on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of administrative review:

Manufacturer/exporter	Net ad valorem subsidy (percent)
Carnation Enterprise Pvt. Ltd.	0.00
Kejriwal Iron and Steel Works	0.00
All other Manufacturers or Exporters	2.00

This administrative review and notice are published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 14, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-1311 Filed 1-17-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Certain Continuous Cast Steel Slabs

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain continuous cast steel slabs.

SHORT-SUPPLY REVIEW NUMBER: 35.

SUMMARY: The Secretary of Commerce ("Secretary") hereby denies a request for a short-supply allowance for certain continuous cast ("concast") steel slabs for January-June 1991 under Article 8 of the U.S.-E.C. and U.S.-Brazil steel arrangements and paragraph 8 of the U.S.-Mexico steel arrangement.

EFFECTIVE DATE: January 11, 1991.

FOR FURTHER INFORMATION CONTACT: Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-0165 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On December 13, 1990, the Secretary received an adequate short-supply petition from Weirton Steel Corporation ("Weirton") requesting a short-supply allowance for 182,600 net tons of certain low carbon concast steel slabs for the first three quarters of 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the

Arrangement Between the Government of Brazil and the Government of the United States Concerning Trade in Certain Steel Products, and paragraph 8 of the Arrangement Between the Government of Mexico and the Government of the United States Concerning Trade in Certain Steel Products. Weirton requested short supply because it has been unable to secure a domestic source(s) of supply for the first three quarters of 1991 and because insufficient regular export licenses are available to potential foreign producers to supply Weirton's needs available to potential foreign producers to supply Weirton's needs for this time period.

The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

The requested material meets the following specifications:

Dimensions:

Thickness: 8 inches to 9 inches.
Length: 250 inches to 400 inches.
Width: 27 inches to 34 inches.

Tolerances:

Width: −¼ inc, +½ inch.
Thickness: −⅛ inch, +⅛ inch.
Length: −3 inches, +3 inches.
Camber: 1 inch maximum to 33 foot length.
Bow: 1 inch maximum to 33 foot length.
Profile: (level) 1/16 inch maximum off level (edge to edge across width).
Surface: Critical exposed material.

Chemical Composition:

C—0.04% to 0.07%
Mn—0.25% to 0.38%
S—0.015% maximum
P—0.012% maximum
Si—0.020% maximum
Cu—0.060% maximum
Sn—0.020% maximum
Cr—0.050% maximum
Ni—0.040% maximum
Mo—0.020% maximum
Al—0.030% to 0.055%
AISI Designation: 1006.

Action

On December 13, 1990, the Secretary established an official record on this short-supply request (Case Number 35) in the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce at the above address. On December 21, 1990, the Secretary published a notice in the Federal Register announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than December 28, 1990, and interested parties were invited to file replies to any comments no later than five days after that date. In order to determine whether this product, or a viable alternative product, could be supplied in the U.S. market for the period of this review, the Secretary sent questionnaires to: Armco Inc. ("Armco"), Bethlehem Steel Corporation ("Bethlehem"), Citisteel USA ("Citisteel"), Geneva Steel Company ("Geneva"), Gulf States Steel ("Gulf States"), Inland Steel Industries ("Inland"), LTV Steel Company ("LTV"), Lukens Steel Company ("Lukens"), McLouth Steel ("McLouth"), National Steel Corporation ("National"), USX Corporation ("USX"), Wheeling-Pittsburgh Steel Corporation ("Wheeling-Pittsburgh"), Rouge Steel Company ("Rouge"), and Sharon Steel Corporation ("Sharon"). The Secretary received timely questionnaire responses from 9 of the 14 companies and one timely response to comments by questionnaire respondents. No comments were filed in response to the Federal Register notice.

Questionnaire Responses

Five questionnaire recipients (Lukens, USX, Sharon, Wheeling-Pittsburgh, and Geneva) did not respond. Six questionnaire respondents (Gulf States, Citisteel, Rouge, McLouth, National, and Inland) indicated that they were unable to supply slabs to Weirton. Three respondents (Armco, LTV, and Bethlehem) indicated an ability to supply slabs during one or more of the first three quarters in 1991.

Armco offered 15,000 to 20,000 net tons of slabs in the first quarter and 40,000 to 50,000 net tons in the third quarter. For Weirton's second quarter needs, Armco noted "to be determined." LTV offered to supply 20,000 net tons for the first quarter of 1991 and noted that it would be willing to supply slabs to Weirton for second and third quarter delivery but that it was too early to accept such orders. Bethlehem initially offered to supply a minimum of 20,000 net tons of slabs in each of the second and third quarters. Bethlehem subsequently modified its response, offering to supply 20,000 net tons of slabs in the first quarter and 36,000 net tons in the second quarter.

Analysis

The only question in this review is whether sufficient supplies of slabs are available to meet Weirton's actual consumption needs, which are as follows: 5,000 net tons in the first quarter; 36,300 net tons in the second quarter; 101,300 net tons in the third quarter; and 40,000 net tons in October 1991. This differs from the quarterly tonnage requested by Weirton (20,000 net tons 61,300 net tons, and 101,300 net tons in the first three quarters, respectively) due to extended shipping schedules for receiving offshore material. (A portion of the tonnage requested for each quarter must be shipped in that quarter in order to be received in time by Weirton for use in the following quarter.)

Due to the uncertainty and volatility in this market at this time, it is only feasible to make a decision on this case for the first two quarters of 1991. Weirton's actual consumption needs for the first quarter are 5,000 net tons. Between the three producers offering tonnage for this quarter, the minimum total available is 55,000 net tons, as follows: Armco—15,000 net tons minimum; LTV—20,000 net tons; and Bethlehem—20,000 net tons. Weirton's actual consumption needs for the second quarter are 36,300 net tons. Bethlehem has offered to supply the full 36,300 net tons. Weirton notes in its response to comments that it does appear that a formal arrangement will be reached with Bethlehem and/or Armco to fulfill its estimated needs for the first and second quarters. Hence, no shortage of material to meet Weirton's needs exists for the first two quarters of 1991.

Conclusion

Because the domestic industry is able to supply Weirton with sufficient material meeting its specifications for the first and second quarters, the Secretary determines that short supply does not exist with respect to the requested product for this time period. Pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, the Secretary hereby denies a short-supply allowance for the requested low carbon concast slabs for January-June 1991. Due to current market volatility, the Secretary will not consider the balance of Weirton's 1991 needs at this time. Should Weirton require additional material to meet those needs, it should submit a new request to the Secretary no earlier than April 1, 1991.

Dated: January 11, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–1312 Filed 1–17–91; 8:45 am]

BILING CODE 3510–DS–M

Short Supply Review: Certain Wide Stainless Steel Hot Bands

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain wide stainless steel hot bands.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 12,000 net tons of certain 61.25 inch wide stainless steel hot bands for 1991 under Article 8 of the Arrangement Between the European Communities and the Government of the United States of America Concerning in Certain Steel Products ("the U.S.-EC Arrangement").

SHORT-SUPPLY REVIEW NUMBER: 36.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, published in the **Federal Register** on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain wide stainless steel hot bands. On January 11, 1990, the Secretary received an adequate petition from Mercury Stainless Inc. ("Mercury Stainless") requesting a short-supply allowance for 12,000 net tons of this product during 1991 (1,000 tons per month) under Article 8 of the U.S.-EC Arrangement. Mercury Stainless is requesting short supply for this material because potential foreign suppliers prefer using existing quotas to export higher value products (e.g. cold-rolled sheets), and the only potential domestic producer is an unreliable source of supply.

The requested hot bands meet the following specifications:

Grades: T–304, T–304L, T–316, T–316L.

Thickness: 0.145 inch, 0.187 inch, 0.210 inch, 0.250 inch. Variations in gauge shall not exceed 10 percent of the nominal, and tolerance will be ordered gauge plus or minus 5 percent.

Width 61.25 inches (+ ½ inch, — ¼ inch tolerance).

Mercury Stainless is requesting 74.5 percent of the material in the T–304 grade, 10.5 percent in the T–304L grade, 1.5 percent in the T–316 grade, and 13.5 percent in the T–316L grade.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than February 8, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than January 25, 1991, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after January 25, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Jim Rice or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–2667 or 377–0159.

Dated: January 16, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–1405 Filed 1–17–91; 11:02 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Fishery Management Plan for Atlantic Swordfish; Submission Date for Public Comments

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

ACTION: Notice of submission date for public comments.

SUMMARY: NMFS will hold a public hearing on January 15, 1991, to obtain comments on options for developing a Secretarial Amendment to the Fishery Management Plan for Atlantic Swordfish. The notice of the hearing indicated that public comments were encouraged either at the hearing or in writing, but no deadline date was specified for written comments. This notice specifies the deadline for submitting any written views that could not be presented at the hearing.

DATES: Public comments are invited in writing until February 1, 1991.

ADDRESSES: Comments may be mailed to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone at 301–427–2347.

SUPPLEMENTARY INFORMATION: The NMFS published a notice on December 28, 1990, announcing a public hearing on January 15, 1991, to obtain comments on options for developing a Secretarial Amendment to Fishery Management Plan for Atlantic Swordfish (55 FR 53319). The notice encouraged the public to present comments at the public hearing or in writing. No deadline was indicated for written comments. This notice establishes a deadline of February 1, 1991, for submitting public comments on the Secretary's management options that could not be presented at the hearing.

Dated: January 14, 1991.

Richard H. Schaefer,

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

[FR Doc. 91–1194 Filed 1–17–91; 8:45 am]

BILLING CODE 3510–22–M

[Docket No. 91045-1009]

Policy Statement on the Weather Service/Private Sector Roles

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice publishes the policy statement on the weather service/private sector roles entitled "The National Weather Service (NWS) and Private Weather Industry: A Public-Private Partnership." This statement was jointly prepared by the Privatization Branch of the Office of Management and Budget (OMB) and the National Oceanic and Atmospheric Administration's National Weather Service (NWS). The process, which began in early 1989, resulted in the milestone publication of a draft policy statement in the **Federal Register** on December 22, 1989 (54 FR 52839). During the past year the comments received, as well as a continuing dialogue with the private sector and internal NWS and OMB coordination, have resulted in this policy statement.

The policy statement focuses on the concept of a public-private partnership to enhance total weather services to the American public, government, and industry. It designates the NWS as the single "official" voice in the critical area of severe weather, hurricane, flood, and tsunamic warnings. It emphasizes the need to protect the free and open exchange of meteorologic, hydrologic, and oceanographic data as well as delimiting the areas in which the NWS and the private sector will provide products and services. It provides a mechanism to implement this policy and establishes a strong basis for a Government/private sector partnership and should minimize any misunderstandings and false expectations which may occur between both parties. It offers the close cooperation and coordination needed to ensure that the public receives the best possible weather service.

Generally the comments received were favorable. Some, however, reflected a concern on the part of the private weather industry that the policy statement could provide restraints on existing activities. Several comments urged the NWS to more clearly define what the relationship between the public and private weather industry should be. The information which follows will address the significant comments received and the new areas which were added to the policy statement. In addition, there were comments concerning clarity in general and changes were made in both restructuring and rewording the statement in order to respond.

Comment—Comments were received from the private weather industry expressing concern on what it perceives as a limited role for it in providing weather services to the general public.

Response—The NWS firmly believes that the private weather industry plays an important and essential role as a partner in ensuring that the Nation receives the full benefit of weather and hydrometeorological information for promoting protection of life and property, and economic prosperity. The final policy statement more clearly delimits areas in which the NWS and the private weather industry will provide such products and services as well as a mechanism to implement the policy.

Comment—Under the section entitled General Criteria, the NWS noncompetition paragraph will be better stated, "The NWS will not compete with the private sector in those areas where the private sector services are available." Along these same lines, a responder voiced concern over the NWS providing specialized agricultural services. Another expressed concern about the NWS withdrawing from providing those same services.

Response—The NWS will not compete with the private sector when a service is currently provided or can be provided by commercial enterprises, unless otherwise directed by applicable law, e.g., the provision of NOAA's Appropriations Act concerning the fruit frost program which has attracted some private sector interest.

The NWS will also assure the public of continuation of services when those services are not available from the private sector, unless directed otherwise.

Comment—Implication of the use of the words "single" and "official," especially in combination, was of great concern to one of the responders. He states that the connotation of the use of the word "official" means "governmental." Then the wording is not objectionable, but if there is any intent here which suggests that by making the NWS the "single official voice," the private weather industry is to be restricted or limited in any way in providing to the public its own weather forecasts or information regarding severe weather or floods, then this is a serious incursion into the area of freedom of speech.

Response—In order to avoid confusion on the part of the public, it is vital that there be one single "official" voice when issuing warnings of life threatening situations. The policy statement is not intended to discourage or preclude the private sector from providing comments and advice on publicly issued warnings, but the distinction between the NWS "official" warning and these comments and interpretations of it must be clear to the public. This is in no way a restraint on freedom of speech.

Comment—Placing scientific data, especially real-time information, that can affect decisions concerning the protection of life and property and the ability of firms in the private weather sector as well as individual meteorologists and scientists to access, analyze, comment upon, predict from, and disseminate information is of grave concern. Placing such resources in the hands of a limited number of major corporations who have control, not only over the collection of the data but its dissemination and the establishment of the price that will be paid for the receipt of the data, coupled with the ability to pick and choose who may be given access to that data, needs to be stopped.

Response—The NWS provides access to near real-time alphanumeric and graphical data and information through a variety of ways. This access is open to anyone in the marketplace who signs an agreement with the NWS or a contractor who has been competitively selected to provide specialized services for the delivery of and access to data by the private sector and others requiring that data. An example is the Contel ASC contract to deliver the NOAA Weather Wire Service to the Government and other subscribers around the Nation at an agreed to price. Contel, like any NWS contractor, cannot pick and choose who receives the data but is required to provide the data both efficiently and at a more reasonable price than the NWS could do by itself. Currently the NWS costs are based on the incremental access costs, but a fair market pricing policy is being developed as a result of the 1990 Budget Reconciliation Act.

Comment—One responder expressed concern over the direct participation of NWS personnel with the radio and television media.

Response—The policy limits direct NWS participation with the radio and television media to those situations requiring urgent public action, as in the case of severe or extreme weather and flooding or to education and preparedness activities.

Comment—Representatives of the World Meteorological Organization and others questioned how the NWS intends to ensure that the free and open

international exchange of data concept continues.

Response—The NWS has incorporated into this final policy statement a section requiring that the private weather industry and the NWS work together to protect the free and open international exchange of data provided by the NWS by ensuring that the data are not used to compete directly with or interfere with internal policies of national meteorological agencies in those countries where they also provide commercial weather services. Any activity by a U.S. weather company in another country must, of course, be in accordance with the laws and established practices of that country.

Comment—Representatives of the library community questioned whether this policy statement would in any way interfere with existing laws, e.g., title 44 U.S.C., which requires NOAA and NWS publications to be made available through the Depository Program regardless of privatization.

Response—This policy statement in no way changes or alters existing arrangements among NOAA and the NWS and the library community for the receipt of its data and information.

Comment—Insert the following two phrases in the section entitled "The Private Weather Industry."

• Provide climatological summaries, probability values of weather extremes, and similar materials for design and construction; and

• Provide special case-oriented retrospective weather reconstruction and provide expert testimony relating to them for weather-related private litigation.

Response—The first phrase dealing with the provision of climatological summaries, probability values of weather extremes, and similar materials for design and construction has been included in the final policy statement. However, the second phrase was not included since the subject of testimony in litigation is too complex for this statement. The issue is addressed in detail in Federal regulations (15 CFR parts 15a and 909.4) which state that NOAA employees will not provide such testimony and generally anticipate that the private sector will. However, exceptions exist where NOAA and the NWS could provide expert testimony, for example, in Government-related cases. This, of course, in no way precludes the private weather industry's recognized role to provide expert testimony in both civil and Government litigation.

This policy statement is the first of its kind to be developed within NOAA. It applies only to the National Weather Service and should not be interpreted to apply to any other component of NOAA nor to prejudice any future decisions by NOAA and its components with regard to relations with private sector users of their services and products.

FOR FURTHER INFORMATION CONTACT: Edward M. Gross, Constituent Affairs Officer (NWS), 1325 East-West Highway, Silver Spring, Maryland 20910, (301) 427–7258.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Policy Statement of the Weather Service/Private Sector Roles

The National Weather Service and the Private Weather Industry: A Public-Private Partnership

Accurate and timely weather and river forecast and warning systems are vital to the safety and well-being of the Nation's population. Weather and water resources forecasting harnesses modern advances in information to increase the productivity of American industry, thereby contributing to economic growth. A public-private partnership is needed to provide American industry with the most effective means to increase productivity.

A continuing strong cooperative relationship between the National Weather Service (NWS) and the private sector will provide both industry and the general public with more accurate and timley weather and river forecasts and other hydrometeorological products. An effective partnership will allow each sector to perform those functions which it can carry out best and avoid unnecessary duplication or competition between the Government and the private sector.

The purpose of this policy statement is to define the relationship and respective roles of NWS and the private sector to ensure that Federal resources are focused on providing essential core functions and to encourage the private sector to provide those services which it is ideally suited to provide.

The goal is a partnership which enhances total service to the American public, Government, and industry.

General Criteria

The policy statement is based on the respective roles of NWS and the private sector described below:

• The primary mission of the National Weather Service is the protection of life and property and the enhancement of the national economy. Hence, the basic functions of NWS are the provision of forecasts and warnings of severe weather, flooding, hurricanes, and tsunami events; the collection, exchange, and distribution of meteorological, hydrologic, climatic, and oceanographic data and information; and the preparation of hydrometeorological guidance and core forecast information. The NWS is the single "official" voice when issuing warnings for life-threatening situations and is the source of a common national hydrometeorological information base. The national information base forms an infrastructure on which the private sector can build and grow.

• The NWS will not compete with the private sector when a service is currently provided or can be provided by commercial enterprises, unless otherwise directed by applicable law.

• The private weather industry is ideally suited to put the basic data and common hydrometeorological information base from the NWS into a form and detail that can be utilized by specific weather and water resources-sensitive users. The private weather industry provides general and tailored hydrometeorological forecasts and value-added products, and services to segments of the population with specialized needs.

Policy

In order to carry out its mission and foster this public-private partnership, NWS shall:

• Collect and exchange hydrometeorological data and information on a national and international basis;

• Issue warnings, and forecasts of severe weather, floods, hurricanes, and tsunami events which adversely affect life and property;

• Issue weather, river, and water resources forecasts, and related guidance materials used to form a common national hydrometeorological information base for the general public, private sector, aviation, marine, forestry, agricultural, navigation, power interests, land and water resources management agencies, and emergency managers at all levels of government;

• Provide climatological summaries, frequencies, and limits of hydrometeorological elements to

establish a basis for various Federal regulations and design criteria and to support the real-time operations of federally-operated facilities;

- Provide private weather access to near real-time alphanumeric and graphical data and information through a variety of techniques;
- Establish basic quality controls for the observed and collected data, and provide the user community with sufficient information to evaluate data and forecast reliability and applicability;
- Conduct and support research and development of atmospheric and hydrometeorological models;
- Produce global, national, or general regional atmospheric models and river basin models.

The NWS also recognizes the important contribution that private broadcast meteorologists, newspapers, and news agencies make to the timely dissemination of NWS watches and warnings and other products that may require public response. The relationship is one of mutual support and cooperation. In order to protect the competitive nature of the privately-owned media, direct NWS participation with the radio and television media should be limited to those situations requiring urgent public action as in the case of severe or extreme weather and flooding or educational and preparedness activities.

The private weather industry provides:

- Tailored weather, river, and water resources forecasts detailed hydrometeorological information, consultation, and data for weather, river, and water resources sensitive industries and private organizations;
- Value-added products such as weather and hydrologic-related computer hardware and software, observational systems, imaging systems, displays, communications, charts, graphs, maps, and images for clients;
- Climatological summaries, probability values of weather extremes, and similar material for specific design and construction problems.

Free and open international exchange of data.

- The private weather industry and the NWS will work together to protect the free and open international exchange of meteorologic, hydrologic, and oceanographic data provided by the NWS by ensuring that the data are not used to compete directly with or to interfere with internal policies of national meteorological agencies in those countries where they also provide commercial weather services;

This concept of a public-private partnership is not intended to discourage or preclude the private sector from providing comments and advice on publicly issued warnings and forecasts nor government agencies from obtaining weather services from the private sector. However, in the critical area of severe weather, hurricane, flood, and tsunami warning, the NWS is the single "official" voice.

Implementation

It is the responsibility of all NWS officials and employees to comply with this policy. An effective partnership requires that the parties understand each other's role and be sensitive to the constraints and aspirations that govern their respective actions. This policy statement cannot cover all possibilities. However, it should minimize any misunderstandings and false expectations between both parties. Close coordination and cooperation are essential to ensure that the public receives the best possible weather service. Regional and local NWS officials should arrange periodic meetings with private meteorologists and hydrologists to promote an exchange of ideas which will be mutually beneficial and increase understanding between the two groups. The overriding goal of this policy statement is to ensure that the Nation receives the full benefit of weather and hydrometeorological information to promote safety of life and property and economic prosperity. Effective partnership between the NWS and the private meteorological sector is the means to that end.

Persons who believe that NWS or any of its employees are providing specialized services contrary to this policy may bring the matter directly to the attention of the Assistant Administrator for Weather Services, 1325 East-West Highway, room 18130, Silver Spring, Maryland 20910. The Assistant Administrator for Weather Services shall ascertain the facts and report promptly to the complainant the results of his inquiry and advise him of any remedial action that will be taken by the NWS to assure full compliance with this policy. In the event that the situation resulted from decisions made by the Assistant Administrator, the resolution will take place at the National Oceanic and Atmospheric Administration level.

[FR Doc. 91–1242 Filed 1–15–91; 11:37 am]
BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India; Correction

January 15, 1991.

In the third column, second table, of the notice published in the **Federal Register** on December 17, 1990 (55 FR 51753), change "kilograms" to "square meters" for Category 665–0.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–1305 Filed 1–17–91; 8:45 am]
BILLING CODE 3510–DR–M

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

January 15, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: January 22, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, 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).

The existing export visa arrangement between the Governments of the United States and Hong Kong is being amended to permit the merge catagory visa 633/634.

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 55 FR 50756, published on December 10, 1990). Also see 48 FR 2400,

published on January 19, 1983, and 51 FR 27235, published on July 30, 1986.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 15, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1983, as amended on July 25, 1986, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong, for which the Government of Hong Kong has not issued an appropriate visa.

Effective on January 22, 1991 the directive on January 14, 1983, as amended, is amended further to include the merged Category visa 633/634 for man-made fiber apparel in Categories 633 or 634, produced or manufactured in Hong Kong and exported from Hong Kong on and after January 1, 1990. You are directed to permit entry of merchandise in Categories 633 and 634 visaed as merged Categories 633/634 or 633/634/635 or the correct category corresponding with the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreement has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-1243 Filed 1-17-91; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

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

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: February 19, 1991.

ADDRESSES: 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 October 19, November 26 and 30, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 42428, 49101 and 49677) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and 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 and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Clamp, Panel
5450-00-297-5271
Mast Section
5985-01-072-8066
Cover, Mattress Pad
7210-00-118-0010

Services

Commissary Shelf Stocking, Custodial and Warehousing, Vandenberg Air Force Base, California
Commissary Shelf Stocking and Custodial, Fort Carson, Colorado
Food Service Attendant, Naval Training Station, Orlando, Florida
Janitorial/Custodial, U.S. Courthouse, 312 N. Spring Street, Los Angeles, California.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-1289 Filed 1-17-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

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

ACTION: Proposed additions to procurement list.

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

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 19, 1991.

ADDRESSES: 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 commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Pallet, Wood
3990-00-NSH-0063 40" × 48" × 50"
3990-00-NSH-0064 48" × 48" × 50"
(Requirements of the Government Printing Office, Washington, DC)
Fastener Assembly, Clamp Strap
5820-00-937-9844
Surgical Pack, Disposable
6532-01-018-3286
Pad, Writing Paper
7530-01-124-7632
(Requirements of GSA Region 10)

Services

Grounds Maintenance, McClellan Air Force Base, California
Grounds Maintenance, Vacant Family Housing Quarters, Fort Campbell, Kentucky

Parts Sorting, Red River Army Depot, Texarkana, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–1290 Filed 1–17–91; 8:45 am]

BILLING CODE 6820–33–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Flammability Standards for Clothing Textiles and Vinyl Plastic Film

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through February 28, 1994, of information collection requirements in regulations implementing the flammability standards for clothing textiles and vinyl plastic film. These regulations are codified at 16 CFR parts 1610 and 1611, and prescribe requirements for testing and recordkeeping by persons and firms issuing guaranties for products subject to the Standard for the Flammability of Clothing Textiles, and the Standard for the Flammability of Vinyl Plastic Film.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207

Title of information collection: Standard for the Flammability of Clothing Textiles (16 CFR 1610); Standard for the Flammability of Vinyl Plastic Film (16 CFR 1611).

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of goods manufactured or imported.

General description of respondents: Manufacturers and importers of fabrics and film used in wearing apparel, and manufacturters and importers of garments other than children's sleepwear.

Estimated number of respondents: 1,000

Estimated average number of hours per respondent: 101.6 per year.

Estimated number of hours for all respondents: 101,600 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Elizabeth Harker, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: January 14, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91–1221 Filed 1–17–91; 8:45 am]

BILLING CODE 6355–01–M

COPYRIGHT ROYALTY TRIBUNAL

[CFT Docket No. 90–5–CRA]

Adjustment of the Basic and 3.75% Cable Royalty Rates

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: Following the withdrawal of all cable rate adjustment petitions, the Tribunal is giving notice that no other cable rate petitions are pending with the Tribunal, and no further adjustments to the cable copyright royalty rates can be considered until the next window year 1995.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202–673–5400).

SUPPLEMENTARY INFORMATION: The Copyright Act of 1976 authorizes the Copyright Royalty Tribunal to be petitioned to adjust the cable copyright royalty rates in any year ending in a 0 or a 5. It also authorizes the Tribunal to be petitioned to adjust the cable rates whenever the FCC changes its blackout rules or distant signal importation rules.

The FCC changed its syndicated exclusivity blackout rules in 1989, with blackout demands to begin January 1, 1990, and acordingly, the Tribunal was petitioned by NCTA and CATA to adjust the syndicated exclusivity surcharge. The Tribunal commenced the proceeding on January 10, 1990, and published its final rule on August 16, 1990. 55 FR 893; 55 FR 33604.

In the same petition, NCTA also requested that there be a downward adjustment of the basic and 3.75% rates paid by Form 3 cable systems. The basis for this request was the FCC's change of its syndicated exclusivity blackout rules.

NCTA recommended that this second request be heard by the Tribunal in a later proceeding. Since 1990 was also a window year in which the Tribunal can be petitioned to adjust the cable rates, the Tribunal determined that it would consolidate NCTA's second request with any other rate adjustment petitions that would be filed with the Tribunal in 1990.

On December 28, 1990, the Tribunal received cable rate adjustment petitions from the Program Suppliers, the Joint Sports Claimants, PBS, the Music Claimants, the Canadian Claimants, and a joint petition from NCTA and CATA.

On January 11, 1991, the Tribunal received a Joint Withdrawal of Petitions For Rate Adjustments from all parties who had filed a cable rate adjustment petition with the Tribunal, including the rate adjustment petitions filed January 2, 1990 by NCTA and CATA, and the above mentioned rate adjustment petitions filed December 28, 1990. The parties, including copyright owners and users, agreed that they will not seek any adjustment to the cable copyright royalty rates.

Accordingly, all petitions filed due to the FCC's reinstatement of the syndicated exclusivity blackout rules or due to the window year having been withdrawn, there are no cable rate adjustment petitions pending with the Tribunal.

Therefore, the Tribunal will not consider adjusting the cable copyright royalty rates until the next window year, 1995, or until the FCC makes any further modification to its blackout rules or reinstates its distant signal importation rules.

Dated: January 15, 1991.

Mario F. Aguero,

Chairman.

[FR Doc. 91–1241 Filed 1–17–91; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby

given that a closed meeting of the DIA Advisory Board has been changed as follows: The January 30–31, 1991 meeting has been rescheduled to Wednesday and Thursday, February 13–14, 1991, (8 a.m. to 5 p.m.) each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, 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 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical intelligence matters.

Dated: January 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–1229 Filed 1–17–91; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 5 February 1991.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: January 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–1226 Filed 1–17–91; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday and Thursday, 13 & 14 February 1991.

ADDRESS: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: January 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–1227 Filed 1–17–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Advisory Committee on Military Personnel Testing

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 5 p.m. on January 31–February 1, 1991. The meeting will be held at the Radisson Mark Plaza Hotel, 711 NW 72nd Avenue, Miami, Florida 33126. The purpose of the meeting is to review: (1) Planned changes in the Department of Defense's Student Testing Program, (2) progress on developing paper-and-pencil and computerized enlistment aptitude and adaptability screening tests, and (3) efforts to equate new and old test answer sheets. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than January 25, 1991.

Dated: January 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–1225 Filed 1–17–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on National Space Launch Strategy; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on National Space Launch Strategy will meet in closed session on 8 February, 1991 at Science Applications International Corporation (SAIC), 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 receive a briefing by the Air Force

regarding changes affecting DoD space launch requirements which have occurred since the Task Force issued its final report.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 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 14, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–1228 Filed 1–17–91; 8:45 am]

BILLING CODE 3810–01–M

Recoupment of Nonrecurring Cost on Sales of U.S. Products and Technology (DoD Directive 2140.2)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of availability.

SUMMARY: This document is to inform the public and Government Agencies of the availability of DoD Directive 2140.2, "Recoupment of Nonrecurring Cost on Sales of U.S. Products and Technology." Interested persons may obtain copies, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 703–487–4650. The NTIS accession number is PB 90 144858.

Dated: January 15, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–1288 Filed 1–17–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Privacy Act of 1974; Alter a System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Air Force proposes to alter an existing record system in its inventory of records systems notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This action will be effective February 19, 1991, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to Mrs. Anne Turner, SAF/AAIA, The Pentagon, Washington, DC 20330–1000. Telephone (202) 697–3491 or Autovon 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DoD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 8, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 5, 1986
51 FR 7317 Mar. 5, 1986
51 FR 16735 May 6, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 9, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 9, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Air Force Address Directory)
55 FR 27868 Jul. 6, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990
55 FR 38126 Sep. 17, 1990
55 FR 42625 Oct. 22, 1990
55 FR 42629 Oct. 22, 1990

An altered record system report, as required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), was submitted on December 20, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals" dated December 12, 1985 (50 FR 52738, December 24, 1985). The specific changes to the record system being altered are set forth below, followed by the system notice, as altered, published in its entirety.

Dated: January 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 AF MP C

SYSTEM NAME:

F035 AF MP C—Military Personnel Records System (51 FR 44333, December 9, 1986).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add "Air Force Reserve and Air National Guard" to the categories of individuals covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete "Precision Measurement Equipment (PME)," and insert "Professional Military Education (PME)". Delete "drug abuse" records from this category.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add "and Executive Order 9397" to the end of the entry.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with "Records may be disclosed to the Veterans Administration for research, processing and adjudication of claims, and providing medical care.

To dependents and survivors for determination of eligibility for identification card privileges.

To Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) for determination of eligibility and benefits.

To local Immigration/Naturalization office for accountability and audit purposes.

To State Unemployment Compensation offices for verification of military service related information for unemployment compensation claims; Respective local state government offices for verification of Vietnam "State Bonus" eligibility.

To the Office of Personnel Management for verification of military service for benefits, leave, or Reduction in Force purposes, and to establish Civil Service employee tenure and leave accrual rate.

To the Social Security Administration to substantiate applicant's credit for social security compensation; Local state office for verification of military service relative to the Soldier and Sailors Civil Relief Act. Information as to name, rank, Social Security Number, salary, present and past duty assignments, future assignments that have been finalized, and office phone number may be provided to military financial institutions who provide services to DoD personnel. For personnel separated, discharged or retired from the Air Force, information as to last known address may be provided to the military financial institutions upon certification by a

financial institution officer that the facility has a dishonored check or defaulted loan.

Information may also be provided to the US Department of Agriculture for investigative and audit procedures.

To the Selective Service Agencies for computation of service obligation.

To the American National Red Cross for emergency assitance to military members, dependents, relatives or other persons if conditions are compelling.

To the Department of Labor for claims of civilian employees formerly in military service, verification of service-related information for unemployment compensation claims, investigations of possible violations of labor laws and for pre-employment investigations.

To the National Research Council for medical research purposes.

To the U.S. Soldiers' and Airman's Home to determine eligibility.

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices also apply to this system."

* * * * *

STORAGE:

Delete entry and replace with "Maintained in visible file folders/ binders, cabinets and on computer and computer output products."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleard for need-to-know.

Records stored in locked rooms, cabinets, and in computer storage devices protected by computer system software."

NOTIFICATION PROCEDURE:

Delete sentence which reads "Response to written requests will be provided not later than ten days following receipt of request". Add "Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices" to the end of the entry.

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address written inquiries to the Assistant Deputy Chief of Staff/ Manpower and Personnel, Randolph AFB, TX 78150-6001.

Individuals may also appear in person at the responsible official's office or the respective repository for records for personnel in a particular category during normal duty hours any day except Saturday, Sunday or national and local holidays. The exception does not apply to Reserve and National Guard units during periods of training. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from a system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information is obtained from the subject of the file, supervisors, correspondence generated within the agency in the conduct of official business, educational institutions, and civil authorities."

* * * * *

F035 AF MP C

SYSTEM NAME:

FO35 AF MP C—Military Personnel Records System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Washington, DC 20330-5060; Air Force Military Personnel Center, Randolph AFB TX 78150-6001; Air Reserve Personnel Center, Denver, CO 80280-5000; National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132-2001.

Headquarters of major commands and separate operating agencies; consolidated base personnel offices; State Adjutant General Office of each respective state, District of Columbia and Commonwealth of Puerto Rico, and at Air Force Reserve and Air National Guard units. Official mailing addresses are published as an appendix to the Air Force's compilation or record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military, Air Force Reserve and Air National Guard personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer Correspondence and Miscellaneous Document Group (C&M) at Air Force Military Personnel Center (AFMPC) and Headquarters, United States Air Force (HQ USAF); Selection Record Group at HQ USAF, Assistant for General Officer Matters; Retired Air Force General Officers Master Personnel Record Group (MPeRGp) at AFMPC; active duty colonels at HQ USAF, Assistant for Senior Officer Management; C&M at AFMPC Air Force active duty officer personnel; MPeRGp at AFMPC Officer Command Selection Record Group (OCSR) at the respective major command or separate operating agency; Field Record Group (FRGp) at the respective Air Force base of assignment/servicing Consolidated Base Personnel Office (CBPO); Air Force active duty enlisted personnel MPeRGp at AFMPC and FRGp at respective servicing CBPO; Senior Noncommissioned Officer Selection Folder at the respective servicing CBPO; personnel in Temporary Disability Retired List status, Missing in Action (MIA), Prisoner of War (POW), Dropped From Rolls MPeRGp at AFMPC; Reserve officers MPeRGp at Air Reserve Personnel Center (ARPC); OCSR at the respective Air Force major command when applicable, FRGp at the respective unit of assignment or servicing CBPO or Consolidated Reserve Personnel Office (CRPO); Reserve airmen MPeRGp at ARPC and FRGp at the respective unit of assignment or servicing CBPO/CRPO; Air National Guard (ANGUS) officers MPeRGp at ARPC, OCSR at the respective State Adjutant General Office, and FRGp at the respective unit of assignment; ANGUS airmen MPeRGp at the respective State Adjutant General Office and FRGp at the respective unit of assignment; Retired and discharged Air Force military personnel MPerGp at National Personnel Records Center and Air Force Academy cadets MReRGp at unit of assignment CBPO. System contains substantiating documentation such as forms, certificates, administrative orders and correspondence pertaining to appointment as a commissioned officer, warrant officer, Regular AF, AF Reserve or ANGUS, enlistment/reenlistment/ extension of enlistment, assignment, Permanent Change of Station, Temporary Duty (TDY), promotion and demotion; identification card requests; casualty; duty status change—Absent Without Leave/MIA/POW/Missing/ Deserter; military test administration/ results; service dates; separation; discharge; retirement; security; training; Professional Military Education (PME); On-The-Job Training; Technical, General Military Training; commissioning; driver; academic education;

performance/effectiveness reports; records corrections; formal/informal medical or dental treatment/examination; flying/rated status administration; extended active duty; emergency data; line of duty determinations; human/personnel reliability; career counseling; records transmittal; AF reserve admininstration; Air National Guard administration; board proceedings; personnel history statements; Veterans Administration compensations; disciplinary actions; record extracts; locator information; personal clothing/equipment items; passport; classification; grade data; Career Reserve applications/cancellations; traffic safety; Unit Military Training; travel voucher for TDY to Republic of Vietnam; dependent data; professional achievements; Geneva Convention card; Federal insurance; travel and duty restrictions; Conscientious Objector status; decorations and awards; badges; Favorable Communications (colonels only); Inter-Service transfers; pay and allowances; combat duty; leave; photographs, and Personnel Data System products.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Regulation 35–44, Military Personnel Records System, and Executive Order 9397.

PURPOSE(S):

Military personnel records are used at all levels of Air Force personnel management within the agency for actions/processes related to procurement, education and training, classification, assignment, career development, evaluation, promotion, compensation, sustentation, separation and retirement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed to the Veterans Administration for research, processing and adjudication of claims, and providing medical care.

To dependents and survivors for determination of eligibility for identification card privileges.

To the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) for determination of eligibility and benefits.

To local Immigration/Naturalization office for accountability and audit purposes.

To State Unemployment Compensation offices for verification of military service related information for unemployment compensation claims; Respective local state government offices for verification of Vietnam "State Bonus" eligibility.

To the Office of Personnel Management for verification of military service for benefits, leave, or Reduction in Force purposes, and to establish Civil Service employee tenure and leave accrual rate.

To the Social Security Administration to substantiate applicant's credit for social security compensation; Local state office for verification of military service relative to the Soldier and Sailors Civil Relief Act. Information as to name, rank, Social Security Number, salary, present and past duty assignments, future assignments that have been finalized, and office phone number may be provided to military financial institutions who provide services to DoD personnel. For personnel separated, discharged or retired from the Air Force, information as to last known address may be provided to the military financial institutions upon certification by a financial institution officer that the facility has a dishonored check or defaulted loan.

Information may also be provided to the US Department of Agriculture for investigative and audit procedures.

To the Selective Service Agencies for computation of service obligation.

To the American National Red Cross for emergency assistance to military members, dependents, relatives or other persons if conditions are compelling.

To the Department of Labor for claims of civilian employees formerly in military service, verification of service-related information for unemployment compensation claims, investigations of possible violations of labor laws and for pre-employment investigations.

To the National Research Council for medical research puposes.

To the U.S. Soldiers' and Airman's Home to determine eligibility.

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file folders/binders, cabinets and on computer and computer output products.

RETRIEVABILITY:

Information in the system is retrieved by last name, first name, middle initial and Social Security Number.

Records stored at National Personnel Records Center are retrieved by registry number, last name, first name, middle initial and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records stored in locked rooms, cabinets, and in computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

Those documents designated as temporary in the prescribing directive remain in the records until their obsolescence (superseded, member terminates status, or retires) when they are removed and provided to the individual data subject.

Those documents designated as permanent remain in the military personnel records system permanently and are retired with the master personnel record group.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff/Manpower and Personnel, Randolph AFB, TX 78150–6001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Deputy Chief of Staff/Manpower and Personnel, Randolph AFB, TX 78150–6001.

Individuals may also appear in person at the responsible official's office or the respective repository for records for personnel in a particular category during normal duty hours any day except Saturday, Sunday or national and local holidays. The Saturday and Sunday exception does not apply to Reserve and National Guard units during periods of training. The system manager has the right to waive these requirements for personnel located in areas designated as Hostile Fire Pay areas. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Assistant Deputy Chief of Staff/Manpower and Personnel, Randolph AFB, TX 78150–6001.

Individuals may also appear in person at the responsible official's office or the

respective repository for records for personnel in a particular category during normal duty hours any day except Saturday, Sunday or national and local holidays. The Saturday and Sunday exception does not apply to Reserve and National Guard units during periods of training. The system manager has the right to waive these requirements for personnel located in areas designated as Hostile Fire Pay areas. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesing and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the subject of the file, supervisors, correspondence generated within the agency in the conduct of official business, educational institutions, and civil authorities

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–1223 Filed 1–17–91; 8:45 am]

BILLING CODE 3810–01–M

Air Force Reserve Officer Training Corps Advisory Committee; Meeting

January 11, 1991.

The Air Force Reserve Officer Training Corps (AFROTC) Advisory Committee will meet on February 11, 1991, from 8 a.m. to 5 p.m. and on February 12, 1991, from 8 a.m. to 12 p.m. at Headquarters Air Training Command Headquarters, Building 900, room 203, Randolph Air Force Base (AFB), Texas 78150–5001.

The AFROTC Advisory Committee meets to offer advice, views, and recommendations regarding the educational mission of AFROTC. The Committee is an external source of expertise and serves in an advisory capacity to the Commander, Air Training Command and the Commandant, AFROTC.

Meeting is open to the public.

For further information, contact Air Force Reserve Officer Training Corps Advisory Committee, Mr. John D. Pickett, Jr., Project Officer, AFROTC/XPX, Maxwell AFB, Alabama 36112–6663, telephone (205) 293–7856.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–1260 Filed 1–17–91; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

January 11, 1991.

The USAF Scientific Advisory Board Ad Hoc Committee on Modeling and Simulation will meet on 6 Feb 91 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC 20330.

The purpose of this meeting will be to receive briefings and discuss the uses of models and simulation by Air Force and contractor organizations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–1261 Filed 1–17–91; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Technology Strategy Cross-Matrix Panel will meet on 5 February 1991, from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC.

The purpose of this meeting is to review the task and develop a roadmap for the study.

Meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–1230 Filed 1–17–91; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Notice of proposed information collection request.

SUMMARY: The Acting Director, Office of Information Resources Management, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

DATES: An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by January 15, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State of Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an emergency review is requested, the additional information to be requested in this collection is included in the section on "Additional Information" in this notice.

Dated: January 15, 1991.

Wallace R. McPherson, Jr.,

Acting Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Emergency.

Title: Grant Application under the Individuals with Disabilities Education Act (IDEA), formerly the Education of the Handicapped Act (EHA).

Abstract: This form will be used by State educational agencies to apply for funding under the Individuals with Disabilities Education Act, as amended. The Department uses the information to make grant awards.

Additional Information: An emergency clearance is requested due to the recently enacted Public Law 101–476 amendments to the Individuals with Disabilities Education Act, which provides authorization to support new program activities under the Services for Children with Deaf-Blindness Program and the Secondary Education and Transition Services for Youth with Disabilities Program. Current program regulations do not include criteria for the selection of applications addressing the newly authorized FY 1991 Competitions under these programs, and revised regulations containing such criteria are still in the development and departmental review stages. Consequently, Office of Management and Budget approval is needed to use the standard EDGAR criteria for selection of applications under these programs.

An emergency approval will allow time for the Secretary to publish the necessary competition announcements in the **Federal Register** and receive applications addressing the EDGAR criteria within the 90-day period. This schedule will permit the Secretary to make grant awards within the fiscal year.

Frequency: One time only.

Affected Public: State or local governments.

Reporting Burden:

Responses: 2,710.

Burden Hours: 97,820.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

[FR Doc. 91–1294 Filed 1–17–91; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 19, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early oportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invities public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: January 15, 1991.

Wallace R. McPherson, Jr.,

Acting Director, for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Fiscal Operations Report and Application to Participate in the Perkins Loan, Supplemental Education Opportunity Grant, and College Work-Study Programs.

Frequency: Annually.

Affected Public: State or local governments; businesses or other for-profit; non-profit institutions.

Reporting Bruden:

Responses: 5,300.

Burden Hours: 142,332.

Recordkeeping Burden:

Recordkeepers: 5,300.

Burden Hours: 424.

Abstract: Under the Higher Education Act of 1965, as amended, institutions are required to apply for, and subsequently report on an annual basis, the expenditures for the Perkins Loan, the Supplemental Educational Opportunity Grant, and the College Work Study Programs. The Department will use the information collected on the reports and applications to assess the effectiveness and accountability of the programs and to make awards.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Three Year State Plan for Vocational Rehabilitation Services under title I and the State Supported Employment Services Program under title VI, part C of the Rehabilitation Act of 1973, as amended.

Frequency: Three year cycle.

Affected Public: State or local governments.

Reporting Burden:

Responses: 84.

Burden Hours: 5,185.

Recordkeeping Burden:

Recordkeepers: 84.

Burden Hours: 1,520,000.

Abstract: State agencies that administer Vocational Rehabilitation programs must submit a three year state plan to receive Federal funds. The Department will use the information to make grant awards, and to evaluate States' performance and compliance under title I and title VI, part C of the Rehabilitation Act, as amended.

[FR Doc. 91–1295 Filed 1–17–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. FE C&E 91-06; Certification Notice—74]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8302 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners and operators of proposed new electric base load powerplant have filed self-certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION:

The following companies have filed self-certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Binghamton Cogeneration Limited Partnership, Wilmington, DE.	12-28-90	Topping cycle	50	Binghamton, NY.
Cogen Power Company, Salt Lake City, UT	01-02-91	Combine cycle	9.9	Firth, ID.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of these self-certifications may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC, on January 14, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-1304 Filed 1-17-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-198-000, et al.]

Pacific Gas and Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 9, 1991.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Co.

[Docket No. ER91-198-000]

Take notice that on January 3, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing as a rate schedule change without a rate increase, an Agreement Between Pacific Gas and Electric Company (PG&E) and Western Area Power Administration (Western) for Interim Transmission Service dated January 2, 1991 (Agreement). This Agreement would supersede Rate Schedule FERC No. 130 accepted by the Commission for filing on September 20, 1990 in Docket No. ER90-508-000.

Except as set forth below, the Agreement is identical to Rate Schedule FERC No. 130 which provides for transmission and other specified services (energy losses, Replacement Energy, and administration services) provided to Western during the period a portion of its transmission system is removed from service to be reconstructed as part of the California-Oregon Transmission Project (COT Project). The revisions consist solely of deleting all provisions relating to PG&E's right to generate and sell to itself Replacement Energy in the event it elects to curtail its own imports from the Pacific Northwest or certain other generation in order to maintain continuity of transmission service to Western. These deletions were made in response to the Commission's concerns as stated in its September 20, 1990 letter.

PG&E has requested Rate Schedule FERC No. 130 be terminated and superseded by this Agreement effective immediately. PG&E also requests a waiver of the sixty-day notice period specified in Section 35.3 of the Commission's regulations (18 CFR 35.3) pursuant to § 35.11 of the Commission's regulations (18 CFR 35.11) and a waiver of any and all other filing requirements as may be necessary.

Copies of this filing were served upon Western, all COT Project participants including the Transmission Agency of Northern California (project manager of the COT Project), and the California Public Utilities Commission.

Comment date: January 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Long Island Lighting Co.

[Docket No. ER91-202-000]

Take notice that Long Island Lighting Company [LILCO] on January 7, 1991, tendered for filing proposed changes in its FERC Rate Schedule 34, pursuant to which LILCO transmits power and energy from the Power Authority of the State of New York (Power Authority) to Brookhaven National Laboratory in Upton, New York and Grumman Corporation in Bethpage, New York.

LILCO proposes to establish an additional charge for wheeling power and energy over LILCO's distribution system to two other Grumman facilities located in Calverton and Holtsville, New York. The revenues from this distribution surcharge were $39,515,000 for the September 4, 1989 to May 31, 1990 period.

LILCO also proposes to decrease wheeling charges under FERC Rate Schedule No. 34 for the period June 1, 1990 to May 31 1991. The proposed rates would decrease revenues from such services by $101,042.40 based on the 12-month period ending May 31, 1991.

Copies of this filing were served upon the Power Authority, Brookhaven National Laboratory, Grumman Corporation and the New York State Public Service Commission.

Comment date: January 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Ocean State Power

[Docket No. ER91–183–000]

Take notice that Ocean State Power ("Ocean State I), on December 27, 1990, tendered for filing the following amendments to its rate schedules with the Federal Energy Regulatory Commission:

Supplement No. 11 to Rate Schedule FERC No. 1
Supplement No. 8 to Rate Schedule FERC No. 2
Supplement No. 7 to Rate Schedule FERC No. 3
Supplement No. 8 to Rate Schedule FERC No. 4

The supplements are amendments (the "Amendments") to the unit power agreements between Ocean State I and Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation. The Amendments are necessitated, for the most part, to correct typographical errors, clarify ambiguities and to permit Ocean State I to commence commercial operation in December 1990. The Amendments do not constitute a rate increase.

Copies of the filing were served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada PipeLines Limited.

Comment date: January 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Arkansas Power and Light Co.

[Docket No. ER91–199–000]

Take notice that Arkansas Power and Light Company (AP&L), on January 3, 1991 tendered for filing an Amendment to a Power Coordination, Interchange and Transmission Service agreement between AP&L and Entergy Power, Inc. The Amendment provides for transmission service information filing requirements and the right of the Commission staff to request an investigation of the transmission service formulary rates. AP&L requests an effective date of August 28, 1990 for the Amendment. AP&L respectfully requests waiver of the Commission's regulations.

Comment Date: January 24, 1991, in accordance with Standard Paragraph E end of this notice.

5. Pacific Gas and Electric Co.

[Docket No. ER91–203–000]

Take notice that on January 8, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing changes to a rate schedule covering services rendered by PG&E under the agreement entitled, "Comprehensive Agreement between State of California Department of Water Resources and Pacific Gas and Electric Company" (Comprehensive Agreement) dated April 22, 1982. The Comprehensive Agreement was initially filed under FERC Docket No. ER83–142–000 and was assigned Rate Schedule FERC No. 77.

The Comprehensive Agreement provides for firm transmission service between Points of Receipt and Points of Delivery as shown in its Table II–1 of Exhibit II as follows:

1. The Maximum Rate of Delivery for the Delta Pumping Plant has been increased to 275 MW under certain circumstances.

2. A new footnote 12 has been added to explain the increase.

Copies of this filing have been served upon California Department of Water Resources and the California Public Utilities Commission.

Comment Date: January 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Co.

[Docket No. ER91–200–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on January 4, 1991, tendered for filing a Letter Agreement among Wisconsin Electric, The Wisconsin Public Power Inc., SYSTEM (WPPI), and the City of Menasha (Menasha) which extends and modifies the terms and conditions of 34.5 kV standby services to Menasha provided for under the March 31, 1988 letter agreement under paragraphs 5(d) and (f) and Modification No. 1 of Exhibit A–a to Wisconsin Electric Rate Schedule No. 57 among the parties. Wisconsin Electric also requests waiver of the 60-day notification requirements.

Copies of the filing have been served on WPPI, Menasha, and the Public Service Commission of Wisconsin.

Comment Date: January 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corp.

Docket No. ER91–167–000]

Errata

January 9, 1991.

Notice of Filing

December 26, 1990.

Take notice that the two paragraphs of the Notice of Filing issued in this docket on December 26, 1990, should be replaced by the following paragraphs:

Take notice that Central Vermont Public Service Corporation (CVPS) on December 19, 1990, tendered for filing four contracts under which CVPS has agreed to sell short term power and energy to several utilities. CVPS states that the price for each transaction was negotiated by CVPS and the purchasers and reflects the parties' agreement concerning the split of the savings realized from the transaction. CVPS states that the transactions all were at less than CVPS' average system cost of capacity.

CVPS also has filed a notice of termination with respect to the four contracts.

CVPS requests the Commission to waiver its notice of filing requirements to permit the contracts to become effective as of the dates specified herein.

Comment Date: January 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power and Light Co.

[Docket No. ER90–298–001]

Take notice that on December 18, 1990, Pennsylvania Power & Light Company tendered for filing its compliance refund report in this docket.

Comment date: January 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. PSI Energy, Inc. and Consumers Power Co.

[Docket No. ER91–176–000]

Take notice that Consumers Power Company and PSI Energy, Inc., formerly named Public Service Company of Indiana, Inc., on December 24, 1990, tendered for filing an Interconnection Agreement, dated December 1, 1990, between Consumes Power Company (Consumers) and PSI Energy, Inc. (PSI).

Also a Facilities Agreement, dated December 1, 1990, between Consumes and PSI was filed to establish a direct interconnection between their respective systems. The Interconnection Agreement provides the following interchange services between Consumers and PSI:

1. Service Schedule A provides emergency service.
2. Service Schedule B provides short-term capacity and energy.
3. Service Schedule C provides interchange power.
4. Service Schedule D provides limited-term capacity and energy.

Consumers and PSI requested waiver of the Commission's notice requirements to permit an effective date of May 1, 1991.

Copies of the filing were served on the Michigan Public Service Commission, and the Indiana Utility Regulatory Commission.

Comment date: January 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-1204 Filed 1-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER90-164-002, et al.]

TECO Power Services Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 11, 1991.

Take notice that the following filings have been made with the Commission:

1. TECO Power Services Corp.

[Docket No. ER90-164-002]

Take notice that on December 19, 1990, TECO Power Services Corporation (Power Services) tendered for filing in the above-captioned docket in accordance with the Commission's "Order Granting Intervention, Denying Rehearing, and Accepting Proposed Amendments" which was issued on November 19, 1990 and pursuant to rule 1907 of the Commission's Rules of Practice and Procedure (18 CFR 385.1907).

Comment date: January 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Nevada Power Co.

[Docket No. ER90-587-000]

Take notice that on December 21, 1990 and December 24, 1990, Nevada Power Company (Nevada) tendered for filing a cost of service study and revised sheets for the cost of service study in this docket. Nevada states that these revised sheets provide support for the adoption of the tariff schedule entitled Supplemental Service—Silver State Power Association.

Comment date: January 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Georgia Power Co.

[Docket No. ER91-204-000]

Take notice that on January 8, 1991, Georgia Power Company (Georgia Power) tendered for filing a Block Power Sale Agreement (the Agreement) dated as of November 12, 1990, between Georgia Power and Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Corporation) (Oglethorpe Power).

Georgia Power states that the Agreement provides for the sale of 1250 mW of system capacity and associated energy from Georgia Power to Oglethorpe Power at negotiated rates. Georgia Power contends that the negotiated charges are reasonable in light of certain cost of service information contained in the filing. Georgia Power seeks an effective date of March 1, 1991.

Comment date: January 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Eastern Edison Co.

[Docket No. ER91-59-000]

Take notice that on January 8, 1991, Eastern Company (Eastern Edison) filed a letter as an amendment to its filing in this docket in response to inquiries by the FERC staff as to Eastern Edison's methodology regarding allocation of property taxes, A&G, working capital, and directly related outside services for the East Bridgewater 115 kV breaker filing for Middleborough and to the Staff's requests that the formula rate provisions be made more specific in certain respects and that return on equity be reduced to 12%.

Comment date: January 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Public Service Co.

[Docket No. ER91-57-000]

Take notice that on December 11, 1990, Maine Public Service Company (MPS) tendered for filing certain supplemental information requested by the Commission Staff in connection with the subject initial rate schedule filing pertaining to agreements entered into with Houlton Water Company (Houlton) covering transmission and back-up services by MPS for Houlton's entitlement in the Maine Yankee Atomic Power Plant. More specifically, MPS supplemented its filing on three matters: (1) the costs to be recovered in the dispatch charge; (2) how the bill for back-up services will be computed; and (3) whether Houlton separately will pay for transmission service when it receives back-up service.

Comment date: January 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-1205 Filed 1-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2214-000 and CP91-121-000]

El Paso Natural Gas Co.; Intent To Prepare An Environmental Assessment For the Proposed El Paso East-End/North System Expansion Project and Request for Comments on Environmental Issues

December 28, 1990.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will

prepare an environmental assessment (EA) on the facilities proposed in the above-referenced dockets for the North System Expansion Project and the East-End System Expansion Project filed on September 17, 1990 and October 11, 1990, respectively. One document will be produced covering both projects.

El Paso Natural Gas Company (El Paso), pursuant to section 7 of the Natural Gas Act, is seeking a certificate of public convenience and necessity under the optional procedures of 18 CFR 157 subpart E of the FERC's regulations to construct, own, and operate a total of approximately 351.3 miles of new 34-, 36-, and 42-inch-diameter natural gas pipeline on four of El Paso's pipeline systems, 46,600 horsepower (hp) of additional compression at existing compressor stations, additional metering facilities, and appurtenant facilities. In addition, El Paso requests, pursuant to § 157.103(f)(1) of the Commission's Rules of Practice and Procedure, conditional pregranted authority to abandon the services which are undertaken and/or the facilities which are constructed pursuant to the certificate authority requested in its applications.

The purpose of the facilities proposed in Docket No. CP90–2214–000 is to: (1) Add 835 million cubic feet per day (MMcf/d) of incremental pipeline capacity on its San Juan Triangle System to permit delivery of gas volumes from the San Juan Basin to markets in El Paso's California service area and to the east of El Paso's systems; (2) add 400 MMcf/d of incremental pipeline capacity on its San Juan Mainline System into the existing utility system and into facilities to be constructed and operated by Mojave Pipeline Company; and (3) add meter stations and make certain changes to the compressor piping at existing compressor stations on its Permian-San Juan Crossover System to enable El Paso to transport 429 MMcf/d of natural gas to its Plains Compressor Station and provide for bi-directional flow of naturral gas on that system.

The purpose of the facilities proposed in Docket No. CP91–121.000 is to increase the capacity of El Paso's East-End System from approximately 172 MMcf/d to approximately 852 MMcf/d to move gas from the Plains Compressor Station to the Waha Compressor Station.

By this notice, the FERC staff is requesting comments on the scope of the analysis that should be conducted for the EA. All comments will be reviewed prior to preparation of the EA and significant issues will be addressed. Comments should focus on potential environmental effects, measures to mitigate adverse environmental impact, and should include any suggestions for alternatives to the proposal (including alternative routes). Written comments must be submitted no later than 30 days from the issuance date of the notice, in accordance with the instructions provided at the end of this notice.

Proposed Action

The general location of the facilities proposed in Docket Nos. CP90–2214–000 and CP91–121–000 are shown on figure 1.[1] A listing of the facilities is provided in table 1. The proposed facilities would include a total of 351.3 miles of pipeline. Approximately 231.3 miles of that total would be comprised of 11 segments of 34- and 36- and 42-inch-diameter looping on the existing El Paso San Juan Triangle System and San Juan Mainline System (proposed in Docket No. CP90–2214–000).[2] Approximately 120.0 miles would be new 36-inch-diameter pipeline on the El Paso East-End System (proposed in Docket No. CP91–121–000). The proposal also includes the addition of 46,600 hp of compression at five existing compressor stations on the San Juan Triangle System, the San Juan Mainline System, and the East-End System; the uprating of an existing compressor station on the San Juan Mainline System; and plant yard piping modifications at three existing compressor stations on the Permian-San Juan Crossover System. The proposed facilities would also include the installation of a total of 22 meters on the four systems, all at existing facilities. The estimated cost of the facilities proposed in Docket No. CP90–2214–000 is $233.3 million. The estimated cost of the facilities proposed in Docket No. CP91–121–000 is $107.1 million. The total estimated cost of the project is $340.4 million.

Facilities would be located in five counties in Arizona, five counties in New Mexico, and six counties in Texas. The proposed facilities would be located on land owned or managed by the Navajo Nation, the U.S. Bureau of Indian Affairs, the U.S. Bureau of Land Management (BLM), the Coconino National Forest, the Kaibab National Forest, the State of Arizona, the State of New Mexico, and the University of Texas.

[1] Figure 1 is not being printed in the Federal Register, but copies are available from the Commission's Public Reference Branch at (202) 208–1371. A copy of figure 1 is attached to each mailed copy of the notice.

[2] A pipeline loop is a segment of pipeline which is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the pipeline system at the location in which it is installed.

Portions of the North System Expansion Project loops proposed in Docket No. CP90–2214–000 have previously undergone public scoping and have been analyzed by the staff as part of the environmental review process for the *Mojave-Kern River-El Dorado Natural Gas Pipeline Projects, Final Environmental Impact Report/ Statement*, FERC/FEIS–0045 (Mojave-Kern River FEIS), issued December 18, 1987. The Mojave-Kern River FEIS included a review of El Paso's proposal in Docket No. CP86–197–003 that consisted of various alternative expansions of its San Juan Triangle and San Juan Mainline Systems (see table 1). Therefore, the pertinent environmental analysis of El Paso's facilities included in the Mojave-Kern River FEIS will be incorporated by reference in this EA. If any other Federal, state, or local environmental analysis of these facilities becomes available, the FERC staff will also utilize such analysis in order to avoid duplication. The EA will, however, further assess the potential effects of the project by considering information that was not available to the Commission during its prior review of these facilities in the Mojave-Kern River FEIS.

Construction, Operation, and Maintenance Procedures

The proposed facilities would be constructed and operated in accordance with all applicable regulations. These include: 49 CFR part 192, Transportation of Natural Gas by Pipeline: Minimum Federal Safety Standards; 18 CFR 2.69, Guidelines to be Followed by Natural Gas Pipeline Companies in the Planning, Clearing, and Maintenance of Rights-of-Way; and other applicable Federal, state and local regulations and permit requirements.

El Paso would acquire right-of-way easements for the proposed pipeline and has no plans to acquire any lands in fee. All lands involved in the proposed project would remain in private ownership and El Paso would compensate landowners for properties used by the proposed facilities.

The pipeline proposed in Docket No. CP90–2214–000 would be comprised entirely of looping on the El Paso San Juan Triangle System and San Juan Mainline System. The proposed loops would be constructed parallel to existing pipelines with a 20-foot separation between the existing and proposed pipelines. A 100-foot-wide right-of-way would typically be required for construction, with 50 feet being on the existing pipeline right-of-way and 50 feet being new right-of-way. The

operational right-of-way would be 50 feet wide on Bureau of Land Management lands and 60 feet wide on all other lands. In the vicinity of a residential subdivision in Bloomfield, New Mexico, the separation between the proposed loop and the existing pipeline would be reduced to 10 feet and all construction activities would be confined, to the extent possible, to the existing right-of-way.

The pipeline proposed in Docket No. CP91-121-000 would be constructed on a 100-foot-wide new right-of-way. The operational right-of-way would be 60 feet wide.

Each meter would be constructed on an area approximately 25 feet by 40 feet adjacent to other metering facilities located within or adjacent to existing aboveground facilities. No new property would be acquired for the installation of the meters. The addition of compression units and the modifications to compressors and station piping would all take place within existing compressor station yards.

Construction of the proposed pipelines would follow standard pipeline construction methods. At all stream crossings, the pipeline would be buried below the estimated scour depths associated with a 100-year flood event. Construction across intermittent streams would be carried out during periods of low flow or no flow. El Paso states that the only perennial water ways to be crossed would be the San Juan River and the Pecos River. Each would be crossed during low flow, with flow being maintained during construction and 200 foot by 400 foot temporary work areas would be established on each bank.

Pipeline construction would begin with the clearing and grading of the construction right-of-way to prepare a relatively level strip to accommodate construction equipment. Rotary wheel ditching machines, backhoes, or rippers would be used to excavate a trench deep enough to provide the minimum depth of cover required by the U.S. Department of Transportation (normally 30-36 inches) and approximately 12 inches wider than the proposed pipe diameter. On cultivated land and in other areas where the landowner or land-managing agency requests it, the top 10 to 12 inches of soil would be separated and stockpiled. All drainage tiles would be located prior to construction and any tiles which are damaged as a result of construction would be repaired to original or better condition.

After trenching, pipe segments would be strung along the right-of-way, bent to conform to the contours of the trench, welded together, coated, and lowered into the trench. The trench would then be backfilled using previously excavated materials if these are suitable for contact with the pipeline. The soil would be ripped to a depth of approximately 18 inches to reduce soil compaction and improve permeability. Topsoil that was conserved would be replaced at its original horizon. Seeding and addition of fertilizers, mulches, or other amendments would be in accordance with landowner preference and the recommendations of the local soil conservation authorities. Restoration of the disturbed area would include the installation of permanent erosion control devises.

In forested areas, trees would be cut in uniform lengths and stacked along the right-of-way, based on landowner preference. Stumps would be cut near the ground and would be removed only when necessary to permit pipeline installation. Slash from right-of-way clearing would be handled in accordance with landowner preferences.

In areas of solid or fractured rock, blasting may be required. Care would be exercised to avoid damage to nearby wells, springs, wetlands, and existing pipelines and other aboveground and underground facilities.

Pipeline crossings of lightly traveled and unimproved roads would be open-cut, with construction operations normally completed in one day. At paved roads, railroads, and lined irrigation canals, the crossing would be by boring, with a casing installed where needed. Temporary work areas of up to 200 feet by 400 feet would be needed on each side of the paved road and railroad crossings.

Following installation, the pipelines would be hydrostatically tested to ensure structural integrity. Hydrostatic test water would be obtained from existing wells and reservoirs along the proposed routes. Disposal of test water would be to temporary ponds on or adjacent to the right-of-way or to evaporation ponds at El Paso's existing compressor stations. No chemical additives would be used in the hydrostatic test waters or for drying the pipeline.

Construction of the proposed pipelines would require approximately 3 months. The East-End System Expansion Project would involve 1 spread of approximately 400 workers. The North System Expansion Project would require 4 spreads, each with 300 workers. Installation of the new compressor units and meter stations, and proposed modifications to compressor station piping would require 4 to 6 months.

Upon cessation of operation, the pipeline would be purged and abandoned in place. Ancillary facilities would be dismantled and salvaged to the extent feasible. Compressor units would be deactivated and moved. Areas disturbed during abandonment would be revegetated and restored in accordance with applicable regulations in effect at that time.

Environmental Issues

Based on preliminary analyses of the applications for the proposed facilities and the enviornmental information provided by El Paso, the FERC staff has identified a number of issues which will be specifically addressed in the EA. These issues include but are not limited to:

- Land Use—Impact on homes and future development. Impact on the Coconino National Forest and Kaibab National Forest.
- Aesthetics—Effect of the appearance of rights-of-way and aboveground facilities on residential areas and scenic areas.
- Pipeline Safety—Possibility of pipeline failure.
- Cultural Resources—Effect on the project on properties listed on or eligible for the National Register of Historic Places. Effect of the project on areas of significance to Native Americans.
- Water Resources—Effect of constrution on potable water supplies.
- Wildlife/Fisheries—Impact on wildlife/fisheries. Impact on threatened and endangered species.
- Vegetation—Short- and long-term effects on vegetation from clearing, seeding, and right-of-way management. Impact on riparian vegetation. Impact on rare or sensitive native plant species.
- Soils and Geology—Erosion control and revegetation. Effect on crop and timber production. Effects of blasting. Impact on exploitable mineral resources.
- Alternatives—Route variations to avoid specific resources. Alternative pipeline system designs.

Comments are solicited on any additional topics of environmental concern to residents and others in the project area. After comments in response to this notice are received and analyzed and the various issues investigated, the staff will prepare an EA for the East-End/North System Expansion Project. The EA will be based on the FERC staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding.

Cooperating Agencies

Any Federal or state agencies desiring cooperating agency status should send a request describing how they would like

to be involved and designating one contact per agency to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The request should reference Docket Nos. CP90–2214–000 and CP91–121–000, and should be received within 30 days of the issuance date of this notice. An additional copy of the request should be sent to the FERC project manager identified at the end of the notice. Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agency. Cooperating agencies are also welcome to suggest format and content modifications to facilitate ultimate adoption of the EA; however, the lead agency will decide what modifications will be adopted in light of production constraints.

Comment Procedure

A copy of this notice and request for comments on environmental issues has been sent to Federal, state, and local environmental agencies, parties in this proceeding, public interest groups, libraries, newspapers and other interested individuals.

Comments on the scope of the EA should be filed as soon as possible but no later than 30 days after the notice is issued. All written comments must reference Docket Nos. CP90–2214–000 and CP91–121–000 and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to Ms. Lauren O'Donnell, Project Manager, Federal Energy Regulatory Commission, Room 7407, 825 North Capitol Street, NE., Washington, DC 20426. Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

Organizations and individuals receiving this Federal notice have been selected to ensure public awareness of this project and public involvement in the review process under the National Environmental Policy Act. The FERC staff expects to complete the EA in April 1991 and circulate it to the public for a limited comment period. The EA will be sent automatically to the appropriate Federal agencies for comment. However, to reduce printing and mailing costs and related logistical problems, the EA will only be distributed to those other organizations, state and local agencies, and individuals for comment who return the attached appendix to this notice within 30 days.

Additional information about the proposal, including detailed route maps for specific locations, is available from Ms. Lauren O'Donnell, Project Manager, telephone (202) 208–0874.

Linwood A. Watson, Jr.,

Acting Secretary.

TABLE 1.—EL PASO PROPOSED PIPELINE AND ABOVEGROUND FACILITIES

Docket No./system/proposed facility	Pipe diameter (in)	Approximate length (mi)[a]	New compression (hp)	County	State
Docket No. CP90–2214–000					
North System Expansion Project					
Blanco—Chaco Loop	42" Loop	14.2		San Juan	NM
White Rock—Gallup Loop[b]	42" Loop	21.0		San Juan	NM
				McKinley	NM
Gallup—Valve City Loop	42" Loop	18.2		McKinley	NM
Valve City—Window Rock Loop[b]	36"	15.5		McKinley	NM
				Apache	AZ
Window Rock—Navajo Loop[b]	36" Loop	16.2		Apache	AZ
Navajo-Dilkon Loop[b]	34" Loop	18.1		Apache	AZ
				Navajo	AZ
Flagstaff—Williams Loop[b]	36" Loop	22.1		Coconino	AZ
Williams—Seligam Loop[b]	34" Loop	41.8		Coconino	AZ
				Yavapai	AZ
Seligman—Hackberry 1.8 Mile Loop	36" Loop	1.8		Yavapai	AZ
				Conconino	AZ
Seligman—Hackberry 8.0 Mile Loop	36" Loop	8.0		Mohave	AZ
Hackberry—Topock Loop[b]	36" Loop	54.4		Mohave	AZ
Caprock Compressor Station (piping modification).				Lea	NM
Lincoln Compressor Station (piping modification).				Lincoln	NM
Belen Compressor Station (piping modification)				Valencia	NM
Plains Compressor Station (1 meter)				Yoakum	TX
Wingate Fractionating Plant (replacement of 2 meters).				McKinley	NM
White Rock Compressor Station (additional compression).			12,000	San Juan	NM
Blanco Compressor Station (8 meters)				San Juan	NM
Window Rock Compressor Station (additional compression).			5,300	Apache	AZ
Navajo Compressor Station (additional compression).			5,300	Apache	AZ
Dilkon Compressor Station (additional compression).			12,000	Navajo	AZ
Hackberry Compressor Station (uprating of existing units).			916	Mohave	AZ
Franconia Meter Station (1 meter)				Mohave	AZ
Topock Compressor Station (4 meters)				Mohave AZ	

TABLE 1.—EL PASO PROPOSED PIPELINE AND ABOVEGROUND FACILITIES—Continued

Docket No./system/proposed facility	Pipe diameter (in)	Approximate length (mi)[a]	New compression (hp)	County	State
		Docket No. CP91-121-00			
East-End System					
Segment 1	36"	73.6		Yoakum	TX
				Gaines	TX
				Andrews	TX
				Winkler	TX
Segment 2	36" New	47.2		Winkler	TX
				Ward	TX
				Reeves	TX
Keystone Field Compressor Station (additional compression and meters)			12,000	Winkler	TX
Waha Field Plant (additional meters)				Reeves	TX

[a] Exact length may vary with topography.
[b] Portions of this facility have been previously analyzed as part of the Mojave-Kern River-El Dorado Natural Gas Pipeline Projects FEIS

[FR Doc. 91-1240 Filed 1-17-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP91-745-000, et al.]

Great Lakes Transmission Co., et al.; Natural Gas Certificate Filings

January 9, 1991.

Take notice that the following filings have been made with the Commission:

1. Great Lakes Gas Transmission Co.

[Docket Nos. CP91-745-000, CP91-746-000 and CP91-747-000]

Take notice that Great Lakes Gas Transmission Company, Suite 1600, One Woodward Avenue, Detroit, Michigan 48226, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under this blanket certificate issued in Docket No. CP89-2198-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of the notice.

Docket number (date filed)	Shipper name (type)	Peak day average day annual Mcf	Receipt points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-745-000 (12-21-90)	Howard Energy Company, Inc. (Marketer)	400,000	MN, MI	MN, MI	10-24-90	ST91-5260-000
		400,000			IT	11-01-90
		146,000,000			Interruptible	
CP91-746-000 (12-21-90)	Panhandle Trading Company (Marketer)	100,000	MN, MI	MN, MI	10-24-90	ST91-5276-000
		100,000			IT	11-05-90
		36,500,000			Interruptible	
CP91-747-000 (12-21-90)	Coastal Gas Marketing Company (Marketer)	400,000	MN, MI	MN, MI	10-16-90	ST91-5269-000
		400,000			IT	11-01-90
		146,000,000			Interruptible	

2. Panhandle Eastern Pipe Line Co.

[Docket Nos. CP91-836-000, CP91-837-000, CP91-838-000, CP91-839-000, CP91-840-000, CP91-841-000 and CP91-842-000]

Take notice that on January 7, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of seven shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the

Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Panhandle and is summarized in the attached appendix.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual Dth	Receipt points	Delivery points	Contract date rate schedule service type	Related docket start up date
CP91-836-000 (1-7-91)	GasTrak Corporation (marketer).	10,000 10,000 3,650,000	CO, IL, KS, MI, OH, OK, TX, WY.	MO	6-4-90, PT, Interruptible.	ST91-5374-000 11-1-90
CP91-837-000 (1-7-91)	Delhi Gas Pipeline Corporation (Intrastrate Pipeline).	50,000 50,000 18,250,000	CO, IL, KS, MI, OH, OK, TX.	IN	7-12-90, PT, Interruptible.	ST91-5367-000 11-1-90
CP91-838-000 (1-7-91)	Bishop Pipeline Corporation (Intrastate Pipeline).	20,000 20,000 7,300,000	CO, IL, KS, MI, OH, OK, TX.	MO	3-22-90, PT, Interruptible.	ST91-5362-000 11-1-90
CP91-839-000 (1-7-91)	Seagull Marketing Services, Inc. (marketer).	100,000 100,000 36,500,000	CO, IL, KS, MI, OH, OK, TX.	IN	10-17-90, PT, Interruptible.	ST91-5467-000 11-1-90
CP91-840-000 (1-7-91)	Enron Gas Marketing, Inc. (marketer).	100,000 100,000 36,500,000	CO, IL, KS, MI, OH, OK, TX.	KS	2-21-90, PT, Interruptible.	ST91-5370-000 11-1-90
CP91-841-000 (1-7-91)	Amgas, Inc. (marketer)	260 130 47,450	CO, IL, KS, MI, OH, OK, TX, WY.	IL	9-10-90, PT, Interruptible.	ST91-5365-000 11-1-90
CP91-842-000 (1-7-91)	New England Power Company (end user).	30,000 30,000 10,950,000	OK[1]	OH	11-1-90, PT, Firm	ST91-5369-000 11-1-90

[1] Additionally, Panhandle would receive gas on an interruptible basis from the interruptible points of receipt as listed in Exhibit A of the Master Receipt Point List.

3. Indicated Shippers Complaints, v. El Paso Natural Gas Co., Defendant

[Docket No. CP91-732-000]

Take notice that on December 20, 1990, complainants [3] filed a complaint under rule 206 of the Commission's Rules of Practice and Procedure against El Paso Natural Gas Company (El Paso). Complainants allege that a certain Extended Supply Program (ESP) sales contract between El Paso and Southern California Gas Company (SoCal) is unduly discriminatory, anti-competitive, and unjust and unreasonable. Complainants also assert that the sales contract violates the terms and conditions of El Paso's interruptible sales certificate, El Paso's tariff, the Commission's Regulations and the Natural Gas Act, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Complainants state that the Commission issued an order an November 29, 1988, in Docket No. CP88-332-000 authorizing El Paso to provide an interruptible sales service under Rate Schedule IS-1.

Complainants assert that on October 1, 1989, El Paso and SoCal negotiated a sales agreement that provided for Combined Layers of Annual Secure Sales (CLASS) of natural gas for a one year term. Complainants further assert that the CLASS contract provided for three layers of sales and related transportation, combining both interruptible and firm sales, and tying the purchase of Rate Schedule IS-1 gas to minimum purchases of firm sales gas. Complainants explain that the rates for the combined sales were less than the filed tariff rate for firm service under Rate Schedule G-1. Complainants assert that the priority for the sales service was the "highest" priority, contrary to the Commission's policy that ISS sales have the lowest priority. Finally complainants state that the CLASS contract provided that no correlative discount would be triggered, contrary to the Condition attached to El Paso's ISS certificate issued in Docket No. CP88-332-000.

Complainants state that by letter order issued June 25, 1990, in Docket No. CP88-332-000, the Commission accepted the CLASS contract filed by El Paso.

Complainants state that on November 27, 1990, El Paso filed in Docket No. CP88-332-017 the new ESP contract with SoCal to replace the CLASS contract. It is asserted that the ESP contract became effective December 1, 1990, and would remain in effect for a five year term and month to month thereafter, unless it is superseded by a new contract or by implementation by El Paso of a gas inventory charge, which is pending before the Commission as part of a settlement in Docket No. RP88-44-000, *et al.*

Complainants argue that the ESP contract reflects a negotiated sales service for one preferred customer. Complainants assert that SoCal has the equivalent of firm service at a lower "blended" rate than that on file in El Paso's tariff. Complainants claim that SoCal has preferential access to specified basins. Whereas El Paso's other customers purchase from "system supply". Complainants argue that El Paso is offering these features to SoCal prior to the implementation of any the comparability features that are pending El Paso's GIC proceeding.

Complainants state that the ESP contract provides for three service tiers, a base tier, a swing tier available throughout the year, and a flexible tier available only during the months of December-February. The rate level or "Average Gas Cost" is the same for each service tier and varies on a

[3] Mobil Natural Gas Inc., ARCO Oil & Gas Company, Chevron U.S.A. Inc., Oryx Energy Company, Shell Western E&P Inc., Texaco Inc., Texaco Producing Inc., Texaco Gas Marketing Inc., Union Oil Company of California, Union Pacific Fuels, Inc., and Union Pacific Resources Company.

monthly basis. Complainants further assert that the ESP contract provides for SoCal to purchase gas under Rate Schedule G, when El Paso does not have gas supplies available for sale under Rate Schedule IS–1. Complainants argue that under the ESP contract El Paso would be selling some firm gas at rates lower than El Paso's rate on file with the Commission. It is argued that El Paso would accomplish this by tying the sale of Rate Schedule IS–1 gas with the sale of firm gas under Rate Schedule G and by adjusting the Rate Schedule IS–1 rate between the maximum and minimum in order to achieve the desired "Average Gas Cost." El Paso also has reserved the right to "flex" its PGA rates applicable to firm sales in order to achieve the "Average Gas Cost." Accordingly, complainants argue that the ESP contract violates the filed rate doctrine under Section 4 of the Natural Gas Act, which forbids a company from charging rates other than those filed with the Commission.

Complainants also argue that the ESP contract ties the purchase of Rate Schedule IS–1 gas to a minimum purchase obligation. Complainants state that a minimum purchase obligation is achieved because the purchase of interruptible sales gas is combined with the purchase of firm gas, with the following minimum daily purchase obligations for the base tier: 100 Mdth/d for December–February; 90 Mdth/d for March and April; 50 Mdth/d for May–September; and 75 Mdth/d for October and November. Complainants argue that the tying of the purchase Rate Schedule IS–1 gas to a minimum purchase obligation is contrary to the terms of El Paso's certificate issued in Docket No. CP88–332–000 and the Commission's Order No. 380.

Complainants state that under the ESP contract El Paso warrants deliveries to SoCal by using authorized firm sales when necessary. Complainants also state that El Paso assures SoCal that on days when firm sales gas is necessary, no other customer of El Paso would be granted a higher priority of sales service by El Paso. Complainants allege that this provision is in violation of El Paso's tariff provision that allocates capacity on a pro rata basis first among all firm customers, and second among interruptible customers on a first come first served basis.

Complainants state that the ESP contract provides that the prices are not intended to trigger any correlative interruptible transportation discounts for SoCal and, if such discounts unintentionally occur, SoCal shall nevertheless forgo any correlative discount for eligible transportation. Complainants argue that this provision is a violation of the condition attached to El Paso's certificate issued in Docket No. CP88–332–000 that provides if El Paso discounts the non-gas component of the Rate Schedule IS–1 rate, El Paso must offer a comparable discount to competing shippers in their interruptible transportation rates.

Complainants assert that the ESP contract provides that after the sales point shifts to El Paso's mainline receipt points, SoCal would have the right to nominate first from the Permian Basin, next from the Anadarko Basin and then from the San Juan Basin. Complainants argue that the preferential treatment granted SoCal is in direct conflict with El Paso's tariff.

Complainants argue that the ESP contract is anti-competitive and in direct conflict with the Commission's goals under Order Nos. 436/500. Complainants state the ESP contract is unjust unreasonable, unduly discriminatory and preferential. Complainants state that the Commission should use its Section 5 authority to declare the ESP contract unlawful and require El Paso to comply with its Rate Schedule IS–1 certificate conditions. In the alternative, complainants request that the case be set for formal hearing.

Comment date: February 8, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Respondent's answer to the complaint shall also be due on or before February 8, 1991.

4. Trunkline Gas Co.

[Docket Nos. CP91–817–000, CP91–818–000, CP91–819–000, CP91–820–000, CP91–821–000]

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

Applicant: Trunkline Gas Company, Post Office Box 1642, Houston, Texas 77251–1642

Blanket Certificate Issued in Docket No. CP86–586–00

[4] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type shipper)	Peak day [1] average annual	Points of		Start up date rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-817-000 (01-04-91)	GasTrak Corporation (marketer).	4,000 4,000 1,460,000	IL, LA, TN, TX, Offshore LA, Offshore TX.	IN	11-01-90, PT	ST91-5196-000.
CP91-818-000 (01-04-91)	Polaris Pipeline Corporation (marketer).	30,000 30,000 10,950,000	IL, LA, TN, TX, Offshore LA, Offshore TX.	IL	11-01-90, PT	ST91-5193-000.
CP91-819-000 (01-04-91)	Shell Gas Trading Co. (marketer).	40,000 20,000 7,300,000	Offshore TX, Offshore LA.	Offshore TX	11-01-90, PT	ST91-4344-000.
CP91-820-000 (01-04-91)	Nortech Energy Corp. (marketer).	15,000 15,000 5,475,000	IL, LA, TN, Offshore LA, Offshore TX.	IL	11-01-90, PT	ST91-5186-000.

Docket number (date filed)	Shipper name (type shipper)	Peak day [1] average annual	Points of		Start up date rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-821-000 (01-04-91)	Amerada Hess Corp. (producer).	100,000 45,000 16,425,000	IL, LA, TN, TX, Offshore LA, Offshore TX.	LA	11-01-90, PT	ST91-5188-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

5. Columbia Gas Transmission Corp.

[Docket No. CP91-852-000]

Take notice that on January 7, 1991, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Ave, S.E., P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP91-852-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform a firm transportation service for Industrial Energy Services Company (shipper) under the blanket certificate issued in Docket No. CP86-240-000, 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.

Specifically, Columbia Gas proposes to implement a transportation agreement dated November 1, 1990, providing for a maximum transportation quantity of 3,901 dt equivalent of natural gas per day. It is indicated that Columbia Gas would receive the gas at a specified point located in Scioto County, Ohio and redeliver the gas at specified points located in the states of Ohio and Pennsylvania. Columbia Gas estimates peak day, average day and annual volumes of 3,901 million Btu, 3,121 million Btu, and 1,423,865 million Btu, respectively. It is stated that Columbia Gas initiated a 120-day transportation service for shipper on November 1, 1990, as reported in Docket No. ST91-5472-000.

Columbia Gas states that no new facilities would be required to implement the service. Columbia Gas indicates that it would charge the rates and abide by the terms and conditions of its Rate Schedule FTS.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. CNG Transmission Corp.

[Docket No. CP91-756-000]

Take notice that on December 26, 1990, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP91-756-000 an application pursuant to section 7(b) of the Natural Gas Act requesting, (a) An order permitting and approving abandonment of certain sales service and related standby service to Hope Gas, Inc. (Hope), Baltimore Gas and Electric Company (BG&E), Cincinnati Gas and Electric Comany (CG&E), and Union Light, Heat and Power Company (Union), four of CNG's local distribution company customers, in connection with each company's conversion from firm sales to firm transportation and (b) any necessary abandonment authorization to reduce sales services to Hanley and Bird, Inc. (Hanley & Bird), an RQ customer, in connection with Hanley & Bird's election to become a Rate Schedule SCQ customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that it seeks abandonment authorization to reduce its sales service obligation, including standby sales service, to Hope, BG&E, CG&E, Union and Hanley & Bird in response to, (a) Hope, BG&E, CG&E and Union's election to convert from firm sales to firm transportation, in accordance with the terms of their service agreements and (b) Hanley & Bird's election to become a Rate Schedule SCQ customer as permitted by Section 1 of Rate Schedule SCQ. Further, CNG requests (a) that the abandonment authorization for Hope, CG&E, Union and Hanley and Bird be effective as of January 1, 1991 and (b) that the abandonment authorization for BG&E be effective as of December 1, 1989. In addition CNG requests similar abandonment authority for service to BG&E during the period December 1, 1988 through June 7, 1989 when CNG provided an interim combination of sales service and firm transportation service to BG&E in place of the full certificated level of sales service.

Comment date: January 30, 1991, in accordance with Standard Paragraph F at the end of this notice.

7. Texas Eastern Transmission Corp., Northwest Pipeline Corp. and Northwest Pipeline Corp.

[Docket Nos. CP91-800-000, CP91-802-000 and CP91-803-000]

Take notice that Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252-2521, and Northwest Pipeline Corporation, 295 Chipeta Way, Salt Lake City, Utah 84108, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-136-000, as amended, and Docket No. CP86-578-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: February 25, 1990, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-800-000 (1-3-90)	Santanna Natural Gas Corporation (Marketer).	75,000 75,000 27,375,000	LA, OLA, AL, AR, IL, IN, KY, MO, MS, NJ, NY, OH, PA, TN, TX, WV.	MD, OMD	8-1-90, TI-1, interruptible.	ST91-5372, 11-6-90.
CP91-802-000 (1-3-90)	The Boeing Company (End User).	20,000 20,000 7,300,000	various [2]	various	9-7-88 [3], TI-1, interruptible.	ST91-5912, 12-1-90.
CP91-803-000 (1-3-90)	Snyder Oil Company (Producer).	500 200 73,000	various	various	8-30-90, TI-1, interruptible.	ST91-5922, 11-1-90.

[1] Offshore Louisiana, offshore Texas, and offshore Maryland are shown as OLA, OTX, and OMD.
[2] Northwest states that it would receive gas for the account of either shipper at any of the transportation receipt points on Northwest's system and that it would redeliver gas for the account of either shipper at any transportation delivery point on Northwest's system.
[3] As amended December 5, 1988, and February 21, 1989.

8. Colorado Interstate Gas Co., Colorado Interstate Gas Co. and Sea Robin Pipeline Co.

[Docket Nos. CP91-792-000, CP91-793-000 and CP91-794-000]

Take notice that Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, and Sea Robin Pipeline Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-589, *et al.* and Docket No. CP88-824-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public insection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual Mcf	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-792-000 (1-2-91)	U.S. Air Force Academy/Fort Carson (End-User).	6,750 5,000 1,785,000	WY	CO	7-1-90, TF-1, Firm	ST91-3156-000, 10-1-90.
CP91-793-000(1-2-91)	LL & E Gas Marketing, Inc. (Marketer).	75,000 40,000 14,600,000	WY	OK	10-1-89, TI-1, Interruptible	ST91-5929-000, 12-5-90.
CP91-794-000 (1-2-91)	American Central Gas Companies, Inc. (Marketer).	20,600 MMBtu 20,600 MMBtu 7,519,000 MMBtu	OLA	LA	8-24-90, ITS, Interruptible	ST91-1448-000, 9-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing or will be held without further notice before the Commission its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's

staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, 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. 91-1206 Filed 1-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-753-000, et al.]

Texas Eastern Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corp.

[Docket No. CP91-753-000]

January 10, 1991.

Take notice that on December 26, 1990, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252-2521, filed a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texas Ohio Gas, Inc. (Texas-Ohio), a marketer, under Texas Eastern's blanket transportation certificate issued in Docket No. CP88-136-000, as amended in Docket No. CP88-136-007, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Texas Eastern states that pursuant to a Service Agreement dated September 27, 1991 (Agreement) it proposes to transport up to 15,000 MMBtu per day on an interruptible basis on behalf of Texas-Ohio under its Rate Schedule IT-1. It is stated that the Agreement provides for Texas Eastern to receive gas from existing receipt points on its system located offshore Louisiana, and in the states of Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Missouri, Mississippi, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas and West Virginia and redeliver such gas, less applicable shrinkage, to existing delivery points on its system in Kentucky. Texas Eastern indicates that the estimated daily and annual quantities to be transported would be 15,000 MMBtu and 5,475,000 MMBtu, respectively. Lastly, Texas Eastern advises that the transportation service commenced on November 1, 1991, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST91-4019-000.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. High Island Offshore System

[Docket Nos. CP91-812-000, CP91-813-000, and CP91-814-000]

January 10, 1991.

Take notice that High Island Offshore System, 500 Renaissance Center, Detroit, Michigan 48243, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-812-000 (1-4-91)	Wisconsin Gas Company (Distributor).	700,000 700,000 255,500,000	OLA, OTX	OLA	4-1-90, IT, Interruptible.	ST91-2987-000 10-31-90.
CP91-813-000 (1-4-91)	Niagara Mohawk Power Corporation (Distributor).	219,100 219,100 79,971,500	OLA, OTX	OLA	4-1-90, IT, Interruptible.	ST91-2984-000 10-31-90.
CP91-814-000 (1-4-91)	Triumph Gas Marketing Company (Marketer).	181,500 181,500 66,247,500	OLA, OTX	OLA OTX	4-1-90, IT, Interruptible.	ST91-2986-000 10-31-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

3. Viking Gas Transmission Co., Superior Offshore Pipeline Co. and Trunkline Gas Co.

[Docket No. CP91-831-000 CP91-832-000 CP91-833-000 CP91-835-000]

January 10, 1991.

Take notice that Applicants filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.233 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[2]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day and annual volumes; the service initiation dates; and related ST docket number of the 120-day transaction under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in appendix A. Applicants' addresses and transportation blanks certificates are shown in Appendix B.

[2] These prior notice requests are not consolidated.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Shipper's name (type)	Peak day, average day, annual	Receipt points [1]	Delivery points	Contract date, Rate Schedule Service type	Related docket start up date
CP91-831-000 (1-4-91)	Western Methane Company (Marketer).	[2] 480,000 480,000 175,200,000	MN, ND, WI	MN, ND, WI	10-1-90 IT-2 Interruptible.	ST91-5897 11-20-90.
CP91-832-000 (1-4-91)	TexPar Energy, Inc. (Marketer).	100,000 100,000 36,500,000	MN, ND, WI	MN, ND WI	10-1-90, IT-2, Interruptible.	ST91-5896 11-21-90.
CP91-833-000 (1-4-91)	Kerr-McGee Corporation (Marketer).	[3] 42,000 42,000 5,040,00	OLA	LA	12-1-90 T-1, Firm	ST91-5468 12-1-90.
CP91-835-000 (1-7-91)	Xebec Gas Company (Marketer).	[4] 15,000 7,500 5,475,000	IL, LA OLA, TN, TX, OTX.	IN	10-18-90, PT, Interruptible.	ST91-4343 11-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Dekatherms.
[3] MMBtu.
[4] Mcf.

Applicant's address	Blanket docket
Superior Offshore Pipeline Co., 12450 Greenspoint Drive, Houston, Texas 77060.	CP86-387-000
Trunkline Gas Company, P.O. Box 1642, Houston Texas 77251-1642.	CP86-586-000
Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252.	CP90-273-000

4. Arkla Energy Resources, a division of Arkla, Inc.

[Docket Nos CP91-787-000, CP91-788-000, CP91-790-000, CP91-791-000]

January 10, 1991.

Take notice that on December 31, 1990, as supplemented on January 7, 1991, Arkla Energy Resources, a division of Arkla, Inc. (Applicant), Post Office Box 21734, Shreveport, Louisiana 71151, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.233 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-820-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No.	Shipper name	Peak day,[1] avg. annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-787-000 12-31-90	Arkla Energy Marketing Co.	1,527 1,527 557,355	AR, LA, OK, TX	AR	11-1-90 FT	ST91-5504-000
CP91-788-000 12-31-90	Hollytex Carpet Mills	1,000 1,000 365,000	AR, LA, OK, TX	OK	11-1-90 IT	ST91-5512-000
CP91-790-000 12-31-90	National Steel Corporation.	5,000 5,000 760,000	AR, LA, OK	AR	11-1-90 FT	ST91-3560-000
CP91-791-000 12-31-90	Arkla Energy Marketing Co.	5,000 5,000 760,417	AR, LA, OK, TX	AR	11-1-90 FT	ST91-5503-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. H an ST docket is shown, 120-day transportation service was reported in it.

5. Tennessee Gas Pipeline Co., Tennessee Gas Pipeline Co., Midwestern Gas Transmission Co., and Colorado Interestate Gas Co.

[Docket Nos. CP91–796–000, CP91–797–000, CP91–798–000, CP91–799–000]

January 10, 1991.

Take notice that on January 3, 1991, the above-listed companies filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shipppers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket number (date field)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91–796–000 (1–3–91)	Tennesse Gas Pipeline Company.	NGC Transportation, Inc.	25,000 25,000 9,125,000	NY	NY	12–1–91, FT–A	CP87–115–000 ST91–6041–000
CP91–797–000 (1–3–91)	Tennesse Gas Pipeline Company.	Enevco Oil and Gas Company.	50,000 50,000 18,250,000	MS	TN	12–5–90, IT	CP87–115–000 ST91–6039–000
CP91–798–000 (1–3–91)	Midwestern Gas Transmission Company.	KN Gas Marketing Inc.	150,000 150,000 54,750,000	TN, IN, IL, KY	TN, IN, IL, KY	12–13–90, IT	CP90–174–000 ST91–6936–000
CP91–799–000 (1–3–91)	Colorado Intersate Gas Company.	PSI Gas Marketing, Inc.	25,000Mcf 600Mcf 219,000Mcf	WY	OK	12–1–90, IT–1	CP86–589–000 ST91–6043–000

[1] Quantities are shown in Dt. unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Southern Natural Gas Co., Southern Natural Gas Co., Southern Natural Gas Co., Southern Natural Gas Co., and Southern Natural Gas Co.

[Docket Nos. CP91–822–000, CP91–823–000, CP91–824–000, CP91–825–000, and CP91–826–000,]

January 10, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date rate schedule	Related Dockets [2]
				Receipt	Delivery		
CP91–822–000 1/4/91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202.	PSI Gas Marketing, Inc.	45,000 45,000 16,425,000	Offshore	LA, TX, MS, AL	FT FIRM, 11/1/90	CP88–316–000 ST91–3019–000
CP91–823–000 1/4/91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202.	Citrus Marketing, Inc.	10,000 10,000 3,650,000	Offshore LA, TX, MS, Al.	LA	FT FIRM, 11/1/90	CP88–316–000 ST91–3015–000
CP91–824–000 1/4/91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202.	Natural Gas & Oil Corporation.	2,500 2,500 TX, LA, MS, 912,500 AL	Offshore	MS	FT FIRM 11/1/90	CP88–316–000 ST91–3023–000

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date rate schedule	Related Dockets [2]
				Receipt	Delivery		
CP91-825-000 1/4/91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202.	Marshall County Gas District.	1,933 1,933 705,545	Offshore TX, LA, MS, AL.	AL	FT FIRM 11/1/90	CP88-316-000 ST91-3014-000
CP91-826-000 1/4/91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202.	Access Energy Corporation.	1,600 1,600 584,000	Offshore LA, TX, MS, AL.	LA	FT FIRM 11/1/90	CP88-316-000 ST91-3016-000

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. Southern Natural Gas Co.

[Docket No. CP91-859-000]

January 11, 1991.

Take notice that on January 8, 1991, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-859-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to construct, install and operate four sales taps and appurtenant facilities for the delivery of natural gas to Amoco Producton Company (Amoco) under the blanket certificate issued in Docket No. CP82-406-000, and pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to construct the new sales taps which will include meter stations in order to provide interruptible transportation service, as necessary, to Amoco for use as compressor fuel in Amoco's Oak Grove Field Operations in Tuscaloosa and Jefferson Counties, Alabama. It is stated that Amoco anticipates requesting up to 1,500 MMBtu of natural gas per day at the subject facilities. Southern states that the facilities will consist of a single 3-inch orifice meter and tie-in piping as well as other necessary equipment to be located at each proposed sales tap. Southern states that the Oak Grove #4 Meter Station will be located at or near Mile Post 285.5 on Southern's North Main Lines in Section 30, Township 18 South Range 7 West, Tuscaloosa County, Alabama; the Oak Grove #5 Meter Station will be located at or near Mile Post 300.5 on Southern's North Main Lines in Section 31, Township 17 South, Range 5 West, Tuscaloosa County, Alabama; the Oak Grove #6 Meter Station will be located at or near Mile Post 283.2 on Southern's North Main Lines in Section 35, Township 18 South, Range 8 West, Tuscaloosa County, Alabama; and the Oak Grove-Lick Creek Meter Station will be located near Mile Post 6.0 on Southern's 12-inch Bessemer-Calera Line in Section 28, Township 18 South, Range 5 West, Jefferson County, Alabama.

To the extent utilized, Southern state that the subject interruptible transportation service is conditioned on the availability of capability sufficent for Southern to perform the service without detriment or disadvantage to Southern's obligations to its customers who are dependent on its general system supply, and is further subject to the availability of excess capacity in Southern's pipeline facilities and the operating conditions and system requirements of Southern. Southern anticipates that the performance of interruptible transportation for Amoco at the sales taps will have no significant impact on Southern's peak day capabilities, and the addition of said sales taps on Southern's system will potentially increase throughout.

Southern states that Amoco has agreed to reimburse Southern for the total cost of constructing and installing the facilities which is estimated to be $185,460. Southern states that it will own and operate the facilities as part of its pipeline system.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

8. Tennessee Gas Pipeline Co., Trunkline Gas Co. and Truckline Gas Co.

[Docket Nos. CP91-811-000, CP91-815-000 and CP91-816-000]

Take notice that on January 4, 1991, the above referrenced companies (Applcicants) filed in respective dockets prior notice requests pursuant to § § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the initiation dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Applicants states that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No.	Applicant	Shipper name	Peak Day,[1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-811-000	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77252.	Atlas Gas Marketing, Inc.	[3] 20,000 20,000 7,300,000	WV, NY, PA	PA, WV, NJ, MA, OH, CT.	11-07-90, IT	CP87-115-000 ST91-5529-000
CP91-815-000	Truckline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Associated Natural Gas.	100,000 100,000 36,500,000	IL, TX, LA, TN, Off LA, Off TX.	IL	11-01-90, PT	CP86-586-000 ST91-5187-000
CP91-816-000	Truckline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Conoco, Inc.	20,161 20,161 7,358,765	LA TN, IL TX, Off La, Off TX.	IL	11-01-90 PT	CP86-586-000 ST91-5189-000

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] Volumes in dekatherms.

9. United Gas Pipe Line Co.

[Docket Nos. CP91-857-000 and CP91-858-000]

January 11, 1991.

Take notice that on January 8, 1991, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77251-1478, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: February 25, 1990, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[1] avg. annual	Points of—		Start up date, rate schedule, service type	Related [2] docket, contract date
			Receipt	Delivery		
CP91-857-000 (1-8-91)	Louisiana State Gas Corp.	309,000 309,000 112,785,000	LA, MS, TX	AL, FL, LA, MS	12-7-90 ITS Interruptible	ST91-6013-000 10-1-88 [3]
CP91-858-000 (1-8-91)	Enermark Gas Gathering Corp.	103,000 103,000 37,595,000	LA, MS, TX	AL, FL, LA, MS, TX	12-4-90 ITS Interruptible	ST91-6055-000 9-15-89 [4]

[1] Quantities are shown in MMBtu.
[2] If an ST docket is shown, 120-day transportation service was reported in it.
[3] Amended 11-16-90.
[4] Amended 11-21-90

10. Panhandle Eastern Pipe Line Co.

[Docket Nos. CP91-878-000, CP91-879-000 and CP91-880-000]

January 11, 1991.

Take notice that on January 9, 1991, Panhandle Eastern Pipe Line Company (Applicant), Post Office Box 1642, Houston, Texas 77251-1642, filed in respective dockets prior to notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the initiation dates and related docket numbers of the 120-day transactions under Section 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[1] avg. annual	Points of—		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-878-000 1-09-91	Amgas, Inc	1,500 1,500 547,500	CO, IL, KS, MI, OH, OK, TX.	IL	11-20-90 PT	ST91-5488-000
CP91-879-000 1-09-91	Amgas, Inc	150 75 27,375	CO, IL, KS, MI, OH, OK, TX, WY.	IL	11-07-90 PT	ST91-5489-000
CP91-880-000 1-09-91	Amoco Production Co	150,000 150,000 18,250,000	CO, KS, OK, TX	KS	11-13-90 PT	ST91-5366-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

11. Great Lakes Gas Transmission Co.

[Docket Nos. CP91-884-000 and CP91-885-000]

January 11, 1991.

Take notice that Great Lakes Gas Transmission Company, Suite 1600, One Woodward Avenue, Detroit, Michigan 48226, (Great Lakes) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of the various shippers under its blanket certificate issued in Docket No. CP-89-2198-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.[9]

Information applicable to each transaction, including the identity of the shipper, the type of transportation, the appropriate transportation rate schedule, the peak-day, average-day, and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Great Lakes and is summarized in the attached appendix.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

Docket No. (date filed) shipper's name (type of shipper) (date)	Peak-day, average-day, annual Mcf	Receipt/delivery points	Contract date, rate schedule, service type	Related docket and start-up
CP91-884-000 (1-10-91), ST91-5271-000, Western Gas Marketing USA Ltd. (Marketer)	500,000 500,000 182,500,000	*R* MN, MI *D* MN, MI	10-25-90 IT Interruptible	11-01-90
CP91-885-000 (1-10-91), ST91-5266-000, Utilicorp United, Inc. dba NMU (LDC)	1,000 1,000 365,000	*R* MN *D* MN	10-18-90 FT Firm	11-01-90

12. Great Lakes Gas Transmission Co.

[Docket Nos. CP91-808-000, CP91-809-000, CP91-810-000]

January 11, 1991.

Take notice that Great Lakes Gas Transmission Company, Suite 1600, One Woodward Avenue, Detroit, Michigan 48226, (Great Lakes) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of the various shippers under its blanket certificate issued in Docket No. CP89-2198-000, pursuant to section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.[10]

Information applicable to each transaction, including the identity of the shipper, the type of transportation, the appropriate transportation rate schedule, the peak-day, average-day, and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Great Lakes and is summarized in the attached appendix.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[10] These prior notice requests are not consolidated.

Docket No. (date filed), shipper's name (type of shipper)	Peak-day, average-day, annual Mcf	Receipt/delivery points	Contract date, rate schedule, service type	Related docket, start-up date
CP91-808-000 (1-04-91), Peoples Natural Gas Co. (LDC)	1,948 1,948 711,020	*R* MN *D* MN	10-16-90 FT Firm	ST91-5275-000 11-01-90
CP91-809-000 (1-04-91), Unicorp Energy, Inc. (Marketer)	400,000 400,000 146,000,000	*R* MN, MI *D* MN, MI	10-22-90 IT Interruptible	ST91-5261-000 11-01-90
CP91-810-000 (1-04-91), MichCon Trading Co. (Marketer)	200,000 200,000 73,000,000	*R* MN, MI *D* MI	10-23-90 IT Interruptible	ST91-5270-000 11-01-90

13. National Fuel Gas Supply Corp.

[Docket No. CP91–860–000]

January 11, 1991.

Take notice that on January 8, 1991, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP91–86–000 an application pursuant to section 7(b) of the Natural Gas Act and part 157 of the Regulations under the Natural Gas Act (18 CFR part 157), for authority to abandon certain of the compression facilities installed pursuant to the authority granted in Docket No. CP70–76, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, National proposes to abandon one 600 horsepower compressor unit located at its Corry Compressor Station in the Town of Corry, Erie County, Pennsylvania. National states that the certificate authorized the installation of two 600 horsepower units, one to be used for storage operations and the other for transmission purposes. National further states that the unit used for transmission purposes has proved unnecessary and has not been in service since 1983. National asserts that it has a buyer willing to pay $29,000 for the engine portion of this unit and that it will scrap the remainder of the unit.

Comment date: February 1, 1990, in accordance with Standard Paragraph F at the end of this notice.

14. Southern Natural Gas Co.

[Docket No. CP91–784–000]

January 11, 1991.

Take notice that on December 31, 1990, Southern Natural Gas Company (Southern) Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP91–784–000 an application pursuant to section 7(b) of the Natural Gas Act, for authority to abandon its transportation service for United Gas Pipe Line Company (United) that was authorized in Docket No. CP80–509–000, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Southern states that pursuant to a transportation agreement between Southern and United dated April 15, 1980, as amended July 9, 1980 (Transportation Agreement), Southern agreed to transport and exchange gas produced from the Fort Pike Field, Orleans Parish, Louisiana for United's account. Because United has indicated that it no longer needs the firm transportation capacity reserved under the terms of the Transportation Agreement, Southern states that by Letter Agreement dated December 13, 1990, the parties agreed to terminate the Transportation Agreement as of November 30, 1990. Southern further states that no abandonment of facilities is proposed in conjunction with the abandonment of this transportation service. Upon receipt of the requested abandonment authority, Southern states that it would file appropriate tariff sheets to cancel Rate Schedule X–56 of its FERC Gas Tariff, Original Volume No. 2, which consists of the subject Transportation Agreement.

Comment date: February 1, 1991, in accordance with Standard Paragraph F at the end of the notice.

15. H. United Gas Pipe Line Co.

[Docket Nos. CP91–848–000, CP91–849–000, CP91–850–000 and CP91–851–000]

January 11, 1991.

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251–1478, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[11]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[11] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–848–000 (1–7–91)	FRM, Inc. (Intrastate pipeline)	15,450 15,450 5,639,250	Various	Various	10–15–90 ITS Interruptible	ST91–06012 11–16–90
CP91–849–000 (1–7–91)	Bishop Pipeline Corp. (Intrastate pipeline).	41,200 41,200 15,038,000	do	do	10–22–90 ITS Interruptible	ST91–05554 11–19–90
CP91–850–000 (1–7–91)	Bishop Pipeline Corp. (Intrastate pipeline).	41,200 41,200 15,038,000	do	do	11–1–90 ITS Interruptible	ST91–05552 11–19–90
CP91–851–000 (1–7–91)	Arkla Energy Marketing Co. (Marketer).	206,000 206,000 75,190,000	do	do	3–1–90 Firm	ST91–05797 11–12–90

16. Natural Gas Pipeline Co. of America

[Docket Nos. CP91-861-000,[12] CP91-862-000 CP91-863-000]

January 11, 1991.

Take notice that on January 9, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the transportation agreement between Natural and the respective shipper, the contract number of the transportation service agreement, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Natural and is included in the attached appendix.

Natural alleges that it would provide the proposed service for each shipper under an executed transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[12] These prior notice requests are not consolidated.

Docket No. trans. agree. (contract no.)	Applicant	Shipper Name	Peak Day [1] avg. annual	Points of—		Start up date, rate schedule, service type	Related [2] dockets
				Receipt	Delivery		
CP91-861-000, 10-19-90 (FGP-2540).	Natural	USS, a division of USX Corp.	10,000 10,000 3,650,000	TX, IL, & AR	IL & TX	11-1-90 FTS Firm	ST91-4171-000
CP91-862-000, 10-31-90 (IP-2777).	do	Centran Corp.	30,000 15,000 5,475,000	Various existing points.	Various existing points.	11-3-90 ITS Interruptible	ST91-5281-000
CP91-863-000, 10-31-90 (IP-2774).	do	Reliance Gas Marketing Co.	25,000 15,000 5,475,000	Various existing points.	Various existing points.	11-30-90 ITS Interruptible	ST91-5282-000

[1] Quantities are shown in MMBtu.
[2] The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

17. Southern Natural Gas Co.

[Docket No. CP91-783-000]

January 11, 1991.

Take notice that on December 31, 1990, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-783-000 an application pursuant to section 7(b) of the Natural Gas Act, for authority to abandon its transportation service for United Gas Pipe Line Company (United) that was authorized in Docket No. CP78-284-000, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Southern states that pursuant to a transportation agreement between Southern and United dated April 5, 1978, (Transportation Agreement), Southern agreed to receive gas from the Block 57 Field, Eugene Island area, offshore Louisiana for United's account and deliver the gas to United's offshore facilities in Block 32, Eugene Island area, offshore Louisiana. Because United has indicated that it no longer needs the firm transportation capacity reserved under the terms of the Transportation Agreement, Southern states that by Letter Agreement dated December 13, 1990, the parties agreed to terminate the Transportation Agreement as of November 30, 1990. Southern further states that no abandonment of facilities is proposed in conjunction with the abandonment of this transportation service. Upon receipt of the requested abandonment authority, Southern states that it would file appropriate tariff sheets to cancel Rate Schedule X-44 of its FERC Gas Tarifff, Original Volume No. 2, which consists of the subject Transportation Agreement.

Comment date: February 1, 1991, in accordance with Standard Paragraph F at the end of the notice.

18. Transcontinential Gas Pipe Line Corp., Transcontinential Gas Pipe Line Corp., Panhandle Eastern Pipe Line Co., Tennessee Gas Pipeline Co.

[Docket Nos. CP91-853-000, CP91-854-000, CP91-855-000 and CP91-856-000]

January 11, 1991.

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[13]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: February 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[13] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day[1] avg. annual	Points of—		Start up date rate schedule	Related[2] dockets
				Receipt	Delivery		
CP91-853-000 1-8-91	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251.	Union Texas Development Corp.	40,000 20,000 7,300,000	Off. LA	Off. LA	11-1-90 IT	CP88-328-000 ST91-4983-000
CP91-854-000 1-8-91	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251.	Graham Energy Marketing Corp.	100,000 100,000 36,500,000	LA	LA, MS	11-1-90 IT	CP88-328-000 ST91-4981-000
CP91-855-000 1-8-91	Panhandle Eastern Pipe Line Co., P.O. Box 1642, Houston, TX 77251-1642.	Amgas, Inc	40 20 7,300	CO, IL, KS, MI, OH, OK, TX, WY.	IL	11-1-90 PT-I	CP86-585-000 ST91-5364-000
CP91-856-000 1-8-91	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77252.	Graham Energy Marketing Corp.	100,000 100,000 36,500,000	Off. LA, Off. TX, LA, TX, MS, AL.	LA, MS, AL, WV, TN, KY.	12-1-90 IT	CP87-115-000 ST91-6221-000

[1] Quantities are shown in dt unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

19. Chevron U.S.A. Inc., et al.
[Docket No. CI61-1441-001, *et al.*] [14]
January 11, 1991.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Comment date: January 30, 1991, in accordance with Standard Paragraph J at the end of this notice.

[14] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI61-1441-001, D, 12-10-90	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 75253-3725.	Lone Star Gas Company, Durant Southeast Field, Byran County, Oklahoma.	Assigned 8-1-90 to Chase Petroleum Ltd., Hondo Oil & Gas Company, MSG Petroleum Partners, Ltd., and SHELRO Petroleum Corporation.
CI61-1441-002, D, 12-26-90	Chevron U.S.A. Inc.	Lone Star Gas Company, Durant Southeast Field, Bryan County, Oklahoma.	Assigned 8-1-90 to EXOK, Inc.
CI77-230-003, D, 11-13-90	Oryx Energy Company, P.O. Box 2880, Dallas, TX 75221-2880.	Texas Gas Transmission Corporation, Bayou Mallet South Field, Acadia Parish, Louisiana.	Assigned 10-12-90 to Ernest Bieber.
CI91-12-000 (CI71-559), D, 11-15-90	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102.	Columbia Gas Transmission Corporation, Kentland Coal and Coke Co. #1 and #2, Pike County, Kentucky.	Assigned 1-1-90 to Columbia Natural Resources, Inc.
CI91-12-000 (CI73-635), D, 11-15-90	OXY USA Inc.	Columbia Gas Transmission Corporation, Lydia Belcher Unit, Pike County, Kentucky.	Assigned 1-1-90 to Columbia Natural Resources, Inc.
CI91-14-000 (CI77-605), D, 11-28-90	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Lone Star Gas Company, Sholem Alechem Field, Carter County, Oklahoma.	Assigned 10-1-90 to L.E. Jones Production Company.
CI91-21-000 (CI69-334), D, 12-20-90	Oryx Energy Company	Natural Gas Pipeline Company of America, Crittendon Field, Winkler County, Texas.	Assigned 10-1-89 to Headington Minerals, Inc.
CI91-22-000 (G-6640), D, 12-20-90	Oryx Energy Company	United Gas Pipe Line Company Carthage Field, Panola County, Texas.	Assigned 9-1-90 to Union Pacific Texas, Inc.
CI91-23-000 (G-6045), D, 12-20-90	Oryx Energy Company	United Gas Pipe Line Company, Cotton Valley Field, Webster Parish, Louisiana.	Assigned 1-1-90 to Hunt Oil Company.
CI91-24-000 (G-18243), D, 12-20-90	Oryx Energy Company	Texas Gas Transmission Corporation, Carthage Field, Panola County, Texas.	Assigned 9-1-90 to Union Pacific Texas, Inc.
CI91-25-000 (G-6648), D, 12-20-90	Oryx Energy Company.	Texas Gas Transmission Corporation, Carthage Field, Panola County, Texas.	Assigned 9-1-90 to Union Pacific Texas, Inc
CI91-26-000 (G-6643), D, 12-20-90	Oryx Energy Company	United Gas Pipe Line Company, Carthage Field, Panola County, Texas.	Assigned 9-1-90 to Union Pacific Texas, Inc.
CI91-27-000 (G-2991), D, 12-20-90	Oryx Energy Company	Texas Gas Transmission Corporation, Carthage Field, Panola, County, Texas.	Assigned 9-1-90 to Union Pacific Texas, Inc.
CI91-30-000 (CI65-531), D, 12-26-90	BHP Petroleum (Americas) Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	Natural Gas Pipeline Company of America, Indian Basin Field, Eddy County, New Mexico.	Assigned 11-1-90 to Nearburg Exploration Company.
CI91-31-000 (G-7193), D, 12-31-90	Unocal Exploration Corporation, P.O. Box 7600, Los Angeles, CA 90051.	Texas Gas Transmission Corporation, Carthage Field, Panola County, Texas.	Assigned 10-1-89 to Sun Operating Limited Partnership.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the National Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, 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.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91–1207 Filed 1–17–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5–021, –022, and –023 Montana]

Montana Power Co.; Public Meeting

January 10, 1991.

The Federal Energy Regulatory Commission (Commission) will conduct a public meeting on February 13, 1991, regarding the fish and wildlife mitigation plan (plan) for the Kerr Hydroelectric Project (FERC Project No. 5) filed with the Commission on June 22, 1990. The public meeting will be held in the Winchester Room of the Best Western-Outlaw Inn, 1701 Highway 93 South, Kalispell, Montana, and will begin at 7:30 p.m.

The public meeting will: (1) Present the elements of the plan; (2) answer questions to clarify the plan; and (3) encourage statements from the public and experts on issues and concerns regarding implementation of the plan as filed with the Commission on June 22, 1990.

The meeting will be recorded by a stenographer and a copy of the transcript will become a part of the formal record of the Commission proceeding on the Kerr Hydroelectric Project. Individuals presenting statements at the meeting will be asked to clearly identify themselves for the record.

Persons choosing not to speak at the meeting, but who have views on the plan or information relevant to the plan, may submit written statements for inclusion in the public record. Written statements or correspondence should be send to The Secretary, Federal Energy Regulatory Commission, Mail Code: DPCA, HL–21.1, 825 N. Capitol St., NE., Washington, DC 20426, and clearly show the following caption on the first page: Kerr Hydroelectric Project, Fish and Wildlife Mitigation Plan, Montana, FERC No. 5–021, –022, –023.

For further information, please contact Patrick K. Murphy at (202) 219–2659.

Lois D. Cashell,

Secretary.

[FR Doc. 91–1208 Filed 1–17–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3898–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 19, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Information Collection from States in Accordance with the CERCLA Capacity Assurance Process, (EPA ICR #1343.02). This is a renewal of a currently approved collection.

Abstract: EPA requires States to provide data and program information biennially to assure that they have an adequate capacity to manage the hazardous waste expected to be generated within their borders. Specifically each state must report on its: (1) Understanding of its current hazardous waste management system, (2) waste minimization program, (3) projected future in-state generation, imports, and exports of hazardous waste, (4) projected future hazardous waste management system, and (5)

projected state and regional shortfalls of hazardous waste management capacity.

Burden statement: The estimated average public reporting burden for this collection of information is about 4,368 hours per state. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering data, and preparing and submitting the information to the Agency.

Respondents: States and Territories

Estimated No. of respondents: 56

Estimated total annual burden of respondents: 244,608 hours

Frequency of collection: biennially

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: January 14, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-1300 Filed 1-17-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3898-6]

Environmental Impact Statements and Regulations: Availability of EPA Comments

Availability of EPA comments prepared December 31, 1990 through January 4, 1991 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 FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-FAA-C51012-NY Rating E02, Stewart International Airport Properties Improvement, Orange County, NY.

Summary: EPA expressed environment objections to the proposed project because of potential adverse impacts to wetlands, a deficient alternatives analysis, lack of information regarding secondary and indirect impacts, incomplete infrastructure information, and a deficient noise impact analysis. EPA requested that additional information be provided in the final EIS to address these issues.

ERP No. D-SFW-J64004-WY Rating LO, Cokeville Meadows National Wildlife Refuge, Management Plan, Land Acquisition, Implementation, Bear River Valley, Lincoln County, WY.

Summary: EPA has no objections to the proposed project.

ERP No. D-UAF-A11069-AL Rating EC1, Anniston Army Depot On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operation, Calhoun County, AL.

Summary: EPA requested clarifying information on emergency preparedness and prevention measures and county participation in emergency preparedness exercises and committees.

Final EISs

ERP No. F-BPA-L05199-WA, Adoption—Cowlitz Falls Hydroelectric Project No. 2833, Power Acquisition and section 404 Permit, Lewis County, WA.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

ERP No. F-COE-C36053-NY, Limestone Creek Local Flood Protection, Implementation, Fayetteville, Onondaga County, NY.

Summary: EPA believes the final EIS has adequately addressed concerns and has incorporated the measures recommended in comments on the draft EIS. Accordingly, EPA does not object to the implementation of this project.

ERP No. F-COE-C36057-NY, Limestone Creek Flood Damage Reduction Plan, Implementation, Manlius, Onondaga County, NY.

Summary: EPA fells the final EIS has adequately addressed concerns and has incorporated the measures EPA recommended in comments on the draft EIS. Accordingly, EPA does not object to the implementation of the project.

ERP No. F-FHW-L40170-OR, US 30/ Columbia River Highway Improvements, Bennett Road to Columbia Road, Funding and 404 Permit, Columbia County, OR.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

ERP No. F-NOA-A91056-00, Atlantic Coast Red Drum Fishery Management Plan, Implementation, Exclusive Economic Zone (EEZ) of the east coast of MA, NH, MA, RI, CT, NY, NJ, PA, DE, MD, VA, NC, SC, GA, and FL.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

ERP No. F-UMT-K54018-CA, Colma BART Station Project, Transit Improvements, Funding, San Mateo County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

Dated: January 15, 1991.

Anne Norton Miller,

Director, FALD, Office of Federal Activities.

[FR Doc. 91-1325 Filed 1-17-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3898-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed January 07, 1991 Through January 11, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910005, Draft EIS, AFS, CA, Gillibrand Soledad Canyon Mining Operations Management Plan, Implementation, Angeles National Forest, Los Angeles County, CA, *Due:* March 12, 1991, *Contact:* Charles McDonald (818) 574-5257.

EIS No. 910006, Draft EIS, AFS, CA, Mt. Reba Ski Area Expansion, Stanislaus National Forest, Special Use Permit, Calaveras Ranger District, Alpine County, CA, *Due:* March 04, 1991, *Contact:* Claire C. Huking (209) 795-1381.

EIS No. 910007, Final EIS, GSA, MI, Internal Revenue Service Detroit Computing Center Expansion, Construction, Wayne County, MI, *Due:* February 19, 1991, *Contact:* Ms. Sharon Malloy (312) 353-5610.

EIS No. 910008, Draft EIS, FAA, WA, Bellingham International Airport Runway Extension, Construction and Operation, Airport Layout Plan, Approval and Funding, Whatcom County, WA, *Due:* March 04, 1991, *Contact:* Dennis G. Oseenkop (206) 227-2611.

EIS No. 910009, Draft EIS, AFS, MT, Upper Ruby Cattle and Horse Allotment Management Plan, Centennial Divide Road No. 100 Reconstruction and Management Area Designation for portions of the Ruby River, Implementation, Beaverhead National Forest, Sheridan Ranger District, Madison and Beaverhead Counties, MT, *Due:* March 04, 1991 *Contact:* Ronald

Stellingwerf (406) 683–3900.

EIS No. 910010, Draft EIS, FRC, CA, Pacific and Altamont Natural Gas Transmission Pipeline Projects, Construction, Operation and Maintenance, section 10 and 404 Permits, extending from Canada to CA, *Due:* March 04, 1991 *Contact:* Mark Kalpin (202) 208–0918.

EIS No. 910011, Final EIS, AFS, OR, Mount Hood Ski Area Additional Development and Expansion, Master Plan Approval, Special Use Permit, US Department of Commerce Permits and US COE Section 404 Permit, Mount Hood National Forest, Hood River County, OR, *Due:* February 19, 1991, *Contact:* Douglas E. Gochnour (503) 666–0700.

EIS No. 910012, Final EIS, REA, FL, Hardee Power Station and Related Facilities, 230kV Trnasmission Line and Natural Gas Pipeline, Construction and Operation, Loan Guarantee, NPDES Permit, Hardee, Polk, DeSoto, Lee and Charlotte Counties, FL, *Due:* February 19, 1991, *Contact:* Alex M. Cockey (202) 382–8437.

EIS No. 910013, Final Supplement, COE, NY, NJ, Port of New York-New Jersey Dredged Material Disposal Project, Use of Subaqueous Borrow Pits for Disposal of Dredged Material Designation, Updated Information, NY and NJ, *Due:* February 25, 1991, *Contact:* Len Houston (212) 264–4662.

EIS No. 910014, Draft EIS, BLM, NV, Betze Open Pit Gold Mine Expansion, Implementation Elko and Eureka Counties, NV, *Due:* March 11, 1991, *Contact:* Nick Rieger (702) 738–4071.

EIS No. 910015, Draft EIS, FHW, VT, I–89 Interchange in the town of Bolton and US 2 between Watersburg and Richmond, Construction Funding, Chittenden and Washington Counties, VT, *Due:* March 15, 1991, *Contact:* George Jensen (802) 828–4423.

EIS No. 910016, Third Draft Supplem, NOA, WA, OR, CA, Pacific Coast Groundfish Fishery Management Plan (FMP), License Limitation Program, Approval and Implementation of Amendment No. 6, OR, WA and CA, *Due:* March 04, 1991, *Contact:* Rolland Schmitten (206) 526–6150.

EIS No. 910017, Revised Draft EIS, AFS, NH, Loon Mountain Ski Area, South Mountain Expansion Project, Additional Information, Special Use Permit, White Mountain National Forest, Grafton County, NH, *Due:* March 04, 1991, *Contact:* Ned Therrien (603) 528–8721.

Amended Notices

EIS No. 900435, Draft EIS, AFS, MT, Flathead National Forest Land and Resource Management Plan, Amendment No. 10 Open Road Density Standard for Non-Wilderness Portion of the Forest, Implementation, Flathead, Lake, Lincoln and Missoula Counties, MT., *Due:* March 01, 1991, *Contact:* Charles Snyder (406) 755–5401. Published FR 12–07–90—Review period extended.

Dated: January 15, 1991.

Anne Morton Miller,

Director, FALD Office of Federal Activities.

[FR Doc. 91–1324 Filed 1–17–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3897–8]

Science Advisory Board; Ecological Processes and Effects Committee; Ecological Monitoring Subcommittee; Marine Disease Diagnostic Task Group; Open Meetings

Under Public Law 92–463, notice is hereby given that two meetings of subgroups of the Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board (SAB) will be held on February 19–20, 1991, and March 18–19, 1991.

The Marine Disease Diagnostic Task Group will meet at the EPA Environmental Research Laboratory, Sabine Island, Gulf Breeze, Florida 32561. This meeting will start at 9 a.m. on February 19 and will adjourn no later than 5 p.m. on February 20, and is open to the public. The main purpose of this meeting is to review plans that are being developed by EPA to develop a Marine Disease and Diagnostic Center at the Gulf Breeze research laboratory. The review will include a limited tour of the facilities, and it will focus on EPA's five year plan, proposed structure of the organization, and the research agenda for the center. Copies of background documents for this meeting are available from Dr. Robert Menzer, Director of the Gulf Breeze Environmental Research Laboratory (Phone: (904) 932–5311).

The Ecological Monitoring Subcommittee will meet at the Howard Johnson, National Airport, 2650 Jefferson Davis Highway, Arlington, VA 22202 on March 18–19, 1991. The meeting will start at 9 a.m. on March 18 and will adjourn no later than 5 p.m. on March 19, and is open to the public. The main purpose of this meeting is to review a long-term strategy for the Ecological Monitoring and Assessment Program (EMAP) that is being developed by EPA and to receive a briefing on the relationship between EMAP and EPA research on ecological risk assessment. The Subcommittee will also receive updates on two other elements of the EMAP: Landscape characterization and Statistical Design. Copies of background documents for this meeting are available from Dr. Rick Linthurst, USEPA–OMMSQA, 401 M St., SW., Washington, DC, 20460 (Telephone: (202) 382–5767).

For additional information concerning either meeting or to obtain an agenda, please contact Dr. Edward Bender, Designated Federal Official, Ecological Processes and Effects Committee (EPEC), Science Advisory Board (A–101–F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Phone: (202) 382–2552; Fax: (202) 475–9693). Anyone wishing to make a presentation at the meeting should forward a written statement to Dr. Bender no later than January 25, 1991 for the Ecological Monitoring Subcommittee meeting and no later than February 1, for the Task Group meeting. The Science Advisory Board 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. Seating at both meetings will be on a first come basis.

Dated: January 8, 1991.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 91–1054 Filed 1–17–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59290A; FRL–3874–7]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–91–2, TME–91–3, and TME–91–4. The test marketing conditions are described below.

EFFECTIVE DATE: January 11, 1991.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 382–2440.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury to human health or the environment.

EPA hereby approves TME–91–2, TME–91–3, and TME–91–4. EPA has determined that test marketing of these new chemical substances described below, under the conditions set out in each TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME–91–2, TME–91–3, and TME–91–4. A bill of lading accompanying each shipment must state that the use of the substances is restricted to that approved in the specific TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of each TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of each TME substance.

TME–91–2

Date of receipt: November 29, 1990.

Notice of receipt: December 26, 1990 (55 FR 53044).

Applicant: Confidential.

Chemical: (G)Fatty amine salt of a sulfonate aromatic compound.

Use: (G) A coating additive for open, non-dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

TME–91–3

Date of receipt: November 29, 1990.

Notice of receipt: December 26, 1990 (55 FR 53044).

Applicant: Confidential.

Chemical: (G) Fatty amine salt of a C18 fatty ester of a mineral acid.

Use: (G) A coating additive for open, non-dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

TME–91–4

Date of receipt: November 29, 1990.

Notice of receipt: December 26, 1990 (55 FR 53044).

Applicant: Confidential.

Chemical: (G) Fatty amine salt of a C12–C15 fatty ester of a mineral acid.

Use: (G) A coating additive for open, non-dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: January 11, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91–1301 Filed 1–17–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1834]

Petitions for Reconsideration of Actions in Rule Making Proceedings

January 15, 1990.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452–1422. Oppositions to these petitions must be filed February 4, 1991. See § 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b) (1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Monroeville and Thomasville, Alabama) (MM Docket No. 89–362, RM Nos. 6694 & 6893)

Number of petitions filed: 1

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Greenwood, South Carolina) (MM Docket No. 89–404, RM–6895)

Number of petitions filed: 1

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Clintonville, New Holstein & Wautoma, Wisconsin) (MM Docket No. 89–548, RM–7017)

Number of petitions filed: 1

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Mt. Pleasant, Iowa) (MM Docket No. 90–103, RM–7174)

Number of petitions filed: 2

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–1317 Filed 1–17–91; 8:45 am]

BILLING CODE 6712–01–M

Applications, Hearings, Determinations, etc.: AJP Communications Investment Co., Inc. et al.

1. The Commission has before it the following mutually exclusive applications for 5 new FM stations:

I.

Applicant, city and State	File No.	MM docket No.
A. AJP Communications Investment Co., Inc.; Idaho Falls, ID.	BPH-890411MB	90-582
B. SPH Associates; Idaho Falls, ID.	BPH-890412MA	
C. Country Investments Limited Partnership; Idaho Falls, ID.	BPH-890412MG	

Issue Heading and Applicant(s)

1. Air Hazard, A–C
2. Environmental, A
3. Comparative, A–C
3. Ultimate, A–C

II

Applicant, city and State	File No.	MM docket No.
A. Kelly Vaughan Busch; West Lafayette, IN.	BPH-880822MA	90-583
B. Virginia Jo & Jack McFadden, Sr.; West Lafayette, IN.	BPH-880824MB	
C. WMRI, Inc.; West Lafayette, IN.	BPH-880825MT	
D. West Lafayette Communications, Inc.; West Lafayette, IN.	BPH-880825NH	
E. Hicks Broadcasting Corporation; West Lafayette, IN.	BPH-890825NU	
F. Goodrich Theaters, Inc.; West Lafayette, IN.	BPH-880824NB (dismissed herein).	

Issue Heading and Applicants

1. Air Hazard, A,C,D,E
2. Comparative, A,B,C,D,E,F
3. Ultimate, A,B,C,D,E,F

III.

Applicant, city and State	File No.	MM docket No.
A. Angela M. Segal; Homer, LA.	BPH-881026MA	90-584
B. Alfred T. Moore Jr. and Elbert Wiggins Giles d/b/a NWLA Broadcasting Co.; Homer, LA.	BPH-881026MB	
C. Marcus D. Jones d/b/a Fresh Radio; Homer, LA.	BPH-881026MG	
D. M.S.C. Communications, Inc.; Homer, LA.	BPH-881026MH	
E. Homer Broadcasting; Homer, LA.	BPH-881026MJ	

Issue Heading and Applicants

1. Air Hazard, C, D
2. Comparative, A–E
3. Ultimate, A–E

IV.

Applicant, city and State	File No.	MM docket No.
A. North Shore Communications, Inc.; Lacombe, LA.	BPH-890123MF	90-590
B. North Shore Broadcasting Limited Partnership; Lacombe, LA.	BPH-890123M	
C. North Lake Radio, Inc.; Lacombe, LA.	BPH-890123MH	
D. Lacombe Broadcasting Service; Lacombe, LA.	BPH-890123MN	
E. William Seiler; Lacombe, LA.	BPH-890123MW	
F. Lacombe Community Broadcasters, Inc.; Lacombe, LA.	BPH-890123MX	

Issued Heading and Applicant

1. Air Hazard, E
2. Comparative, A–F
3. Ultimate, A–F

V.

Applicant, city, state	File No.	MM docket No.
A. Teresa B. Lowry; Warrior, AL.	BPH-891214MJ	90-589
B. G. Dean Pearce; Warrior, AL.	BPH-891215MO	
C. Media Enterprises of Warrior, Inc.; Warrior, AL.	BPH-891218MG	
D. (Rick L. Jones, James Michael Anderson and Annie Grace Morgan d/b/a) Warrior Communications; Warrior, AL.	BPH-891218MH	
E. Ross Broadcasting Company, Inc.; Warrior, AL.	BPH-891218MI	
F. Henry S. Granger, Jr.; Warrior, AL.	BPH-891218MJ (returned herein).	

Issue Heading and Applicants

1. Air Hazard, C
2. Comparative, A–F
3. Ultimate, A–F

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commisson's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91–1250 Filed 1–17–91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Community Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Co.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under section 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and Section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the

proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 7, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Bancshares, Inc.*, Noblesville, Indiana; to become a bank holding company by acquiring 80 percent of the voting shares of Summitville Bank and Trust Co., Summitville, Indiana.

In conection with this application, Applicant also proposes to acquire Community Federal Savings Bank, Lapel, Indiana, a thrift to be formed for the purposes of acquiring certain assets and assuming certain liabilities of the Lapel, Indiana, branch of Colonial Central Savings Bank, F.S.B., Mt. Clemens, Michigan, pursuant to § 225.25(b)(9) of the Board's Regulation Y. The thrift will be merged with Community's proposed subsidiary bank, Summitville Bank and Trust Co., Summitville, Indiana. These Activities will be conducted in Lapel, Indiana, and the surrounding communities.

Board of Governor of the Federal Reserve System, January 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-1244 Filed 1-17-91; 8:45 am]

BILLING CODE 6210-01-M

First of America Bank Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application msut be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 7, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation*, Kalamazoo, Michigan; to acquire First of America Information Systems, Inc., Peoria, Illinois, and thereby engage in providing data processing and data transmission services pursuant to section 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-1245 Filed 1-17-91; 8:45 am]

BILLING CODE 6210-01-M

The Fuji Bank, Limited, Tokyo, Japan; Application

In the matter of Application to Underwrite and Deal in Debt and Equity Securities to a Limited Extent; to Act as Agent in the Private Placement of All Types of Securities; to Buy and Sell All Types of Securities on the Order of Investors as Riskless Principal; and to Provide Securities Brokerage Services Separately and in Conjunction with Investment Advisory Services.

The Fuji Bank, Limited, Tokyo, Japan ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act"), and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its wholly owned United States subsidiary, Fuji Securities Inc., Chicago, Illinois ("Company"), to engage *de novo* on a worldwide basis in the following activities:

1. Underwriting and dealing in all types of bank-ineligible debt securities, including, without limitation, sovereign debt securities, corporate debt, debt securities convertible into equity securities, commercial paper, municipal revenue bonds, securities issued by a trust or other vehicle secured by or representing interests in debt obligations, including mortgage-related securities and consumer-receivable-related securities, rights issued in connection with any of the foregoing to acquire interests in any other security, and options and warrants on all the foregoing;

2. Underwriting and dealing in equity securities, including, without limitation, common stock, preferred stock, American Depository Receipts, other direct and indirect equity ownership interests in corporations and other entities, and options and warrants on the foregoing;

3. Acting as agent in the private placement of all types of bank-ineligible securities, including providing related advisory services;

4. Buying and selling all types of bank-ineligible securities on the order of investors as a riskless principal; and

5. Providing securities brokerage services and related or incidental activities pursuant to § 225.23(b)(15) of the Board's Regulation Y and providing securities brokerage services in conjunction with investment advisory activities to institutional and retail customers.

The Company is currently authorized to engage in the following activities:

1. Underwriting and dealing in bank-eligible securities, pursuant to § 225.24(b)(16) of the Board's Regulation Y.

2. Purchasing and selling futures, forward, and options contracts on bank-eligible securities for its own account for hedging purposes in accordance with 12 CFR 225.142;

3. Providing portfolio investment advice and research and furnishing

general economic statistical forecasting services and industry studies pursuant to § 225.25(b)(4)(iii) and (b)(4)(iv) of the Board's Regulation Y;

4. Acting as a futures commission merchant for affiliated and nonaffiliated persons and providing investment advice in conjunction therewith, pursuant to § 225.25 (b)(18) and (b)(19) of the Board's Regulation Y; and

5. Providing data processing and transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously determined that, subject to certain conditions, underwriting and dealing in debt and equity securities that are not eligible to be underwritten and dealt in by member banks are closely related and proper incidents to banking. J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankders Trust New York Corporation, Citicorp, and Security Pacific Corporation, 75 Federal Reserve Bulletin 192 (1989) ("Morgan Order"). The Board also has previously determined that, subject to certain conditions, acting as agent in the private placement of all types of securities and acting as riskless principal in buying and selling all types of securities on the order of customers are closely related and proper incidents to banking. J.P. Morgan & Company Incorporated, 76 Federal Reserve Bulletin 26 (1990); Bankers Trust New York Corporation, 75 Federal Reserve Bulletin 829 (1989). In addition, the Board previously has determined that providing securities brokerage services separately and in conjunction with the provision of investment advisory activities ("full service brokerage") are closely related and proper incidents to banking. PNC Financial Corporation, 75 Federal Reserve Bulletin 396 (1989).

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1337 (D.C. Cir. 1975) ("National Courier"). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. "Board Statement Regarding Regulation Y," 49 **Federal Register** 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflict of interest, or unsound banking practices."

Applicant contends that the proposed activities are closely related to banking under the National Courier test, and that permitting bank holding companies to engage in the proposed activities would result in increased competition and gains in efficiency. Applicant proposes to conduct the proposed underwriting and dealing activities substantially in compliance with the framework established by the Board in the *Morgan* order, as that framework has been modified to account for the activities of foreign banking organizations. See The Bank of Montreal, 76 Federal Reserve Bulletin 653 (1990); The Bank of Nova Scotia, 76 Federal Reserve Bulletin 455 (1990); Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC, Barclays Bank PLC, 76 Federal Reserve Bulletin 158 (1990) ("CIBC"). Applicant also has proposed to act as agent in the private placement of all types of securities and to act as riskless principal in buying and selling securities in substantial conformity with requirements of the Board's prior Orders, as those requirements have been modified to account for the activities of foreign banking organizations. CIBC, 76 Federal Reserve Bulletin 158 (1990); J.P. Morgan & Company Incorporated, 76 Federal Reserve Bulletin 26 (1990); Bankers Trust New York Corporation, 75 Federal Reserve Bulletin 829 (1989). In addition, Applicant also has proposed to conduct the proposed full service brokerage activities substantially in accordance with the requirements of prior Board orders. The Sanwa Bank, Limited, 76 Federal Reserve Bulletin 568 (1990); PNC Financial Corporation, 75 Federal Reserve Bulletin 396 (1989); J.P. Morgan & Company Incorporated, 73 Federal Reserve Bulletin 810 (1987).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act or the Glass-Steagall Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for a hearing should be submitted in writing and received by Williams W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington DC 20551, not later than February 11, 1991. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, January 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-1246 Filed 1-17-91; 8:45 am]

BILLING CODE 6210-01-M

The Long-Term Credit Bank of Japan, Limited; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 7, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Long-Term Credit Bank of Japan, Limited, Tokyo, Japan; to engage *de novo* through unidentified U.S. Subsidiaries, in making, acquiring, and servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others pursuant to § 225.25(b)(1); leasing personal property and real property and acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5); and providing advice regarding the structuring of and arranging for loan syndications, interest rate "swaps", interest rate "caps" and similar transactions; providing advice in connection with financing transaction for nonaffiliated financial and nonfinancial institutions; providing valuation services for nonaffiliated financial and nonfinancial institutions in connection with merger, acquisition, and divestiture considerations; rendering fairness opinions in connection with merger, acquisition, and similar transaction for nonaffiliated financial and nonfinancial institutions; and conducting feasibility studies for corporations. (See, e.g. SunTrust Banks, Inc., 74 Fed. Res. Bull. 256 (1988)). These activities will be conducted on a worldwide basis.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. ABN Amro Holding N.V., Amsterdam, The Netherlands; Stichting Prioriteit ABN AMRO HOLDING, Amsterdam, The Netherlands; Stichting Administratiekantoor ABN AMRO HOLDING, Amsterdam, The Netherlands; Algemene Bank Nederland N.V., Amsterdam, The Netherlands; ABN Stichting, Amsterdam, The Netherlands; Amsterdam Rotterdam Bank N.V., Amsterdam, The Netherlands; ABN AMRO North America Inc., Chicago, Illinois; and Stichting Amro, Amsterdam, The Netherlands; to cause a merger of Amro Securities, Inc. ("ASI"), into ABN Capital Markets Corporation ("ABN CMC"), and thereby transfering ASI's powers to ABN CMC pursuant to § 225.25(b)(3) of Regulation Y. ASI received approval by order of the Board of Governors, 76 Fed. Res. Bull. 682 (1990), to engage in the following activities for which ABN CMC has not already received approval: Acting as agent in the private placement of all types of securities; buying and selling securities on the order of investors as riskless principal; and underwriting and dealing in, to a limited extent, municipal revenue bonds, 1–4 family mortgage-related securities, commercial paper and consumer-receivable-related securities ("bank-ineligible securities"). These activities will be conducted on a worldwide basis.

Board of Governors of the Federal Reserve System, January 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–1247 Filed 1–17–91; 8:45 am]

BILLING CODE 6210–01–M

John D. O'Brien, Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. John D. O'Brien, Sandstone, Minnesota; to acquire 75.1 percent; and JDOB, Inc., Sandstone, Minnesota, to acquire 4.9 percent (for a total of 80 percent) of the voting shares of First Security Bank of Missoula, Missoula, Montana.

Board of Governors of the Federal Reserve System, January 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–1248 Filed 1–17–91; 8:45 am]

BILLING CODE 6210–01–M

Mary C. Vezzetti; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notification listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding compay. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mary C. Vezzetti, Ontonagon, Michigan; to acquire an additional 15.37 percent of the voting shares of Citizens Bancshares, Inc., Ontonagon, Michigan, for a total of 15.91 percent, and thereby indirectly acquire Citizens State Bank, Ontonagon, Michigain.

Board of Governors of the Federal Reserve System, January 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–1249 Filed 1–17–91; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-32]

Quarterly Notice of Health Assessments To be Conducted in Response to Requests from the Public and All Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice contains the following: 1. A list of sites for which ATSDR, during the period July–September 1990, has accepted a request from the public to conduct a health assessment (petitioned health assessment). 2. A list of sites for which ATSDR has completed a health assessment, or issued an addendum to a previously completed health assessment, during the same period. This list includes sites that are on, or proposed for inclusion on, the National Priorities list (NPL) and non-NPL sites for which ATSDR has prepared a health assessment in response to a request from the public. Acceptance of a request for the conduct of a health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a health assessment at the site.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Atlanta, Georgia 30333, telephone (404) 639–0610, FTS 236–0610.

SUPPLEMENTARY INFORMATION: A list of completed health assessments, health assessments with addenda, and petitioned health assessments which were accepted by ATSDR during April–June 1990 was published in the **Federal Register** on Tuesday, September 4, 1990 [55 FR 35956]. The quarterly announcement is the responsibility of ATSDR under the regulation, Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (to be codified at 42 CFR part 90). The final rule sets forth procedures for ATSDR in the conduct of health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9604(i)] and appeared in the **Federal Register** on Tuesday, February 13, 1990 [55 FR 5136].

1. Petitions for Health Assessments Accepted

Between July 1, 1990, and September 30, 1990, ATSDR determined that there was a reasonable basis to conduct health assessments for the sites or facilities listed below in response to requests from the public. As of September 30, 1990, ATSDR has initiated health assessments at these sites or facilities:

California

Pacific Gas and Electric Company—San Rafael.

North Carolina

Caldwell Systems—Lenoir.

2. Health Assessments Completed or Health Assessment Addenda Issued for NPL Sites

Between July 1, 1990, and September 30, 1990, health assessments or addenda to a health assessment were issued for the NPL sites listed below:

Alabama

Redwing Carriers, Inc. (Saraland)—Saraland.
T.H. Agriculture and Nutrition Company (Montgomery Plant)—Montgomery.

California

Advanced Micro Devices (Building 915)—Sunnyvale.
GBF, Inc., Dump—Antioch.
Hewlett-Packard (620–640 Page Mill)—Palo Alto.
Hexcel Corporation—Livermore.
Intersil, Inc./Siemens Components—Cupertino.
Jasco Chemical Corporation—Mountain View.
Spectra-Physics, Inc.—Mountain View.
Synertek, Inc. (Building 1)—Santa Clara.
TRW Microwave, Inc. (Building 825)—Sunnyvale.

Florida

Chemform, Inc.—Pompano Beach.
Wingate Road Municipal Incinerator Dump—Fort Lauderdale.

Georgia

Cedartown Municipal Landfill—Cedartown.

Idaho

Eastern Michaud Flats Contamination—Pocatello.
Kerr-McGee Chemical (Soda Springs)—Soda Springs.

Illinois

Ilada Energy Company—East Cape Girardeau.

Indiana

Carter Lee Lumber Company—Indianapolis.
Lakeland Disposal Service, Inc.—Claypool.
Whiteford Sales and Service/National Lease—South Bend.

Iowa

Fairfield Coal Gasification Plant—Fairfield.
Farmers Mutual Cooperative Company—Hospers.
Red Oak City Landfill/Union Carbide Disposal—Red Oak.

Kentucky

Caldwell Lace Leather Company, Inc.—Auburn.
Red Penn Sanitation Company, Inc. Landfill—Peewee Valley.
Tri-City Disposal Company—Shepherdsville.

Michigan

Albion-Sheridan Township Landfill—Albion.
Bofors Nobel, Inc.—Muskegon.

Minnesota

Adrian Municipal Well Field—Adrian.

New Jersey

A.O. Polymer—Sparta Township.
American Cyanamid—Bound Brook.
Brook Industrial Park—Bound Brook.
Cinnaminson Groundwater Contamination (Block 702)—Cinnaminson Township.
Denzer and Schafer X-Ray Company—Bayville.
Ewan Property—Shamong Township.
Fried Industries—East Brunswick Township.
Garden State Cleaners Company—Buena Borough.
Higgins Disposal—Franklin Township.
Higgins Farm—Franklin Township.
Imperial Oil Company, Inc.—Morganville.
Industrial Latex Corporation—Wallington Borough.
Jones Industrial Services Landfill/JIS Landfill—South Brunswick Township.
Maywood Chemical Company—Maywood/Rochelle Park.
Pohatcong Valley Groundwater Contamination—Warren County.
Radiation Technology, Inc.—Rockaway Township.
South Jersey Clothing Company—Buena Borough.
W.R. Grace and Company, Inc./Wayne Interim Storage Site—Wayne Township.

New York

Sidney Landfill—Sidney.

North Carolina

ABC One Hour Cleaner—Jacksonville.
Benfield Industries, Inc.—Hazelwood.
FCX, Inc. (Washington Plant)—Washington.
Geigy Chemical Corporation (Aberdeen Plant)—Aberdeen.
JFD Electronics/Channel Master—Oxford.
Potter's Septic Tank Service Pits—Maco.

Ohio

Reilly Tar and Chemical (Dover Plant)—Dover.

Oregon

Joseph Forest Products—Joseph.

Pennsylvania

Berks Landfill—Sinking Spring.
Jacks Creek/Sitkin Smelting and Refining, Inc.—Maitlnd.
Occidental Chemical Corporation/ Firestone Tire and Rubber Company—Lower Pottsgrove Township.
Publicker Industries, Inc.—Philadelphia.
Tonolli Corporation—Nesquehoning.

Rhode Island

Rose Hill Regional Landfill—South Kingstown.

Utah

Richardson Flat Tailings—Park City.

Vermont

Bennington Municipal Sanitary Landfill—Bennington.

Virginia

Abex Corporation—Portsmouth.

Washington

Northwest Transformer (South Harkness)—Everson.
Pacific Car and Foundry Company, Inc.—Renton.
Pasco Sanitary Landfill—Pasco.
Seattle Municipal Landfill (Kent Highlands)—Kent.

Wisconsin

Hechimovich Sanitary Landfill—Williamstown.

Availability

The completed health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 31, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. On or about January 1, 1991, the completed health assessments will be available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650.

Dated: January 11, 1991.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91–1275 Filed 1–17–91; 8:45 am]

BILLING CODE 4160–70–M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in February

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the agency's advisory committee—Extramural Science Advisory Board, NIDA—in the month of February 1991.

The initial meeting of the Extramural Science Advisory Board, NIDA, will consist of presentations of NIDA's programs by the Division Directors and the Institute Director. Attendance by the public is limited to space available.

Notice of this meeting is required under the Federal Advisory Committee Act, Public Law 92–463.

Committee Name: Extramural Science Advisory Board, NIDA.

Date and Time: February 12, 9 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Status of Meeting: Open—February 12, 9 a.m.—5 p.m.

Contact: Jacqueline Downing, room 10A–43, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1056.

Purpose: The Extramural Science Advisory Board, NIDA, advises the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, based on an ongoing review of the direction, scope, balance, and emphasis of the Institute's extramural science programs. The Board shall review programs, recommending areas for emphasis or de-emphasis, new or changed directions, and mechanisms or approaches for implementing recommendations. Substantive information, a summary of the meeting, and a roster of committee members may be obtained from Ms. Camilla Holland, NIDA Committee Management Officer, room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–2755.

Dated: January 14, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–1190 Filed 1–17–91; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC), announces the following committee meeting:

NAME: Advisory Committee for Injury Prevention and Control (ACIPC).

TIME AND DATE:

8 a.m.-5 p.m., February 4, 1991.
8 a.m.-12 noon, February 5, 1991.

PLACE: Centers for Disease Control, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

STATUS: Open to the public, limited only by the space available.

PURPOSES: The Committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the development of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

MATTERS TO BE DISCUSSED: The Committee will discuss CDC's disability prevention program; review the strategic plan of the Division of Injury Control (DIC); review progress made on developing a national agenda for injury control; discuss implementing the Interagency Head Injury Task Force Report; consider issues dealing with the prevention of youth violence in minority communities; be briefed on legislative developments; discuss intramural laboratory support for injury control; and review progress made towards achieving external cause of injury coding for hospital discharges.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: John F. Finklea, M.D., Executive Secretary, ACIPC, DIC, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE, Mailstop F–36, Atlanta, Georgia 30333, telephone 404/488–4690 or FTS 236–4690.

Dated: January 14, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–1258 Filed 1–17–91; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Mental Health Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statitics (NCHS), Centers for Disease Control, announces the following committee meeting.

NAME: NCVHS Subcommittee on Mental Health Statistics.

TIME AND DATE: 9 a.m.—3 p.m., February 7, 1991.

PLACE: Room 303A–305A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

STATUS: OPEN.

PURPOSE: The subcommittee will discuss the current status of children's mental health statistics and followup on items identified in previous meetings; particulary, the Health Care Financing Administration's data collection activities and a depression measure for general health surveys.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and a roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number (301) 436–7050.

Dated: January 14, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–1264 Filed 1–17–91; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Medical Classification Systems; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting.

NAME: NCVHS Subcommittee on Medical Classification Systems.

TIME AND DATE: 9 a.m.—5 p.m., February 4, 1991.

PLACE: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

STATUS: Open.

PURPOSE: The purpose of this meeting is for the subcommittee to discuss: implementation plans for the tenth revision of the International Classification of Diseases; the status of NCHS's Morbidity Classification Branch; the Health Care Financing Administration's efforts to explore new methodology for revising the "International Classification of Diseases, 9th Revision, Clinical Modification, Volume 3"; and short-term activities for the Subcommittee.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and a roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number (301) 436–7050.

Dated: January 14, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–1265 Filed 1–17–91; 8:45 am]

BILLING CODE 4160–18–M

Office of Human Development Services

Revised Fiscal Year 1991 Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs

AGENCY: Administration on Developmental Disabilities, Office of Human Development Services, HHS.

ACTION: Notification of Revised Fiscal Year 1991 Federal Allotments for States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth the revised individual allotment for each State for Fiscal Year 1991 pursuant to section 125 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotments for the States published herein are based upon Fiscal Year 1991 appropriation levels.

These allotments reflect the appropriated funds allocated to the States based on the most recent data available for population, extent of need for services for persons with developmental disabilities, and the financial need of the States.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Bettye Mobley, Chief, Formula Grants Management Branch, Division of Grants and Contracts Management, Office of Human Development Services, Department of Health and Human Services, 200 Independence Avenue SW., room 341–F, Washington, DC 20201, telephone (202) 245–7220.

SUPPLEMENTARY INFORMATION: Section 125(a)(2) of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities updated the data for issuance of Fiscal Year 1991 formula grants and States were notified by **Federal Register** announcement of April 2, 1990. The data elements used are the same as provided in that issuance, which are:

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1988, are from table 5.J10 of the "Social Security Bulletin: Annual Statistical Supplement 1989" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territories of the Pacific Islands, included under 'Abroad' in the Table, were obtained from the Social Security Administration;

B. State data on Average Per Capita Income, 1986–88, are from table 1, page 34, of the "Survey of Current Business", August 1989, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Territories also were obtained from that Bureau; and

C. State data on total population as of July 1, 1988, are from table 1 of "Current Population Reports: Population Estimates and Projections," Series P–25, Number 1044, issued August 1989 by the Bureau of the Census, U.S. Department of Commerce. The working population (ages 18–64) were from table 6 of Series P–25, Number 1044. The Territories data on population are from Current Population Report P–25, No. 1049 issued October 1989. The Territories working populations were obtained from Bureau of Census.

FY 1991 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Basic support	Protection & advocacy
Total	$64,409,000	$20,982,000
Alabama	1,296,703	384,207
Alaska	350,000	200,000
Arizona	776,711	243,774
Arkansas	752,043	222,922
California	5,349,910	1,587,102
Colorado	651,456	218,207
Connecticut	620,831	207,387
Delaware	350,000	200,000
District of Columbia	350,000	200,000
Florida	2,708,033	803,217
Georgia	1,611,331	477,634
Hawaii	350,000	200,000
Idaho	350,000	200,000
Illinois	2,625,276	777,994
Indiana	1,443,915	428,015
Iowa	783,114	231,985
Kansas	588,175	200,000
Kentucky	1,195,838	354,272
Louisiana	1,378,243	408,540
Maine	355,857	200,000
Maryland	913,269	270,754
Massachusetts	1,237,162	366,366
Michigan	2,309,476	684,144
Minnesota	986,642	292,469
Mississippi	929,543	275,509

FY 1991 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Basic support	Protection & advocacy
Missouri	1,301,722	385,791
Montana	350,000	200,000
Nebraska	395,190	200,000
Nevada	350,000	200,000
New Hampshire	350,000	200,000
New Jersey	1,461,872	433,102
New Mexico	423,525	200,000
New York	3,990,161	1,181,616
North Carolina	1,793,957	531,698
North Dakota	350,000	200,000
Ohio	2,802,194	830,305
Oklahoma	857,531	254,398
Oregon	651,960	208,809
Pennsylvania	3,093,556	916,342
Rhode Island	350,000	200,000
South Carolina	1,042,176	308,936
South Dakota	350,000	200,000
Tennessee	1,421,913	421,364
Texas	3,970,566	1,178,187
Utah	473,192	200,000
Vermont	350,000	200,000
Virginia	1,356,078	401,880
Washington	994,925	295,163
West Virginia	715,644	223,003
Wisconsin	1,261,666	373,807
Wyoming	350,000	200,000
American Samoa	200,000	107,000
Guam	200,000	107,000
Puerto Rico	2,253,751	668,101
Trust Territories	283,893	107,000
Virgin Islands	200,000	107,000
Northern Mariana Islands	200,000	107,000

Dated: December 21, 1990.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

Approved: January 14, 1991.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 91–1285 Filed 1–17–91; 8:45 am]

BILLING CODE 4130–01–M

Family Violence Prevention and Services

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Notice of the availability of fiscal year (FY) 1991 funds for State and Indian Tribal grants for family violence prevention and services.

SUMMARY: FY 1991 funds will be available for grants to States (including Territories and Insular Areas) and Indian Tribes and Tribal organizations to assist in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents. This Notice sets forth the application process and requirements for these grants. Please note a new paragraph "M" regarding required certifications.

DATES: Applications must be received by March 19, 1991.

ADDRESSES: Address applications to: Office of Human Development Services, Office of Policy, Planning and Legislation, Attn: William D. Riley, Room 312–F, Humphrey Building, 200 Independence Avenue, SW. Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: William D. Riley, (202) 245–2892.

SUPPLEMENTARY INFORMATION:

A. Background

Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457, 42 U.S.C. 10401 et seq.) is entitled the "Family Violence Prevention and Services Act" (the Act). It was first implemented in FY 1986 and was reauthorized by Congress in April 1988 by Public Law 100–294.

The purposes of this legislation are to assist States in their efforts to prevent family violence and provide immediate shelter and related assistance for victims of family violence and their dependents; and to carry out coordination, research, training, technical assistance, documentation, and evaluation activities. Also, the Secretary may make demonstration grants directly to Indian Tribes and Tribal organizations to prevent family violence and provide immediate shelter and related assistance.

During FY 1990, grants under the Act were made to States and Indian Tribes. Grants to the States are based on population, with a minimum of $50,000 specified in the Act. In FY 1990, State grants ranged from $50,000 to $736,000. Grants to eligible Indian Tribes are based on tribal population and were either $6,154 or $16,410, with the exception of the Navajo Nation which received $49,258.

Both State and Indian Tribal grantees are required to use not less than 60 percent of these funds for immediate shelter and related assistance (section 303(g)). States and Indian Tribes have met this requirement with the majority of the States and Tribes exceeding the 60 percent requirement. The Department also funds the operation of the Clearinghouse on Family Violence Imformation; supports research, including documentation activities, and regionally based training and technical assistance for State and local law enforcement personnel through the Department of Justice; carries out evaluation and coordination efforts; and makes grants for technical assistance and training for State and local agencies administering this program.

B. Reporting Requirements

Program and Fiscal Reports

Current State and Indian Tribal grantees are remined that annual program activity reports and annual fiscal reports (SF 269) are due December 28, 1990.

C. Expenditure Period

These fiscal year 1991 funds may be used for expenditures on and after October 1, 1990, and will be available for expenditure through September 30, 1993.

D. Funds Available

Public Law 101–517, the Department of Health and Human Services Appropriations Act for FY 1991, made $10,735 million available for Family Violence grants in FY 1991. (A total of $8.3 million was available in FY 1990.)

Of this amount, the Department will make $9.1 million (85 percent of total funds) available for grants to States (section 310(b) of the Act). State allocations are listed at the end of this Notice as appendix A and have been computed based on the formula in section 304 of the Act. We estimate that approximately $700,000 may be available for direct grants to Indian Tribes or Tribal organizations.

The remaining funds will be used to carry out the research, evaluation, coordination, training, clearinghouse, and documentation activities required by the Act.

E. Eligibility: States

"States" as defined in section 309(6) of the Act are eligible to apply for funds. The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the remaining eligible entity previously a part of the Trust Territory of the Pacific Islands—the Republic of Palau. In the past, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands have applied for these funds as a part of their Consolidated Grant under the Social Services Block Grant.

F. Eligibility: Indian Tribes and Tribal Organizations

In FY 1986, the first year of this program, Indian tribal eligibility was limited to those Federally recognized Tribes that had established social services programs as evidenced by receipt of "638" contracts for social

services with the Bureau of Indian Affairs (BIA).

In FY 1987 we expanded eligibility to include Indian Tribes and Tribal organizations which had received FY 1986 grants under the Indian Child Welfare Act from the BIA (also considered as evidence of established social services programs).

Because of funding constraints, we limited Indian tribal eligibility in FY 1988 and in FY 1989 to those Indian Tribes and Tribal organizations which had received FY 1987 family violence grants.

In FY 1990, we expanded the eligibility to solicit applications from those Indian Tribes and Tribal organizations that were FY 1989 grantees under Title IV–B, Child Welfare Services, of the Social Security Act, as well as the Indian Tribes and Tribal organizations who received family violence prevention grants in FY 1987.

For FY 1991 we are inviting applications for family violence prevention grants from all previously funded grantees irrespective of the award year, and from those Tribes that were listed as eligible for family violence prevention grants in the Federal Register of May 6, 1987.

We believe that this expanded eligibility to additional Indian Tribes comes at a critical time in family violence prevention activities in Native American communities. As we have done in the past, we have tried to make grants available to additional Indian Tribes when warranted by an increase in grant funds.

As in previous years, Indian Tribes may apply singly or as a consortium. A list of the eligible Indian Tribes and Tribal organizations is found at the end of this Notice at appendix B.

Because section 304(a) specifies a mimimun base amount for State allocations, we have set a base amount for Indian Tribal allotments since FY 1986. We have found, in practice, that the establishment of such a minimum allocation, based on population, has facilitated our efforts to make a fair and equitable distribution of limited grant funds.

Tribes which meet the application requirements and whose reservation and surrounding tribal trust lands population is less than 3,000 will receive a minimum of $3,000; Tribes which meet the application requirements and whose reservation and surrounding tribal trust lands population exceeds 3,000 will receive a minimum of $8,000, except for the Navajo Tribe which will receive a minimum of $24,000 because of its population. We have used these population and grant award figures since the beginning of the program.

In computing Indian Tribal allocations, we will use the best available population figures from the Census Bureau. Where Census Bureau data are unavalable, we will use figures from the BIA Indian Population and Labor Force Report.

If not all eligible Tribes apply, the available funds will be divided proportionally among the Tribes which apply and meet the requirements.

G. Matching Requirements

States and Indian Tribes and Tribal organizations are not required to furnish matching funds, but sub-State grantees must meet the requirements in section 303(f) as follows:

In the first year, the required match for a sub-State grantee is 35 percent of the funds received under this Act. If the same sub-State grantee receives a second year grant, the required match is 55 percent of the funds received under this Act. In the third and subsequent years, if the same sub-State grantee receives a grant, the required match will be 65 percent of the funds received under the Act.

If a different sub-State grantee receives funds for the first or second time under the Act, then the match is computed at 35 or 55 percent, respectively. The required match, in any case, should not be computed against total project funds or any amoutn other than the amount of funds received by the sub-State grantee under this Act.

H. Change in the Law Regarding Funding of Sub-State Grantees

Public Law 100–294 recently amended the Act to allow sub-State grantees to receive funds for more than three years but limited to $150,000 the total amount of grant funds that may be awarded to any sub-State grantee since the beginning of the program in FY 1986.

I. State Application Requirements

The application requirements for these grants do not go beyond the requirements in the statute. We have cited each requirement to the specific section of the law.

Please note the assurance in paragraph (3)(e) below that limits the funds an entity may receive from the State in any one fiscal year to $50,000 and provides that no entity will receive more than a total of $150,000 under this Act (section 303(c)).

Please note also that in order to apply for these FY 1991 funds, a State must have or have under consideration a procedure for the eviction of an abusing spouse from a shared residence. (See the assurance in paragraph (3)(1) below.)

The Secretary will approve any applicaton that meets the requirements of the Act and this Notice, and will not disapprove an application unless the State has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies (section 303(a)(3)).

All applications must meet the following requirements:

The State's application must be signed by the Chief Executive of the State or the Chief Program Official designated as responsible for the administration of the Act.

The application must contain the following information:

(1) The name of the State agency and the Chief Program Official, designated as responsible for the administration of State programs and activities related to family violence carried out under the Act and for the coordination of related State programs, and the name of a contact person if different from the Chief Program Official (section 303(a)(2)(D)).

(2) The procedures designed to involve knowledgeable individuals and interested organizations and assure an equitable distribution of grants and grant funds within the State and between rural and urban areas in the State (section 303(a)(2)(C)). (For example, knowledgeable individuals and interested organizations may include but are not limited to: State Advisory Committees on Family Violence, law enforcement officials, or Coalitions of Directors of Family Violence Shelters.)

(3) The application must contain the following assurances:

(a) That funds under the Act will be distributed as demonstration grants to local public agencies and non-profit private organizations for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims and their dependents (section 303(a)(2)(A)).

(b) That not less than 60 percent of the funds distributed shall be used for immediate shelter and related assistance (section 303(g)).

(c) That not more than 5 percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(d) That in distributing the funds, the States will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by non-profit private organizations

(particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents) and those which provide counseling, alcohol and drug abuse treatment, and self-help services to abusers and victims (section 303(a)(2)(B)(ii)).

(e) That no entity funded by the State will receive more than $50,000 in any one fiscal year, and no entity will receive more than a total of $150,000 under this Act (section 303(c)).

(f) That demonstration grants funded by the State will meet the matching requirements in section 303(f), i.e., 35 percent of the total funds provided under this title in the first year, 55 percent in the second year, and 65 percent in the third or subsequent year(s); that except in the case of a public entity, not less than 50 percent of the local matching share shall be raised from private sources; that the local share may be cash or in-kind; and that the local share may not include any Federal funds provided under any authority other than this title (section 303(f)).

(g) That demonstration grants funded by the State may not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(h) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(e)).

(i) That procedures will be developed to assure the confidentiality of records pertaining to persons receiving assistance or services from any program assisted under the Act as specified in section 303(a)(2)(E).

(j) That the address or location of any shelter-facility assisted under the Act will not be made public, except with written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(k) That all demonstration grants made by the State under the Act must prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(l) That the State has, or has under consideration, a procedure for the eviction of an abusing spouse from a shared residence (section 303(a)(2)(F)).

(m) That States will comply with Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Part 92.

J. Indian Tribe and Tribal Organization Application Requirements

The application requirements for these grants do not go beyond the requirements in the statute. We have cited each requirement to the specific section of the law.

The Secretary will approve any application that meets the requirements of the Act and this Notice, and will not disapprove an application unless the Indian Tribe or Tribal organization has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies (section 303(a)(3)).

The application from the Indian Tribe or Tribal organization must be signed by the Chief Executive Officer of the Indian Tribe or Tribal organization and must contain the following information:

(1) The name of the organization or agency designated as responsible for the administration of this program (section 303(a)(D)), and the name of a contact person in the designated organization or agency.

(2) A copy of a current resolution stating that the designated organization or agency has the authority to submit an application on behalf of the Indian individuals in the Tribe(s) (section 303(a)(2)(G)).

(3) A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing service under the Act (section 303(a)(2)(C)). (For example, knowlegeable individuals and interested organizations may include: Tribal officials or social services staff involved in child abuse or family violence prevention, Tribal law enforcement officials, State Coalitions Against Domestic Violence, and Directors of Family Violence Shelters.)

(4) A brief description of how the Indian Tribe or Tribal organization plans to use the grant funds to prevent incidents of family violence and to provide immediate shelter and related assistance to victims of family violence and their dependents (section 303(a)(2)(G)).

(5) Each application must contain the following assurances:

(a) That not less than 60 percent of the funds shall be used for immediate shelter and related assistance (section 303(g)).

(b) That no funds under the Act will be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(c) That no income eligibility standard will be applied to individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(e)).

(d) That procedures will be developed to assure the confidentiality of records pertaining to persons receiving assistance or services from any program assisted under the Act as specified in section 303(a)(2)(E).

(e) That the address or location of any shelter-facility assisted under the Act will not be made public, except with written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(f) That Indian grantees will comply with Departmental recordkeeping and reporting requirements and general grant administration requirements of 45 CFR part 92.

K. Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" for State plan consolidation and simplification only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply. Federally recognized Indian Tribes are exempt from all provisions and requirements of E.O. 12372.

L. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this notice have been approved by the Office of Management and Budget under control number 0980–0175.

M. Certifications

Applicants must comply with the required certifications found at appendix C, regarding Drug Free Workplace, Debarment, and Lobbying which are self-explanatory. Please note that the certification regarding Lobbying must be signed and returned with your application.

(Catalog of Federal Domestic Assistance number 13. 671, Family Violence Prevention and Services)

Dated: January 4, 1991.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

Appendix A

STATE ALLOCATION: FAMILY VIOLENCE PREVENTION AND SERVICES ACT

AL	Alabama	$143,612
AK	Alaska	50,000
AS	American Samoa	11,405
AZ	Arizona	124,013
AR	Arkansas	83,907
CA	California	1,013,574
CO	Colorado	115,643
CT	Connecticut	112,958
DE	Delaware	50,000
DC	District of Columbia	50,000
FL	Florida	441,893
GA	Georgia	224,451
GU	Guam	11,405
HI	Hawaii	50,000
ID	Idaho	50,000
IL	Illinois	406,565
IN	Indiana	195,052
IA	Iowa	99,043
KS	Kansas	87,639
KY	Kentucky	129,976
LA	Louisiana	152,819
ME	Maine	50,000
MD	Maryland	163,700
MA	Massachusetts	206,177
MI	Michigan	323,390
MN	Minnesota	151,808
MS	Mississippi	91,405
MO	Missouri	179,916
MT	Montana	50,000
NE	Nebraska	56,182
NV	Nevada	50,000
NH	New Hampshire	50,000
NJ	New Jersey	269,788
NM	New Mexico	53,288
NY	New York	625,995
NC	North Carolina	229,124
ND	North Dakota	50,000
MP	Northern Mariana Islands.	11,405
OH	Ohio	380,374
OK	Oklahoma	112,435
OR	Oregon	98,345
PA	Pennsylvania	419,887
PR	Puerto Rico	114,771
RI	Rhode Island	50,000
SC	South Carolina	122,478
SD	South Dakota	50,000
TN	Tennessee	172,279
TX	Texas	595,515
TT	Trust Territories of Northern Pacific.	11,405
UT	Utah	59,530
VT	Vermont	50,000
VI	Virgin Islands	11,405
VA	Virginia	212,663
WA	Washington	166,036
WV	West Virginia	64,761
WI	Wisconsin	169,733
WY	Wyoming	50,000
Total		$9,124,750

Appendix B—Indian Tribal Eligibility

Below is the list of Indian Tribes which are eligible for fiscal year 1991 Family Violence Prevention and Services grants. Tribes are listed by BIA Area Office based on Census Bureau population data or, where that is not available, BIA data.

Tribes Under 3,000 Population

Eastern Area Office

Houlton Band of Maliseet Indians of Maine
Indian Township Passamaquoddy Reservation of Maine
Miccosukee Tribe of Indians of Florida
Narragansett Indian Tribe of Rhode Island
Penobscot Tribe of Maine
Pleasant Point Passamaquoddy Reservation of Maine
Seminole Tribe of Florida

Aberdeen Area Office

Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Devil's Lake Sioux Tribe of the Devil's Lake Sioux Reservation, North Dakota
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Yankton Sioux Tribe of South Dakota
Winnebago Reservation of Nebraska

Minneapolis Area Office

Grand Traverse Band of Ottawa and Chippewa Indians of Michigan
Lac Vieux Desert Band of Chippewa Indians
Menominee Indian Tribe of Wisconsin
Michigan Inter-Tribal Council on behalf of:
Bay Mills Indian Community
Hannahville Indian Community
Keweenah Bay Indian Community
Saginaw Chippewa Indian Tribe of Isabella Reservation, Michigan
Sault Saint Marie Tribe of Chippewa Indians of Michigan
Prairie Island Community of Minnesota
Onieda Tribe of Indians of Wisconsin
Forest County Potawatomi of Wisconsin
Lad du Flambeau Reservation of Wisconsin
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Bad River Tribal Council, Wisconsin
Lower Sioux Tribe of Minnesota
Upper Sioux Tribe of Minnesota
Shakopee Community of Minnesota
Minnesota Chippewa:
Nett Lake Reservation (Bois Fort)
Fond du Lac Reservation
Grant Portage Reservation
Mille Lac Reservation
St. Croix Chippewa, Wisconsin

Anadarko Area Office

Apache Tribe of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Comanche Indian Tribe of Oklahoma
Four Tribes of Kansas
Iowa Tribe of Kansas and Nebraska
Kickapoo Tribe of Kansas
Sac and Fox Tribe of Kansas and Nebraska
Prairie Band of Potawatomi of Kansas
Absentee Shawnee Tribe of Oklahoma
Sac and Fox Tribe of Oklahoma
Pawnee Tribe of Oklahoma
Kiowa Indian Tribe of Oklahoma
Kickapoo Tribe of Oklahoma
Otoe-Missouria Tribes Oklahoma
Citizen Band of Potawatomi, Oklahoma
Fort Sill Apache Tribe of Oklahoma
Tonkawa Tribe of Oklahoma
Wichita Indian Tribe of Oklahoma

Billings Area Office

Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Fort Belknap Tribe of Montana

Phoenix Area Office

Cocopah Tribe of Arizona
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Elko Band Council
Ft. McDermitt Paiute and Shoshone Tribes of the Ft. McDermitt Indian Reservation, Nevada
Ft. McDowell Mohave-Apache Indian Community, Arizona
Ft. Majave Indian Tribe of Arizona
Hualapai Tribe of the Hualapai Reservation, Arizona
Kaibab Band of the Paiute Indians of the Kaibab Indian Reservation, Arizona
Las Vegas Tribe of the Paiute Indians of the Las Vegas Indian Colony, Nevada
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Paiute Indian Tribe of Utah
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Pasqua Yaqui Tribe of Arizona
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quechan Tribe of the Ft. Yuma Indian Reservation, California
Reno-Sparks Indian Colony, Nevada
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Shoshone Paiute Tribes of the Duck Valley Reservation, Nevada
Te-Moak Bands of the Western Shoshone Indians, Nevada
Havasupai Tribe of Arizona
Ute Indian Tribe of the Unitah and Ouray Reservation, Utah
Yavapai-Prescott Tribe, Arizona
Yavapai-Apache Indian Community of the Camp Verde Reservation, Arizona
Yerington Pauite Tribe of the Yerington Colony and Campbell Ranch, Nevada
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Washoe Tribe of Nevada and California

Albuquerque Area Office

Jicarilla Apache Tribe, New Mexico
Pueblo of Acoma, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Zia, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Tesuque, New Mexico
Ramah Navajo Community
Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah

Portland Area Office

Burns Paiute Indian Colony, Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation, Oregon
Confederated Tribes of the Grand Ronde, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Kootenai Tribe of Idaho

Makah Tribe of Washington
Metlakatla Indian Community, Alaska
Muckleshoot Tribe of Washington
Nez Perce Tribe of Idaho
Nooksak Tribe of Wasington
Nisqually Tribe of Washington
Puyallup Tribe of Washington
Quileute Tribe of Washington
Quinault Tribe of the Quinault Reservation, Washington
Sauk-Suiattle Tribe of Washington
Skokomish Tribe of Washington
Squaxin Island Tribe of Washington
Stillquamish Tribe of Washington
Swinomish Tribe of Washington
Suquamish Tribe of Washington
Tulalip Tribes of Washington
Upper Skagit Indian Tribes of Washington

Juneau Area Office

Aleutian Pribiloff Islands, Alaska
Copper River Association, Alaska
Orutsaramuit Native Council, Alaska
Kawerak, Inc., Alaska
Ketchikan Indian Corporation, Alaska
Kenaitze, Inc., Alaska
Kotezbue Native Association, Alaska
Kuskokwim Native Association, Alaska
Kodiak Native Association, Alaska
Northern Pacific Rim Association, Alaska
Sitka Community Association, Alaska
Tanana Indian Reorganization Act Council
Tyonek, Alaska
United Crow Band, Alaska

Sacremento Area Office

Big Lagoon Rancheria, California
Cahuilla Band of Mission Indians
Coastal Indian Community of the Resighina Rancheria
La Jolla Indian Band of Mission Indians
Jamul Indian Village
Morongo Band of Cahuilla Mission
Soboba Band of Mission Indians.
Trinidad Rancheria
Torres Martinez Band of Mission Indians

Tribes over 3,000 Population

Eastern Area Office

Eastern Band of Cherokee Indians of North Carolina
Mississippi Band of Choctaw Indians, Mississippi

Aberdeen Area Office

Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Standing Rock Sioux Tribe of the Standing Rock Reservation, North and South Dakota
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Turtle Mountain Band of Chippewa Indians Turtle Mountain Indian Reservation, North Dakota

Billings Area Office

North Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Shoshone-Arapahoe Tribes of Wyoming (Wind River Reservation)

Phoenix Area Office

Gila River Pima-Maricopa Indian Community of the Gila River Reservation, Arizona
Hopi Tribe of Arizona
Papago Tribe of the Sells, Gila Bend, and San Xavier Reservations, Arizona
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
Tohono O'Odham Nation, Arizona
White Mountain Apache Tribe of the Fort Apache Indian Reservation, Arizona

Navajo Area Office

Navajo Tribe of Arizona, New Mexico and Utah

Albuquerque Area Office

Pueblo of Laguna, New Mexico
Zuni Tribe of the Zuni Reservation, New Mexico

Portland Area Office

Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Colville Reservation, Washington
Shoshone Bannok Tribes of the Fort Hall Reservation, Idaho
Yakima Indian Nation, Washington

Juneau Area Office

Cook Inlet Corporation, Alaska
Association of Village Council Presidents, Alaska
Central Council of the Tlingit and Haida Indians of Alaska
Tanana Chiefs Conference, Alaska
Sitka Community Association, Alaska
Bristol Bay Native Association of Alaska
Fairbanks Native Association, Alaska

Muskogee Area Office

Cherokee Nation of Oklahoma
Choctaw Nation of Oklahoma
Muskogee Creek Nation of Oklahoma

Minneapolis Area Office

Minnesota Chippewa:
Leech Lake Reservation
White Earth Reservation

Appendix C—Certifications

BILLING CODE 4130-01-M

U.S. Department of Health and Human Services

Certification Regarding

Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

BILLING CODE 4130-01-C

GPO 942-949

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." Provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201–0001.

[FR Doc. 91–1284 Filed 1–17–91; 8:45 am]

BILLING CODE 4130–01–M

President's Committee on Mental Retardation; Meeting

AGENCY HOLDING THE MEETING:
President's Committee on Mental Retardation.

TIME AND DATE:

Executive Committee Meeting and Subcommittee Discussion, Monday, February 4, 1991, 3 p.m.–5 p.m.

Full Committee, February 5, 1991, 9 a.m.–3:30 p.m.

Summit on the National Effort to Prevent Mental Retardation and Related Disabilities. February 5–7, 1991, 8:30 a.m.–5:15 p.m.

PLACE:
Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

STATUS: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

MATTERS TO BE CONSIDERED: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

THE PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

CONTACT PERSON FOR MORE INFORMATION:

Sambhu N. Banik, 330 Independence Avenue, SW., room 5325—Wilbur J. Cohen Building, Washington, DC 20201–0001 (202) 619–0634.

Dated: January 14, 1991.

Sambhu N. Banik,

Executive Director, PCMR.

[FR Doc. 91–1286 Filed 1–17–91; 8:45 amj

BILLING CODE 4130–01–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 requests have been submitted to OMB since the list was last published on Friday, January 4, 1991.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. Special Volunteer and Guest Researcher Assignment—0925–0177—The NIH–590 records name, address, employer, education, and other information on prospective Special Volunteers and Guest Researchers, and is used by the responsible NIH approving official to determine the individual's qualifications and eligibility for such assignments. The form is the only official record of approved assignments. Respondents: Individuals or households; Number of Respondents: 1,000; Number of Responses per Respondent: 1; Average Burden per Response: .08 hours; Estimated Annual Burden: 80 hours.

2. Application Packets for Real Property for Public Health Purposes—0937–0191—State and local governments and non-profit organizations use these applications to apply for excess/surplus and underutilized/unutilized Government real property. These applications are used to determine if institutions/organizations are eligible to purchase, lease, or use property under the provisions of the surplus property program. Respondents: State or local governments, non-profit institutions; Number of Respondents: 67; Number of Responses per Respondent: 1; Average Burden per Response: 200 hours; Estimated Annual Burden: 13,400 hours.

3. Grants for Hospital Constructions and Modernization—Federal Right of Recovery and Waiver of Recovery (42 CFR 124, subpart H)—0914–0099—"Federal Right of Recovery and Waiver of Recovery" provides a means for the Federal Government to recover grant funds and a method of calculating interest when a grant-assisted facility is sold or leased, or there is a change in use of the facility. It also allows for a waiver of the right of recovery under certain circumstances. Respondents: State or local governments, businesses or other for-profit, non-profit institutions; Number of Respondents: 20; Number of Responses per Respondent: 1; Average Burden per Response: 3 hours; Estimated Annual Burden: 60 hours.

OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: January 14, 1991.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 91–1196 Filed 1–17–91; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on December 14, 1990.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package.)

1. Request For SSI Benefit Estimate—0960–0000—The information collected on the form SSA–3716 will be used by the Social Security Administration to provide estimates of future Supplemental Security Income (SSI) payments for recipients who are about to receive a monetary reimbursement for work performed. The affected public consists of current SSI recipients expecting to return to work.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 4,167 hours.

2. Vocational Rehabilitation "301" Program Development—0960–0282—The information collected on the form SSA–4290 is used by the Social Security Administration to determine an individual's entitlement to continued payments while participating in an approved vocational rehabilitation (VR) program. The affected public consists of State VR agencies serving persons who have been found to have medically recovered but who are allegedly participating in a VR program.

Number of Respondents: 80.

Frequency of Response: 100.

Average Burden Response: 25 minutes.

Estimated Annual Burden: 2,000 hours.

3. Third Party Liability Statement—0960–0323—The information collected on the form SSA–8019 is used by the Social Security Administration to record commercial health insurance information from applicants and/recipients of Supplemental Security Income (SSI) and Medicaid benefits for the purpose of establishing his/her continuing entitlement to Medicaid benefits.

The affected public is comprised of SSI applicants/recipients who would otherwise be entitled to Medicaid benefits.

Number of Respondents: 65,400.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 5,450.

4. Joint Checking/Savings Account Rebuttal Statement—0960–0461—The information on form SSA–2574 is used by the Social Security Administration to determine if funds in a joint bank account belong to a claimant/recipient for Supplemental Security Income (SSI), and to ensure that the individual's resources do not exceed those allowable. The respondents are claimants for or recipients of SSI payments.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 23,333 hours.

5. Report To The United States Social Security Administration By A Person Receiving Benefits For A Child or An Adult Unable To Handle Funds, Report To United States Social Security Administration—0960–0049—The information collected on the forms SSA–7161/7162 is used by the Social Security Administration to determine continuing entitlement for Social Security benefits and the proper benefit amounts to beneficiaries living outside the United States. The affected public is comprised of persons living outside the U.S. who act as representative payees for a minor child or an adult unable to handle their funds.

Number of Respondents: 250,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 25,000 hours.

6. Claimant's Medications—0960–0289—The information on form HA–4632 is used by the Social Security Administration to compile a list of the current medications taken by a claimant for disability insurance benefits. The respondents are claimants for those benefits who have requested a hearing before an Administrative Law Judge.

Number of Respondents: 171,250.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 14,271 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 10, 1991.

Ron Compston,

Social Security Administration Reports Clearance Officer.

[FR Doc. 91–1045 Filed 1–17–91; 8:45 am]

[BILLING CODE 4190–11–M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1917; FR–2934–N–08]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: January 18, 1991.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565. (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD:

(1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or

(2) A statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; room 1E671 Pentagon, Washington, DC 20360–2600; (202) 693–4583; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Dept. of Energy: Tom Knox, Facility Management Specialist, MA222, room 5B020, 1000 Independence Ave. SW., Washington, DC 20303; (202) 586–1191. (These are not toll-free numbers.)

Dated: January 10, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Suitable Land (by State)

Oregon

Land—McNary Substation
2 miles east of Umatilla
(See County), OR Co: Umatilla
Landholding Agency: Energy
Property Number: 419110001
Status: Unutilized
Comment: Approximately 3.73 acres; adjacent to limited access state highway.

South Carolina

Portion of the Bamberg Job Corps Center
Bamberg, SC Co: Bamberg
Location: 2 parcels of land on either side of Rhoad Park Street near Birch Street.
Landholding Agency: GSA
Property Number: 549110002
Status: Excess

Comment: 2 parcels of land totaling 15.86 acres with a water pump shed; potential utilities; most recent use—recreation fields.
GSA No. 4–L–SC–519

Suitable Buildings (by State)

Alabama

Bldg. T00220
Fort McClellan
Fort McClellan, AL Co: Calhoun
Location: Take left turn off Baltzell Gate Road.
Landholding Agency: Army
Property Number: 219110041
Status: Underutilized
Comment: 1040 sq. ft.; 1 story wood frame; needs major rehab; termite infested; off-site use only.
Bldg. T00221
Fort McClellan
Fort McClellan, AL Co: Calhoun
Location: Take left turn off Baltzell Gate Road.
Landholding Agency: Army
Property Number: 219110042
Status: Underutilized
Comment: 4125 sq. ft.; one story wood frame; needs major rehab; termite infested; presence of asbestos; off-site use only.
Bldg. T00796
Fort McClellan
Fort McClellan, AL Co: Calhoun
Location: Intersection of 19th and 20th Streets.
Landholding Agency: Army
Property Number: 219110043
Status: Underutilized
Comment: 1340 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.
Bldg. T00883
Fort McClellan
3rd Avenue
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110044
Status: Underutilized
Comment: 760 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.
Bldg. T00890
Fort McClellan
2nd Avenue
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110045
Status: Underutilized
Comment: 1713 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.
Bldg. T00895
Fort McClellan
3rd Avenue in Area 8 Motor Pool Compound
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110047
Status: Underutilized
Comment: 108 sq. ft.; one story wood floor with metal walls; off-site use only.
Bldg. T01121
Fort McClellan
MacArthur Avenue
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110048
Status: Underutilized
Comment: 2400 sq. ft.; two story wood frame; needs rehab; presence of asbestos; off-site use only.
Bldg. T01123
Fort McClellan
MacArthur Avenue
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110049
Status: Underutilized
Comment: 2400 sq. ft.; two story wood frame; needs rehab; presence of asbestos; off-site use only.
Bldg. T01124
Fort McClellan
MacArthur Avenue
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110050
Status: Underutilized
Comment: 2400 sq. ft.; two story wood frame; needs rehab; presence of asbestos; off-site use only.
Bldg. T01125
Fort McClellan
21st Street and MacArthur Avenue
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110051
Status: Underutilized
Comment: 2556 sq. ft.; one story wood frame; needs rehab; presence of asbestos; off-site use only.
Bldg. T01394
Fort McClellan
4th Avenue in Area 13 of Post
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110052
Status: Underutilized
Comment: 191 sq. ft.; one story tin and lumber building; needs major rehab; off-site use only.
Bldg. T01692
Fort McClellan
25th Street
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110053
Status: Underutilized
Comment: 4404 sq. ft.; one story wood frame; needs rehab; presence of asbestos; off-site use only.
Bldg. T02264
Fort McClellan
WAC Circle
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110054
Status: Underutilized
Comment: 664 sq. ft.; one story wood frame; needs major rehab; electrical hazard; presence of asbestos; off-site use only.
Bldg. T02266
Fort McClellan
WAC Circle
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110055
Status: Unutilized
Comment: 664 sq. ft.; one story wood frame; structurally deteriorated electrical hazard; presence of asbestos; off-site use only.
Bldg. T02267
Fort McClellan
WAC Circle
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110056
Status: Unutilized
Comment: 664 sq. ft.; one story wood frame; structurally deteriorated electrical hazard; off-site use only.
Bldg. T02268
Fort McClellan
WAC Circle
Fort McClellan, AL Co: Calhoun
Landholding Agency: Army
Property Number: 219110057
Status: Unutilized
Comment: 664 sq. ft.; one story wood frame; needs major rehab; off-site use only.

California

Point Dume Instrumentation Station, Birdview Avenue
Accessors Parcel No. 4468–017–900
Malibu, CA
Landholding Agency: GSA
Property Number: 549110001
Status: Excess
Comment: 750 sq. ft.; concrete block building on approximately 1.23 acres of sloping land with cliffside.
GSA No. 9–GR–CA–1008

Tennessee

Area Q—Housing Area—Q–21
Milan Army Ammunition Plant
Milan, TN Co: Carroll
Landholding Agency: Army
Property Number: 219110032
Status: Underutilized
Comment: 2506 sq. ft.; 2 story wood frame residence.

Area C—Housing Area—Q–26
Milan Army Ammunition Plant
Milan, TN Co: Carroll
Landholding Agency: Army
Property Number: 219110033
Status: Underutilized
Comment: 2506 sq. ft.; 2 story wood frame residence.

Area Q—Housing Area—Q–28
Milan Army Ammunition Plant
Milan, TN Co: Carroll
Landholding Agency: Army
Property Number: 219110034
Status: Underutilized
Comment: 2024 sq. ft.; 2 story wood frame residence.

Area Q—Housing Area—Q–9
Milan Army Ammunition Plant
Milan, TN Co: Carroll
Landholding Agency: Army
Property Number: 219110102
Status: Underutilized
Comment: 2024 sq. ft.; two story residence.

Area Q—Housing Area—Q–22
Milan Army Ammunition Plant
Milan, TN Co: Carroll
Landholding Agency: Army
Property Number: 219110103
Status: Underutilized
Comment: 2506 sq. ft.; two story residence.

Texas

Bldg. 11109
Fort Bliss
11109 CSM E. Slewitzke Street, Biggs Filed
El Paso, TX Co: El Paso

Landholding Agency: Army
Property Number: 219110035
Status: Unutilized
Comment: 642 sq. ft.; one story wood frame; needs rehab; off-site use only; most recent use—storehouse.

Bldg. 11195
Fort Bliss
11195 Duncan Street, Biggs Army Airfield
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219110036
Status: Unutilized
Comment: 4863 net sq. ft.; one story wood frame; needs rehab; off-site use only; most recent use—storage.

Bldg. 4203
Fort Bliss
4203 Ellerthrope Avenue
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219110037
Status: Unutilized
Comment: 4200 net sq. ft.; one story wood frame; off-site use only; most recent use—bowling center.

Bldg. 4769
Fort Bliss
4769 Burgin Street, Logan Heights
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219110038
Status: Unutilized
Comment: 873 net sq. ft.; one story wood frame; off-site use only; most recent use—headquarters building.

Bldg. 4817
Fort Bliss
4817 Gatchell Avenue, Logan Heights
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219110039
Status: Unutilized
Comment: 858 net sq. ft.; one story wood frame; off-site use only; most recent use—storehouse.

Bldg. 4830
Fort Bliss
4830 Hohenthal Avenue, Logan Heights
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219110040
Status: Unutilized
Comment: 915 net sq. ft.; one story wood frame; off-site use only; recent use—storehouse.

Bldg. 640
650 Merritt Road
Fort Bliss
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219110058
Status: Unutilized
Comment: 150 sq. ft.; one story metal frame; off-site use only; most recent use—general storehouse.

Bldg. 757
757 Merritt Road
Fort Bliss
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219110059
Status: Unutilized
Comment: 495 sq. ft.; one story metal frame; off-site use only; most recent use—general storehouse.

Bldg. 758
758 Merritt Road
Fort Bliss
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219110060
Status: Unutilized
Comment: 260 sq. ft.; one story metal frame; off-site use only; most recent use—general storehouse.

Bldg. 759
759 Merritt Road
Fort Bliss
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219110061
Status: Unutilized
Comment: 260 sq. ft.; one story metal frame; off-site use only; most recent use—general storehouse.

Bldg. 5440
5440 Forsyth Road
Fort Bliss
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219110065
Status: Unutilized
Comment: 152 sq. ft.; one story metal frame; off-site use only; most recent use—general storehouse.

Bldg. 7034
7034 Sutherland Street, Lower Beaumont Area
Fort Bliss
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219110066
Status: Unutilized
Comment: 430 sq. ft.; one story brick/stucco frame; off-site use only; most recent use—storage shed.

Universe of Properties:

Total = 107
Suitable = 36
Suitable Buildings = 34
Suitable Land = 2
Unsuitable = 71
Unsuitable Buildings = 71
Unsuitable Land = 0
Number of Resubmissions = 0

[FR Doc. 91–1024 Filed 1–17–91; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Martin Luther King, Junior, National Historic Site Advisory Commission; Establishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing the Martin Luther King, Junior, National Historic Site Advisory Commission for an additional 5 years. The Commission was originally established by Public Law 96–428, October 10, 1980, and terminated as a legislatively established body on October 10, 1990. It will become an agency-established Commission under the authority of 16 U.S.C. 1a–2(c). The Commission is necessary in connection with the performance of duties imposed on the Department of the Interior by law by the Act of August 25, 1916 (16 U.S.C. 1 *et seq.*); the Act of August 21, 1935 (16 U.S.C. 461 *et seq.*); Public Law 96–428, October 10, 1980, establishing the Martin Luther King, Junior, National Historic Site; and other statutes relating to the administration of the National Park System.

The purpose of the Commission is to advise the Secretary of the Interior with respect to the formulation and execution of plans for and the overall administration of the Martin Luther King, Junior, National Historic Site and the preservation district, agreements, and interpretation of properties, and the use and appreciation of the national historic site and the preservation district by the public.

Further information regarding the Commission may be obtained from Sharon Edwards, (202) 208–7351, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240.

The certification of establishment is published below.

Certification

I hereby cerfify that the establishment of the Martin Luther King, Junior, National Historic Site Advisory Commission is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by law and by the Act of August 25, 1916 (16 U.S.C. 1 *et seq.*), as amended and supplemented; the Act of August 21, 1935 (16 U.S.C. 461 *et seq.*) as amended and supplemented; Public Law 96–428, October 10, 1980, establishing the Martin Luther King, Junior, National Historic Site; and other statutes relating to the administration of the National Park System.

Dated: January 14, 1991.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 91–1268 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Indian Affairs

Blackfeet Irrigation Project: Operation and Maintenance Charges

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

PURPOSE: Repair of Two Medicine Canal, Blackfeet Irrigation Project.

SUMMARY: The Two Medicine River is eroding the toe of the Two Medicine canal slope. Reimbursable construction funding from the Washington, DC office have been requested and received by this agency. Temporary Repairs to the canal have been made and permanent repairs to the problem will be accomplished as soon as design studies have been completed.

An interim construction assessments of $1.50 per assessable acre will be made against the Two Medicine irrigation unit to repay the reimbursable construction funding received from our Washington, DC office. Once the repair work has been completed and total cost of the repair has been determined, the construction assessment charges will be adjusted.

The due date for construction charges will be November 15, of each calendar year.

Interest and/or penalty fees will be assessed on delinquent construction charges as prescribed in the 42 Bureau of Indian Affairs Manual and the Code of Federal Regulations, chapter 4, part 102. Government agencies, such as Federal, State and Tribal Governments are exempted from interest and/or penalty fees.

This notice will be published and posted at the following locations:

U.S. Post Offices	*Newspapers*
Browning, Mt. 59417 ..	Glacier Reporter
Cut Bank, Mt. 59427...	Browning, Mt. 59417
Valier, Mt. 59486.....	Pioneer Press
	Cut Bank, Mt. 59427

Bureau of Indian Affairs

Blackfeet Agency
Browning, Mt. 59417

Exception: The Badger-Fisher irrigation units which are not served by the Two Medicine Canal will not be assessed construction charges. Trust lands within the Two Medicine irrigation unit will have their construction charges deferred as authorized by 25 U.S.C. 386a.

Comments: Individuals and/or corporations may comment on this rule making to the Superintendent, Blackfeet Agency, Browning, Montana 59417. All comments must be in writing and must be received by the Superintendent on or before the close of business, 30 days after this announcement has been published in the Federal Register.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to 25 U.S.C. 386, et. seq. and under the authority delegated to the Area Director, by the Assistant Secretary of Indian Affairs and the Deputy Assistant Secretary of the Interior [Departmental Manual, chapter 3, part 230, (3.1 & 3.2)].

Norris Cole,

Acting Billings Area Director.

[FR Doc. 91-1210 Filed 1-17-91; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

[CO-050-4333-09]

Interim Management for Protection of Wild and Scenic River Values

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Canon City District, has determined that 126 miles of the Arkansas River and 20 miles of Beaver Creek in Colorado are eligible for consideration as a potential addition to the National Wild and Scenic River System. This required resource management plan determination was made as a part of the Royal Gorge Resource Management Plan in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), 43 CFR 1600, the Guidance for the Identification and Evaluation of Potential Additions to the National Wild and Scenic Rivers System, the USDI-USDA Final Revised Guidelines for Eligibility, Classification and Management of River Areas, and BLM Manual Section 1623.41A2d.

SUMMARY: A resource management plan (RMP) is being prepared for the Royal Gorge Resource Area of Colorado. Assessment of potential additions to the National Wild and Scenic River Sysem is included in this planning effort. Within the Royal Gorge RMP, a total of 70 streams have been analyzed to date. Specific segments along 126 miles of the Arkansas River and along 20 miles of Beaver Creek have been determined to meet the eligibility criteria. These streams are "free-flowing" and have "outstandingly remarkable" values; therefore, adequate interim protection is needed until a final decision is reached.

The 126-mile segment of the Arkansas River, from the U.S. Forest Service boundary in section 16 of T. 8 S., R. 79 W. downriver to where the river enters the Royal Gorge Park in section 21 of T. 18 S., R. 71 W. has been tenatively classified as a "recreational" river. The Arkansas River from the west boundary of the Royal Gorge Park down to the Pueblo Reservoir also appears to meet the eligibility criteria. Since the majority of the lands in this lower segment are in state, city, and private ownership, this segment of the river will be excluded from analysis within the BLM study report. This analysis is more appropriately done under state direction than through this Federal study. The segment of Beaver Creek, from Skagway Dam in section 1 of T. 16 S., R. 69 W. downstream to the south boundary of section 9 of T. 17 S., R. 69 W. in the State Wildlife Management Area and including the east fork of Beaver Creek to the Fremont/Teller county line in section 22 of T. 16 S., R. 68 W., has been tentatively classified as a "wild" river. From the south boundary of section 9 of T. 17 S., R. 68 W. downstream to the south boundary of the State Wildlife Management Area in section 33 of T. 17 S., R. 68 W. a segment has been tentatively classified as a "scenic" river.

Management activities and authorized uses of BLM-administered lands shall not be allowed to adversely affect the eligibility or classification of these rivers. Management prescriptions affecting BLM-administered lands within the one-half mile corridor along these rivers should provide for protection in three ways:

1. The free-flowing characteristics of the rivers cannot be modified, to the extent that BLM is authorized under law to control stream impoundments and diversions.

2. Outstandingly remarkable values must be protected and, to the extent practicable, enhanced.

3. Management and development of the river corridors cannot be modified to the degree that eligibility or classification is changed.

A study report is now being prepared for the segments of the Arkansas River and Beaver Creek and will be included as an appendix to the Royal Gorge Draft Resouce Management Plan/Draft Environmental Impact Statement. This study report documents the application of the wild and scenic river eligibility/classification/suitability criteria and is an integral part of the RMP process documentation. The determination within the RMP will reflect tentative eligibility/classification/suitability of the stream/river corridors for inclusion

in the national system of rivers designated under the Wild and Scenic Rivers Act. The RMPs will include a finding on eligibility/classification/suitability, but may not include a preliminary administrative recommendation for designation. Additional public input efforts may continue following completion of the RMP to develop a preliminary administrative recommendation. The resulting recommendation will be submitted to the Diector of the BLM for review.

The preliminary administrative recommendation will receive further review by the Secretary of the Interior and the President of the United States. The final decisions on wild and scenic rivers will be made by the U.S. Congress.

DATES: Interim protective management on public lands along the described stream/river corridors will exist for a period not exceeding 5 years from the date of this publication or until such time as a final decision has been made, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain more information by writing RMP Project, Bureau fo Land Management, P.O. Box 1171, Canon City, Colorado 81215–1171 or by contacting the RMP Project Manager, Dave Taliaferro at (719) (275–0631.

Donnie Sparks,

District Manager.

[FR Doc. 91–1219 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–JB–M

[(WY–920–00–4120–14) W–10050]

Cheyenne, WY; Coal Lease Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice, WYW122586.

SUMMARY: In accordance with the Powder River Operational Guidelines for Coal Leasing-By-Application approved by the Powder River Regional Coal Team on April 3, 1990, the Bureau of Land Management (BLM) is announcing that a coal lease applcation has been received in the Wyoming portion of the Powder River Region. Input and issues concerning this application should be identified within the next thrity (30) days.

FOR FURTHER INFORMATION CONTACT: Lynn E. Rust, Chief, Branch of Mining Law and Solid Minerals, Bureau of Land Management, P.O. Box 1828, (MS 925), Cheyenne, Wyoming 82003; Telephone: (307) 775–6250 or FTS 329–6250.

SUPPLEMENTARY INFORMATION: Texas Energy Services, Inc., and Northwestern Resources Company, the Wyoming affiliate of Western Energy Company, as co-applicants have filed a Federal coal lease application identified by case file serial number WYW122586. The application affects the following described lands in Campbell County, Wyoming:

T. 48 N., R. 71 W., 6th P.M., Wyoming,
Sec. 5: Lots 7 (S2 and NW), 8, 9, 14 and 17;
Sec. 6: Lots 8, 14 (E2), 15, 16, and 23 (W2)
Sec. 8: Lot 4.

Containing 390.00 acres.

The land involved in the applicaion is intended to be developed by the applicants in conjunction with Texas Energy Services, Inc.'s existing Federal coal lease, WYW78633, known as the Rocky Butte Tract. The case file for the application may be viewed in the fourth floor public room of the Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming, during normal public room hours.

Within thirty (30) days after the publication of this notice in the **Federal Register**, issues that the public cares to address or any inputs concerning the application should identify the application by serial number, WYW122586, and be made to the State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003. The Bureau is particularly interested in comments concerning environmental factors and any resource recovery. While other opportunities for public input will follow in the processing of this application, it is most appropriate that public concerns are addressed at this early stage. Therefore, public inputs are encouraged now.

F. William Eikenberry,

Associate State Director.

[FR Doc. 91–1217 Filed 1–18–91; 8:45 am]

BILLING CODE 4310–84–M

[UT–020–01–4333–09]

Salt Lake District; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the environmental assessment (EA) and proposed planning amendment on Off-Highway Vehicle use for the Pony Express RMP for the Pony Express Resource Area. Notice of scoping meetings as per 43 CFR 2310.1, public meeting requirements, on a proposed withdrawal for the Bonneville Salt Flats.

SUMMARY: The Bureau of Land Management (BLM) has completed a plan and environmental assessment addressing Off-Highway Vehicle (OHV) use of 2,030,899 acres of public lands in the Pony Express Resource Management Area (Salt Lake, Tooele and Utah Counties). The plan, once enacted, would constitute a formal redesignation of lands as either "open", 242,186 acres, "limited", 1,663,766 acres, or "closed", 127,303 acres, to OHV use.

A 30-day comment period for the planning amendment will commence with the publication of this Notice of Availability. The draft EA and maps are available for inspection at the Salt Lake District Office or will be provided upon request.

DATES: Four public meetings to receive public comments on the proposed plan have been scheduled: (1) January 23—Payson City Council Chambers, 439 West Utah Avenue, Payson, Utah; (2) January 24—Tooele County Courthouse, South Auditorium, 47 South Main, Tooele, Utah; (3) January 29—State Line Hotel and Convention Center, Wendover, Nevada; (4) January 31—Department of Natural Resources Auditorium, 1636 West North Temple, Salt Lake City, Utah. All four public meetings will begin at 6 p.m. The first part of the meeting will treat the Bonneville Salt Flats withdrawal (6–7:15); the second part will treat OHV designations (7:30–9:30).

FOR FURTHER INFORMATION CONTACT: Howard Hedrick, Pony Express Resource Area Manager, 2370 South 2300 West, Salt Lake City, Utah 84119; (801) 977–4300.

Dated: January 14, 1991

James M. Parker,

State Director.

[FR Doc. 91–1263 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–DQ–M

[MN–920–01–4120–02]

San Juan River Regional Coal Team (RCT) New Mexico; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of RCT meeting.

SUMMARY: The San Juan River RCT will meet to discuss current activities on Federal coal lands in New Mexico and southwest Colorado and to consider future development plans for Federal coal in the region. The public is invited to attend.

The primary purposes of the meeting are to:

1. Inform the RCT of the results of the Fence Lake Project Environmental Impact Statement (EIS) and Record of Decision (ROD);
2. Brief the RCT on the scheduled Fence Lake Project coal lease sale; and
3. Update the RCT on the status of coal Preference Right Lease Applications (PRLA's).

DATE: The RCT will meet at 9 a.m. on Wednesday, February 20, 1991.

ADDRESSES: The meeting will be held at the Picacho Plaza Hotel (formerly the Sheraton), in the Boardroom, 750 North St. Francis Drive, Santa Fe, New Mexico 87501, telephone (505) 982–5591.

Copies of the Final Fence Lake Project EIS and ROD may be obtained from John Kenny, Bureau of Land Management, New Mexico State Office, Division of Mineral Resources, NM (920), P.O. Box 1449, Santa Fe, New Mexico 87504–1449, telephone (505) 988–6024.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen or Ed Heffern at the Bureau of Land Management, New Mexico State Office, Branch of Solid Minerals, NM (921), P.O. Box 1449, Santa Fe, New Mexico 87504–1449, telephone (505) 988–6109.

SUPPLEMENTARY INFORMATION: At this meeting, the BLM will report on the results of the Final Fence Lake Project EIS, the Maximum Economic Recovery Report, and the final tract configuration in the ROD. We will also announce the decision on Salt River Project's Public Body Set-Aside Request for the tract, discuss the decision to proceed with a spring 1991 lease sale for the Fence Lake Tract, and update the RCT on the status of surface owner consent. The BLM will report on progress in resolving the outstanding coal PRLA's in New Mexico. The meeting may also include presentations on plans for new highways or railroads in the San Juan Basin, and changes in native American coal lease and land ownership.

The RCT will consider information obtained from the public in making decisions at this meeting.

Anyone who wishes to be scheduled to speak at the meeting is requested to provide written copies of their remarks to Russell Jentgen or Ed Heffern, Bureau of Land Management, at the above address by Friday, February 15, 1991. Written materials will also be accepted in lieu of or in addition to any oral presentation.

Following is a preliminary agenda for this meeting:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Annual BLM Coal Market Assessment
4. Current Activity and Production on Existing Leases
5. Status of PRLA's
6. Status of Industry Interest in San Juan Region Coal
7. Status of Fence Lake Project Lease Application
   a. Review of Final EIS and ROD
   b. Tract Delination
   c. Decision on Public Body Set-Aside Request
   d. Native American Consultation
   e. Surface Owner Consent
   f. Proposed Sale Date
8. Updates on Other Issues
   a. Transportation Routes
   b. Changes in Native American Land Status
9. Public Comment
10. Scheduling of New Meeting
11. Adjourn

Dated: January 15, 1991.

Kathy J. Eaton,

Acting State Director, New Mexico BLM, San Juan River Regional Coal Team.

[FR Doc. 91–1374 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–FB–M

[WY–920–41–5700; WYW105272]

Proposed Reinstatement of Terminated Oil and Gas Lease

January 9, 1991.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW105272 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW105272 effective August 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 91–1215 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–22–M

[CO–050–4212–11]

Colorado: Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purposes Classification, Mill Creek Historic Area, Clear Creek County, Colorado.

SUMMARY: The following described public lands have been found to have historical values and are suitable for classification and disposal under the Recreation and Public Purposes (R&PP) Act of June 14, 1926 (43 U.S.C. 869) as amended, and the regulations thereunder (43 CFR 2740):

Sixth Principal Meridian, Colorado

T.3S., R.73W., Section 19, W½SE¼, E½SW¼; containing approximately 80 acres of public lands.

This classification is consistent with BLM land use plans for the area. Publication of this notice will segregate these lands from all appropriation, including mineral entry, except applications under the R&PP Act. Segregation will terminate eighteen (18) months from publication of this notice unless an application is filed.

DATES: Interested parties may submit comments on or before March 4, 1991.

ADDRESSES: Comments should be sent to the District Manager, P.O. Box 2200, Canon City, Colorado 81215–2200.

FOR FURTHER INFORMATION CONTACT: Priscilla McLain, Northest Resource Area, (303) 236–4399.

Donnie R. Sparks,

District Manager.

[FR Doc. 91–1218 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–JB–M

[MT–930–5420–10–E019; SDM 79730]

Recordable Disclaimer; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Robert E. Hummel and Roger L. Hummel have applied for a Recordable Disclaimer of Interest from the United States under the provisions of section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745 (1988), for the NW¼SW¼, section 33, T. 90 N., R. 49 W., 5th Principal Meridian, containing 40 acres in Union County.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION: The official records of the Bureau of Land Management (BLM) were reviewed and a determination made that the United States has no claim to or interest in the land described, and issuance of a recordable disclaimer will remove a cloud on the title to the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to present comments, suggestions, or objections in connection with the proposed disclaimer may do so by writing to the Chief, Branch of Land Resources, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107. If no objections are received, the disclaimer will be published shortly after the 90 days has lapsed.

Dated: January 8, 1991.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 91-1214 Filed 1-17-91; 8:45 am]

BILLING CODE 4310-DN-M

[UT-942-01-4212-13; U-54864]

Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 160.98 acres of public land out of Federal ownership. This action will also open 160.00 acres of reconveyed lands to surface entry.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145-0155, 801-539-4119.

SUPPLEMENTARY INFORMATION:

1. The United States has issued an exchange conveyance document to Robert F. Montgomery and Julene S. Montgomery, for the following described lands pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716:

Salt Lake Meridian, Utah

T. 12 N., R. 14 W.,
Sec. 1, Lot 3, SE¼NW¼;
Sec. 3, E½SE¼.
Containing 160.98 acres.

2. In exchange for these lands, the United States acquired the surface of the following described lands.

Salt Lake Meridian, Utah

T. 12 N., R. 14 W.,
Sec. 20, SW¼.
Containing 160.00 acres.

3. At 7:45 a.m., on February 19, 1991, the lands described in paragraph 2 will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m., on the date stated above, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. The purpose of this exchange was to acquire non-federal lands which have high public historical values.

James M. Parker,

State Director.

[FR Doc. 91-1262 Filed 1-17-91; 8:45 am]

BILLING CODE 4310-DQ-M

[G-910-G1-0409-4214-10; NMNM 85612]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (USDA), Forest Service, has filed an application to withdraw 2,432.40 acres of National Forest System land for protection of the Sacramento Peak Observatory (SPO) from interference that might affect the use of the site for scientific purposes. This notice closes the land for up to 2 years from location and entry under the United States mining laws, subject to valid existing rights.

DATES: Comments and requests for a public meeting must be recieved by April 18, 1991.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Sanata Fe, New Mexcico 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexcio State Office, 505-988-6071.

SUPPLEMENTARY INFORMATION: On August 22, 1990, the USDA filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights.

New Mexico Principal Meridian

Lincoln National Forest

T. 17 S., R. 11 E.,
Sec. 26, SW¼;
Sec. 27, W½NE¼, SE¼NE¼, NW¼ and S½;
Sec. 28, E½NE¼ and S½, unsurveyed;
Sec. 33, unsurveyed;
Sec. 34, lots 1 to 4, inclusive, N½ and N½S½.

The areas described aggregate approximately 2,432.40 acres in Otero County.

The purpose of the proposed withdrawal is to protect the SPO from interference that might affect the use of the site for scientific purposes.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard, on the proposed withdrawal, must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied, cancelled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations.

The temporary segregation of the land in connection with this withdrawal application or proposal shall not affect the administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the USDA.

Dated: January 8, 1991.

Monte G. Jordan,

Associate, State Director.

[FR Doc. 91-1216 Filed 1-17-91; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Reclamation

Operation of Glen Canyon Dam, Colorado River Storage Project, AZ

AGENCY: Bureau of Reclamation, (Interior).

ACTION: Notice of Public Meetings and Correction.

SUMMARY: Pursuant to section 102(d)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Department of the Interior previously announced it is preparing a draft environmental impact statement (DEIS) on the downstream impacts of water releases from the Glen Canyon Dam. Public meetings will be held to present the alternatives developed through the scoping process.

The Cooperating Agencies will conduct three public meetings to be held in Flagstaff and Phoenix, Arizona, and Salt Lake City, Utah. On February 23, 1990, the Bureau of Reclamation (Reclamation), the lead agency in the development of the EIS, published a Federal Register notice that listed the cooperating agencies in the process. The list of cooperating agencies is changed to read: "Cooperating agencies are the U.S. Fish and Wildlife Service, National Park Service, and the Bureau of Indian Affairs, of the Department of the Interior, Western Area Power Administration of the Department of Energy, Arizona Game and Fish Department, the Navajo Nation, the Hopi Tribe, the Havasupai Tribe, and the Hualapai Tribe."

DATES AND LOCATIONS: Three public meetings will be held:

February 26, 1991, 7 p.m., Hilton Hotel, 150 W. 500 South, Salt Lake City, UT.

February 27, 1991, 7 p.m., Little America Hotel, 2515 East Butler Avenue, Flagstaff, AZ.

February 28, 1991, 7 p.m., YWCA Leadership Development Center, 9440 North 25th Avenue, Phoenix, AZ.

SUPPLEMENTARY INFORMATION: In addition to this notice, interested government agencies, public groups, and private citizens will be informed of the alternative measures through the Colorado River Studies Office (CRSO) Newsletter and news releases. Basic information on the alternatives and the public involvement process will be contained in the newsletter which will be published prior to the meetings. A document listing preliminary Alternatives will be provided at the meetings and will also be available on request. The public meetings will be held in a workshop style. In addition, written comments will be accepted at the meetings. Written comments can also be submitted by mail or in person through April 12, 1991. Persons may be added to the current DEIS mailing list to receive the newsletter or additional information by contacting the person noted below. Comments should be sent to the same address.

On October 27, 1989, Reclamation published a Notice of Intent in the Federal Register (54 FR 43870) to prepare a DEIS which would be used to evaluate the impacts of Glen Canyon Dam operations on the downstream environmental and ecological resources of the Glen Canyon National Recreation Area and Grand Canyon National Park. The notice was amended in the Federal Register notice dated February 23, 1990, to state "The final environmental impact statement (FEIS) will be filed in December 1991." The previous notice is again amended to read "The final environmental impact statement (FEIS) will be filed in September of 1993." The Draft Environmental Impact Statement will be available in July of 1992. This schedule change is necessary to better incorporate information from research studies currently under way.

FOR FURTHER INFORMATION CONTACT: Mary Ann Facer, Colorado River Studies Office, UC 1512, U.S. Bureau of Reclamation, 125 South State Street, P.O. Box 11568, Salt Lake City, UT 84147, telephone: (801) 524–4099.

Dated: January 14, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91–1267 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Jimmy Carter National Historic Site, Georgia; Boundary Revision

Public Law 100–206 (101 Stat. 1434) dated December 23, 1987, established the Jimmy Carter National Historic Site and sections 7(c)(i) and 7(c)(ii) of the Land and Water Conservation Fund Act, as amended by the Act of June 10, 1977 (Pub. L. 95–42, 91 Stat. 210) and the Act of March 10, 1980 (Pub. L. 96–203, 94 Stat. 81) authorized the Secretary to make minor revisions in the boundary.

Notice is given that the boundary of Jimmy Carter National Historic Site has been revised pursuant to the Acts, to encompass lands as are depicted on the boundary map entitled "Boundary Map—Jimmy Carter National Historic Site" dated September 1989, prepared by the Land Resources Division, Southeast Region, National Park Service. The revisions to the boundary are to correct omissions in the authorizing legislation.

This map is on file and available for inspection in the Land Resources Division, Southeast Regional Office, 75 Spring Street, SW., Atlanta, Georgia 30303, and in the Offices of the National Park Service, Department of the Interior, Washington, DC 20013–7127.

Dated: November 17, 1989.

Note.—This document was received by the Office of the Federal Register January 14, 1991.

Robert M. Baker,

Regional Director, Southeast Region, National Park Service.

[FR Doc. 91–1193 Filed 1–17–91; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31810]

Atlantic and East Carolina Railroad Co.; Trackage Rights Exemption; Camp Lejeune Railroad Co.

Camp Lejeune Railroad Company (CLR) has agreed to grant local trackage rights to Atlantic and East Carolina Railroad Company (AEC) over 38.06 miles of rail line between Havelock, NC (milepost CL 29.5), and Kellum, NC (milepost CK 13.28). CLR and AEC are wholly owned subsidiaries of Southern Railway Company. CLR will assign trackage rights to AEC between Havelock and Jacksonville [1] and grant trackage rights to AEC over CLR's wholly owned Jacksonville-Kellum segment of the line. The trackage rights became effective January 2, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees affected by the trackage right will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 14, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–1313 Filed 1–17–91; 8:45 am]

BILLING CODE 7035–01–M

[1] CLR operates the 33-mile Havelock-Jacksonville segment over trackage rights granted by the United States Department of the Navy and will retain a right to operate over this segment.

[Finance Docket No. 31811]

Chicago Southshore and South Bend Railroad Co.; Trackage Rights Exemption; Northern Indiana Commuter Transportation District

Northern Indiana Commuter Transportation District (NICTD) has agreed to grant local and overhead trackage rights (for freight traffic only) to Chicago SouthShore & South Bend Railroad Co. (CSS) between milepost 0.9, near South Bend, IN, and milepost 69.19, near Hammond, IN, a distance of approximately 68.29 miles, in Lake, Porter, La Porte, and St. Joseph Counties, IN.[1] The trackage rights agreement was to become effective on December 31, 1990.[2]

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction. Pleadings must be filed with the Commission and served on: Stephen W. McVearry, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., 1350 New York Avenue NW., suite 800, Washington, DC 20005.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfok and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 14, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–1314 Filed 1–17–91; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31803]

The Indiana & Ohio Eastern Railroad, Inc. Modified Rail Certificate

On December 20, 1990, the Indiana & Ohio Eastern Railroad, Inc. (IOER) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150.23 to operate approximately 9.0 miles of line (between milepost 127.71, near Hamden, OH, and milepost 136.71,[1] at a point known as Red Diamond, OH) acquired by the City of Jackson, OH (the City),[2] from CSX Transportation, Inc. (CSXT), after the line was approved for abandonment.[3]

IOER and the City have a 15-year agreement for IOER's operation of the line that was scheduled to begin on December 21, 1990.[4] IOER intends to connect the line with its existing operations at Hamden and interchange traffic with CSXT at Vauces, OH.

This notice involves the lease of property, which is defined by the regulations of the Advisory Council on Historic Preservation as potentially having an adverse effect on properties. IOER shall maintain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Date: January 15, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–1315 Filed 1–17–91; 8:45 am]

BILLING CODE 7035–01–M

[1] In Finance Docket No. 31812, *Northern Indiana Commuter Transportation District—Acquisition Exemption—Chicago SouthShore and South Bend Railroad Company* (not printed) served December 31, 1990, and published January 4, 1991, at 56 FR 446, NICTD's petition for exemption for its purchase of this line and other trackage from CSS was approved.

[2] To qualify for an exemption under 49 CFR 1180.2(d), a railroad must file a verified notice of the transaction with the Commission at least 1 week before the transaction is to be consummated. 49 CFR 1180.4(g)(1). Because the notice in this proceeding was filed on December 26, 1990, the transaction should not have been consummated until January 2, 1991.

[1] In one instance, the notice incorrectly refers to milepost 229.83 instead of milepost 136.71.

[2] The City is a political subdivision of the State of Ohio and therefore is considered a "State" as defined at 49 CFR 1150.21.

[3] Abandonment of the line by CSXT had been authorized in Docket No. AB–55 (Sub-No. 221), *CSX Transportation, Inc. Abandonment and Discontinuance of Trackage Rights—In Vinton and Jackson Counties, OH* (not printed), served November 8, 1988. The principal shipper on the line, the Austin Powder Company (APC), however, subsidized continued rail operation for 2 years ending December 31, 1990. In response to APC's subsidy, issuance of a certificate permitting the abandonment and discontinuance of service was stayed. On December 10, 1990, following notification from APC that it would discontinue its operating subsidy on December 21, 1990, CSXT requested the Commission, under 49 CFR 1152.27(j), to issue a certificate authorizing the abandonment of and discontinuance of service on the line segment involved here. A certificate and decision was served December 18, 1990.

[4] The agreement between IOER and the City is in the form of an amendment to a lease agreement, dated March 23, 1987, under which IOER leased from the City track that the City acquired from the Chesapeake and Ohio Railway Company, a wholly owned subsidiary of CSXT. That lease and purchase was approved by the Commission in Finance Docket No. 31017, *Indiana & Ohio Eastern Railroad, Inc.—Exemption Lease and Operation—Certain Lines of the City of Jackson, OH* (not printed), served April 24, 1987.

DEPARTMENT OF JUSTICE

Office of Justice Programs; National Institutes of Justice

Announcement of Availability of a Request for Proposals for a National Evaluation of Innovative Neighborhood Oriented Policing

AGENCY: Office of Justice Programs, National Institute of Justice, DOJ.

ACTION: Announcement of a competitive procurement of research services to evaluate eight Innovative Neighborhood Oriented Policing projects.

SUMMARY: The National Institute of Justice is announcing availability of the Request for Proposals soliciting evaluation research to document and assess the effects of differing "innovative neighborhood oriented policing" approaches and strategies on the nation's drug and crime problem pursuant to the Omnibus Crime Control and Safe Street Act of 1968, as amended, section 201, 42 U.S.C. section 3721. Neighborhood oriented policing is an innovative public safety philosophy that couples law enforcement resources more directly with community resources in partnerships for the purpose of reducing drug sales, drug abuse, and crime. The Bureau of Justice Assistance's (BJA) Innovative Neighborhood Oriented Policing Program is designed to develop and demonstrate innovate community policing programs which target demand reduction at the neighborhood level in urban and rural areas. Researchers are invited to propose process and impact evaluations of eight neighborhood oriented policing demonstrations that wer recently funded by BJA, Office of Justice Programs, U.S. Department of Justice. This evaluation should include recommendations for policy and action related to neighborhood oriented policing projects and also provide guidance on research needs. The eight neighborhood oriented policing projects will be developed by Hayward, CA, Houston, TX, Louisville, KY, New York, NY, Norfolk, VA, Portland, OR, Prince Georges County, MD, and Tempe, AZ.

DATES: Copies of the Request for Proposals may be obtained immediately. All proposals must be received by the

close of business March 1, 1991. No extension of this date will be granted.

ADDRESSES: All proposals must be mailed or otherwise sent to: National Institute of Justice, Public Safety and Security Program, 633 Indiana Avenue NW., room 864, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Mr. George Shollenberger (at the above address. Telephone: (202) 307–2967 (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Background

The National Institute of Justice is a research unit in the Office of Justice Programs of the U.S. Department of Justice. It is authorized by the U.S. Congress to conduct research on problems of crime and justice. As a research unit, the Institute conducts evaluations in community settings such as the eight to be evaluated in this research.

Summary of Evaluation Research Effort

The evaluation research will address both the processes involved in developing and implementing innovative neighborhood oriented policing projects and the impacts of those projects on the crime and drug problems. The purpose of the process evaluation is to provide other jurisdictions with technical information that can assist them in developing and implementing similar neighborhood oriented policing strategies targeting demand reduction. Special attention will be given to identifying the lessons learned at the various sites and the guidance that they can provide to other jurisdictions in regard to the organization and development of neighborhood oriented policing strategies and to the implementation of various project elements which are useful in addressing particular kinds of problems relating to drug abuse and crime control.

One purpose of the impact evaluation is to provide management information needed by State and local government officials and community leaders who are involved in policy funding decisions regarding such project. The impacts observed in the eight projects shall be distilled in order to provide a general assessment of the impact of the neighborhood oriented policing strategy with regard to problems related to drugs and crime. For this assessment attention shall be given to the effects of neighborhood oriented policing on community security as well as on other qualtiy of life issues such as economic viability of the area, housing stability, sense of order in the neighborhood, project effects in relation to other social problems such as alcohol abuse and truancy. Attention must also be given to process issues such as partnerships with other city agencies, schools, community groups, etc. and citizen mobiliation and community improvement efforts that address root causes of crime and drug abuse. Another purpose is to provide a comparative assessment of neighborhood oriented policing with other anti-drug and crime control strategies. A third purpose is to provide a comparative assessment of the actual impacts of such project with the expectations of the project managers and those community leaders and law enforcement personnel who conceived and planned the project.

Level and Duration of Funding

The level of funding for this evaluation will be up to $400,000. It is anticipated that the evaluation effort will be for an eighteen (18) month period.

Eligibility

Eligible applicants include private institutions such as universities, non-profit research organizations, and profit-making organizations that are willing to waive their fee or profit. To be eligible the evaluator must show his or her independence from the projects to be evaluated and from the positive or negative results that might emerge from the evaluation. Applicants should be thoroughly experienced in the conduct of evaluations of community and law enforcement projects that address the problems of crime and drug abuse.

Application Requirements and Procedures

Applicants shall submit three (3) copies of their proposal. Submissions must include the following:

(1) Abstract of the full proposal, not to exceed one page.

(2) Description of the projects to be evaluated specifying all essential program elements or changes in procedures and who is or will be responsible for implementing these elements or changes.

(3) Written assurances of the intent to participate in this project and to cooperate with the evaluation effort from all necessary local participants.

(4) Description of the research design and methodology for the evaluation of the projects effectiveness, including data gathering methods and the analysis plan to be used.

(5) Statement of the applicant's qualifications, intended management plan, task plan (including task timetable), products to be produced, and résumés of named, primary researchers should be appended. Statements regarding the research team should indicate the variety of skills to be used, a description of the relevant research experience, educational background, experience in dealing with local decision-makers, law enforcement personnel, and community groups, and the demonstrated ability to produce a final product that is readily comprehensible and usable.

(6) A fully executed Federal Assistance Form 424 with cost estimates by budget category including time commitments from key project personnel and short narrative explanation of budgeted costs. The budget should outline all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and overhead. Separate budgets for each of the eight projects must be prepared to comply with the financial reporting requirements. Percentage of time and person-months of effort to be devoted by principal staff should also be included.

(7) In addition to Form 424, three recent requirements involve certification regarding: (1) debarment, (2) drug-free workplace, and (3) lobbying. Certification forms can be obtained by contacting the NIJ Program Manager. It should be noted that there are separate debarment forms for direct recipients and for subrecipients and separate drug-free workplace forms for individuals and other applicants. Certification regarding lobbying pertains to grants, contracts, or cooperative agreements of $100,000 or more.

Review Procedures and Proposal Evaluation Criteria

The selections from among competing applications will be made on the basis of the criteria given below. The order given does not indicate the importance of each criterion. The selection process begins with a panel of consultants that includes both knowledgeable researchers and members of the criminal justice prefessional community. The Director of the National Institute has sole authority for awarding grants. Thus, consultant assessments of proposal submittals, together with the Institute program manager's assessments, are submitted for consideration by the Director. The following criteria are used to assess proposals:

1. Cooperation of the participant jurisdiction. Satisfactory evidence must be given of the intended cooperative of all parties in the local site of the project to be evaluated. A discussion of the legal ramifications, and/or impediments to implementing any suggested changes, along with the proposed solutions to any

such problems will be considered. Applications that fail to demonstrate this access and cooperation will Not be considered further. Since the Bureau of Justice Assistance requires awardees of Innovative Oriented Neighborhood Policing grants to cooperate with this national impact evaluation, letters of cooperation should be obtainable with minimum delay.

2. Technical merit of the project design. A full description of all essential elements of the proposed project research design, including the primary objectives to be achieve, anticipated changes in existing procedures to be effected, and the nature of the involvement of all participating agencies or personnel in the local evaluation site. Evidence of an understanding of the evaluation issues involved and any problems that may be potentially involved in the undertaking itself will be considered. The potential significance and utility of the evaluation proposed will also be considered. The methodology of evaluation will be weighed heavily in the assessments of proposals. Applicants are thus encouraged to explain why the methodology chosen can be expected to be successful. Reviewers take into account the logic and timing of the research plan, the validity and reliability of measures proposed, the appropriationess of statistical methods to be used, and the applicant's awareness of factors that might dilute the credibility of the findings.

3. Qualifications of the proposed research team and adequacy of the management and staffing plan. Both individual expertise and the appropriateness of the mix of skills represented on the research/evaluation team will be considered. In addition, it is important to note that the management plan is a critical and integral part of the evaluation effort and will be weighed accordingly. Information demonstating the applicant's ability to successfully complete a comparable effort will be considered, as will the feasibility of the proposed project milestones. The comprehensiveness and clarity of the proposal will be used an indication of the applicant's ability to communicate clearly and effectively.

4. *Adequacy of cost estimates.* Project cost estimates will be assessed to determine if the applicant has estimated the elemental and total project costs realistically and allocated costs among particular sub-categories in a rational and efficient manner. Project costs must be identified as they relate to tasks in the proposed workplan. They must also be consistent with personnel qualifications.

Charles B. DeWitt,

Director, National Institute of Justice.

[FR Doc. 91-1211 Filed 1-17-91; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Existing Collection in Use Without an OMB Control Number

Assistant Secretary for Veterans' Employment and Training.

Manager's Report on Services to Veterans.

State or local governments.

1,600 respondents; 45 minutes per response; 4,800 hours; Information is required by 33 USC 2004(c) from federally funded Local Veterans' Employment Representatives on a quarterly basis regarding services and priorities provided to veterans by local employment service offices (LESOs). Information is collected by about 1,600 LESO managers from Local Veterans' Employment Representatives (LVERs) and transmitted to the Director for Veterans' Employment and Training (DVET). It is used to monitor compliance with statutory requirements on services to veterans.

Revision

Employment Standards Administration.

Application of the Employee Polygraph Protection Act of 1988—29 CFR Part 801, Final Rule.

1215-0170.

On occasion.

Businesses or other for profit; non profit institutions; small businesses or organizations.

261,000 respondents; 122,310 total hours; 5-30 min. per response. These reporting and recordkeeping requirements for employers and polygraph examiners are necessary to insure polygraph examinees receive the protections and rights mandated by the employee Polygraph Protection Act of 1988.

Revision

Employment and Training Administration.

Part B Data Collection and Analysis of JTPA Evaluation Experiments.
1205–0257.
Other.
Individuals or households.
6,000 respondents; 2,850 total hours; 29 minutes per respondent; no forms
JTPA mandates evaluation of the effectiveness of JTPA Programs. Due to ambiguous results of prior evaluations, USDOL will carry out c classical field experiment in a sample of 16 locations to measure net impacts in these sites, and improve future quasiexperimental analyses. Approval is sought for information collections to support this evaluation.

Reinstatement

Bureau of Labor Statistics.
Mass Layoff Statistics Program.
Supplemental Employer Information Report and State.
Operating Manual.
1220–0090; BLS 428.
Quarterly.
State or Local governments; farms; businesses or other for-profit organizations; Federal agencies or employees; non-profit institutions.
15,200 responses; 164,760 hours; 10.839 hours per response; 1 form and 1 State Operating Manual.

Section 462(e) of the Job Training Partnership Act states that the Secretary of Labor develop and maintain statistical data on permanent mass layoffs and plant closings, and publish a report annually. These data will be used to study the causes and effects of worker dislocations.

Signed at Washington, DC this 15th day of January, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91–1291 Filed 1–17–91; 8:45 am]

BILLING CODE 4510–27–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3104, Washington DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume III

Utah:
UT90—8 (Jan. 18, 1991)..... p. 368k
Utah:
UT90—9 (Jan. 18, 1991)..... p. 368m p. 368n.
Utah:
UT90—10 (Jan. 18, 1991)... p. 368o p. 368p.
Utah:
UT90—11 (Jan. 18, 1991)... p. 368q p. 368r.
Utah:
UT90—12 (Jan. 18, 1991)... p. 368s pp. 368t–368v.
Utah:
UT90—13 (Jan. 18, 1991)... p. 368w p. 368x.
Utah:
UT90—14 (Jan. 18, 1991)... p. 368y p. 368z.
Utah:
UT90—15 (Jan. 18, 1991)... p. 368aa p. 368bb.
Utah:
UT90—16 (Jan. 18, 1991)... p. 368cc p. 368dd.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey.....
NJ90–2 (Jan. 5, 1990)..... p. 665 p. 669
New York: :
NY90–5 (Jan. 5, 1990)..... p. 777 p. 780
NY90–8 (Jan. 5, 1990)..... p. 815 p. 820
NY90–19 (Jan. 5, 1990)..... p. 903 p. 905
Pennsylvania.....
PA90–4 (Jan. 5, 1990)..... p. 941 pp. 942–943

West Virginia,
WV90–3 (Jan. 5, 1990)..... p. 1415 pp. 1418,1422–1423 p. 1428

Volume II

Iowa,.....
IA90–2 (Jan. 5, 1990)..... p. 23 p. 24
Illinois,.....
IL90–18 (Jan. 5, 1990)..... p. 227 pp. 228–229
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OH90–29 (Jan. 5, 1990)..... p. 873 pp. 875,877,979 pp. 893,985

Volume III

Alaska.....
AK90–1 (Jan. 5, 1990)..... p. 1 p. 3
Colorado.....
CO90–2 (Jan. 5, 1990)..... p. 117 p. 118

General Wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 11th day of June 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91–1101 Filed 1–17–91; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Native American Programs' Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–563), as amended, and section 401(b)(1) of the Job Training Partnership Act as amended (29 U.S.C. 1671(b)(1)), notice is hereby given of a meeting of the Job Training Partnership Act Native American Programs' Advisory Committee. The meeting will be chaired by Mr. Eddie L. Tullis, chairperson of the Committee. Mr. Tullis is the Chairman and Chief Executive Officer of the Poarch Band Tribal Council.

TIME AND DATE: The meeting will begin at 9 a.m. on February 6, 1991, and continue until close of business that day, and will reconvene at 9 a.m. on February 7, 1991, and adjourn at 12 p.m. that day. The final hour of the meeting on February 7 will be reserved for participation and presentations by members of the public.

PLACE: Department of Labor, 200 Constitution Avenue NW., room C–5515, Seminar room #4, Washington, DC.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: The agenda will focus on the NAPAC Strategic Plan. Another topic will be the 1990 Census. Committee members may propose additional items for discussion.

CONTACT PERSON FOR MORE INFORMATION: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, United States Department of Labor, room N–4641, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–535–0500 (this is not a toll-free number).

Signed at Washington, DC this 4th day of January, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91–1239 Filed 1–17–91; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–90–202–C]

Andalex Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Andalex Resources, Inc., P.O. Box 902, Price, Utah 84501, has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Pinnacle Mine (I.D. No. 42–01474); its Apex Mine (I.D. No. 42–01750); and its Aberdeen Mine (I.D. No. 42–02028) all located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that two or more branch lines be installed in each sprinkler system to provide a uniform discharge of water to the belt surface.

2. As an alternate method, petitioner proposes to install a single line of automatic sprinklers for fire protection systems at main and secondary belt conveyor drives.

3. In support of this request, petitioner states that:

(a) Each sprinkler system will consist of a single overhead pipe system with automatic sprinklers located not more than 10 feet apart;

(b) The residual pressure in each sprinkler system will be not less than 10 psi with any three sprinklers open and the supply of water will be adequate to provide a constant flow of water for at least 10 minutes with all sprinklers functioning;

(c) Each water sprinkler will be equipped with a flush-out connection and a manual shut-off valve;

(d) An annual functional test of each water sprinkler system will be conducted.

4. Petitioner states that the alternate method will at all times guarantee no less than the same measure of protection as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 19, 1991. Copies of the petition are available for inspection at that address.

Dated: January 11, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91–1236 Filed 1–17–91; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–207–C]

West Elk Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

West Elk Coal Company Inc., P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30

CFR 75.305 (weekly examinations for hazardous conditions) to its Mt. Gunnison No. 1 Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that seals be examined on a weekly basis.

2. Due to heaving floor and other deteriorating ground conditions, the seals in the 1 West Submains section cannot be safely examined. To require weekly examinations of the seals would expose miners to hazardous conditions and result in a diminution of safety.

3. As an alternate method, the petitioner proposes to establish a monitoring station where the air quantity and quality would be measured.

4. In support of this request, the petitioner states that—

(a) Tests for methane and the quantity of air would be determined weekly by a certified person at each station;

(b) All measuring stations and travelways would be maintained in a safe condition at all times; and

(c) The person making such examinations and tests would place his/her initials and the date and time at each station. A record of these examinations, tests and actions taken would be recorded in a book and kept on the surface and made accessible to all interested parties.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 19, 1991. Copies of the petition are available for inspection at that address.

Dated: January 11, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91–1235 Filed 1–17–91; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–205–C]

Eastern Associated Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Company, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Lightfoot No. 1 Mine (I.D. No. 46–04332) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to deteriorating roof conditions, portions of a longwall tailgate entry and other return entry is unsafe for travel. To require an examiner to make weekly examinations would pose unnecessary hazards.

3. As an alternate method, petitioner proposes that—

(a) Evaluation points would be established at specific locations where the air would be monitored;

(b) All monitoring stations would be maintained in a safe condition;

(c) Tests for methane and the quantity of air would be determined weekly by a responsible person; and

(d) The person making such examinations and tests would place his/her initials and the date and time at each station.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 19, 1991. Copies of the petition are available for inspection at that address.

Dated: January 11, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91–1233 Filed 1–17–91; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–200–C]

Kinney Branch Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kinney Branch Coal Company, Inc., 109 Broadbottom Road, Pikeville, Kentucky 41501, has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 1 Mine (I.D. No. 15–15543) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that aircourses be examined in their entirety on a weekly basis.

2. Due to serious roof problems, a 450-foot section of the return entry cannot be safely traveled.

3. As an alternate method, petitioner proposes to inspect the return up to the hazardous area and visually inspect the hazardous area (approximately 450 feet) from each end.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 19, 1991. Copies of the petition are available for inspection at that address.

Dated: January 11, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91–1237 Filed 1–17–91; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–206–C]

McElroy Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its McElroy Mine (I.D. No. 46–01437) located in Maarchsll County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that aircourses be examined in their entirety on a weekly basis.

2. Dispite additional bolting and cribbing, the return entry has experienced severe deterioration of roof and rib conditions.

3. Application of the standard would result in a diminution of safety to the miners.

4. As an alternate method, petitioner proposes to establish evaluation points and monitor the quality and quantity of air entering and exiting the affected air courses.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 19, 1991. Copies of the petition are available for inspection at that address.

Dated: January 11, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-1234 Filed 1-17-91; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-204-C]

Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 490, Albany, Ohio 45701, has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Meigs No. 31 Mine, (I.D. No. 33-01172) located in Meigs County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that high-voltage cables not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. The longwall mining equipment in use at the mine is powered by a 1000-volt system which requires large, heavy cables that congest working areas and present significant handling problems.

3. This equipment is subject to poor voltage regulation which causes a decrease in the working torques of the drive motors and leads to excessive strain on equipment.

4. As an alternate method, petitioner proposes to use 2,400 volt electricity to power the longwall mining equipment. The petitioner outlines specific equipment and procedures in the petition.

5. Petitioner state that the proposed alternate method will provide no less than the same measure of protection for the miners as the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 19, 1991. Copies of the petition are available for inspection at that address.

Date: January 11, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-1238 Fled 1-17-91; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

California State Plan, Addendum to Operational Status Agreement, Level of Federal Enforcement

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Change in level of federal enforcement.

SUMMARY: This notice announces the signing of a November 8, 1990 addendum to the October 5, 1989 Operational Status Agreement between the Occupational Safety and Health Administration (OSHA) and the California Department of Industrial Relations (CAL/OSHA). Pursuant to enactment of California Assembly Bill 3018 on September 21, 1990, CAL/OSHA has begun enforcing requirements identical to the Federal OSHA worker safety rules governing hazardous waste and emergency response operations pending action by the CAL/OSHA Standards Board to adopt a comparable standard. Under the terms of the November 8, 1990 addendum to the Operational Status Agreement, Federal OSHA withdrew from and CAL/OSHA assumed full enforcement authority for protection of employees engaged in hazardous waste operations in the State.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N3647, 200 Constitution Avenue, NW., Washington, DC, (202) 523-8148.

SUPPLEMENTARY INFORMATION: Part 1954 of title 29, Code of Federal Regulations, sets out procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for the evaluation and monitoring of State plans which have been approved under section 18(c) of the Act and 29 CFR part 1902. After initial approval, but prior to final approval, section 18(e) of the Act provides for a period of concurrent jurisdiction.

Section 1954.3 of this chapter provides guidelines and procedures for the exercise of discretionary concurrent Federal enforcement authority during the period with regard to Federal standards in issues covered under an approved State plan. In determining the appropriate level of Federal enforcement, OSHA must consider the effectiveness of State enforcement, the coordinated utilization of Federal and State resources throughout the Nation, and current worker protection needs in the State. If Federal monitoring shows that a State program has developed its program to a degree sufficient to justify suspension of duplicative Federal enforcement activity, U.S. Department of Labor regulations provide that OSHA, through its Regional Administrator, may enter into a procedural agreement (and addenda to such agreements) with the State, usually referred to as an "operational status agreement," setting forth areas of Federal and State enforcement responsibility (29 CFR 1954.3(f)).

On October 5, 1989, an Operational Status Agreement was entered into between the Occupational Safety and Health Administration (OSHA) and the State of California whereby concurrent Federal enforcement authority would not be initiated with regard to most Federal occupational safety and health standards in issues covered by the State's OSHA-approved occupational safety and health plan. (See 55 FR 28610, July 12, 1990.) However, the agreement provided that Federal OSHA would continue to be responsible for enforcement of Federal standards not yet promulgated by the State, including Toxic and Hazardous Substances (Air

Contaminants, 29 CFR 1910.1000), General Environmental Controls in Agriculture (Field Sanitation, 29 CFR 1928.110), and Hazardous Materials (Hazardous Waste Operations and Emergency Response, 29 CFR 1010.120).

Subsequent to the signing of the October 5, 1989 Operational Status Agreement, California Assembly Bill 3018 was enacted on September 21, 1990, which required CAL/OSHA to immediately enforce, as an interim standard, section 1910.120 of title 29 of the Code of Federal Regulations (the Federal worker safety rules governing hazardous waste and emergency response operations) until such time as the California Occupational Safety and Health Standards Board adopts a comparable State standard.

When the State's own standard in this area is developed, it will be subject to review by OSHA to determine whether it meets the criteria of section 18(c)(2) of the Federal OSH Act. Section 18(c)(2) requires States to develop and enforce at least as effective occupational safety and health standards and when different State standards ae applicable to products which are distributed or used in interstate commerce, they must be required by compelling local conditions and not unduly burden interstate commerce.

Consequently, on November 8, 1990, an addendum to the State's Operational Status Agreement was signed between Federal OSHA and CAL/OSHA the State of California and Federal OSHA reflecting the CAL/OSHA's authority to enforce worker protection requirements for hazardous waste operations and emergency response in the State. Pursuant to the October 5, 1989 Operational Status Agreement, Federal enforcement authority continues to remain in effect for Toxic and Hazardous Substances (Air Contaminants, 29 CFR 1910.1000) and General Environmental Controls in Agriculture (Field Sanitation, 29 CFR 1928.110), specific Federal standards which the State has not yet adopted or with respect to which the State has not amended its existing State standards when the Federal standard provides a significantly greater level of worker protection than the corresponding Cal/OSHA standard, enforcement of new permanent and temporary emergency Federal standards until such time as the State shall have adopted equivalent standards, and enforcement of unique and complex standards as determined by the Assistant Secretary.

Accordingly, notice is hereby given that concurrent Federal enforcement authority will not be exercised with respect to issues covered under the State's Hazardous Waste and Emergency Response standard (published in the **Federal Register**, 55 FR 47953 November 16, 1990) which is identical to the Federal standard (29 CFR 1910.120).

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667.)

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 91–1119 Filed 1–17–91; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on TVA Plant Licensing and Restart; Revision

The **Federal Register** notice previously published on January 4, 1991 (56 FR 452) announcing the ACRS Subcommittee on TVA Plant Licensing and Restart has been rescheduled to Tuesday, March 5, 1991 at the Amberley Suite Hotel, 4880 University Drive, Huntsville, AL. All other items pertaining to this meeting remain the same as previously published.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 11, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–1381 Filed 1–17–91; 8:45 am]

BILLING CODE 7590–01–M

Public Disclosure of Selected General Licensee Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available selected information on its general licensees in the NRC's Public Document Room. The NRC is listing the names and addresses of all general licensees in alphabetical order by licensee. This action is being taken because the NRC now has a data base capable of extracting the type of information which the NRC has always considered to be in the public domain from information which has traditionally been withheld from disclosure.

DATES: The list of general licensees will be placed in the Public Document Room on January 18, 1991.

ADDRESSES: The list of names and addresses of NRC's general licensees may be inspected, and copied for a fee, at the NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555. Telephone (301) 492–7211.

SUPPLEMENTARY INFORMATION:

Background

The NRC and the Agreement States regulate the distribution and use of all products within the United States that contain byproduct material. The NRC classifies the regulatory control of byproduct material into one of three categories: specific license, general license, or exempt from regulations. The classification depends on the type, quantity and use of the material.

Specific licenses are issued to persons who have filed an application demonstrating that their training, experience, equipment, and facilities are adequate to perform the requested task to meet NRC requirements for protecting public health and safety.

There are many products containing radioactive material that may be used by the general public and industry without extensive radiation safety programs. These products contain relatively small amounts of radioactive materials that are sealed within the device (sealed source) so that they may be used by persons who do not have radiological training. The products containing byproduct material, along with small amounts of source material, fall under the category of general licenses. General licenses are in effect for persons using certain radioactive material without the filing of an application with the NRC.

General Licenses

The general license policy was implemented by the Atomic Energy Commission in 1959. The general license serves as means of simplifying the specific license process where a case-by-case determination of the adequacy

of qualification is not necessary. A generally licensed device uses radioactive material contained in a sealed source within a shielded device. The device is designed with inherent radiation safety features so that it may be used by persons without radiation training or experience beyond precautions which may be placed on a label or simple instruction guide.

Devices used under a general license must be manufactured and distributed under a specific license. The specific license may be issued by the NRC or an Agreement State. The radiation safety of the device design is evaluated against regulatory requirements prior to being listed on a specific license authorizing distribution to general licensees.

Quarterly Reports of Transfer

Those who obtain devices under the general license are listed under the manufacturers' (in this case the specific licensee) quarterly reports of transfer to the NRC. Agreement State distributors have similar reporting requirements in that they are required to notify the NRC when they sell generally licensed devices in areas udner NRC jurisdiction.

Information contained on the quarterly reports of transfer has, in the past, been withheld from public disclosure under 10 CFR 2.790. However, the NRC now has an automated data base on general licensees capable of extracting the names and addresses of NRC general licensees without revealing any confidential data associated with the reports of transfer.

NRC Proposal

On October 16, 1990 (55 FR 41907), the NRC published a document in the Federal Register informing the public that it was considering releasing the names and addresses of the general licensees identified in the quarterly reports of transfer. The NRC requested public comment on whether this information should be made available to the public.

Public Comment

The NRC received 13 responses to its request for comment on the release of this information. The NRC received 12 comments from specific licensees who manufacture devices distributed under a general license and one comment from a non-profit organization. The NRC did not receive a comment from any of the approximately 30,000 general licensees that would be directly affected by the release of information contemplated by the NRC.

The only comment supporting the proposed action was submitted by the non-profit organization. This commenter stated the public has a right to know this information and that there is no valid reason to continue to withhold this type of information. The commenter also suggested that the NRC expand the type of information made available, to the extent that confidential data can be protected. For example, the commenter suggested that the NRC list the general type of device that is distributed under the general license along with the licensee's name and address.

The NRC agrees that the names and addresses of its general licensees should be made available to the public. The NRC has a long-standing policy of providing the names and addresses of its licensees upon request. This action is merely and extension of that policy. However, the commenter's suggestion that the NRC expand the type of information that will be made available is beyond the scope of this action. The NRC will release only the names and addresses of the general licensees.

Eleven of the industry commenters were opposed to the NRC's suggested release of information contained on the quarterly reports of transfer. The remaining industry commenter had no problem with the release of company names and addresses. The issue raised by those commenters opposing the release of any information are summarized as follows:

1. A number of commenters stated that information such as customer names, addresses, and contacts is confidential business information that should not be made public. Some of these commenters indicated that their customer base was so diverse that it would be difficult, if not impossible, to obtain by normal marketing techniques. These commenters object to the possibility of having the results of years of painstaking and expensive effort made available to their competition for a nominal fee.

One commenter indicated that the disclosure of information from the general license transfer reports in response to numerous requests under the Freedom of Information Act has been denied consistently. This commenter also indicated that it had reached an agreement with the Agreement States that information on these reports contained trade secrets. Therefore, this type of information should not be released.

Two commenters asseted that their customers (the general licensees) would object to the release of any information because of their desire to maintain industrial secrecy.

It is the NRC's position that the release of company names and addresses, which is the extent of the information from the general license transfer reports that is to be released, does not constitute the release of proprietary information. The NRC does not intend to release information concerning—

(a) The type of industry or market activity;

(b) The geographic location of the market activity;

(c) The competitive stance of a company in a particular industry or area;

(d) The name, address, and telephone number of a direct contact at the general licensee's facility;

(e) The type of measurement application and equipment;

(f) The age and condition of the equipment;

(g) The history of a company's progress with regard to sales and new product or application development; or

(h) The nature of the company's direction in seeking new industries for future business.

The information to be released does not tie a particular entry on the list to an identified licensee or type of device.

The list will be provided alphabetically and all general licensees disclosed. No licensee or licensee group that falls under NRC's jurisdication will be favored. Therefore, the NRC does not consider the information to be released as the type of information which may be withheld as proprietary under the Freedom of Information Act.

Because none of the general licensees that would be directly affected by the release information commented on the proposed action, the NRC believes the commenters' concern that their customers might object to the release of this information because of the customer's desire for secrecy is unfounded.

2. Most of the commenters stated that the release of the names and addresses of general licensees would provide competitors or potential competitors with an unfair advantage. These commenters assert that the action would provide competitors with access to customer lists, assist them in developing future business at their expense, and weaken their market position and sales potential. Some commenters also stated that such an action would provide non-nuclear and foreign competitors, who do not have similar reporting requirements, with an unfair advantage.

The NRC does not believe that the information being disclosed constitutes a customer list. The list does not reveal

the nature, size, or location of the business or the type of device that is transferred. The list does not tie any general licensee to an identified licensee or identified type of device.

The list does not provide a competitive advantage to any firm or class of industry. The list, which contains more than 25,000 entries, is alphabetical by licensee. The size and structure of the list combined with the diverse nature of the activities conducted using radioactive material under a general license makes it unlikely that the information will be used as a source list for developing future customers.

Any foreign firm that desires to transfer materials to general licensees would be required to apply for and obtain a specific license. These firms would be under the same requirements as domestic industries operating under a specific license. The NRC believes that these is no meaningful crossover between nuclear and non-nuclear firms when it comes to the types of devices and industries affected by this action.

3. Several commenters asserted that the intended action does not fall within the scope of NRC's mandate to protect the health and safety of the public. Therefore, the release of the information would serve no discernable purpose. One commenter indicated that the release of the information would result in undue and unnecessary concern by members of the general public. Other commenters asserted that anti-nuclear groups would attempt to use the lists for purposes of harassment.

The NRC operates under the policy that there is an overriding public interest to provide as much information as possible to the public concerning the NRC's regulatory and licensing activities. The release of the names and addresses of general licensees is an extension of this policy that was not possible until the data base was successfully automated.

NRC Action

As of January 18, 1991, the NRC will place a list of its general licensees in the NRC Public Document Room. The list will contain the name and address of each general licensee in alphabetical order by licensee. Because Agreement State licensees are not included in this data base, they would be excluded from the information that is made available. The list will be updated semi-annually.

Dated at Bethesda, Maryland, this 15th day of January 1991.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 91-1319 Filed 1-17-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-35 and NPF-52 issued to Duke Power Company (the licensee) for operation of Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments to the Technical Specifications (TSs) would increase the weight of ice required to be maintained in the containment ice condenser baskets to account for an extension of the ice weighing surveillance interval from once each 9 months to once each 18 months. The minimum required weight of ice per basket would be increased from 1218 to 1273 pounds. The increased surveillance interval, which is also included in the proposed amendments, would enable the licensee to perform ice weighing coincident with refueling outages and thus eliminate the present need for on-line ice weighing. The licensee is concerned that on-line ice weighing could result in the failure of the ice basket U-bolts which secure the ice baskets to their mounting bracket assembles. Associated changes to the Bases are also proposed.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 59.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 59.91(a), the licensee has provided the following analysis about the issue of no significant hazards consideration:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Duke Power proposed to modify the Catawba Nuclear Station Unit 1 and Unit 2 TSs to revise Surveillance Requirement 4.6.5.1.b to allow extension of the 9 month ice weighing interval to 18 months. Duke is requesting an extension to allow the ice weighing coincident with the refueling outages. The total ice bed weight and the minimum average ice basket weights are being increased to account for a 15% sublimation rate over the 18 month interval.

The Ice Condenser is provided to absorb the thermal energy release following a LOCA (Loss of Coolant Accident) or steam line break inside Containment and thereby limiting the peak Containment pressure. The current design analysis is based upon a minimum average ice weight of 1109 lbs. per basket. Calculations using past Ice Condenser sublimation data indicate that the total ice bed weight will not fall below that value assumed in the safety analysis.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

Duke Power's request for an 18 month ice weighing interval will not result in a new or different kind of accident from that previously analyzed in Catawba's Final Safety Analysis Report. Catawba's Ice Condenser serves to limit the peak pressure inside Containment following a LOCA. Duke Power has evaluated past Ice Condenser sublimation data and has determined that a 15% allowance for sublimation is conservative for an 18 month interval. The proposed TS ice weights derived from the safety analysis weight plus additional allowances of 15% for sublimation and 1.1% for weighing errors will ensure that the ice bed will not decrease below that design basis weight. Therefore, the peak Containment pressure assumed in the safety analysis is still valid.

The structural stability of the Ice Condenser will not be affected by the increased ice weights in the proposed TS. Current ice loading practices result in newly loaded ice baskets well in excess of the TS limits. The existing structural design of the Ice Condenser has sufficient margin to conservatively bound the various loading combinations

resulting from maximum ice loading and accident induced loads.

(3) Involve a significant reduction in a margin of safety.

The Ice Condenser is designed to limit the Containment pressure below the design pressure for all reactor coolant pipe break sizes up to and including a double-ended severance. Because the minimum required ice weight assumed in the safety analysis is not being altered, the margin of safety as described in the Peak Containment Pressure Transient is not impacted.

The Ice Condenser also serves as a Containment air purification and cleanup system by absorbing molecular iodine from the containment atmosphere following a LOCA. The required boron concentration (at least 1800 ppm) and pH (9.0–9.5) of the stored ice is not affected by this TS change request. Therefore, the air purification aspects of the Ice Condenser remain unchanged by this submittal and the margin of safety is not adversely impacted.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 59.92 are satisfied. Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intevene is discussed below.

By February 19, 1991, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. 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 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 file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendments involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action,

it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services 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 promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David Matthews: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the 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).

For further details with respect to this action, see the application for amendments dated December 19, 1990, 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 Local Public Document Room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 11th day of January, 1991.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Project Directorate, Division of Reactor Projects—Office of Nuclear Reactor Regulation.

[FR Doc. 91–1320 Filed 1–17–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–413 and 50–414]

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The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52 issued to Duke Power Company (the licensee) for operation of Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments would provide the licensee with an alternative other than plugging for handling defective steam generator tubes. The amendments would allow the option of using the Babcock & Wilcox (B&W) Recirculating Steam Generator Kinetic Sleeve Qualification tube repair process as described in B&W Topical Report BAW–2045(P)–A. The licensee states that the topical report received NRC approval for such an application on January 4, 1990.

The amendments would involve changes to Surveillance Requirement 4.4.5, as identified in the application, to reflect the inclusion of sleeving in the surveillance acceptance criteria, to allow sleeving as an alternate to plugging tubes that exceed the repair limit, to reflect repaired tubes in the reporting requirements and in the Bases.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided the following analysis about the issue of no significant hazards consideration:

Operation of Catawba in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Considering the function of the sleeve, the principal accident associated with this amendment is the steam generator tube rupture accident. The steam generator sleeve has been analyzed and tested to the operating and design conditions of the original tube as documented in Topical Report BAW–2045(P)–A. The Topical Report contains the design verification results from the analysis and confirmatory testing performed on the sleeve. The probability or consequences of this previously evaluated accident does not involve a significant increase since the sleeve meets the original tube design conditions and the structural integrity of the tube is maintained by the sleeving process, and surveillance requirements. The sleeve is less susceptible to the identified stress corrosion failure mechanisms of the original tube because of the B&W specified installation process and the use of improved material (Alloy Inconel 690); therefore, the potential for primary to secondary leakage is also reduced by the addition of a steam generator tube sleeve. The continued integrity of the sleeve will be verified by TS inspection requirements and the sleeve will be plugged in accordance with TSs, if necessary.

Operation of Catawba in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The purpose of the sleeve is to repair a defective steam generator tube to maintain the function and integrity of the tube as opposed to plugging and removing the tube from service. The sleeve functions in essentially the same manner as the original tube and has been analyzed and tested for steam generator design conditions. The sleeve is less susceptible to the identified stress corrosion failure mechanisms of the original tube because of the B&W specified installation process and the use of improved material (Alloy Inconel 690); therefore, the potential for primary to secondary leakage is also reduced by the addition of a steam generator tube sleeve. The continued integrity of the sleeve will be verified by TS inspection requirements and the sleeve will be plugged in accordance with TSs, if necessary. Repairing a steam generator tube to a serviceable condition utilizing the proposed sleeve process does not create the possibility of a new or different type of accident since the sleeve is a passive component with postulated failures that are similar to the original tube.

Operation of Catawba in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The structural integrity of the tube is maintained by the installation of the sleeve and the sleeve/tube weld. The potential for primary to secondary leakage is reduced by the addition of the steam generator tube sleeve. The sleeve is made of Alloy 690 and is not subject to the same failure mechanisms of the original tube.

The Catawba LOCA [Loss of Coolant Accident] analysis in Chapter 15 of the FSAR takes into account the effect of plugged tubes on primary coolant flow. The LOCA analysis assumes a worst case where 10% of the tubes are plugged. The effects of sleeve installation

(versus tube plugging) on steam generator performance, heat transfer, flow restriction, and steam generation capacity were analyzed and described in the B&W Topical Report. The results show that plugging one tube is equivalent to the heat transfer reduction of sleeving 48 tubes, the primary flow reduction of sleeving 20 tubes, and the loss of steam generation of capacity of sleeving 40 tubes. In summary, the tube sleeving does not result in a reduction of the margin assumed in the LOCA analysis since it is bounded by the limits for tube plugging.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be substituted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

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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-examination witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

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the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the 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).

For further details with respect to this action, see the application for amendment dated December 19, 1990, 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 Local Public Document Room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 10th day of January, 1991.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–1321 Filed 1–17–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Policy and Negotiations Meeting and Determination of Closing of Meeting

The meeting of the Advisory Committee for Trade Policy and Negotiations (ACTPN) to be held Tuesday, January 22, 1991 in Washington, DC, from 11:30 a.m. to 5 p.m., will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Mollie Van Heuven, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 91–1256 Filed 1–17–91; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–28771; File No. SR–CBOE–90–33]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Amending the Exchange's Index Trading Halt Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1990, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify Exchange rule 24.7 to delete the requirement that the CBOE halt trading in a class of stock index options when trading in futures on the same stock index (or on a stock index that the CBOE has determined to be closely related) has been effectively halted due to the activation of a price limit triggered by a decline in the Standard and Poor's 500 Index futures contract ("S&P 500 futures contract") of 30 points from its closing value on the previous trading day. The CBOE also proposes to modify rule 24.7 to provide that trading may resume if the conditions which led to a trading halt are no longer present or the interests of a fair and orderly market are served by the resumption of trading. Currently, the CBOE only may resume trading if both these criteria are met. The CBOE also proposes to modify Exchange rule 6.3A to correct typographical errors and references to other Exchange rules.

The text of the proposed rule change is available at the Office of the Secretary, CBOE 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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE proposes to modify Exchange rule 24.7 to delete the requirement that the CBOE halt trading in a class of stock index options when trading in futures on the same stock index (or on a stock index that the CBOE has determined to be closely related) has been effectively halted due to the activation of a price limit triggered by a decline in the S&P 500 futures contract of 30 points from its closing value on the previous trading day. The CBOE is deleting this requirement because the Chicago Mercantile Exchange ("CME") has modified its rules to provide that the maximum daily price limit for the S&P 500 futures contract is 20 points from its previous day's closing value. Prior to December 13, 1990, the maximum downward daily price limit for S&P 500 futures was 30 points.

The CBOE recognizes that deleting this requirement will increase the

[1] The proposal was amended by a letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated January 8, 1991, to clarify, among other things, that the activation of price limits on futures exchanges is one of the factors that could constitute an unusual condition on which the declaration of a trading halt could be based.

amount of discretion available to the Exchange to determine whether or not trading in an index option should be halted. However, the CBOE believes that giving Exchange officials this discretion is preferable to rewriting Exchange rule 24.7 to incorporate the CME's new maximum 20 point daily price limit. The CBOE has previously stated, in commenting on the issue of circuit breakers, that actions to halt or close trading should occur only in extreme circumstances. The CBOE does not believe that a 20 point decline on the S&P 500 futures contract, which is equivalent to approximately a 150 point decline in the Dow Jones Industrial Average ("DJIA"), does not necessarily constitute an extreme circumstance. The CBOE believes that, at current index levels, it is possible that the equity market may have declined 150 DJIA points (less than six percent) in orderly trading with limited or no impact on the ability of market makers and specialists to maintain fair and orderly markets. Accordingly, the CBOE believes that automatically halting trading in index options because of a 20 point decline on the S&P 500 futures contract could be disruptive to the integrity of the equity market.

The CBOE, however, does believe that the activation of price limits on the futures markets is a factor that can be used to determine whether or not to halt trading in index options. Accordingly, the CBOE proposes to add new Interpretation .01 to Exchange rule 24.7 to state that the activation of price limits on futures exchanges is one of the factors that may be considered in determining whether or not to halt trading.

The CBOE further proposes to modify Exchange rule 24.7 to permit the CBOE to resume trading in index options if the conditions that led to a trading halt are no longer present or the interests of a fair and orderly market are served by the resumption. Currently, the CBOE only may resume trading if both these criteria are met. The CBOE states that this change is being made to permit the Exchange to halt trading in index options if the CME's maximum daily price limit has been reached, but then to resume trading if the securities exchanges continue to trade even though trading on the CME is still restricted.

Finally, the proposal amends Exchange rule 6.3A to correct typographical errors and references to other Exchange rules.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it will facilitate transactions in securities and protect investors and the public interest while promoting just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will not impose an inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[2] Specifically, the Commission finds that eliminating the CBOE's reference to the CME's 30 point daily price limit is consistent with section 6(b)(5) in that it will perfect the mechanism of a free and open market by clarifying the CBOE's authority to declare a trading halt in a class of index options if the CME's maximum 20 point daily price limit for the S&P 500 futures contract is reached. Since the CME has modified its rules so that the maximum daily price limit is 20 points, instead of 30 points, the CBOE's current requirement to halt trading when the CME reaches a 30 point maximum daily price limit is no longer valid. Accordingly, the Commission believes that it is appropriate for the CBOE to delete this reference to the CME's maximum 30 point daily price limit and to state that the activation of price limits on futures exchanges is a factor that can be considered in the determination to declare a trading halt. This will better align the CBOE's trading halt policy with the CME's price limits. Moreover, the Commission believes it is reasonable for the CBOE not to automatically halt trading in stock index options when the S&P 500 futures hits its 20-point price limit, as was previously the case with the 30-point price limit, because of the decrease in the magnitude of the price decline in the DJIA necessary to trigger the 20 point limit.

The Commission notes that the CBOE's proposals may be an interim adjustment in response to modifications on the CME's price limits. Recently the Commission released a report by the Division of Market Regulation ("Division") examining the performance of the securities markets during October 13 and 16, 1989.[3] The Division, in the report, critiqued the performance of the CBOE on October 13, 1989, in halting trading in its index options. The Division then discussed possible alternatives that the CBOE should consider to improve its handling of trading halts. While this proposed rule change is not responsive to these recommendations, neither is it inconsistent with them. The proposed rule change is intended merely to address an anomally in the CBOE's rules due to the changing of the S&P 500 price limits. The Commission still expects the CBOE to consider seriously the recommendations in the report and adopt those that the Exchange finds workable.

The Commission also finds that permitting the CBOE to resume trading in index options if either the conditions that led to a trading halt are no longer present or the interests of a fair and orderly market are served by the resumption of trading is consistent with section 6(b)(5) of the Act. This change will perfect the mechanism of a free and open market by providing the CBOE with more flexibility to determine whether to resume trading after a trading halt in an index option. The Commission believes that this increased flexibility will permit the CBOE to halt trading in index options if the CME's maximum daily price limit has been reached, but then to resume trading if the securities exchanges continue to trade even though trading on the CME is still restricted. Accordingly, the Commission believes that the proposal will reduce instances where the stock market is in free trading and the stock index options market is dormant because the CBOE has declared a trading halt in response to the activation of the maximum daily price limit for the S&P 500 futures contracts. Further, the Commission believes that increasing the CBOE's flexibility to order the resumption of trading will increase the CBOE's confidence to act decisively in

[2] 15 U.S.C. 78f(b)(5) (1988).

[3] Market Analysis of October 13 and 16, 1989, A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission (December 1990), at Chapter Three.

determining whether to declare a trading halt in index options.[4]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. As discussed above, the proposal will eliminate the inaccurate reference, in Exchange rule 24.7, to the CME's maximum daily price limit that arose after the CME amended its rules to provide that its maximum daily price limit would be 20 points (instead of 30 points). The Commission believes that the proposal will ensure that CBOE rules governing the declaration of trading halts will be consistent with the CME's maximum daily price limit, thus avoiding ambiguity as to the CBOE's authority to declare a trading halt if the 20 point price limit is reached. The Commission further believes that increasing the CBOE's flexibility to resume trading will reduce the likelihood that trading in CBOE index options will be dormant while the securities markets are free trading. Accordingly, since the CME's new maximum 20 point daily price limit is already in place, the Commission believes that it is consistent with section 6(b)(5) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by Februrary 8, 1991.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR–CBOE–90–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: January 14, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1199 Filed 1–17–91; 8:45 am]

BILLING CODE 8010–01–M

[4] The CBOE's trading halt policy will retain the provision that, for a class of stock index options to reopen after a trading halt, 50% or more of the stocks whose weighting underlies the index must be open and trading. In addition, the CBOE will continue to halt trading in all its options when the DJIA declines 250 or 400 points from the previous day's close.

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1990).

[Release No. 34–28769; File No. SR–NASD–90–63]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Interpretation of the Board of Governors—Prompt Receipt and Delivery of Securities Regarding Short Sales

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice in hereby given that on November 21, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to the Interpretation of the Board of Governors—Prompt Receipt and Delivery of Securities to assist member compliance with SEC Rule 10b–21. The proposed amendemnt would require members to obtain additional representations from customers regarding the source of securities to be sold to the member, if the member effected short sales in the security after a registration statement for an offering in the security had been filed. Additionally, the proposed amendments adds a record-keeping requirement to verify the affirmative determinations made by members prior to effecting short sales.

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 NASD 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 NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing two changes to the Interpretation of the Board of Governors—Prompt Receipt and Delivery of Securities ("Interpretation") dealing with short sales and covering transactions. SEC Rule 10b–21 provides for the regulation of short selling as it relates to secondary public offerings. The NASD has been concerned since the 1970's about the impact that market participants have on the performance of a company's stock when they engage in short selling prior to a secondary distribution since short selling can cause a decrease of the price of the security prior to the offering date, resulting in a lower offering price and lower offering proceeds to issuers. Short sellers are usually able to protect themselves from normal market risks associated with covering their short sales because they know a new supply of shares from the secondary offering if coming into the market. This permits them to purchase securities in the distribution at the reduced offering price and cover the short they incurred at a higher market price. Rule 10b–21 addresses this problem by making it unlawful for any person to effect one or more short sales of equity securities of the same class of securities offered and cover their short position with securities purchased from an underwriter or broker/dealer participating in the offering.

The NASD remains committed to enforcing the provisions of Rule 10b–21 as it applies to member firms making markets in the securities of companies that are engaged in secondary distributions. Since adoption of Rule 10b–21, the NASD has monitored the trading and distribution activity of market makers and other market participants in connection with secondary distributions of securities

trading in the NASDAQ National Market System. Although it appears that NASD market makers are generally complying with Rule 10b–21, there have been circumstances under which market makers have created short positions after a company has filed a registration statement for a secondary equity distribution and then covered those short sales by making purchases from institutions and other market participants at the commencement of the distribution.

In order to ensure that adequate procedures exist to permit market makers to determine whther they are about to engage in a covering transaction that would not comply with SEC Rule 10b–21, the NASD is proposing an amendment to the Interpretation. The proposed amendment would require members that engage in short selling in a proprietary account after a registration statement for the secondary offering has been filed to obtain a representation from the seller of securities purchased to cover the short positions that the securities were not obtained from or through an underwriter or broker/dealer participating in the offering.

The representation would need to be obtained if the covering transaction takes place in the period of the latter of two days after sales may first be made pursuant to the registration statement or completion of the distribution whichever period is longer, and the member would need to memoralialize the representation. This two-day period was chosen as the period in which conduct violative of Rule 10b–21 is most likely to occur. The NASD has also determined that the amendment should not apply to best efforts offerings or "shelf" offerings made pursuant to Rule 415 under the Securities Act of 1933, as Rule 10b–21 does not apply to these types of offerings. Finally, the representation would not be required for purchases effected through automated execution systems in orders less than 3,000 shares.

The second amendment to the Interpretation establishes a requirement for a member to annotate the affirmative determination made before effecting a short sale. The affirmative determination requirement already appears in the Interpretation and requires members to assure that securities are available to cover the short position. The NASD currently conducts reviews on short interest positions to determine whether members have complied with the Interpretation with respect to short sales. The Interpretation requires the executive member, in connection with any sale, to make an affirmative determination that it will receive delivery from the customer or be able to borrow the securities by settlement date. For long sales, the affirmative determination is required to be noted on the order ticket at the time the order is placed. However, the rule does not require that such determination be evidenced in any specific manner for short sales. The lack of a written record in this situation has caused difficulties for the NASD's investigatory and enforcement efforts. For example, when there is a failure to deliver, created as a result of shares sold short by a customer, there is no evidence as to whether the required inquiry and determination were made.

The NASD is, therefore, proposing to amend the Interpretation to require that the affirmative determination prior to a customer or proprietary short sale be evidenced in writing and that the executing member maintain the written record. The written record is required to include the customer's name,[1] account number and short sale order information; the identity of the individual and firm contacted who offered assurances that the shares would be delivered or borrowed by settlement date; the identity of the person making the affirmative determination and the time of the inquiry. The form of documenting the determination (e.g., marking the order ticket, recording inquiries in a log, etc.) is not specified in the Interpretation and, therefore, shall be decided by each member.

The proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires, in pertinent part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The proposals will assist the NASD and its members in complying with SEC Rule 10b–21 and will allow the NASD to more effectively enforce an already existing provision of the Interpretation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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 self-regulatory organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 8, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: January 11, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1283 Filed 1–17–91; 8:45 am]

BILLING CODE 8010–01–M

[1] In the event the short sale is for the member's own account, the fact that the short sale is for a proprietary account shall be duly noted in the written record.

[Rel. No. 34-28768; File No. SR-DTC-90-13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Institution of a Rush Withdrawal Transfer Service

January 11, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 31, 1990, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-90-13) as described in Items I, II and III below, which Items have been prepared by DTC. 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 proposed rule change being filed by DTC consists of the DTC Important Notices dated October 28, 1988, and June 20, 1988, describing DTC's planned elimination of most urgent certification-Demand ("COD") withdrawals of corporate issues settling in next-day funds that are not full ("FAST") issues and DTC's institution of a new rush transfer service for those issues.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Certificates can be withdrawn from DTC in either of two ways:

(1) Withdrawals-by-Transfer (WTs), in which certificates are transferred routinely to the name of a Participant's customer or another party. Depending on the issue, its transfer agent, and the agent's location, newly registered certificates are generally available one to two weeks after DTC has received WT instructions.

(2) COD withdrawals, in which certificates registered in the name of DTC's nominee Cede & Co. or bearer certificates are released directly from the depository.

The reasons for discontinuing the subject CODs (for corporate issues settling in next-day funds that are not "full" FAST issues)[2] are to realize cost savings and improve safety by eliminating a service that is no longer needed. Few corporate CODs are now needed because rules of the New York Stock Exchange, the National Association of Securities Dealers and other self-regulatory organizations now require, in general, that all delivery-vs.-payment settlements in depository-eligible corporate securities be settled by book-entry. For other kinds of settlement, and for purposes other than settlement, where Participants may need to deliver physical certificates, WTs will usually suffice because of recent improvements in transfer agent turnaround performance. In other situations, identified in Item 3 of filing, DTC will provide rush transfer, exception CODs or other special arrangements.

DTC eliminated most same-day corporate CODs for issues settling in next-day funds in November 1987 and eliminated most same-day municipal CODs for issues settling in next-day funds in May 1988. DTC knows of no resulting adverse impact on any Participant or its customers. Participant comment and DTC's experience with phased COD elimination to date have shaped its current proposal. Summaries of significant Participant comments on the proposed rule change and DTC's responses are presented under Item 3 of the filing.

The proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder because it will reduce unnecessary costs in the safeguarding and other processing of securities certificates in the national clearance and settlement system. It will reduce vault and other physical security costs and concerns by substituting "jumbo" certificates for smaller denominations. It will eliminate a costly urgent withdrawal structure and staffing that is no longer needed on a routine basis and should reduce risks associated with that structure. It will cease to mutualize a cost that is better addressed and priced as exception processing.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

All comments received on the present and previous versions of the proposed rule change are summarized in substance under Item 3 of File No. SR-DTC-90-13, and DTC's detailed responses to any significant issues raised by those comments are presented under Item 3 of File No. SR-DTC-90-13. Copies of written comments constitute Exhibits 2(a) and 2(b) to File No. SR-DTC-89-01.

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 self-regulatory organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5

[1] *See infra* for an explanation of this service.

[2] Under DTC's Fast Automated Securities Transfer (FAST) program, DTC leaves securities with transfer agents in the form of balance certificates registered in the depository's nominee name, Cede & Co. The balance certificates are adjusted daily for DTC deposit and withdrawal activity. A "full" FAST issue is one where the transfer agent provides CODs as well as WTs.

U.S.C. sec. 552, will be available for inspection and copying in the Commission's Public Reference Room at the address above.

Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file Number SR–DTC–90–13 and should be submitted by February 11, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1282 Filed 1–17–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25242]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 11, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 4, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70–7703)

Appalachian Power Company ("APCo"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed an application under section 9(c)(3) of the Act.

APCo requests authorization to acquire an equity interest with voting rights in the Virginia Economic Development Corporation ("VEDCORP"), a corporation to be formed by J. Carter Fox, Randolph W. McElroy, William M. Berry and Elliot S. Schewel, nonassociates, for a total purchase price of $500,000.

VEDCORP is being created to invest equity, near-equity and other forms of growth capital in new and expanding small, rural Virginia firms which have the potential to offer significant returns on investment and to improve their local economies. VEDCORP plans to raise $12 million in equity capital, which will be used to leverage lines of credit from major Virginia commercial banks. Thus, it is projected that VEDCORP will have $35 million in total capital available for investment in rural Virginia. It is stated that the State of Virginia has also committed $1.4 million to the first year of VEDCORP operations.

It is not anticipated that VEDCORP will at any time be an "affiliate" of APCo, as that term is defined in section 2(a)(11) of the Act, because it is anticipated that, upon the raising of the $12 million of equity capital by VEDCORP and the proposed investment by APCo, APCo will own less than 5% of the outstanding equity of VEDCORP. Further, if VEDCORP is unable to obtain $10 million of the proposed $12 million of equity capital, APCo will reduce its investment so that such investment does not exceed 5% of the total equity of VEDCORP. In addition, APCo will not be represented on the Board of Directors of VEDCORP or otherwise seek to exercise influence with respect to VEDCORP.

Holyoke Water Power Company (70–7779)

Holyoke Water Power Company ("Holyoke"), One Canal Street, Holyoke, Massahcusetts 01040, a wholly owned subsidiary of Northeast Utilities, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

By order dated December 20, 1990 (HCAR No. 25219), Holyoke was authorized to borrow the proceeds from pollution control revenue bonds ("Bonds") to be issued by the Massachusetts Industrial Finance Agency ("MIFA") in the principal amount of not more than $15.3 million in order to finance certain pollution control facilities at its Mt. Tom Station, located in Holyoke, Massachusetts. The Bonds will be issued under an Indenture between MIFA and a trustee ("Trustee"). The proceeds of the Bonds will be loaned to Holyoke under a Loan Agreement ("Loan Agreement") entered into by MIFA and Holyoke. Holyoke will issue a note in a principal amount of up to $15.3 million to evidence its borrowings.

Under the Loan Agreement, Holyoke is obligated to make payments to the Trustee corresponding to the amounts needed to pay the principal, premium, if any, and interest on the Bonds as they come due. Loan payment obligations shall be satisfied by drawings under an irrevocable letter of credit ("LOC") to be issued by a bank to be selected ("Bank"). Under an agreement between Holyoke and the Bank, Holyoke would be obligated to reimburse the Bank for all amounts drawn under the LOC and to pay interest, at the Bank's prime rate plus 1%, on amounts so drawn until reimbursed. While the LOC remains outstanding, Holyoke will be obligated to pay the Bank an annual commission of 0.65% per annum, increased from 0.55%, on the amount available to be drawn under the LOC, together with certain other fees.

Vermont Yankee Nuclear Power Corporation, et al. (70–7784)

Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), R.D. 5, Ferry Road, Box 169, Brattleboro, Vermont 05301, an electric public-utility subsidiary company of New England Electric System and Northeast Utilities, both registered holding companies, has filed a declaration under section 12(c) of the Act and rule 42(a) thereunder.

Vermont Yankee proposes to repurchase *pro rata* from its shareholders 2% of its presently outstanding common stock, $100 par value, at a purchase price equal to the book value per share on June 30, 1990 ($150 per share). While all thirteen of Vermont Yankee's shareholders may take advantage of this repurchase, Vermont Yankee's offer to repurchase the stock is conditioned upon all nine of Vermont Yankee's sponsoring utilities (the nine utilities to which Vermont Yankee sells the output of its nuclear power generation) tendering their allotment of Vermont Yankee's shares of common stock outstanding. Funds to accomplish this repurchase will be obtained by liquidating short-term investments held by Vermont Yankee as of December 31, 1990. If the proposed transaction were consummated, Vermont Yankee's corporate common

stock equity to total corporate capitalization percentage would be reduced from 41.4% to 40.9%, and Vermont Yankee's common stock investment would be reduced by 8,000 shares ($1,200,000), both as of September 30, 1990. The repurchased shares of common stock will be held as treasury stock.

Southwestern Electric Power Company (70–7819)

Southwestern Electric Power Company ("SEPCO"), 428 Travis Street, Shreveort, Louisiana 71156, an electric public-utility subsidiary company of Central and Southwest Corporation, a registered holding company, has filed a declaration under section 12(d) of the Act and rule 44 thereunder.

SEPCO proposes to sell 1,698 utility poles located in Cass and Gregg Counties, Texas to Southwestern Bell Telephone Company ("Southwestern Bell") for $140,556.01. The 1,698 utility poles will not be removed from their present locations. The proposed sale will be made pursuant to an allocation agreement between SEPCO and Southwestern Bell which provides for the maintenance of equalization in the number of pole contracts between the companies in areas serviced by both. SEPCO anticipates that the proceeds from the proposed sale will be added to SEPCO's general operating funds.

New England Hydro Finance Company, Inc., et al. (70–7821)

New England Hydro-Transmission Electric Company, Inc. ("NE-Hydro"), 25 Research Drive, Westborough, Massachusetts 01582, New England Hydro-Transmission Corporation ("Hydro-TransCorp"), 4 Park Street, Concord, New Hampshire 03301, both subsidiaries of New England Electric System and Northeast Utilities, registered holding companies, and their subsidiary New England Hydro Finance Company, Inc. ("Hydro-Finance"), 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 50(a)(5) thereunder.

Hydro-Finance proposes to borrow an aggregate principal amount of not exceeding $250 million by issuing one or more series of senior notes ("Senior Notes") to one or more institutional investors ("Lenders") through December 31, 1991, pursuant to the terms of a Note Agreement ("Note Agreement"). Each series of Senior Notes will have a fixed interest rate of up to 12% and a maturity of up to thirty years. In accordance with the terms of the master agreement ("Master Agreement") entered into among Hydro-Finance, NE-Hydro and Hydro-TransCorp on or before December 31, 1991, Hydro-Finance will lend the funds borrowed under the Note Agreement to NE-Hydro and Hydro-TransCorp on the same terms and conditions as Hydro-Finance borrowed these funds from the Lenders. The Master Agreement provides the NE-Hydro and Hydro-TransCorp may borrow up to $200 million and $125 million, respectively, from Hydro-Finance. All borrowings under the Master Agreement will be evidenced by the issuance of notes and the aggregate amount of all such borrowings by NE-Hydro and Hydro-TransCorp shall not exceed $250 million. NE-Hydro and Hydro-TransCorp propose to guarantee severally to the Lenders all of Hydro-Finance's debt service obligations in proportion to their respective actual borrowing levels from Hydro-Finance.

Hydro-Finance has requested an exception from the competitive bidding requirements of rule 50 under subsection (a)(5) thereunder with regard to the issuance of the Senior Notes through a negotiated public offering. Hydro-Finance further requests authorization to retain, and begin negotiations with, investment banking firms concerning the structure of the proposed financing. It may do so.

NE-Hydro and Hydro-TransCorp propose to use the proceeds of their respective borrowings to retire their current construction financing and for other corporate purposes in connection with the expanded transmission interconnection between the New England Power Pool and Hydro-Quebec as previously authorized by Commission Orders dated October 25, 1988 and December 30, 1988 (HCAR Nos. 24735 and 24799, respectively).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1200 Filed 1–17–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17945; 812–7628]

WNC California Housing Tax Credits II, L.P.; Application

January 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: WNC California Housing Tax Credits II, L.P. (the "Partnership"), and its general partner, WNC Tax Credits Partners, L.P. (the "General Partner").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order exempting the Partnership from all provisions of the 1940 Act and the rules thereunder to permit the Partnership to invest in other limited partnerships that in turn will engage in the ownership and operation of housing for low and moderate income persons.

FILING DATE: The application was filed on November 9, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. of February 7, 1991, and should be accompanied by proof of service on applicants, in the form of an afficavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 3158 Redhill Avenue, suite 120, Costa Mesa, CA 92626–3416.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was formed under the California Revised Limited Partnership Act on September 13, 1990 and proposes to invest in other limited partnerships ("Local Limited Partnerships") that in turn will engage in the ownership and operation of housing for low and moderate income persons. The Partnership's objectives are to provide current tax benefits in the form of tax credits to qualified investors to offset their Federal and California income tax liabilities, to provide cash distributions from sale or refinancing

transactions, and to preserve and protect the Partnership's capital.

2. On November 9, 1990, the Partnership filed a registration statement under the Securities Act of 1933 to enable the Partnership to offer the State of California 10,000 units of limited partnership interest at $1,000 per unit with a minimum investment of five units. Purchasers of units will become limited partners ("Limited Partners") of the Partnership.

3. Although the Partnership's direct control over the management of each apartment complex will be limited, the Partnership's ownership of interests in Local Limited Partnerships shall, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. The Partnership normally will acquire at least a 90% interest in the profits, losses, and tax credits of the Local Limited Partnerships. In certain cases, however, the General Partner has the discretion to acquire a lesser interest. In such cases, the Partnership normally will acquire at least a 50% interest.

4. Each Local Limited Partnership Agreement will provide the Partnership with certain voting rights, including the right to replace the local general partner on the basis of performance and discharge the local general partner's obligations, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local Limited Partnership Agreement materially and adversely affecting the Partnership's investment.

5. The Partnership will be controlled by the General Partner pursuant to the Partnership's partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. A majority-in-interest of the Limited Partners, however, will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement therfor, and to dissolve the Partnership. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any reasonable time.

6. All proceeds from the public offering of units initially will be placed in an escrow account with American Interstate Bank ("Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in accordance with instructions from the General Partner in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum number of subscriptions, funds in escrow will be released to the Partnership pending investment in Local Limited Partnerships. The Partnership, however, intends to apply such proceeds to the acquisition of Local Partnership interests as soon as possible.

Applicants' Legal Analysis

1. The exemption of the Partnership from all provisions of the 1940 Act is appropriate because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership form provides the only means of bringing private equity capital into such housing, particularly because public investors typically consider investment in low and moderate income housing programs as involving greater risk than real estate investment generally; and (c) the limited partnership form insulates each limited partner from personal liability and limits financial risk incurred by the limited partner to the amount he has agreed to invest in the program, while also allowing the limited partner to claim on his individual tax return his proportionate share of the credits, income, or losses from the investment.

2. The Partnership will operate in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"). The final paragraph of Release No. 8456 contemplates that the exemptive power of the SEC under section 6(c) may be applied to two-tier partnerships that engage in the kind of activities in which the Partnership will engage, that is, "two-tier partnerships that invest in limited partnerships engaged in the development and building of housing for low and moderate income persons. . . ." The release lists two conditions designed for the protection of investors that must be satisfied to quality for such an exemption: (a) "interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable;" and (b) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company."

3. Any subscription for units must be approved by the General Partner, which approval shall be conditioned upon representations as to suitability of the investment for each subscriber. Such investor suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings, and automobiles) of at least $65,000 and an annual gross income of at least $50,000, (b) irrespective of annual income, has a net worth (exclusive of home, furnishings, and automobiles) of at least $200,000, or (c) is purchasing in a fiduciary capacity for a person or entity having the net worth and annual gross income set forth in clause (a) or the net worth set forth in clause (b). Transfer of untis will be permitted only if the transferee meets the same suitability standards as stated above.

4. The Partnership Agreement and prospectus contain numerous provisions designed to insure fair dealing by the General Partner with the Limited Partners. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus and no compensation will be payable to the General Partner or any of its affiliates unless so specified. The fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated at arm's length; however, applicants represent that all such compensation is fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. Further, the Partnership believes that such compensation meets all applicable guidelines necessary to permit the units to be offered and sold in the State of California and would also satisfy the requirements of states which adhere to the guidelines comprising the statement of policy adopted by the North American Securities Administrators Association, Inc. applicable to real estate programs in the form of limited partnerships.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-1201 Filed 1-17-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Deputy Secretary

[Public Notice 1322]

Accountability Review Board; Attack on U.S. Marine House in Bolivia

ACTION: Notice Convening an Accountability Review Board for the Attack on the Marine House in La Paz.

SUMMARY: Pursuant to section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4831 *et seq.*), I have determined that the October 10, 1990 attack on the Marine Security Guard house in La Paz, Bolivia involved loss of life, serious injury and significant property damage related to a U.S. mission abroad. Therefore I am convening an accountability review board, as required by that statute, to examine the facts and circumstances of the attack and report to me such findings and recommendations as it deems appropriate, in keeping with the attached mandate.

I have appointed Mr. L. Craig Johnstone as chairman. He will be assisted by Major General Edmund P. Looney, USMC (Ret.); Mr. James A. Brooke; Mr. William A. Hathaway, Mr. Jay P. Moffat, who will also act as Executive Secretary. The members will bring to their deliberations distinguished backgrounds in government service and private life.

I have asked the board to submit its conclusions and recommendations to the Secretary within sixty days of its first meeting, unless the Chairman determines a need for additional time. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the board.

Anyone with information relevant to the board's examination of this incident should contact the board promptly on (Tel. No. (202) 647–0838).

Lawrence S. Eagleburger,

Deputy Secretary of State.

[FR Doc. 91–1212 Filed 1–17–91; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.807–1, Uniform Distribution of Exits

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.807–1, Uniform Distribution of Exits. This AC provides guidance material for acceptable means, but not the only means, of complying with the requirement to distribute the passenger emergency exits of a transport category airplane uniformly.

DATES: Advisory Circular 25.807–1 was issued by the Manager, Transport Airplane Directorate, Aircraft Certification Service, On August 13, 1990.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, M–443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Renton, Washington, on December 27, 1990.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–1271 Filed 1–17–91; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 90–02–VE–NO1]

Tentative Determination That Certain Nonconforming Vehicles

AGENCY: National Highway Traffic Safety Administration. DOT.

ACTION: Tentative determination that certain nonconforming vehicles are eligible for importation.

SUMMARY: This notice announces tentative determinations by the National Highway Traffic Safety Administration (NHTSA) that certain Canadian motor vehicles certified as complying with the Canadian Motor Vehicle Safety Standards, but which are not certified as complying with the Federal motor vehicle safety standards are nevertheless eligible for importation into the United States because the safety features of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards.

DATES: Comments are due February 19, 1991. The final determination will be effective upon publication in the **Federal Register**

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 205900. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has made one of the following determinations, either pursuant to a petition or on its own initiative—

(1) That the motor vehicle "is substantially similar to a motor vehicle originally manufactured for importation and sale into the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards." (section 108(c)(3)(A)(i)(I), determinations under this provisions are referred to in this notice as Category I determinations) or—

(2) "Where there is no substantially similar United States motor vehicle," that the "safety features of the motor vehicle comply, with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary determines to be adequate * * *" (section 108(c)(3)(A)(i)(II), determinations under this provision are referred to in this notice as Category II determinations

On August 13, 1990, NHTSA published a notice in the **Federal Register** at 55 FR 32988 making final Category I determinations that certain motor vehicles that are certified as conforming to the Canadian motor vehicle safety standards (referred to in this notice as CMVSS) but which are not certified as conforming to the U.S. Federal motor vehicle safety standards (referred to in this notice as FMVSS) were eligible for importation. While this determination covers most vehicles manufactured for sale in Canada since January 1, 1968, it does not extend to vehicles that may have been made for the Canadian market, with no counterpart sold in the United States. Examples are specialized vehicles of low production, such as horse trailers, or passenger cars such as the Hyundai Pony and Stellar.

As NHTSA has previously noted, in most essential respects, the CMVSS's are identical to the FMVSS's. To be sure,

there are certain differences. CMVSS No. 208, Occupant Restraint Systems. Unlike FMVSS No. 208, does not require installation of automatic restraints for passenger cars manufactured on and after September 1, 1989. Two further examples will suffice. Under CMVSS No. 101, Controls and Displays, speedometers/odometers must be marked in kilometers, while those complying with FMVSS No. 101, Controls and Displays, need only to be marked in miles per hour. Headlamps meeting ECE requirements are permissible under CMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment, but they are not permissible under FMVSS No. 108.

With respect to eligibility for a Category II determination, where a vehicle certified to the CMVSS already conforms to a FMVSS, the question of its capability of modification is not reached. Further, because of the near identicality of the CMVSS and FMVSS (other than the automatic restraint requirements that became effective for all passenger cars effective September 1, 1989, and the dynamic side impact requirements that will become effective for all passenger cars effective September 1, 1996), it appears that such modification as may be required are comparatively minor in nature, and hence such vehicles are capable of being modified to comply with all applicable FMVSS. Thus, adequate evidence exists to support a tentative conclusion by NHTSA that Canadian vehicles that are not eligible for a Category I determination and are not covered by its previous final Category I determination, are suitable for a Category II determination.

Tentative Determinations

Accordingly, in consideration of the above, with respect to:

(a) All passenger cars manufactured between January 1, 1968, and August 31, 1989.

(b) All passenger cars manufactured between September 1, 1989, and August 31, 1996, which are equipped with an automatic restraint system that complies with FMVSS No. 208, and

(c) All multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles manufactured from January 1, 1968 on, and for which there is no substantially similar United States motor vehicle, but which are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, the National Highway Traffic Safety Administration hereby tentatively determines that the safety features of such motor vehicles comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards

Fee

Section 108(c)(3)(A)(iii) requires registered importers to pay such fees as NHTSA reasonably establishes to cover its cost in making determinations under subsection (i)(1) on its own initiative that motor vehicles are eligible for importation. In implementation of this requirement, for Fiscal Year 1991, NHTSA has specified (55 FR 40664, October 4, 1990) that such fee is payable on behalf of every person importing a vehicle covered by a determination on the Administrator's initiative, and that the fee is $156. Thus, a fee of $156 would be submitted to the agency for any vehicle imported pursuant to a final determination made under this notice.

Comments

Interested persons are invited to submit comments on the tentative determination described above. It is requested, but not required, that five copies be submitted.

All comments received before the close of business on the comment date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. Comments received after the closing date will be considered to the extent practicable. Notice of NHTSA's final determination will be published in the **Federal Register** pursuant to the authority indicated below.

Comment due date: February 19, 1991.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8

Issued on January 15, 1991.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 91-1323 Filed 1-17-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: "Knott's Berry Farm"

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "KNOTT'S BERRY FARM", used by Knott's Berry Farm, a corporation organized under the laws of the State of California, located at 8039 Beach Boulevard, Buena Park, California 90620.

The application states the trade name is used in connection with clothing and souvenirs. The merchandise is manufactured worldwide by authorized licensees.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATES: Comments must be received on or before March 19, 1991.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue NW., (room 4108), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Patricia A. Aiken, Intellectual Property Rights Branch, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-5765).

Dated: December 26, 1990.

Timothy P. Trainer,

Acting Chief, Intellectual Property Rights Branch.

[FR Doc. 91-1232 Filed 1-17-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System Notice

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) is considering revising routine uses 14 and 20 of VA System of Records 55VA26, entitled "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA", as set forth in the **Federal Register** publication, "Privacy Act Issuances", 1987 Compilation, Volume V, page 804, as amended at 53 FR 49818, December 9, 1988. VA is also considering adding a new routine use 31 to this system of records.

Frequently the Department of Veterans Affairs receives requests for information from other Federal agencies investigating administrative tort claims or potential claims under the Federal Tort Claims Act or a similar statute. This information is usually included in VA medical records or other files.

Where information is contained in VA medical records, the Department honors the request based upon routine use number 17 for 24VA136, "Patient Medical Records—VA." There is no similar routine use for Loan Guaranty files, 55VA26, "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA."

VA Loan Guaranty files contain information of use to other Federal agencies investigating administrative tort claims or potential claims. This information includes beneficiaries' prior employment and income, marital status and number of dependents.

VA believes it is appropriate to honor requests for information made by other Federal agencies. Accordingly, routine use 14 to 55VA26 would be amended to specifically permit disclosure of relevant information to Federal agencies upon their request in connection with review of administrative tort claims and potential tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672, the Military Claims Act, 10 U.S.C. 2733, and other similar claims statutes.

The issue has also arisen as to whether the routine uses contained in this System of Records (55VA26) should be modified to provide authority, consistent with 38 U.S.C. 3301, for disclosure by VA fee attorneys of information contained therein to title insurance companies and title agents, for Trustee's sale advertisements and to subordinate lienholders.

Fee attorneys have operational access to the VA Privacy Act System of Records 55VA26 and are considered as being Government contractors pursuant to 5 U.S.C. 552a(m)(1) for Privacy Act purposes. As Government contractors they are subject to the disclosure provisions of the Privacy Act.

Government contractors may make lawfully authorized disclosures as are necessary to accomplish their contractual duties. As government contractors, fee attorneys may make disclosures to title insurance companies and title agents involved in either judicial or nonjudicial sales under routine use 20 of the System of Records 55VA26. While disclosure for Trustee's sale advertisements and disclosures to subordinate lienholders, in cases involving nonjudicial sales, might be justified under the broad authorization clause of routine use 20, this authorization is not clearly stated. Accordingly, the Department would amend the existing routine use 20 to specifically authorize disclosures of necessary information for Trustee's sale advertisements and to subordinate lienholders. This authority is consistent with 38 U.S.C. 3301 (e) and (h).

VA is also considering adding a new routine use to this System of Records to provide for the release of information as necessary in reaching settlements to actions brought by the Department against parties to recover claims which should not have been paid. From time to time VA demands reimbursement for claims previously paid from parties such as lenders, real estate brokers, fee appraisers, or property sellers in the course of settlement negotiations with these parties. Accordingly, a new routine use 31 would be added to permit disclosure of necessary information to such parties when seeking reimbursement for claims or in the course of settlement negotiations. This authority is consistent with 38 U.S.C. 3301(h).

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed revision to this system of records to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. All relevant material received before February 19, 1991, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until February 22, 1991. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field Stations will be informed that the records are available for inspection only in Central Office and will be furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the Department of Veterans Affairs, the amendments to 55VA26 included herein are effective February 19, 1991.

Approved: January 10, 1991

Edward Derwinski

Secretary.

Notice of Amendment to System of Records

The system of records identified as 55VA26, "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant-VA" as set forth on page 804 of the **Federal Register** publication entitled Privacy Act Issuances, 1987 Comp., Volume V, as amended at 53 FR 49818, December 9, 1988, is amended by revising routine uses 14 and 20 and by adding a new routine use 31. These routine uses now read as follows: **55VA26**

System name:

Loan Guaranty Home, Condominium and Manfactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

14. Any information in this system such as current obligor, prior obligors, debt outstanding, current credit reports cntaining an obligor's name and address and date(s) and cause of the default, and loan account information (e.g., loan account number, property condition, legal description, date loan issued, amount of loan and amount in arrears) may be disclsoed to the U.S. Department of Justice or United States Attorneys in order for the Department of Justice of U.S. Attorneys to liquidate a defaulted loan by judicial process, and take title on the foreclosed property in accordance with State law. Any information in this system may also be disclosed to the Department of Justice o. U.S. Attorneys in order for the foregoing parties to prosecute or defend litigation involving or pertaining to the United States. Any relevant information in this system may also be disclosed to other Federal agencies upon their request in connection with review of administrative tort claims and potential tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672, the Military Claims Act, 10 U.S.C. 2733, and other similar claims statutes.

* * * * *

20. Any information in this system, such as a loan applicant's or a defaulted

obligor's (i.e., a defaulted obligor is an individual that has not performed one or more of the required obligations under the terms of the loan instruments) name and address, property address, balance of debt, amount of debt owed per month, loan account number, credit reports and reasons for notice to quit, may be disclosed to fee attorneys, fee appraisers, management brokers, process servers, subordinate lienholders, title companies, and abstractors for the purposes of loan approval or loan termination of direct or vendee loans by judicial or nonjudicial means, to obtain possession of VA property in cases of default or Foreclosure to issue and post Demands for Possession or Notices to Quit, to file judgments (liens) in accordance with State and local law and to carry out all other necessary VA program responsibilities. VA fee attorneys may disclose record information contained therein to title insurance companies and title agents, for Trustee's sale advertisements, and to subordinate lienholders. This disclosure authority by VA fee attorneys is consistent with 38 U.S.C. 3301 (e) and (h).

* * * * *

31. Any information in the system may be disclosed to the lender or holder of a VA guaranteed loan, or their attorneys, in support of a decision by VA to reject a claim under guaranty, demand reimbursement for a claim previously paid, or in the course of settlement negotiations. When a demand for reimbursement will be made against a party other than the lender or holder, such as the real estate broker, fee appraiser or seller of the property, the information may be disclosed to the party and its attorneys.

[FR Doc. 91-1257 Filed 1-17-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 13
Friday, January 18, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisons of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:31 p.m. on Tuesday, January 15, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Matters relating to the Corporation's corporate activities.

Matters relating to a certain financial institution.

Matters concerning insurance deposit statements.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Director Robert L. Clarke, Director (Comptroller of the Currency), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 - 17th Street, NW., Washington, DC.

Dated: January 16, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–1423 Filed 1–16–91; 1:33 pm]

BILLING CODE 6714-01-M

Federal Register

Friday
January 18, 1991

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57
Safety Standards for Explosives at Metal and Nonmetal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219-AA17

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule updates and clarifies the Mine Safety and Health Administration's (MSHA) safety standards for explosives at metal and nonmetal mines. These revisions upgrade existing provisions consistent with technological advances in mining, eliminate duplicative and unnecessary standards, and provide alternative methods of compliance.

EFFECTIVE DATE: March 19, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The final rule contains no information collection paperwork requirements subject to the Paperwork Reduction Act of 1980.

II. Rulemaking Background

MSHA announced the availability of a preproposal draft for the explosives (subpart E) standards on August 20, 1984 (49 FR 33087).

After reviewing suggestions and recommendations from mine operators, labor groups, and other interested parties, MSHA published a proposed rule in the **Federal Register** for Explosives on November 10, 1988 (53 FR 45487). Public hearings were held in April 1989 for the explosives standards. MSHA received and reviewed written and oral statements on the proposed rule from all segments of the mining community.

The standards in part 56 apply to all surface metal and nonmetal mines; those in part 57 apply to underground and surface areas of underground metal and nonmetal mines. The final rule arranges the standards in subpart E of parts 56 and 57 into related categories. They are storage; transportation; use; electric blasting; nonelectric blasting; extraneous electricity; equipment/tools; maintenance; and general restrictions. Each standard is provided with a title for easier accessibility. Definitions in §§ 56/57.6000 pertain to subpart E and precede the standards. To aid in comparing the existing standards with the revised standards a derivation table and a distribution table have been included. These tables cross-reference the existing standard numbers with the final standard numbers.

III. Discussion and Summary of the Final Rule

A. General Discussion

Hazards associated with explosive material have historically been a leading cause of many serious injuries and fatalities in metal and nonmetal mines. Precautions to safeguard against these hazards are an essential part of any effective mine safety program. In some cases, it is advisable to include redundancy in standards to prevent the hazards associated with misfires. Generally, subpart E standards focus upon hazards which may be present when persons use or work near explosive material at metal and nonmetal mines. The safety measures that are necessary depend upon the nature of the hazards involved. In some instances, the standards prohibit certain actions so as to avoid a situation which could lead to a premature detonation. Other standards set out correct procedures to be followed when working with explosive material. New developments in the field have been reviewed and are addressed where necessary. These include nonelectric initiation systems such as shock tube systems, gaseous initiation systems, and miniaturized detonating cord systems; the use of sequential timers and other in-hole blast delay techniques; and bulk mixing and loading technology.

B. Transfers

Two standards are transferred to subpart F, Drilling and Rotary Jet Piercing. Existing §§ 56/57.6107 prohibit the drilling of holes where there is danger of intersecting a charged or misfired hole. Existing §§ 56/57.6135 prohibit collaring holes in bootlegs. These standards will be renumbered §§ 56/57.7055 and 56/57.7056, respectively. A clarifying change has been made to the wording of §§ 56/57.6107. The phrase "charged" hole has been replaced with "a hole containing explosives, blasting agents or detonators" to make the wording consistent with language used in subpart E.

C. Deletions

Existing § 56.6046, which requires that vehicles containing explosives or detonators be maintained in good condition and be operated at a safe speed and in accordance with all safe operating practices, is deleted since other standards address the maintenance or safe operation of vehicles. Existing §§ 56/57.6108, which requires that fuse and igniters be stored in a cool, dry place away from oils or grease are deleted since both safety fuse and igniter cord are defined as Class "C" explosives and are covered under MSHA's storage requirements for explosives. Existing § 56.6132, which requires delay connectors to be treated and handled with the same safety precautions as detonators, is deleted because delay connectors are defined as detonators.

Existing §§ 56/57.6139 prohibit blasting areas from being re-entered after firing until concentrations of smoke, dust, and fumes have been reduced to limits determined by the air quality standards. This standard is deleted since the hazards are addressed by the post-blast examination requirements of final §§ 56/57.6306 and by the allowable concentrations of blast-generated gases in the existing air quality standards.

Existing §§ 56/57.6140, concerning extraneous electricity, are deleted as redundant with other standards dealing with extraneous electricity.

The existing introductory statements, designated §§ 56/57.6000, state that the term "explosives" includes "blasting agents." Commenters suggested deletion of the introductory statement. MSHA agrees and is including specific language in the standards which clarifies the applicability of each standard with respect to blasting agents and explosives.

Commenters objected to the requirement of § 56.6330 that holes be stemmed as unrelated to safety and unnecessary. Explosive manufacturers, many users, and MSHA recognized that the practice of stemming increases the efficiency of explosive material and contributes to safety by minimizing flyrock and reducing the need for secondary blasting. However, the safety aspects of flyrock and secondary blasting are addressed in final §§ 56/57.6306 and 56/57.6312. For example, final §§ 56/57.6306(d) require all persons to be out of the blast area or in a protected location when the blast is fired. The practice of stemming can, therefore, be left to the discretion of the mine operator, and the stemming requirement is deleted from the final rule.

D. Incorporation by Reference

Existing §§ 56/57.6020 incorporate by reference "the current American Table of Distances for Storage of Explosives"

published by the Institute of Makers of Explosives (IME). The preproposal draft incorporated directly into the standard the pertinent parts of the table and the National Fire Protection Assocation's (NFPA) table, "Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents" (NFPA 495–1985). Commenters suggested deleting any reference to either table because the tables are set out in existing Bureau of Alcohol, Tobacco, and Firearm (BATF) standards at 27 CFR 55.218. While a long-standing interagency agreement provides for MSHA enforcement of BATF standards, MSHA believes that specific hazards unique to mining exist on mine property and dictate the use of tables which specifically address them. For example, the IME table provides excellent safety guidance but is primarily directed at protecting areas outside of mine property. Accordingly, MSHA in its proposed rule replaced the incorporation by reference with tables of distances specifically directed toward mining. Thus, for part 57 the term "inhabited buildings" was replaced with "mine buildings, underground mine openings, fans, dams and electric substations" to address the risk to miners, including underground miners, from the initiation of a surface storage facility. For part 56, the definition was replaced with "mine buildings, dams, and electric substations" to afford protection at surface operations. MSHA retains its own tables of separation distances in the final rule, after carefully weighing the merits of using existing tables of separation distances used by other organizations, as necessary to ensure adequate safety protection for miners.

E. Performance Language

In developing the final rule, performance-oriented criteria has been used rather than specification language, where appropriate. With performance-oriented language, a final standard sets out aspects of the safe use of explosive material as an objective to be met. As long as the safety objective is achieved, the agency allows the operator to use the compliance method that is most appropriate. However, in standards where a necessary and accepted margin of protection is provided and where safety is enhanced by a precise statement of a specific requirement, specifications are retained.

The distances used in the final standards are taken from recommendations of consensus standards, expert organizations, and manufacturers' publications. To illustrate, areas around magazines must be kept clear of combustible material for specified distances because fires initiated by nearby lightning strikes have resulted in the explosion of magazines. The footage requirements of the applicable standard conform with IME Safety Library Publication No. 3, "Suggested Regulations" (section 5.6 r and s), 1985 edition, BATF regulations 27 CFR 55.215, 1989 compilation, and the NFPA 495–1990, Section 6–8 Miscellaneous Safety Precautions.

In cases where the potential source of ignition in a mine environment is electricity, the current could pass through such alternative conductive paths as: (1) The earth, (2) damp timbers, (3) metal pipelines, (4) machinery housings, (5) track rails, (6) metal fences, or (7) a conductive rock strata that lies on top of or between two nonconductive strata. The use of electric detonators, spark-sensitive explosive material and new forms of blasting agents and explosives reinforce the need for a routinely implemented separation distance.

The agency retains specific separation requirements from sources of electricity and fire in standards that address electrical distribution circuits; electrical substations: welding and other sparks; and open flames and smoking. The distances used are taken from the IME Safety Library publications, the Atlas Powder Company "Handbook of Electric Blasting" (1985), the Dupont "Blaster's Handbook" (1978), Bureau of Mine's Circular 54 and the NFPA 495–1990.

F. Definitions

Active workings. The final rule deletes the definition of "active workings." Where relevant, the final standards include specific language relating to the places where persons work or travel.

American Table of Distances. The final rule deletes the definition of "The American Table of Distances" because the table is not included as part of the final standards. However, MSHA will continue to enforce the BATF regulations under the existing Memorandum of Understanding between MSHA and BATF (45 FR 25664, April 15, 1980). The American Table of Distances is published in the BATF regulations at the present time and will continue to be enforced by MSHA. The MSHA tables of distances included in the rule are not inconsistent with the American Table of Distances but provide an additional margin of safety for miners.

Attended. This newly defined term allows for flexibility in securing areas containing explosive material, including areas to be blasted. It is performance-oriented and allows for electronic or video monitoring devices as well as the actual presence of an individual. The term appears in §§ 56/57.6130, Explosive material storage facilities, 56/57.6132 Magazine requirements, 56/57.6133 Powder chests, 57.6161, Auxiliary facilities, 56/57.6202 Vehicles, 56/57.6306 Loading and blasting, and 56/57.6313 Blast site security. Under the language of the final rule, storage facilities can always be locked as an alternative to attending the facilities.

MSHA recognizes that securing of explosive material from potential misuse is an inherent aspect of safety protection. Tampering with explosive material by non-mining or untrained personnel can lead to accidents on mine property. In response to comments received, MSHA acknowledges that at underground mines, trespassing by non-mining personnel has been minimal, and has modified the final rule to allow for underground mines, that the underground blast site can be considered attended when all access to the mine is secured from unauthorized entry. The definition of attended for underground mines (§ 57.6000) stresses that underground areas of a mine containing explosive material can be considered attended if the entry is through vertical shafts or if the entry is through inclined shafts or adits and the portals are locked.

Blasting agent. The final rule definition updates the existing reference pertaining to any substance classified as a blasting agent. MSHA continues to adopt the U.S. Department of Transportation (DOT) classification system, recognizing that the mining industry is familiar with the DOT system of requiring manufacturers of explosive material to label the packaging before it can be transported over the road.

Blast area. The final rule changes the phrase "blasting area" to "blast area" for consistency. The characteristics to be considered in determining the blast area have been listed in the definition in order to more clearly state its intent. Good blasting practices dictate that the operator must determine the safe blast area prior to blasting. This area must be known to ensure the safety of miners who remain within the blast area. Theses miners are required to be in a blasting shelter or obtain other suitable protection. The presence of "gases" is added as a determinant of the blast area since toxic gases associated with blasting can cause serious injury and death. The MSHA air quality standards establish the permissible exposure limits for toxic gases. The term "shock wave"

has been added to clarify the term "concussion."

Blasting cap. The final rule deletes the existing definition of "blasting cap." The term is commonly understood to be a detonator which is initiated by a safety fuse.

Blasting circuit. The existing MSHA definition of "Blasting circuit" limiting the term to electric circuits is inappropriate. As a result of new technology, many non-electric blasting circuits are now in use. The final rule contains no definition for blasting circuit because the term can apply to either electric or nonelectric circuits. Where used, its application is made clear by the language of the standard.

Blast site. This newly defined term describes the area where specific safety precautions must be taken during loading of blastholes. The term is taken from the IME Safety Library publication No. 12, "Glossary of Commercial Explosives Industry Terms" (January 1985). The "blast site" is considerably smaller in size than the "blast area" and is intended to provide protection for miners engaged in blasthole loading activities and miners engaged in other non-blasting activities in the vicinity.

Activity at the blast site unrelated to loading increases the probability of injury associated with explosives-handling. Only activities related to loading is permitted within the blast site. The distance set out in the definition is a reasonable distance to separate the loading operations from other operations which may interfere with preparations for the blast or be affected by a premature detonation of a limited size. Mining activities such as drilling, overburden removal, mucking and hauling is permitted to continue uninterrupted at the mine at a distance which does not interfere with loading activities. This area of inactivity will provide assurance that mine vehicles will not damage the explosive material being handled or disturb the blastholes being loaded. It will also minimize the possibility of injury to miners from a premature detonation and reduce the likelihood that miners' activities such as drilling or mucking could cause a premature detonation. The final rule definition includes not only "loaded holes" but also "holes to be loaded." This inclusion recognizes that the entire loading process often progresses at a rapid rate. It ensures that miners engaged in non-blasting activities will not be within the 50-foot protected area unknowingly.

Blasting switch. The final rule deletes the existing definition of blasting switch and incorporates the definition itself into the standard in which it is used (§§ 56/57.6404) and into the definition of "safety switch." Because the term appears only in these instances, it is not necessary to have a separate definition of the term.

Booster. The final rule deletes the existing definition because the term "booster" is not used in the final rule.

Capped Fuse. The final rule deletes the existing definition because the term "capped fuse" is not used in the final standards.

Capped primer. The final rule deletes the existing definition because the term "capped primer" is not used in the final rule.

Delay connector. The final rule deletes the existing definition because the definition for "detonator" used in the final rule addresses delay connector.

Detonating cord. The final rule clarifies the existing definition. The phrase "used to initiate other explosives" is added to ensure that detonating cord is not confused with other initiating devices.

Detonator. The existing definition is revised for clarity by including examples of commercially available detonating devices. In response to comments received, MSHA has clarified the definition by adding that "detonator" does not include detonating cord. The final definition states that detonators may be either "Class A" or "Class C" detonators as classified by DOT. DOT makes this classification on the basis of its test results. When more than 90 percent of the devices tested in a package explode practically simultaneously, they are classified as Class A detonators. Class A detonators, as packaged, are more likely to mass detonate than Class C detonators. Extra caution must be exercised when storing, transporting or using Class A detonators.

Electric blasting cap. The final rule deletes this definition because the term "electric blasting cap" is readily understood by persons in the mining community who use and handle explosives.

Emulsion. The definition of emulsion is added to the final rule to distinguish it from slurry or water gel. The definitions for emulsion, slurry and water gel are taken from IME Safety Library Publication No. 12, 1985 edition.

Explosive. The final definition clarifies the existing definition by stating that the DOT document referenced is an October 1, 1989, publication on transportation of explosives. MSHA will continue to use the DOT classification system to determine which substances are to be treated as explosives and blasting agents. The classification system is used industry-wide and provides appropriate groupings of explosive material having similar characteristics as determined through DOT tests. The labeling of explosives according to this classification is in wide-spread use and provides an effective means of identification. Classification labels are placed on products by the manufacturer and are present when the products are brought onto mine property. Mine operators are familiar with these labels and can readily identify the hazard class of the explosive material.

The Agency is aware that DOT has published a proposed rule (55 FR 18438, May 2, 1990) to revise its regulations for the hazard classification, packaging and hazard communication requirements applicable to explosives contained in parts 171–180 of Title 49 of the Code of Federal Regulations. MSHA is following this rulemaking closely. The approach adopted by DOT, a lead agency in this area, appears to be satisfactory and may well be adopted by MSHA at some point after completion of the DOT rulemaking. At this time, DOT has not yet promulgated a final rule revising its hazardous material regulations. Therefore, MSHA will continue to use the existing DOT system.

Explosive material. This newly defined term includes "explosives," "blasting agents" and "detonators" as explosive material and is used many times throughout the final rule. It eliminates repetition of the terms "explosives," "blasting agents," and "detonators" and allows for the deletion of the introductory application statements appearing as existing §§ 56/57.6000.

Flash point. The final rule adopts the definition used in subpart C, Fire Prevention and Control, section 56/57.4000. This definition conforms with the definition of "flash point" in the NFPA's "Fire Protection of Diesel Fuel and Diesel Equipment in Underground Mines," NFPA 124–1988. Flash point is defined as the minimum temperature at which a liquid releases sufficient vapor to form a flammable vapor-air mixture near the surface of the liquid.

Igniter cord. The existing definition is retained with editorial changes. The definition is necessary to avoid confusion with other initiating devices.

Laminated partition. In response to comments received, MSHA has added this definition to clarify what may be used as an equivalent alternative to 4-inches of hardwood separating detonators from other explosive material. The phrase "laminated partition" appears in §§ 56/57.6133 and 56/57.6201. Commenters suggested that

the Agency broaden the definition to allow other combinations of material to constitute laminated partitions. MSHA incorporates this suggestion into the final rule along with the requirement that appropriate testing be done. MSHA modified the term in the final rule by stating that the materials must be bonded and consist of minimum nominal dimensions. The definition is derived from the IME Safety Library Publication Number 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, (January 1, 1985)."

Loading. The definition is added to standardize and clarify this important aspect of blasting activities. The use of "charge" as synonymous with "load" has resulted in some confusion within the mining community. MSHA has determined the exclusive use of "load" to be descriptive of the process of placing explosive material in a hole or against material to be blasted.

Magazine. The final rule deletes the definition of "magazine" since it is commonly understood in the mining community. The construction requirements for a surface magazine appear in final §§ 56/57.6132.

Misfire. The complete or partial failure of explosive material to detonate as planned is considered a misfire. Normally, spillage of explosive material is not considered a misfire since there is no attempt to detonate at the time the spill occurs. The final definition substitutes the terms "explosive material" for "blasting charge" and "detonate" for "explode" for consistency in terminology. Misfires have occurred for a variety of reasons, including use of inappropriate, damaged or deteriorated explosive material.

Multi-purpose dry-chemical fire extinguisher. The final rule adopts the definition used in subpart C, Fire Prevention and Control, §§ 56/57.4000, which define multi-purpose dry-chemical fire extinguishers as those meeting at least the nationally recognized criteria for extinguishers with a 2–A:10–B:C rating. These extinguishers are appropriate for use on fires involving combustible solids, flammable and combustible liquids, and electric equipment. Because fire equipment manufacturers designate the weight of dry-chemical agent in an extinguisher by "nominal" weight rather than by "minimum" weight, the definition uses the term "nominal" and clarifies that the nominal weight must be at least 4.5 pounds.

Non-electric delay blasting cap. The final rule deletes the existing definition because the term "non-electric delay blasting cap" is not used in the final standards.

Powder chest. The final rule deletes the existing definition for the term "powder chest" since it is commonly understood in the mining community, and the construction requirements for a powder chest are contained in §§ 56/57.6132.

Primer. MSHA in its proposed rule deleted the existing definition of primer as a commonly understood term. Several commenters suggested that MSHA continue to define the term, which is used in several standards. The final rule adopts the suggestion and contains the language of the existing definition of primer.

Safety switch. The final rule makes editorial revisions to the existing definition of "safety switch" for clarity and consistency. The term "safety switch" is used in §§ 56/57.6403.

Slurry. The definition of slurry is added in the final rule to distinguish it from emulsion and water gel.

Water gel. The definition of water gel is added in the final rule to distinguish it from emulsion or slurry.

Working place. The final rule deletes the existing definition since the term is not used in any of the final standards.

C. Section-by-Section Analysis

The following analysis examines the final rule and its effect on existing standards.

Storage—Surface and Underground

Sections 56/57.6100 Separation of Stored Explosive Material

This final standard combines and clarifies existing §§ 56/57.6002 and 56/57.6008 and expands the coverage of §§ 56/57.6008 to include all forms of blasting agents rather than only ammonium nitrate-fuel oil (ANFO). Existing §§ 56/57.6002 address the need to store detonators away from explosives and blasting agents because of the sensitivity of detonators. Paragraph (a) of the final standard requires continuation of the practice of storing detonators in separate magazines from other explosive material. Storing detonators separately would reduce the chances of accidental detonation of other explosive material contained in the same magazine.

Existing §§ 56/57.6008 deal with the contamination of explosive material by ingredients such as fuel oil (from ANFO mixes) and other blasting agents. Contamination could cause deterioration of the explosive material and lead to misfires. In paragraph (b) of the final standard, MSHA adopts language suggested by one commenter to apply the standard to other blasting agents in addition to ANFO. This is necessary to keep pace with new forms of blasting agents introduced.

Sections 56/57.6101 Areas Around Explosive Material Storage Facilities

The final standard clarifies the intended coverage of existing §§ 56/57.6005. The standard addresses the combustion hazards which can exist near a magazine from either the natural growth of vegetation or the accumulation of other material which supports combustion. Fires believed to be initiated by nearby lightning strikes have resulted in the explosions of several magazines. For this reason, it is imperative to keep areas around magazines clear of combustible material. The rule requires the clearance of combustible material from areas surrounding magazines and facilities which store explosive material. The language of the standard conforms with BATF regulations (27 CFR 55.215 Housekeeping), and with IME, Safety Library Publication No. 3, "Suggested Regulations" (sec. 5.6 r and s), (January 1985).

Agency experience indicates that low intensity rubbish, brush, and dry grass fires do not normally exceed a potentially hazardous temperature at the magazine if a 25-foot clearance is maintained. This is reflected in paragraph (a) of the rule. Paragraph (b) requires a separation of 50 feet between storage facilities and stored combustibles, such as mine timbers and fuels. Fires form these sources normally burn with higher intensity, and distances greater than those needed for protection from rubbish and brush fires are required to ensure that an excessive temperature is not reached. Both of these distances are the recognized industry consensus figures as published in the NFPA 495–1990, chapter 3, section 6–8, as well as in other BATF and IME publications.

In addition, combustible liquids have occasionally been stored in the vicinity of a storage facility. Final §§ 56/57.6101 address the mandatory drainage requirements for storage tanks containing combustible liquids.

The phrase "unnecessary combustible materials" is deleted since no combustible material should be allowed to accumulate or be stored near magazines. Live trees 10 feet or taller are less combustible than the other substances covered by the standard. Removal of these trees is not reuqired. The headings for §§ 56/57.6101, 56/57.6130, and 56/57.6131 have been changed for clarity. The phrase "storage

facilities" has been replaced with "explosive material storage facilities."

Sections 56/57.6102 Explosive Material Storage Practices

This final standard addresses the storage of explosive material in magazines and combines existing §§ 56/57.6007 and 56/57.6011. Under the standard, explosive material must be stored in a stable manner, not more than 8 feet high with the brand and grade readily identifiable. Explosive material must also be stored in a manner which would facilitate use of the oldest stock first. Implementation of these requirements should minimize the migration of sensitizing agents within storage containers and ensure that explosive material are not crushed or dropped, possibly resulting in unplanned detonation. The requirements also ensure stability of the stacked explosive material, while providing ease of handling and ready identification. Many of the explosive materials on the market today have a predetermined shelf life. Misfires have occurred as a result of using outdated stock. The requirement for storage to facilitate the rotation of stock addresses this hazard. As proposed, the existing requirement in §§ 56/57.6007 relating to the storage of explosive material with "top sides up" is deleted. While this language is intended to further the stability of the stacked material, the Agency believes paragraph (a)(3) of the final standard requiring stacking explosive material in a stable manner ensurs stability. One commenter questioned whether the language of the proposed standard which would have allowed nonelectric detonating devices to be stored on nonconductive racks were consistent with the BATF requirements for the storage of explosive material within magazines. The final rule retains the proposed requirement that explosives be stored in closed nonconductive containers except that nonelectric detonating devices may be stored on nonconductive racks. However, it requires that for nonelectric detonating devices, the case-insert instructions and the date-plant-shift code be maintained with the product to ensure that the standard is consistent with the intent of BATF storage requirements.

Existing §§ 56/57.6011 require explosive material containers to be closed. Several existing standards including §§ 56/57.6020, 57.6050, and 57.6056 address the nonsparking and nonconductive nature of containers. Commenters noted that this requirement prohibited accepted safe practices such as storing delay connectors in labeled, open bins and opening containers of rolled detonating cord to cut and remove specific lengths. The nonconductive containers and nonconductive rack requirements of this standard provide protection equivalent to closed containers and allow for deletion of this conductive container requirement with respect to nonelectric detonating devices. The term "explosive material" is used for uniformity with other standards and adds clarity. Consistent with commenters' suggestions, the standard's header has been revised.

BATF requires that a record be kept of the inventory of many storage facilities because of the possibility of theft and subsequent use. This BATF recordkeeping requirement is enforced on mine property through the BATF/MSHA Memorandum of Understanding and is not contained in the MSHA regulation because it is more properly regulated as a security issue under BATF regulations.

Sections 56/57.6130 Explosive Material Storage Facilities

Existing §§ 56/57.6001 state that detonators and explosives other than blasting agents shall be stored in magazines. The final rule addresses these facilities. It also addresses storage facilities for blasting agents in recognition of the many new types of products on the market. The standard contains the general requirements for magazines, bins, tanks, and certain other facilities such as droptrailers, which can be used to store blasting agents. MSHA's proposed rule included a new requirement that facilities be "ventilated." Commenters recommended use of the phrase "ventilated to prevent dampness and excessive heat." MSHA agrees that this language more clearly reflects the intent of the standard and has included this language in the final rule. Many commenters pointed out that mobile facilities are not ventilated when built and for MSHA to require ventilation would create an unnecessary burden. However, it is the Agency's view that the opportunity for dampness and excessive heat build-up in unventilated facilities creates an unacceptable environment which increases the likelihood of product deterioration. Ventilation ensures added safety to mine personnel and is required in facilities used to store packaged blasting agents. MSHA also adopted the phrase in paragraph (c) suggested by one commenter that bins or tanks be "locked or attended, or otherwise made inaccessible to unauthorized entry."

Because of recent fatalities in the non-mining sector, both BATF and NFPA are proposing to require the use of DOT placards on storage facilities for blasting agents. MSHA will allow the use of DOT placards or other appropriate warning signs on storage facilities that contain blasting agents.

Sections 56.6131 and 57.6131 Location of Explosive Material Storage Facilities

Existing §§ 56/57.6020 address construction, location and housekeeping criteria for surface magazines and incorporates by reference the IME "American Table of Distances." Final §§ 56/57.6131 address the location of surface magazines. Final §§ 56/57.6132 address construction and housekeeping criteria for surface magazines. Comments to the preproposal draft suggested deletion of the incorporation because the subject was covered by BATF standards which are enforced by MSHA under an Interagency Agreement. BATF regulations include the "American Table of Distances," the "Table of Distances for Storage of Low Explosives," and the "Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents." These tables principally address the safety of individuals off the mine property. They were deleted from the proposed rule standard which was restructured to provide increased safety for miners at the mine site.

MSHA included its own tables of separation distances as Appendix I of this subpart. The IME "American Table of Distances," February 1986, and the NFPA's "Recommended Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents" (NFPA 495–1990 appendix B) as published in NFPA 495–1990, as well as tables of the Department of Defense (DOD), were considered by the Agency before developing the MSHA tables. It should be emphasized that the MSHA tables are specifically developed for hazards unique to the mining environment. The IME and NFPA tables remain a primary source for separation distances in other situations and should be referred to in those cases. The DOD tables are inappropriate because military requirements are tailored to military environments which differ from the mining environment.

Several comments received regarding MSHA's proposed tables argued that the IME tables should be retained. These commenters felt that the Agency had insufficient data to justify the distances adopted and the hazards to be protected against. The Agency disagrees and retains its own tables of separation distances as necessary to ensure adequate safety protection for miners.

MSHA carefully weighed the merits of using existing tables and determined that none addressed hazards specifically associated with mining. The Agency then developed its own tables after considering the distances used by other organizations. MSHA adopted the IME distances—which represent areas of potential hazards from a magazine detonation based on the amount of explosive material stored. The Agency changed the objects that must be separated from the magazine, for example mine openings instead of public roads. Potential hazards caused by the impact of a magazine explosion or mine property were determined after considering the potential consequences of such an explosion on mine property. MSHA's tables do not conflict with BATF regulations, and MSHA will continue to enforce the BATF requirements under the Interagency Agreement.

MSHA recognizes that some mines do not have sufficient surface areas to permit compliance with the tables. For these mines, MSHA allows an exception based on performance criteria. The criteria are intended to provide protection from the hazards of a surface storage facility detonation. Such a detonation could endanger mine employees in nearby buildings. It could also pose a danger to other employees, especially underground miners, if a mine opening, electric substation, dam or mine ventilation fan were damaged. The standard requires a mine operator to take these hazards into consideration when selecting a storage facility location. In addition to natural or artificial barriers, features such as the natural topography of the ground can be considered in determining the location of the facility when it is not possible to comply with the tables. An example of an acceptable location could be within natural earth formations outside the blast area. Another could be a storage facility placed in an excavation into the toe of a highwall in an abandoned portion of the mine. While this alternative is acceptable to MSHA, the Agency believes that where possible, it is preferable to follow the specific distances set out in the tables to ensure adequate and objective determination of the appropriate location of the magazine.

Paragraph (b) addresses inadvertent damage to a magazine and detonation of its explosive material contents caused by flyrock from a blast or by electrical sources generated from severed powerlines. The requirement that storage facilities be located outside of the blast area is a new provision to address the accidents, fatalities and injuries that have occurred in recent years from flyrock.

The existing requirement for location of magazines "away from" powerlines is clarified in this final rule as "a sufficient distance from powerlines so that the powerlines, if damaged, would not contact the storage facility." This final rule provides assurance that energized powerlines, when severed by an accident or a storm, will not cause a fire at the storage facility or introduce an electrical current which could cause detonation of its contents.

All blasting agents can be affected by heat generated from electric sources and therefore are included in the coverage of this standard. The reference to fuel storage areas in the existing standard has been deleted and is addressed in final §§ 56/57.6101.

Sections 56/57.6132 Magazine Requirements

Existing §§ 56/57.6020 address construction, location and housekeeping criteria for surface magazines. Final §§ 56/57.6131 address the location of explosive material surface magazines. Final §§ 56/57.6132 address construction and housekeeping criteria for surface magazines. The criteria apply regardless of the nature of the explosive material stored in the magazine.

This standard covers all surface magazines, including any droptrailers intended for use as a magazine. Under §§ 56/57.6130 detonators and explosives must be stored in a magazine and packaged blasting agents may be stored in a magazine or other facility. If packaged blasting agents are stored in a magazine, the criteria of §§ 56/57.6132 apply. If blasting agents are stored in a facility other than a magazine, the appropriate provisions of §§ 56/57.6130 would apply.

Paragraphs (a)(1) and (a)(2) of the final standard modify paragraph (c) of the existing standard. The structural integrity requirements of paragraph (a)(1) are adopted as suggested by commenters. The magazine must provide protection of its contents from the elements and from potential impact which could alter the sensitivity of the explosive material or cause a detonation. A structurally sound magazine also enhances safety by contributing to the security of the stored explosive material.

Paragraph (a)(2) of the final rule contains requirements which provide protection from the sparks and heat of nearby fires which could cause a detonation. Commenters suggested that we clarify whether the proposed standard required fire-resistant material on the inside or outside of a magazine. The word "exterior" has been inserted in the final standard to clarify that fire-resistant material is required on the exterior of a magazine.

Paragraph (a)(3) addresses the hazard of magazine detonation by the impact of a bullet on the explosive material stored within. The large quantities of material stored magnify the destructive forces which are generated if a detonation occurs. Three of the last ten magazine explosions were caused by bullets penetrating the magazine. Various methods for achieving bullet resistance are detailed in BATF regulations and IME Safety Library Publication No. 1, "Construction Guide for Storage Magazines" p. 2, (June 1986). These documents are commonly used to evaluate what is an acceptable level of bullet resistance.

Paragraph (a)(4) requires that the magazines have nonsparking material on the inside. Sparking material is prohibited inside a magazine because of the potential for a spark-generated detonation of the magazine contents. This provision editorially revises the existing standard.

Paragraph (a)(5) addresses the need for ventilation in a magazine. The existing standard requires adequate and effectively screened ventilation openings near the floor and ceiling. The performance-oriented final standard provides that the magazine must be ventilated to control dampness and excessive heating. Dampness increases the likelihood of deterioration and misfires. Excessive heat or fumes increase the likelihood of detonation or deterioration of explosive material and can adversely affect the health and safety of miners.

Paragraph (a)(6) editorially modifies the existing standard which requires warning signs to be located so that a bullet passing through the face of the sign will not strike the magazine.

Paragraph (a)(7) of the existing standard requires that magazines be "kept clean and dry in the interior, and in good repair." The reference to "good repair" has been deleted from the final rule because it is covered by the "structurally sound" requirements of paragraph (a)(1). The final rule retains the "clean and dry" requirements in paragraph (h) however, in recognition of two concerns. First, if accumulations of rain, snow, and mud are not removed, they may deteriorate or contaminate the explosive material and alter their physical and chemical nature. Improper detonation can result. In addition, blasting agents are often stored in these magazines with more sensitive

explosives. Minor spills of blasting agents which occur during handling in the magazine must be cleaned up to prevent contamination of the explosives.

Paragraphs (a)(8) is a new provision which addresses fire and explosion hazards that can exist from improper lighting equipment installed in a magazine. This provision is consistent with the BATF requirement which allows battery-activated safety lights or battery-activated safety lanterns in explosive storage magazines. The IME Safety Library Publication No. 3, § 5.4.5, provides guidance for safe lighting of a magazine.

Paragraph (a)(9) editorially revises the existing requirement dealing with the fire and explosion hazards that can exist with improper heating devices in magazines. The standard would allow heating of magazines in a manner which ensures that hazards will not be introduced into the magazines. The IME Safety Library Publication No. 3, § 5.4.4, provides guidance for safe heating of a magazine.

Paragraph (a)(10) editorially revises existing paragraph (h) which requires that magazines be kept locked securely when left unattended. This provision is designed to protect against vandalism.

Paragraph (a)(11) permits storage of essential nonsparking equipment needed to clean, maintain and operate the facility. The existing standard does not allow any extraneous material in the magazine. Allowing essential equipment to be stored in the magazine would not affect the safe storage of explosive material but would ensure that the magazine is effectively maintained.

Paragraph (b) addresses the bonding and grounding of nonmetal magazines. The existing standard requires electrical bonding and grounding if constructed of metal. Several commenters suggested that these requirements be deleted. MSHA agrees with comments with respect to grounding of metal magazines. A metal magazine resting on the earth will likely dissipate static electricity without a grounding rod. Metal 97 structures are an effective shield from lightning and offer a satisfactory path to earth when the metal is resting uninsulated, on the ground. A Bureau of Mines research contract report, "Evaluation of Surface Storage Facilities for Explosives, Blasting Agents and Other Explosive Material," June 1, 1983, concluded that metal magazines do not have to be grounded and recommended that metal portions of nonmetal magazines be bonded together and grounded to ensure that all metal portions are at the same electrical potential. The proposed rule deleted the requirement for grounding of metal magazines. The final standard requires that conductive portions of metal nonmetal magazines be bonded and grounded to prevent internal build-up of electrical energy which could detonate the explosive material stored. The standard also clarifies that welds, rivets, and securely tightened bolts are acceptable methods for magazine bonding.

Paragraph (c) is a new provision intended to address the possibility of misfires from a spark or stray current. It requires that electrical switches and outlets be located on the outside of the magazine.

Sections 56/57.6133 Powder Chests

This final standard modifies existing §§ 56/57.6159 concerning the short-term storage of limited quantities of explosive material. The existing standard applies to both surface and underground operations. The final standard applies only to surface areas since final §§ 57.6161 deal with auxiliary storage facilities underground. Paragraphs (a), (b), (c), (d), and (f) of the existing standard have been edited for clarity and appear in the final standard without substantive change as paragraph (a). Paragraph (e) of the existing standard is revised and set out as final paragraph (b).

The proposed rule would not have allowed Class A detonators to be kept in the same powder chest as other explosives or blasting agents. Commenters objected because detonators are frequently removed from their original containers and once removed from their original containers, the classification is not meaningful. MSHA agrees and has modified the proposed rule language. In the final rule MSHA allows Class A detonators to be kept in the same powder chest as other explosives or blasting agents. The Agency recognizes that when dealing with small quantities of detonators, protection can be achieved with 4-inches of hardwood, laminated partition or equivalent.

Some commenters requested clarification of the word "equivalent" in the phrase "4-inches of hardwood or the equivalent." MSHA added the defined term "laminated partition" as an example of equivalent protection but has also retained "equivalent" to allow for advances in mining technology and flexibility in compliance.

Storage—Underground Only

Section 57.6160 Main Facilities

MSHA recognizes that underground storage of explosive material is a common practice. This new provision addresses hazards associated with the improper storage and location of main underground facilities. The inherently hazardous nature of stored explosives necessitates that certain safety precautions be taken, particularly in a mine environment which may contain high electric current, conductive ore bodies, heavy equipment and nearby activity.

The proposed rule, in response to public comment, omitted certain preproposal draft language. The preproposal draft language required that facilities be located so that fumes could not course to working places. Fumes from explosive material stored in a well-maintained facility present no problem when the facility and the mine are ventilated. However, the proposed rule provided that the main facility be located so that a fire or explosion in the storage facilities would not prevent escape of miners from the mine. The requirements of this standard were taken from Bureau of Mines Circular 54 and IME Safety Library publications. Various modes of transportation have evolved and have differing potential for impact on storage facilities. The distances set out in the final rule have proven effective for rail haulage and more recently diesel-powered rubber-tired haulage.

Comments were received regarding MSHA's distance requirements in paragraphs (a)(4) and (a)(7). Paragraph (a)(4) of the proposed rule required that main facilities used to store explosive material underground be located at least 25-feet from track and haulageways. Commenters objected to the proposed requirement in paragraph (a)(7) that main facilities be located "at least 25 feet from trolley wires." Commenters stated that the distances used in these paragraphs were based on a Bureau of Mines circular published in 1956 and do not reflect the distances which should be required for currently used explosives. They also stated that the application of these standards was restrictive and would require costly modifications to existing facilities with no demonstrated risk reduction. MSHA, after further review, has revised the provisions of the proposed rule. MSHA agrees with commenters that, in these cases, the 25 feet requirement is too restrictive and in some ways redundant with paragraph (a)(3) which requires main facilities to be protected from vehicular traffic. The final rule deletes the requirement that main facilities be located at least 25 feet from track and haulageway. The standard has also been revised to require that main facilities be a safe distance from trolley

wires. Because of differences among new explosive material, MSHA feels that this latter provision should be dealt with on a mine-to-mine basis according to the types, quantity, and ability to allow safe use of the particular explosives employed.

Several commenters stated that paragraph (b)(2) was over-restrictive in limiting the types of equipment allowed in underground explosive material storage facilities. MSHA agrees. The revised standard clarifies our intent to differentiate between the storage requirement for explosives and blasting agents and for necessary associated equipment. Paragraph (b)(7) which required that main facilities be kept free of empty explosive material packaging has been merged with paragraph (b)(3) for clarity. Paragraph (b)(8) which required that main facilities be made of nonsparking material on the inside and equipped with doors or lids has been incorporated with paragraph (b)(2)(i) for clarity.

Paragraph (c) has been moved from paragraph (b)(6) in the final rule.

Section 57.6161 Auxiliary Facilities

This final standard combines existing §§ 57.6027, 57.6029, and 57.6030 which address facilities used to store explosive material near work places. This standard is consistent with the general practice in the mining community of providing wooden, box-type facilities near the work place. Paragraph (a) allows alternatives to "box-type" facilities addressed in existing §§ 57.6027 and 57.6029 by permitting the use of other facilities which provide equivalent impact resistance and confinement and contains the requirement previously addressed in proposed rule paragraph (b)(2) that auxiliary facilities shall be equipped with covers or doors. Original shipping containers often provide some degree of protection and confinement during transportation. However, containers constructed of paper and plastic products do not adequately protect the contents from deterioration caused by impact and moisture in the mining environment during auxiliary storage. Auxiliary storage facilities are used in areas other than "working faces," the phrase appearing in existing § 57.6027. For example, explosive material is occasionally stored near crushers and chutes. MSHA has substituted the phrase "work places" since precautions are necessary wherever explosive material are stored.

Paragraphs (b)(1), (b)(4), (b)(5) and (b)(8) are taken from the existing standards and provide that auxiliary facilities be posted and protected against environmental conditions such as sparks, moisture, and detonation from other storage facilities.

Paragraphs (b)(3), (b)(4) and (b)(5) of the proposed rule appear as paragraphs (b)(2), (b)(3) and (b)(4) of the final rule. Paragraph (b)(2) is taken from the existing standard while (b)(3) and (b)(4) are new provisions designed to protect the contents of auxiliary storage facilities from exposure to the mine environment and particularly to prevent moisture from contaminating and desensitizing the contents. Paragraph (b)(6) is a new provision addressing hazards which occur when equipment or electrical charges contact the explosive material. The 15-foot minimum separation from haulageways and electrical equipment ensures adequate clearance and separation near auxiliary facilities. Since generally the size of equipment and the electrical current would be less in these areas than in areas near main storage facilities, less clearance and separation is required.

Paragraph (b)(7) is a new provision limiting the amount of explosive material stored in auxiliary facilities near the underground work site. These facilities near work areas are exposed to harsher conditions than a main storage facility. They may be subjected to rougher handling, environmental factors such as water, and the potential to be struck by mine equipment, and a restriction on quantity is warranted.

MSHA has evaluated the amounts of explosive material used at an individual work site, the size and material handling capabilities of the affected mines, and the protection provided by the construction requirements for the auxiliary facility. As proposed, the final rule increases the storage quantity of explosives to a one-week supply. This limit will minimize the hazards of unplanned detonation of large amounts of explosives by work site activities and protect the stored material from deterioration, while permitting efficient scheduling of explosive material delivery to work areas throughout the mine.

Paragraph (b)(9) is a new requirement which addresses situations where unauthorized access can be gained to an underground work site during times when the mine is not working or is occupied by a few workers in areas where the auxiliary facilities are not present. The locked facility will ensure that on-site miners and subsequently returning miners will not be endangered by unauthorized use of the stored explosive material. Several editorial changes have been made to the standard for clarity.

Transportation

Sections 56/57.6200 Delivery to Storage or Blast Site Areas

The final standard modifies language addressing the need to avoid delay in the transportation of explosive material to the blast site or storage facility. The phrase in existing §§ 56/57.6048 "over routes and at times that expose a minimum number of persons" has been deleted since it has resulted in some unnecessarily circuitous routes being used, possibly increasing the overall risk. The proposed rule substituted the phrase "transported without avoidable delay" for the phrase "transported without undue delay" appearing in the existing standard. MSHA felt the proposed language would clarify the intent of the standard. Several commenters indicated that the existing language would be preferable, since virtually every delay could be construed to be avoidable. The Agency did not intend to change the standard to allow this interpretation, and therefore retains the phrase "transported without undue delay" in the final rule as it appears in the existing standard.

Sections 56/57.6201 Separation of Transported Explosive Material

Existing §§ 56/57.6040 require that explosives and detonators be transported in separate vehicle conveyances unless separated by 4-inches of hardwood or the equivalent. The final rule specifies the transportation requirements for detonators depending on the quantity transported and the packaging.

MSHA's proposed rule prohibited a detonator which was subject to mass detonate (a Class A detonator) from being transported in the same vehicle or conveyance as explosives or blasting agents. In response to comments, the Agency has modified this position. Several commenters objected to the proposed rule language and suggested that MSHA allow the use of the laminated partition container specified in the IME Safety Library Publication 22. The Agency in its final rule has adopted the suggestion that the IME container or compartment be allowed. Commenters pointed out that the IME container or compartment, or 4-inches of hardwood or laminated construction has been effective in the past as a safe means for transportation of detonators. In addition, as several commenters pointed out, the MSHA proposed standard might have resulted in a net increase in hazards to miners from increased explosive material handling and transportation.

MSHA's final rule is consistent with DOT requirements for transporting detonators over the road. Vehicles meeting DOT requirements satisfy the MSHA standard. IME's Safety Library Publication No. 22 distinguishes the requirements for packaging detonators depending on whether detonators are transported in quantities of 1000 or less. MSHA's final rule adopts this approach for distinguishing the transportation requirements for detonators. To provide additional protection from the mass detonation hazard which can result from impact, stray current or fire, MSHA is requiring that the original packaging be used whenever a 1000 or more detonators are transported. This packaging, provided by the manufacturer, conforms with the DOT requirements for transportation of explosive material. These requirements limit the number of detonators, their total weight and their movement within the package and would reduce the likelihood of mass detonation. MSHA's final standard prohibits all detonators in quantities of more than 1000 from being transported in a vehicle or conveyance with explosives or blasting agents unless the detonators are maintained in the original packaging as shipped from the manufacturer and separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition or equivalent.

The final rule retains the concept of laminated construction but also includes language allowing for use of an "equivalent" protection. This language provides flexibility in compliance while clarifying that a laminated partition is acceptable.

Sections 56/57.6202 Vehicles

This final standard modifies, combines and clarifies existing §§ 56/57.6042; 56/57.6043; 56/57.6044; 56/57.6047; 56/57.6050; 56/57.6053; 56.6065; 57.6077 and 56/57.6200. It addresses the hazard of an unplanned detonation of explosive material during transportation on a mine vehicle. Detonation can result from vehicle fires, vehicle accidents, or construction of a vehicle with inappropriate material.

Paragraphs (a)(1) and (a)(2) of the final standard address construction requirements, warning signs and operational safeguards. The existing term "suitable" is deleted and the term "substantially constructed" is replaced with a more precise term "structurally sound." Several changes have been made to allow greater flexibility in vehicle construction. The phrase "secured to a nonconductive pallet" has been added as an alternative for compliance with sides and tailgate requirements.

Paragraph (a)(3) clarifies MSHA's intent as to where explosive material shall be located during transportation by vehicle. The final rule clarifies that the carrying of explosive material in the passenger area of a vehicle is not permitted.

Paragraph (a)(4) clarifies existing §§ 56/57.6042 which require more than one extinguisher on vehicles used to transport explosive material. The term "suitable" is replaced with the phrase "multipurpose dry-chemical fire extinguishers." Multipurpose dry-chemical fire extinguishers are "suitable" for fighting all classes of fires that are expected to occur on a vehicle used to transport explosive material. These vehicles usually have more than one person aboard. Providing two extinguishers allows for more than one person to fight the fire. No attempt shall be made to fight a fire that cannot be contained or controlled before it reaches explosive materials. In such cases all personnel shall be immediately evacuated to a safe location, and the area shall be guarded from entry by spectators or intruders. In addition, tire fires can rekindle after the flame has been extinguished and the second extinguisher may be needed for resuppression. When faced with the hazards presented by fire near explosives or detonators, the need for readily available fire extinguishers is of critical importance. The presence of two fire extinguishers on a vehicle containing explosives or detonators could greatly reduce response time in fighting a fire. As proposed, under the final rule an automatic fire suppression system can be used as an alternative to one of the extinguishers.

The proposed rule contained a new provision requiring vehicles to be vented unless transporting in bulk. MSHA proposed this language to avoid the build-up of heat and moisture which can result in premature detonation. After further review of comments, MSHA agrees with commenters that due to the short period of time explosive material is contained on these vehicles, venting is unnecessary and this requirement has not included it in the final rule.

Existing §§ 56/57.6043 require posting of proper warning signs on vehicles containing explosives or detonators. Paragraph (a)(5) clarifies that "proper" warning signs are those that indicate the contents and are visible from each approach. This requirement is consistent with other posting sections of the final rule.

Paragraph (a)(6) clarifies the phrase "necessary attendants" used in existing §§ 56/57.6053, by substituting the phrase "persons necessary for handling the explosive material."

Paragraph (a)(7) combines existing §§ 56/57.6065 and 57.6077 concerning the need to attend vehicles during transportation of explosive material. Attendance provides vehicle security as well as protection for nearby miners against a runaway vehicle. The scope of the standard has been broadened to include blasting agents. While blasting agents are less sensitive than explosives, they still require special precautions. The terms "attended" and "loading" are defined terms in the final rule. Commenters pointed out that underground mines provide a degree of inherent security. MSHA recognizes the validity of this comment and modifies the final standard accordingly.

Paragraph (a)(8) addresses inadvertent movement of parked vehicles containing explosive material to prevent runaway vehicle accidents which could cause detonation of the contents. Paragraph (a)(8)(i) is taken from existing §§ 56/57.6044. The phrase "blocked securely against rolling" in existing §§ 56.57.6044, is replaced by paragraph (a)(8)(ii) which requires wheel chocking only if the possibility of movement exists. Paragraph (a)(8)(iii) is a new provision which allows the engine to run while the vehicle is parked if it powers a device being used in the loading operation. Although commenters suggested that paragraph (a)(8) duplicates §§ 56/57.9036 and 56/57.9037, it contains additional specific requirements applicable to the hazards associated with explosive material.

Paragraph (b) makes editorial changes to existing §§ 56/57.6047 and 56/57.6050 dealing with the hazard of spark-producing material in the cargo space with explosives. Sparks produced during transit or in an accident could detonate the entire load. Blasting agents are not covered since they are not spark-sensitive.

Paragraph (c) contains the requirements applicable to bulk dispensing vehicles. Existing §§ 56/57.6200 deal with the transportation and dispensing of blasting agents. The language has been written to address the dispensing of all types of bulk explosive material.

The final rule retains the requirement for protection against internal pressure and frictional heat when screw conveyors are used. This protection addresses potential fires and explosions in the vehicle. Existing §§ 56/57.6200 prohibited zinc or copper exposed in the

cargo space when blasting agents are transported. The final rule extends the requirement to vehicles used for dispensing any type of bulk explosive material. As technology has evolved, bulk explosive material other than blasting agents has sometimes included chemicals which can react with zinc or copper.

Sections 56/57.6203 Locomotives

This final standard combines existing §§ 56/57.6041 and 56/57.6051 covering transportation of explosive material on top of locomotives and in cars being pushed or towed by locomotives. Locomotives are normally powered through direct-current trolley wires, batteries or diesel engines. All three sources have the potential to generate heat or sparks which could cause a fire and unplanned detonation of the explosive material. Additionally, locomotives are not equipped with an enclosed space for material hauling. Any material transported on top of a locomotive is subject to disloding and subsequent impact durng transit or in an accident.

When explosive material is transported in a car being propelled by a trolley-powered locomotive, a potential for electrical sparking and short circuits exist. These cars must be covered and electrically insulated. In addition, fall of ground or other impact can present a hazard to exposed explosive material. The required cover would protect the explosive material from impact.

Sections 56/57.6204 Hoists

The final standard combines and clarifies existing §§ 56/57.6054, 57.6075 and 57.6076 and addresses hazards encountered when conveying explosive material on hoists. The standard broadens coverage to include surface operations. Many surface operations such as slate and dimension-stone mines utilize hoists to allow miners to enter and leave their work area.

The final surface and underground standards are identical with the exception that the underground standard requires hoisting to be stopped in compartments adjacent to those transporting explosive material. This exception is necessary to address the use of the large compartmentalized hoists used in some underground metal and nonmetal mines.

Paragraph (a) ensures that hoist operators at surface mines as well as underground operations are notified that explosive material is being transported.

Paragraph (b) requires containment of the explosive material in a container which prevents shifting of the cargo that could cause detonation of the container by impact or by sparks. The manufacturer's containers, usually cardboard boxes or plastic containers, are acceptable, provided they are secured to a nonconductive pallet and no sparks can be generated.

Paragraph (c) of the proposed rule would have prohibited transporting persons on a hoist conveyance or mantrip containing explosive material. Commenters stated that the proposed language constituted an unnecessary burden and that the existing standard has been effective. MSHA has retained the language of the existing standard which prohibits explosive material from being transported during a mantrip.

Sections 56/57.6205 Conveying Explosives by Hand

This final standard combines existing §§ 56/57.6056 and 56/57.6057. To reflect the intent of the standard to isolate explosives from the elements during conveyance, the term "closed, nonconductive cointainers" replaces the phrase "substantial nonconductive containers" used in the existing standard. The standard does not cover blasting agents since they are not spark-sensitive. Language has been added in the final rule which requires detonators and other explosive material to be carried in separate containers. This practice follows the principle that detonators and other explosive material should be kept separate until loading so that accidental initiation of detonators will not cause detonation of other explosive material. This standard concerns safe transportation and is not intended to address handling of explosives at the blast site. Other editorial changes have been made for clarity.

Use—Surface and Underground

Sections 56/57.6300 Control of Blasting Operations

The final standard combines and clarifies existing §§ 56/57.6090 and 56/57.6091 dealing with direction and supervision of blasting operations. MSHA has determined that only trained and experienced persons should direct the specific tasks involved in blasting operations. Several commenters felt the existing standards are redundant with present training regulations. MSHA disagrees. The training and experience needed to supervise or direct blasting operations in today's mines where the technology is continually changing and may exceed the training provided to miners who simply handle explosives under a supervisor's direction. As new explosive materials are introduced at the mine, the persons directing the blasting operations must be trained in the safe handling and use of the products. This training is normally on-the-job, provided at the mine site by a representative of the explosive manufacturer. These new products may create hazards in storage, transportation, loading, blast hook-up, blast area security, firing, and postblast examinations. Training must address these areas where appropriate.

Sections 56/57.6301 Blasthole Obstruction Check

The final standard clarifies existing §§ 56/57.6093 concerning obstructions in blastholes. When explosive material is loaded into an obstructed blasthole, several safety related problems can occur. A partially obstructed hole can result in wedging of the primed charge at an improper depth in the hole. Manual maneuvering to dislodge the wedged material could result in a premature detonation. A partial obstruction could also cause a separation between the blasting agent and the initiating charge and a misfire could occur. In addition, obstructions which interfere with proper loading of the blasthole can result in poor fragmentation which could require that secondary blasting be performed. Obstructions could also increase flyrock and blowouts which pose injury risks to miners. The final rule clarifies that checks for obstructions must be performed before holes are loaded. Some obstructions can occur near the bottom of a blasthole without effectively blocking the entire hole. In these instances, loading can be accomplished to that depth without imposing safety hazards, and no restrictions apply. Where a rigid liner is inserted in the entire length of the blasthole and remains intact, the hole is considered checked and cleared of obstructions. Good practice dictates that a blasthole log describing geological conditions and unusual features found in drilling be supplied to the blaster. This log will simplify compliance with this standard and aid safe efficient blasting.

Section 56/57.6302 Explosive Material Protection

This final standard deals with the need to provide a protected environment for explosive material prior to loading. Paragraph (a) modifies existing §§ 56/57.6096 by substituting the word "loading" for the word "charging" and adding the term "blasting agents" for clarity. Paragraph (b) is a new requirement that is a basic safety practice to prevent premature initiation of the explosive material due to impact

or heat. The many new types of explosive material presently in use at mine sites are sensitive to varying amounts of impact. In addition, large equipment capable of exerting heavy impact is often used in the loading environment. The IME cautions that temperatures in excess of 150° F are considered hazardous (Safety Library Publication No. 4, p. 5, June 1987).

Sections 56/57.6303 Initiation Preparation

This standard addresses the hazards of premature detonations and misfires associated with the preparation of primers. Paragraph (b) contains the requirements of existing §§ 56/57.6098(a) with clarifying editorial changes requested by commenters. The final rule substitutes "blast site" for "blasting area" in existing §§ 56/57.6097 and requires that primers be made up only at the time of use and as close to the blast site as conditions allow. While the preamble to the proposed rule correctly used the term "made up," in the proposed rule MSHA inadvertently used the word "made" rather than "made up." The final rule uses the term "made up." One commenter suggested adding the words "as close to the time of use as practical." MSHA disagrees because the word "practical" provides no specific guidance in this matter. Preparing primers as close to the blast site as "conditions allow" more clearly conveys the needed safety concern and the proposed language is retained in the final rule. Paragraph (c) retains the requirements of existing §§ 56/57.6098(b) with editorial changes. It protects against misfires by requiring that connections between detonating cord and other explosives be made in a manner which ensures that the detonation will not be interrupted.

Sections 56/57.6304 Primer Protection

This final standard addresses the tamping or dropping of large cartridges of explosives or blasting agents directly on primers, a practice which can cause impact accidents or misfires resulting from separation of the primer components.

Paragraph (a) makes no changes to the tamping precautions of existing §§ 56/57.6101 without change. Paragraph (b) is a new requirement which prohibits dropping of cartridges of explosive material which are four inches in diameter or larger directly on a primer unless the blasthole is full of water. If such cartridges are dropped into blastholes only partially filled with water, the cartridges are likely to spread from the impact and cause an interruption in the column of explosive material.

A commenter stated that it does not believe that when cartridges are filled with water gel blasting agent or prill there is an increased risk to the safety of miners created by the dropping of cartridges into a blast hole that has been loaded with a primer under certain conditions. MSHA disagrees. The Agency is concerned with the effect on the material to be impacted by a dropped cartridge, not solely with what is dropped on to the primer. In addition, a dropped cartridge runs the risk of becoming hung-up in the hole, possibly leading to misfires and to the presence of undetonated explosives in the muckpile. The commenter also stated that it drops a slit cartr ∧]%∧∧U (ill voids. In this case, MSHA feels that if the first cartridge is lowered, the subsequent cartridge can be dropped to achieve the same result of filling any voids.

Another commenter suggested that MSHA retain definition for "primer" which is used in this standard. MSHA has adopted the commenter's suggestion and include a definition for "primer" in the final rule.

Sections 56/57.6305 Unused Explosive Material

This final standard has been revised to clarify existing §§ 56/57.6102 dealing with unused explosives, and to provide uniformity with other standards. The intent of this provision is to ensure that all unused explosive material is removed from the blast area, unless the material is protected from concussion or flyrock, as soon as practical after loading is completed and before firing the blast. "As soon as practical" recognizes that there may be instances where removal may not be immediate. For example, an underground haulageway may be temporarily obstructed by another vehicle. MSHA recognizes that such situations do arise and that it would be appropriate to allow the vehicle containing explosive material to wait a reasonable amount of time rather than potentially creating another hazardous condition by requiring the other vehicle to move.

The phrase "protected location" clarifies the "safe" location of the existing standard. "Protected location" allows unused explosive material inside the blast area provided it would not be affected by concussion or flyrock.

Sections 56/57.6306 Loading and Blasting

The final standard deals with precautions during loading and blasting, and combines existing §§ 56/57.6094, 56/57.6160, 57.6175, and 57.6182, and adds several new provisions. The standard applies to surface and underground operations. Paragraph (a) is a new requirement to ensure proper treatment of explosive material and initiating systems. Explosive material can be prematurely detonated if struck by moving vehicles or contacted by electrically-powered equipment.

Paragraph (b) is a new provision restricting activities near the blast site during loading. It also specifies the minimum distance from the loading and hook-up where work unrelated to the blasting operation is permitted. MSHA's preproposal draft language would have required that, once loading begins, only activity directly related to the blasting operation be permitted within an area at least five times the face height in all directions from the blast site. Many commenters objected to this language as being unnecessarily restrictive. MSHA reevaluated the provision and responded to these comments in its proposed rule to exclude unrelated activity only from the blast site, a defined term. Activity at the blast site can interfere with the loading process and increase the likelihood of an accident. However, as several commenters to the proposed rule pointed out, MSHA's proposed standard would have prohibited any haulage of material near the foot of the highwall being loaded, creating a severe burden at some operations where such a practice is essential to removing the mined material. To accommodate these concerns, the Agency has revised the final standard to allow the occasional haulage of material near the base of a highwall being loaded where no other haulage access exists. MSHA believes that by allowing limited haulage activity to continue in this way as well as by allowing mining activity to continue outside the blast site, there is latitude for the mining cycle to continue without undue interference from this safety precaution. As stated in the definition of "blast site," in underground mines 15 feet of solid rib or pillar can be substituted for the 50 foot distance required at surface areas.

As in the proposal, paragraph (c) of the final rule requires that loading be a continuous operation with certain exceptions to avoid the hazard of prolonged "sleeping" of explosive material. This final standard is a substitute for the requirement in existing §§ 56/57.6094 that blasting occur within 72 hours of loading the hole unless prior approval is obtained. Several commenters felt an exception was needed from "continuous" loading when

unusual circumstances exist. MSHA agrees. The final standard allows relief for emergency situations, shift changes, and up to two consecutive idle shifts. In response to comments received, the final rule clarifies MSHA intent that continuous loading may be interrupted for up to two consecutive idle shifts.

Paragraph (d) of the proposed rule would have required that the blast site be attended when loading is suspended. Commenters pointed out that it would be appropriate to allow an alternative to "attended." MSHA agrees and has moved the appropriate language from proposed paragraph (d) to §§ 56/57.6313, blast site security, and in the final rule clarified that the area may be barricaded and posted or flagged against unauthorized entry.

Paragraph (d) of the final rule is derived from existing §§ 56/57.6160, 57.6175, and 57.6182. It addresses the time when persons must be removed from the blast area to provide for their safety. This paragraph is not intended to prevent persons from performing the necessary hook-up activities.

Paragraph (e) deals with the need to fire blasts without delay. Once all circuits have been connected, conditions at the blast site reach their maximum potential to cause injury or death if an accidental detonation occurs. However, it is not MSHA's intent to require that loaded circuits must be connected as soon as possible. The agency recognizes that in some situations, such as in gassy mines, no blast can occur until all miners evacuate the mine. This may occur at the end of a shift. Circuit connection can in this case occur at the end of a shift, some time after holes are loaded. To clarify the intent of the standard, the Agency has deleted the phrase "as soon as possible" and replaced it with the phrase "without undue delay." There are a number of instances where unplanned detonations have resulted from lightning or other forms of extraneous electricity or impact after faces have been loaded but not connected to the initiation system.

Paragraph (f) provides for warning, clear escape routes from the blast area, and all access to the blast area protected against entry. Like the existing standard, the standard provides that access to the blast area be guarded by persons, or barricaded. It clarifies that "barricade" in this provision means "obstructed to prevent the passage of persons or vehicles." MSHA disagrees with a commenter who felt that this provision was unnecessary. Numerous accidents have occurred from the failure to clear or guard the blast area.

Paragraph (g) is a new provision requiring post-blast examinations to minimize hazards to persons who will perform subsequent work in the area. One commenter stated that the provision for post-blast examinations would not adequately promote safety because it does not explicitly state that smoke, dust, and fumes should be evaluated in any post-blast examination. This degree of specificity is not necessary. Trained and experienced persons conduct these examinations and would address all the potential hazards present at a blast area including ground conditions, undetonated explosive material and smoke, dust and fumes. MSHA clarified the standard in the final rule to address this commenter's concern by stating that the post-blast examination must be done by a person having the abilities and experience to do so.

Sections 56/57.6307 Drill Stem Loading

This final standard addresses the potential for premature detonation of explosive material while it is being loaded into the blastholes with drill stem equipment or other devices that could be extracted. It editorially revises existing §§ 56/57.6142 for consistency with other standards by substituting the terms "explosive material" and "blastholes" for the existing language "explosives or blasting agents" and "boreholes." Accidental deaths and injuries have resulted from failure to recognize the detonation hazard potential which exists when explosive material is accidentally struck by extractable drill stem equipment. Commenters suggested no substantive changes and none have been made.

Sections 56/57.6308 Initiation Systems

The final rule language is identical to the proposed rule language and provides that initiation systems be used in accordance with the manufacturer's instructions. Recent accidents and MSHA experience indicate the need for this new standard to address the safe use of electric and nonelectric initiating systems. In cases where initiating systems are used incorrectly, a variety of malfunctions or unsafe practices can occur. Premature detonations have also occurred when nonelectric systems are prematurely connected, such as to devices using a shotgun shell primer.

Some commenters agreed with the proposed provision while others felt it unnecessary. MSHA expects that new blasting systems will continue to be introduced into mining. MSHA believes that as a minimum, manufacturer's instructions relating to safe use of these systems must be followed to ensure safety of miners. The manufacturer, when introducing technology, can be expected to be familiar with any new safety characteristics and can communicate the hazards in a timely manner.

Sections 56/57.6309 Fuel Oil Requirements for ANFO

This new standard addresses misfires associated with less than maximum detonation of ammonium nitrate-fuel oil blasting agents. It prohibits the use of waste fuels to prepare ammonium nitrate-fuel oil and restricts the use of volatile liquid hydrocarbons. It requires that liquid hydrocarbon fuels used in ammonium nitrate-fuel oil have a minimum flash point of 125 °F to minimize the hazards of fuel storage and blasting agent mixing and use and to prevent the excessive build-up of fumes following a blast. The primary concerns addressed by this standard are incomplete detonation, the creation of unusually high quantities of toxic fumes and incomplete product mixing of more viscus liquids at lower temperatures. In response to comments, MSHA has made an exception to the required use of No. 2 diesel oil. Commenters pointed out that in certain areas, winter temperatures are often well below 45 °F. therefore additives or an alternative fuel such as No. 1 diesel fuel must be used in order to maintain a workable viscosity. The additives can lower the flash point, and No. 1 diesel fuel has a typical minimum flash point of 100 °F.

As proposed, the final rule prohibits the use of waste oil in preparing ANFO. MSHA is particularly concerned with the effect such a mixture might have on the viscosity, sensitivity and fume characteristics of the resulting blasting agent. MSHA intends to examine the scope of potential safety hazards associated with the preparation of ANFO with waste oil. Commenters should be aware that, as it does with coal mines, the Agency will accept petitions for modification concerning this issue.

Sections 56/57.6310 Misfire Waiting Period

The final standard combines and updates existing §§ 56/57.6104 and 56/57.6105 dealing with the length of time a person must wait after a suspected misfire before entering the blast area. The phrase "when a misfire is suspected" is introduced as the criterion for determining when to wait the prescribed period before returning to the blast area. This language is added so that a person would not feel compelled to physically investigate to determine if a misfire has occurred. After a suspected misfire, persons may not enter

the blast area for 30 minutes if blasting caps and safety fuse are used; or 15 minutes if any other type detonators are used.

Sections 56/57.6311 Handling of Misfires

This final standard combines existing §§ 56/57.6106, 56/57.6168 and 57.6177 dealing with the examination for, and handling of, misfires.

The standard recognizes that mine personnel often have the capability of safely disposing of misfires without the need to immediately notify mine management of the misfire. However, if the misfire cannot be disposed of safely, the condition must be reported immediately to mine management. Such misfire conditions may require the expertise of the manufacturer who can be contacted by mine management. For this reason, existing language has been modified in paragraph (d) to require reporting of all misfires either immediately or at the end of the shift depending upon conditions.

Paragraph (a) requires face and muck piles to be examined for misfires after each blasting operation. This final rule provision reflects the original intent of the existing standard and conforms with the language of existing §§ 56/57.6106.

In paragraphs (b) and (c), several commenters suggested changing "affected areas" to "blast site." The final standard retains "affected areas" because an accidental detonation during the removal of a misfire is likely to affect an area larger than the blast site. Several commenters questioned the scope of the phrase "only work necessary to remove any misfires" appearing in paragraph (b). MSHA clarifies its intent by adding language which includes any work related to securing the safety of miners in the affected area. For example, necessary control of ground in the misfire area would be permitted prior to removing the misfire. Although MSHA does not require reporting of misfires, it is a good practice for an operator to keep records of misfires and report serious problems to the manufacturer.

Sections 56/57.6312 Secondary Blasting

Existing § 57.6141 deals with multiple secondary blasts in a blasting area. Its intent is to minimize risks associated with the unnecessary use of multiple initiation sources in a work area when one source will suffice. Because this principle is equally applicable to surface and underground operations, the scope has been expanded to include secondary blasting at surface operations as well as underground mines.

The term "blast area" is used in the existing standard. However, the final rule definition of "blast area" has been broadened to include those areas of the mine affected by shock waves, flying material or gases. Therefore, the final rule uses the term "work area," which more accurately reflecting the intent of the old standard.

Sections 56/57.6313 Blast Site Security

This standard addresses hazards present where loading is completed and the hole is awaiting firing. It replaces existing §§ 56/57.6103 and combines proposed §§ 56/56.6306(d) and proposed §§ 56/57/6313 into final rule §§ 56/57.6313. The term "loaded" is substituted for "charged" and the term "attended" is substituted for "guarded" for consistency with other standards. The existing standard allows alternatives to guarding. The area can be barricaded and posted, or flagged against unauthorized entry. Commenters indicated that it is appropriated to continue to allow these alternatives to "attending" the site. MSHA agrees with these commenters and has allowed barricading and posting or flagging in situations where loading is suspended. The standard thereby allow mine operators flexibility in protecting loaded or partially loaded holes which are not yet ready to be initiated.

Electric Blasting—Surface and Underground

One commenter suggested that the insulation on some electric blasting hook-up wires is substandard. MSHA requested additional information regarding this hazard during rulemaking. No comments were received. The Agency has been unable to verify that this hazard exists. Therefore, this issue is not addressed in the final rule.

Sections 56/57.6400 Compatibility of Electric Detonators

This final standard modifies existing §§ 56/57.6119 and prohibits the use of incompatible electric detonators in the same round. Individual explosive material manufacturers and the IME caution that electric blasting caps of different manufacturers should not be mixed in the same series. Ignition systems may not be electrically compatible and misfires may occur. The term "brand" appearing in the existing standard is replaced with "manufacturer." Commenters agreed that "manufacturer" should be used.

Sections 56/57.6401 Shunting

This final standard addresses shunting. It provides protection against premature detonation caused by extraneous current flowing through the individual portions of the circuit as they are prepared. Editorial changes have been made in existing §§ 56/57.6120 for clarity. Commenters objected to the removal of the reference to blasting galvanometers in the existing standard. The requirement for these testing devices is retained in final standard 56/57.6407, Circuit testing.

Sections 56/57.6402 Deenergized Circuits Near Detonators

This final standard modifies existing §§ 56/57.6126. It addresses the need to deenergize electrical circuits in a blast site where electric detonators are used so that stray current will not be introduced. Stray current can cause a premature detonation during the loading process.

The standard also provides an alternative compliance method by allowing for stray current tests instead of deenergization. The test conducted as frequently as necessary must indicate that stray current levels in the area are sufficiently low so that they would not cause detonation. At the request of commenters, the statement "conducted as frequently as necessary" that appears in the existing standard is retained for clarity. Otherwise, all electrical circuits within 50 feet of electric detonators at the blast site must be deenergized when electrical detonators are used. At surface operations, voltages in excess of 650 volts are common.The use of any power cable that has copper-braid shielding, such as types SHD or SHC, is recommended to minimize stray current hazards. As pointed out in the "Handbook of Electric Blasting," Atlas Powder Company (1985), electric current will always flow from a higher voltage to a lower voltage through whatever conductive paths are available to it. If the insulation around a conductor in a power system or a piece of electrically operated equipment is defective, part of the current in the conductor can leak out and follow other conductive paths to the lower voltage. Thus, this type of stray current could pass through such alternative conductive paths as: (1) The earth, (2) damp timbers, (3) metal pipleines, (4) machinery housing, (5) track rails, (6) metal fences, (7) a conductive rock strata that lies on top of or between nonconductive strata or (8) other conductive material in electrical contact with the defect in the insultation. A potential hazard exists if an electric detonator becomes part of one of these alternate conductive paths. In the stray current test, the 1-ohm resistor is used to simulate the electric detonator. Any stray current flowing in

the circuit is detected by measuring the voltage drop across the resistor. The measured voltage drop cannot exceed the equivalent of 0.050 amps. This maximum stray current provides a safety factor and is 20% of the 0.250 amp firing current for electric detonators.

The frequency of stray current testing should be determined by considering factors such as: Changes in the conductivity of the ground; relocation or change of a source or conductors of electrical current; and the continual development of new blast sites as mining progresses. The term "electric blasting caps" is changed to read "electrical detonators" as suggested by commenters. Other editorial changes have been made.

Sections 56/57.6403 Branch Circuits

This final standard modifies existing §§ 56/57.6125, addressing unintentional current in branch circuits. It protects miners by requiring that safety switches provide isolation of the circuits to reduce the hazard of premature detonation. The standard allows equivalent methods of isolation to be used.

Permanent blasting circuits are often used by more than one miner, particularly in underground mines. The safety switch required in the standard is used to protect individuals from unintentional voltage when another miner may be energizing the circuit which could cause an unplanned ignition. This circuit is similar to an electrical lock-out when working on an electrical circuit.

Sections 56/57.6404 Separation of Blasting Circuits from power Source

Existing §§ 56/57.6127 address blasting switches and lead wire connections to the switch. The intent is to prevent accidental initiation of a blast by premature completion of the circuit. There were no changes suggested by commenters and the final rule appears with editorial changes only.

Sections 56/57.6405 Firing devices

This standard combines existing §§ 56/57.6128 and 56/57.6131 and deals with power sources and control of firing devices. Paragraph (a) addresses the need to provide sufficient power to prevent misfires. Electric detonator manufacturers specify that a minimum of 1.5 amps direct current (DC) or 2.0 amps alternating current (AC) be supplied to any single series or parallel series circuit. Many metal and nonmetal blasts include several hundred detonators with varying amounts of resistance dependent upon lengths and composition of leg wires and lead wires, the use of series or series and parallel series circuits, and the existence of current leakage conditions. It is incumbent upon the operator to evaluate these power needs and to use the proper source. The use of storage or dry cell batteries is not acceptable as a power source because dry cell batteries cannot be relied upon to have sufficient power to detonate a round and there is no built-in mechanism to alert the user that a low electric charge exists.

Paragraph (b) is a new provision which addresses the need for proper maintenance of blasting machines. Advances in technology have led to increasing complexity in firing devices. All blasting devices, including sequential timers, should be maintained in accordance with the manufacturer's instructions to ensure effective operation. Defective or improperly repaired blasting machines can contribute to misfires creating hazards to persons. For example, a sequential timer blasting machine was being used at an operation where machinery struck an undetonated charge causing an explosion and injuries. The timing system on the sequential timer provides blasting operators with a greater number of delays than are available with a conventional blasting machine. According to the accident report the machine "shut down" and failed to completely energize the blasting pattern, meaning that some or all of the circuits were not being energized appropriately. While MSHA cannot ascertain with certainty that the blasting machine was defective in this particular instance, the Agency believes that compliance with the provisions dealing with examination for misfires, §§ 56/57.6311, and with this standard addressing proper maintenance, testing, and repair of blasting machines, may have prevented this incident.

Paragraph (c) assigns control of the firing device key to the blaster. Several commenters suggested that the language relating to "person designated" in the existing standard be used instead of the term "blaster." MSHA disagrees. The blaster should be a knowledgeable person fully trained in all phases of blasting operations and is more likely to have been involved in the loading process and the evaluation of the safety hazards associated with the blast. Editorial changes have also been made to existing §§ 56/57.6131.

Sections 56/57.6406 Duration of Current Flow

This final standard clarifies existing §§ 56/57.6133 which address the prevention of misfires through limiting the duration of current flow. The standard modifies the existing standard by allowing the operator to choose the manner in which the current flow would be limited.

"Arcing" occurs when excessive current within the electric detonator causes a build-up of heat at the bridgewire. The build-up can result in a misfire. When electric blasting is performed from power sources such as powerlines or lighting circuits which provide a continous current, the duration of current flow must be limited to prevent arcing within the detonator. Manufacturers have determined that arcing can be avoided if the current flow time is limited to 25 milliseconds. The phrase "zero-delay" has been changed to "25 millisecond delay," the more precise term. The use of a capacitor dicharge blasting machine is recommended as a practical means of complying with §§ 56/57.6406. The need for powerline shooting has been largely replaced by the availability of high energy capacitor discharge blasting machines. In response to comments, the phrase "explosive charge" in the existing standard is changed to "explosive device" for clarity.

Sections 56.6407 and 57.6407 Circuit Testing

The final standard editorially modifies existing §§ 56/57.6121 dealing with circuit testing. Testing of circuits helps prevent misfires by determining whether an individual series circuit is continous and by locating broken wires and connections. When blasting electrically, the circuit must be tested for continuity and for resistance at surface mines and for continuity at underground mines prior to blasting. The required testing differs between surface and underground mines since surface holes are deeper, larger, and different types of priming systems are used.

This standard also addresses the need to use the appropriate type of testing equipment to avoid introducing excessive current which has resulted in premature detonations and fatalities. Used properly, blasting galvanometers produce the correct amount of current for testing the circuit. The term "borehole" has been changed to "blasthole" for consistency. As suggested by commenters, "electric blasting caps" has been changed to the proper term, "electric detonators," and "or" has been changed to "and" for clarity.

Nonelectric blasting—Surface and Underground

Sections 56/57.6500 Damaged Initiating Material

This final standard revises existing §§ 56/57.6109 which address the prevention of misfires from defective initiating material. The phrase "shock and gas tubing and similar material" is added to address recent technological developments that fall within the coverage of the standard. A commenter stated that the term "shock tubing" is no longer used by the manufacturers to describe this initiating material. While manufacturers may be identifying the product by its brand name, the term "shock tubing" is understood by the industry and has been included in manufacturers' publications.

Except for gas tubing, there is no method of testing the continuity of these initiating materials prior to blasting. To avoid misfires it is extremely important to protect the integrity of the material by using components which are not kinked, bent sharply or damaged. It is also important to check visually to ensure that components are properly aligned and connected. This requirement has been included in the final rule. Commenters recommended adding the phrase "hazardous due to being kinked" to allow the use of materials that might still function properly. The Agency disagrees and retains the proposed language in the final rule.

Sections 56/57.6501 Nonelectric Initiation Systems

This final standard combines existing §§ 56/57.6115, 56/57.6163, and 56/57.6164 which address misfire hazards encountered in detonating cord blasting. For other types of nonelectric blasting systems, it also addresses the misfire hazards from interruptions or cut-offs to the initiation line.

A new provision in paragraph (a) requires the use of double trunklines or loop systems to help prevent misfires when blasting with any nonelectric system. There are three exceptions. First, paragraph (a)(1) excepts safety fuse blasting because of its uniqueness. The provisions dealing with safety fuse are set out in §§ 56/57.6502. Second, paragraph (a)(2) excludes secondary blasting from the double-trunkline requirement. MSHA agrees with public comment that a misfire would be obvious in a secondary blast and easily dealt with. And third, paragraph (a)(3) excludes blasting one or two rows when using shock tube. The proposed rule included a paragraph (a)(3) directed toward multiple row blasting which would have allowed the operator to forego use of the double trunkline or loop system when using in-the-hole delays of sufficient duration to retard ground movement. While it is good practice to have in-hole delays of sufficient duration to preclude cut-off, several commenters indicated using a redundant shock tube system provides an additional measure of protection and requested that MSHA require multiple initiation paths to the blastholes with use of shock tube. MSHA agrees it is necessary that multiple initiation paths should be used when using more than two rows of shock tube. When blasting with more than two rows of shock tube, the nature of the misfire can be extensive and complex. The additional protection offered by a double trunkline is necessary in this case. One commenter suggested that MSHA delete paragraph (a) and replace it with language giving the blaster discretion. MSHA disagrees. Paragraph (a) sets out basic practices which must be followed to ensure safety. This method has been effective in preventing misfires due to cut-offs. Paragraphs (b) and (d) are new provisions dealing with the shock tube and gas tube blasting systems which have been introduced into the mining industry. These paragraphs set out some basic safety practices outlined by the individual manufacturers. The proper handling of shock tube initiation systems is essential because they cannot be physically tested for continuity. Shock tubes are also directional in nature and cannot be spliced to another length of shock tube by the traditional knotting or tying techniques. Manufacturers of shock tube testified that a single splice in a lead-in trunkline during dry conditions would not affect safety. MSHA has modified paragraph (b)(2) to allow this practice. When connecting shock tube to other initiation devices such as the detonating cord trunkline, it is necessary that all joints be kept tight and at right angles to the trunkline. Otherwise cut-off can occur and result in a misfire. Special connectors are available for connecting shock tube to detonating cord. When connecting shock tube to another length of shock tube, propagation can only be ensured if the correct type of connector is used. Paragraphs (b)(3) and (c)(5) have been revised in response to comments to allow more flexibility when not using delay connectors outside the blasthole.

Paragraph (c) addresses detonating cord blasting. Paragraph (c)(1) is a new requirement to ensure that a premature detonation in the blasthole will not transmit detonation to the entire spool or cord on the surface. Paragraphs (c)(2) requires that in multiple row blasts, the trunkline layout must be designed so that the detonation can reach each blasthole from at least two directions. Paragraph (c)(3) retains that existing requirement that connections must be tight and kept at right angles to the trunkline. Paragraph (c)(4) contains a new requirement the detonators must be attached securely to the side of the detonating cord and pointed in the direction in which the detonation is to proceed. These provisions allow the mine operator flexibility in the shot design while addressing the hazards of misfires due to cut-off. The requirements of these paragraphs retain the same degree of safety as the prior specific requirements of crossties at 200 feet intervals and tight connections at right angles to the trunkline. Paragraph (c)(5) is a new provision designed to protect the integrity of the cord and connections from damage by loading activities so that misfires will not occur. Paragraph (c)(6) has been added to the final rule to prevent accidents which have occurred when lead-in lines spooled from trucks become lodged. The lead-in lines then come under sudden tension and become more susceptible to impact detonation in the surface delay connector.

Sections 56/57.6502 Safety Fuse

This final standard combines existing standards dealing with safety fuse into one standard. They are: §§ 56/57.6110, 56/57.6111, 56/57.6112, 56/57.6113, 56/57.6114, 56/57.6116, 56/57.6117 and 56/57.6118.

Paragraph (a) requires that the burning rate of each spool of safety fuse be checked and that users be made aware of the rate. Manufacturers acknowledge that burning rates vary as much as plus or minus ten percent. Additionally, during storage and handling, factors such as dampness and mishandling may create an even greater variation in the burning rate. Blasters must know the burning rate of the fuse in use in order to properly time the individual shots and allow an opportunity to evacuate safely.

Paragraph (b) addresses the minimum burning time for safety fuse depending on the number of holes to be fired. It recognizes that the length of lighting time varies with the number of fuses to be lit, and provides time for the miner to evacuate before holes begin to detonate.

Paragraph (c) ensures that the timing of safety fuse is considered so that all fuses are burning within the hole before the first blasthole detonates. Failure to take this precaution could result in undetonated holes, leaving unwanted explosive material in the muckpile to be handled later.

Paragraph (d) includes a quality control measure to ensure ease of lighting and consistency of the burning rate. Note that under final rule §§ 56/57.6904, smoking cannot be permitted in this area due to the spark sensitivity of the black powder train in the fuse.

Paragraph (e) and (f) contain only editorial changes. The existing standards provide for effective connection between the fuse and cap and prohibits lighting prior to placement.

Paragraph (g) prohibits use of carbide lights, liquified petroleum gas torches and cigarette lighters to light safety fuse. These devices may induce erratic burning rates, and may not provide reliable initiation of the fuse.

Paragraph (h) provides a safety factor during the critical fuse lighting operation. The final rule allows the lighting of up to 15 individual fuses per person.

Extraneous Electricity—Surface and Underground

Sections 56/57.6600 Loading Practices

Existing §§ 56/57.6123 require that loading be suspended if extraneous electricity is detected when using electrical detonators. The final standard substitutes the word "suspected" for "detected" to increase the margin of safety. As proposed, the standard sets out a threshold level to determine the presence of stray current. The threshold is the level recommended by the IME and is accepted by the industry as a safe level of extraneous electricity for electric blasting. It is based upon the current required to detonate electric detonators. The minimum firing current of detonators is approximately 0.25 amperes. Manufacturers have established that the maximum safe current flow through a detonator, without the potential for initiation, is one-fifth of the minimum firing current, or 0.05 amperes. The 1-ohm resistor specified in the test represents the same resistance as the electric detonator. As proposed, the final language requires that stray current not exceed "0.05 amperes through a 1-ohm resistor," which is consistent with final §§ 56/57.6402.

Editorial changes have also been made. The term "extraneous electricity" includes both static electricity and stray current. The word "loading" replaces "charging" and the word "detonators" replaces "caps" for consistency.

Sections 56/57.6601 Grounding

This final standard clarifies existing §§ 56/57.6129, addressing the hazard of ground wires conducting extraneous electricity through the blasting circuit and into the blast area. It is important that electrical blasting circuits be isolated and insulated from any other electrical sources and not grounded, so that fault currents are not induced into the blasting circuit.

MSHA adopts a commenter's suggestion to broaden the existing language. As proposed, the existing standard is broadened to include powerline sources when used. This clarifies that all methods of electric initiation are covered. The standard also has been edited for clarity.

Sections 56/57.6602 Static Electricity Dissipation During Loading

This final standard addresses the build-up of static electricity during pneumatic loading or dropping of explosive material into a blasthole. It expands the scope of existing §§ 56/57.6193; 56/57.6194; 56/57.6195; and 56/57.6198, which explicitly cover "blasting agents," to address all explosive material.

The standard requires that an evaluation of potential static electricity hazards be made and that the hazard be eliminated before loading begins. It prohibits the use of wire-countered hoses and plastic tube hold liners where their use could create the hazard of unwanted current flow.

The standard also contains requirements for loading equipment used in pneumatic placement of explosive material. Loading hoses must be semi-conductive so that static electricity generated during the loading process is harmlessly dissipated. The hose must, however, provide sufficient resistance to prevent stray current from reaching the detonators which could result in a premature detonation. The loading vessel and its component parts must be bonded and grounded to complete the flow path for static electricity to ground and to prevent the vessel from serving as a storage capacitor for the generated static electricity.

The proposed rule contained specifications for loading hose which were derived from the NFPA 495. While the final rule contains language which differs from that in existing NFPA 495–1990, it conforms to the language (1000 ohms per foot resistance) contained in NFPA's proposed revisions to NFPA 495. The final rule ensures that the characteristics of the hose will be appropriate for the conditions present at mines and will provide protection against premature detonation. Manufacturers specify differing amounts and tolerances for resistance of the hose depending upon the mining environment.

Some commenters acknowledged the hazard of using plastic hole liners, but suggested that their restriction is appropriate only when electric detonators are used. The Agency concurs and the standard includes this revision. Commenters also requested clarification that plastic bags containing stemming and explosive material would not be covered by this standard. These objects are not considered to be plastic tube hole liners and are exempted from the provisions of the standard.

Editorial changes have been made in response to comments received.

Sections 56/57.6603 Air Gap

No change has been made to existing §§ 56/57.6130. The standard provides for an air gap to reduce the potential for extraneous electricity bridging the distance between blasting circuits and electric power sources.

Sections 56.6604 and 57.6604 Precautions During Storms

This final standard divides existing §§ 56/57.6124 into two standards, §§ 56.6604 and 57.6604. It broadens the scope of the existing surface blasting standard to require the evacuation of personnel when an electrical storm is approaching, regardless of the type of initiation systems being used. It also revises the language applicable to underground mines to address those situations where lightning strikes on the surface can travel underground and create a hazard. For surface blasting, the NFPA 495–1990, 7–1.15(c), and manufacturers of explosive material agree that a direct lightning strike on any type of initiation system can result in detonation. Agency statistics indicate that premature detonations have been initiated by lightning in underground mines when paths such as air lines, water lines, rails, and conductive ore bodies are present. Each mine operator should evaluate the underground entrances and ore body to determine whether a path is provided for lightning to travel to a blasting area.

When a determination has been made that an electrical storm is in progress and is approaching, the final rule requires evacuation of the blast area. Some commenters suggested that MSHA adopt the Arizona Code language for determining when persons should evacuate a blast area during the approach of a storm. The Arizona Code uses the phrase "during the ominous approach and progress" of a storm. These commenters contend that the approach of a storm may be hours away and evacuation may not yet be necessary. However, the standard does

not incorporate the term "ominous" since the term may be construed to mean "arrival" of the storm. Recent fatalities resulting from premature detonations attributable to lightning strikes indicate that the danger can exist well before a storm may be considered ominous to those affected. In addition to lightning, the atmosphere can also build up dangerous charges of static electricity at distances far removed from the storm center.

The standard also incorporates suggestions of commenters to include language calling for the withdrawal of persons "to a safe location." As stated by one commenter, a safe location should provide protection against both explosive and lightning hazards.

Sections 56/57.6605 Isolation of blasting circuits.

Existing §§ 56/57.6162 deal with the need to isolate the blasting circuits from sources of extraneous electricity. It also addresses the force of the blast that can propel firing lines into contact with overhead powerlines. Coverage is expanded to underground as well as surface applications since the same safety principles are applicable underground. Overhead powerlines include trolley lines. For clarity, MSHA has adopted the suggestions of two commenters to include the language "stray or static" electricity instead of "extraneous" electricity and "contact between firing lines and overhead powerlines." Commenters felt that the proposed standard prohibiting blasting lines to be strung across conductors was unnecessarily strict and was not completely understood. MSHA agrees that there can be cross points provided special precautions are taken. Therefore, MSHA in its final rule has modified the proposed language to address the concerns of these commenters and allows lead wires and blasting lines to cross over conductors provided they are isolated and insulated from these conductors.

Equipment/Tools—Surface and Underground

Sections 56/57.6700 Nonsparking Tools

Final §§ 56/57.6700 combine and editorially revise existing §§ 56/57.6099 and 56/57.6134 dealing with the use of nonsparking tools when preparing packaged explosive material for use. Some explosive materials contain spark-sensitive and potentially spark-generating ingredients. The final rule should reduce the likelihood that sparks would be generated by requiring that nonsparking tools be used for punching holes in cartridges.

Existing §§ 56/57.6134 deal with the use of nonsparking implements to open containers. Black powder is shipped in metal containers and many metallic fasteners are used in the packaging of explosive material. In view of these packaging practices and the possibility that a tool used to open a cartridge of explosive material could puncture the contents, the final rule requires that nonsparking tools be used for opening containers of explosive material and for punching holes in explosives cartridges.

Sections 56/57.6701 Tamping and Loading Pole Requirements

Final §§ 56/57.6701 clarify existing §§ 56/57.6100 and respond to commenters' requests to allow material other than wood to be used for tamping poles. MSHA's preproposal draft would have permitted the use of products other than wood for tamping and loading poles provided that they meet specific electrical resistance criteria. Although comments on the preproposal provision were in general agreement with the standard and its intent, some commenters observed that the resistance requirements may not be achievable, even in wooden poles, where a wet environment is encountered. Manufacturing requirements for resistive tamping and loading poles specify an electrical resistance of more than 5000 ohms per foot and less than 3 meg ohms per foot. As proposed, the final standard contains no reference to these specifications but rather requires that poles be nonconductive and nonsparking and that couplings be nonsparking.

Maintenance—Surface and Underground

Sections 56/57.6800 Storage Facilities

This final standard describes precautions to be taken when an explosive material storage facility is repaired. Existing §§ 56/57.6012 require removal of material and cleaning for all interior repairs. The standard requires removal and cleaning only if a spark or flame could be generated.

The existing standard also requires material removal to a "safe distance" and requires that the material be "properly guarded." The final standard requires removal of all explosive material to a distance of 50 feet. Repairs which generate sparks are generally of a welding or cutting nature. In these instances, the hot sparks are propelled outward from the work site. A minimum of 50 feet, as recommended by manufacturers, is needed for safety.

"Monitored" has been substituted for "properly guarded" to allow the mine operator latitude for security measures. In most instances, the workers performing the repairs would do the monitoring.

Sections 56/57.6801 Vehicle Repair

This final standard editorially revises existing §§ 56/57.6045 and incorporates commenters' language substituting "explosive material and oxidizers" for "explosives or detonators" and "into" for "to." The final standard prohibits vehicles containing explosive material from being taken into a repair garage or shop, where ignition sources are present.

Sections 56/57.6802 Bulk Delivery Vehicles

This new standard addresses the detonation hazard created when heat is applied to equipment on bulk delivery vehicles which have contained explosive material. The new venting requirement for hollow shafts is derived from the NFPA 495–1990 edition, to provide for the escape of gases which could be generated if even minimal amounts of residue remain inside the shaft when heat is applied.

Sections 56/57.6803 Blasting Lines

This final standard adds a requirement to existing §§ 56/57.6122 which address the quality of permanent blasting lines. The standard requires that not only permanent blasting lines but "all" blasting lines be insulated, and kept in good repair. This minimizes the risk of pre-ignition and reduces the possibility of misfires.

General Requirements—Surface and Underground

Sections 56/57.6900 Damaged or Deteriorated Explosive Material

This final standard editorially revises existing §§ 56/57.6092, dealing with disposal of defective explosives. The proposed rule provided that delay detonators that are at least five years old cannot be used or stored because the delay element becomes erratic and may cause misfires or out-of-sequence firing. Commenters questioned the validity of the use of "5 years" stating that this may not be an appropriate cut-off period. MSHA has deleted the reference to "5 years" from the final standard. However, good practice would normally not have delay detonators five years old at mine property. MSHA's preproposal draft required that damaged or deteriorated explosive material be disposed of "only on the surface." Commenters objected to this change because it would introduce additional hazards entailed in the handling and transporting of damaged or deteriorated

explosives to the surface for removal. As proposed, the final rule retains the existing requirement for safe disposal of these explosives.

Sections 56/57.6901 Black Powder

The final standard combines and editorially revises existing §§ 56/57.6136 and 56/57.6137 and adds the requirement that containers of black powder be constructed to be nonsparking. Black powder is presently used in the metal and nonmetal mining industry as the powder train in safety fuse and in bulk form in dimension stone mining. This standard addresses bulk use. Black powder when used in bulk form is extremely spark and heat sensitive. For this reason, black powder must be handled with extreme caution Spills, which could occur any time the bulk material is handled, must be especially avoided in the vicinity of a magazine. Vehicular and foot traffic in this area while loading and unloading magazines could spread this substance over a wider area and expose it to heat sources such as engine manifolds and catalytic converters. For this reason, MSHA is retaining the existing requirement that black powder containers shall not be opened within 50 feet of any magazine. The final standard also retains existing provisions that prohibit the opening of containers of black powder within 50 feet of sources of open flame or sparks because the material is so spark sensitive. These provisions are consistent with other final standards that require separation of ignition sources from explosive material by 50 feet.

The nonsparking container requirement is intended to prevent the practice of transferring black powder into small metal cans before loading. Manufacturers often supply black powder in metal containers. These containers, however, are coated with a nonsparking material and their continued use will be accepted.

The final standard prohibits holes from being reloaded for at least 12 hours when the blastholes have failed to break as planned due to the potential hazard of residual heat from the initial blast.

Sections 56/57.6902 Excessive Temperatures

Final §§ 56/57.6902 deal with placement of explosive materials in holes where heat could cause premature detonation. It revises existing §§ 56/57.6138 for clarity, and the term "explosive material" replaces the phrase "explosives or blasting agents" for consistency. The temperature of holes suspected of being hot should be measured before loading. Without taking special precautions, explosive material normally cannot be safely loaded into holes having a temperature above 150° F. These temperatures are often encountered where explosives have been used to enlarge or "spring" the holes, or when blasting near fires or other hot areas such as kilns. Ammonium nitrate-fuel oil blasting agents, or other bulk mixed blasting materials reacting with sulfide ores may also generate high temperatures. In response to comments received, MSHA has deleted the specific reference to 150° F. The final rule prohibits the use of explosive material in areas where heat could cause premature detonation. Further, the final rule requires special precautions when blasting sulfide ores.

Sections 56/57.6903 Burning Explosive Material

Existing §§ 56/57.6161 address actions to be taken with burning explosives at the blast site. The standard broadens the scope of the existing standard. It expands the "surface only" application of the standard to include underground areas because burning explosives can occur anywhere blasting is performed. Incomplete detonation in a blasthole can lead to the slow burning of explosives in the hole. The IME recommended that these locations not be approached for at least one hour after the apparent burning has stopped. In the case of fire in a quantity of explosive materials, such as a haulage vehicle or bulk loading vehicle, evacuation to ½ mile in all directions is recommended. (1990 Emergency Response Guidebook, DOT, P 5800.4—Guide 46). MSHA agrees and has incorporated this language into the standard. Commenters suggested and MSHA agrees that special situations may exist, as in oil shale mining, where it may be necessary under certain circumstances to allow persons to fight a fire even though there is a possibility of the presence of suspected explosive material. This unique situation is not addressed in the standard and appears to be an appropriate subject for a request for a petition for modification. Other editorial changes have been made to the standard.

Sections 56/57.6904 Smoking and Open Flames

Existing §§ 56/57.6250 which prohibit smoking and open flames near explosive material is editorially changed for clarity.

General Requirements—Underground Only

Section 57.6960 Mixing of Explosive Material

Existing § 57.6220 prohibits the mixing of ammonium nitrate-fuel oil blasting agents underground. The preproposal draft prohibited underground mixing of all blasting agents. Commenters objected, stating that underground mixing of blasting agents would actually promote safety when done properly. One commenter pointed out that hazards associated with mixing and handling of ammonium nitrate-fuel oil included the potential build-up of static electricity and fine dust upon handling and processing. As ammonium nitrate is crushed finer and finer, it becomes more and more sensitive to many stimuli, such as sparks, friction, impact and shock. The commenter indicated that these hazards do not exist or are greatly reduced when mixing slurries or emulsions.

MSHA's final standard allows the bulk mixing of explosive material underground provided the prior approval of the MSHA district manager has been obtained. In reaching a decision on whether to allow bulk mixing underground, the district manager on a case by case basis will take into account the various safety factors set out in the standard. Technological advances have allowed for the introduction of new combinations of explosive materials designed for particular applications. District manager approval would provide the needed flexibility to respond to innovations in material or processes but also provide a mechanism to evaluate the new technology in the context of the safety hazards that may exist at a particular mine.

H. Derivation Table

The following derivation table lists: (1) The number of the final standard, and (2) the number of the existing standard. Standards that uniformly appear in 30 CFR 56 and 57 are referred to in this table as 56/57.

DERIVATION TABLE

Final Number	Existing Number
56/57.6100	56/57.6002 and 56/57.6008.
56/57.6101	56/57.6005.
56/57.6102	56/57.6007 and 56/57.6011.
56/57.6130	56/57.6001.
56.6131 and 57.6131	56/57.6020.
56/57.6132	56/57.6020.
56/57.6133	56/57.6159.
57.6160	New.

DERIVATION TABLE—Continued

Final Number	Existing Number
57.6161	57.6027, 57.6029 and 57.6030.
56/57.6200	56/57.6048.
56/57.6201	56/57.6040.
56/57.6202	56/57.6042, 56/57.6043, 56/57.6044, 56/57.6047, 56/57.6050, 56/57.6053, 56/57.6065, 57.6077 and 56/57.6200.
56/57.6203	56/57.6041 and 56/57.6051.
56.6204 and 57.6204	56/57.6054, 57.6075 and 57.6076.
56/57.6205	56/57.6056 and 56/57.6057.
56/57.6300	56/57.6090 and 56/57.6091.
56/57.6301	56/57.6093.
56/57.6302	56/57.6096.
56/57.6303	56/57.6097 and 56/57.6098.
56/57.6304	56/57.6101.
56/57.6305	56/57.6102.
56/57.6306	56/57.6094, 56/57.6160, 57.6175, and 57.6182.
56/57.6307	56/57.6142.
56/57.6308	New.
56/57.6309	New.
56/57.6310	56/57.6104 and 56/57.6105.
56/57.6311	56/57.6106, 56/57.6168 and 57.6177.
56/57.6312	57.6141.
56/57.6313	56/57.6103.
56/57.6400	56/57.6119.
56/57.6401	56/57.6120.
56/57.6402	56/57.6126.
56/57.6403	56/57.6125
56/57.6404	56/57.6127.
56/57.6405	56/57.6128 and 56/57.6131.
56/57.6406	56/57.6133.
56.6407 and 57.6407	56/57.6121.
56/57.6500	56/57.6109.
56/57.6501	56/57.6115, 56/57.6163, and 56/57.6164.
56/57.6502	56/57.6110, 56/57.6111, 56/57.6112, 56/57.6113, 56/57.6114, 56/57.6116, 56/57.6117, and 56/57.6118.
56/57.6600	56/57.6123.
56/57.6601	56/57.6129.
56/57.6602	56/57.6193, 56/57.6194, 56/57.6195, and 56/57.6198.
56/57.6603	56/57.6130.
56.6604 and 57.6604	56/57.6124.
56/57.6605	56/57.6162.
56/57.6700	56/57.6099 and 56/57.6134.
56/57.6701	56/57.6100.
56/57.6800	56/57.6012.
56/57.6801	56/57.6045.
56/57.6802	New
56/57.6803	56/57.6122.
56/57.6900	56/57.6092.
56/57.6901	56/57.6136 and 56/57.6137.
56/57.6902	56/57.6138.
56/57.6903	56/57.6161.
56/57.6904	56/57.6250.
57.6960	57.6220.
56/57.7055	56/57.6107.
56/57.7051	56/57.6135.

I. Distribution Table

For the convenience of the reader, the following distribution table has been added as a cross-reference guide. Standards that uniformly appear in 30 CFR parts 56 and 57 are referred to in this table as 56/57.

DISTRIBUTION TABLE

Existing Number	Final Number
56/57.6001	57/57.6130.
56/57.6002	56/57.6100.
56/57.6005	56/57.6101.
56/57.6007	56/57.6102.
56/57.6008	56/57.6100.
56/57.6011	56/57.6102.
56/57.6012	56/57.6800.
56/57.6020	56.6131, 57.6131 and 56/57.6132.
57.6027	57.6161.
57.6029	57.6161.
57.6030	57.6161.
56/57.6040	56/57.6201.
56/57.6041	56/57.6203.
56/57.6042	56/57.6202.
56/57.6043	56/57.6202.
56/57.6044	56/57.6202.
56/57.6045	56/57.6801.
56/57.6046	Removed.
56/57.6047	56/57.6202.
56/57.6048	56/57.6200.
56/57.6050	56/57.6202.
56/57.6051	56/57.6203.
56/57.6053	56/57.6202.
56/57.6054	56.6204 and 57.6204.
56/57.6056	56/57.6205.
56/57.6057	56/57.6205
56/57.6065	56.6202.
57.6075	56.6204 and 57.6204.
57.6076	56.6204 and 57.6204.
57.6077	56/57.6202.
56/57.6090	56/57.6300.
56/57.6091	56/57.6300.
56/57.6092	56/57.6900.
56/57.6093	56/57.6301.
56/57.6094	56/57.6306.
56/57.6096	56/57.6302.
56/57.6097	56/57.6303.
56/57.6098	56/57.6303.
56/57.6099	56/57.6700.
56/57.6100	56/57.6701.
56/57.6101	56/57.6304.
56/57.6102	56/57.6305.
56/57.6103	56/57.6313.
56/57.6104	56/57.6310.
56/57.6105	56/57.6310.
56/57.6106	56/57.6311.
56/57.6107	Transferred to subpart F, 56/57.7055.
56/57.6108	Removed.
56/57.6109	56/57.6500.
56/57.6110	56/57.6502.
56/57.6111	56/57.6502.
56/57.6112	56/57.6502.
56/57.6113	56/57.6502.
56/57.6114	56/57.6502.
56/57.6115	56/57.6501.
56/57.6116	56/57.6502.
56/57.6117	56/57.6502.
56/57.6118	56/57.6502.
56/57.6119	56/57.6400.
56/57.6120	56/57.6401.
56/57.6121	56.6407 and 57.6407.
56/57.6122	56/57.6803.
56/57.6123	56/57.6600.
56/57.6124	56.6604 and 57.6604.
56/57.6125	56/57.6403.
56/57.6126	56/57.6402.
56/57.6127	56/57.6404.

DISTRIBUTION TABLE—Continued

Existing Number	Final Number
56/57.6128	56/57.6405.
56/57.6129	56/57.6601.
56/57.6130	56/57.6603.
56/57.6131	56/57.6405.
56/57.6132	Removed.
56/57.6133	56/57.6406.
56/57.6134	56/57.6700.
56/57.6135	Transferred to subpart F, 56/57.7056.
56/57.6136	56/57.6901.
56/57.6137	56/57.6901.
56/57.6138	56/57.6902.
56/57.6139	Removed.
56/57.6140	Removed.
57.6141	56/57.6312.
56/57.6142	56/57.6307.
56/57.6159	56/57.6133.
56/57.6160	56/57.6306.
56/57.6161	56/57.6903.
56/57.6162	56/57.6605.
56/57.6163	56/57.6501.
56/57.6164	56/57.6501.
56/57.6168	56/57.6311.
57.6175	56/57.6306.
57.6177	56/57.6311.
56/57.6182	57.6306.
56/57.6193	56/57.6602.
56/57.6194	56/57.6602.
56/57.6195	56/57.6602.
56/57.6198	56/57.6602.
57.6200	57.6202.
57.6220	57.6960.
56/57.6250	56/57.6904.

IV. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared a Regulatory Impact Analysis to identify potential costs and benefits associated with the revised changes to its explosives standards for metal and nonmetal mines. The Agency has combined this analysis with the Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, summarized below, MSHA has determined that the final rule does not result in major cost increases nor have an effect of $100 million or more on the economy.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulations. This final rule introduces alternative compliance methods to the existing regulations that would directly benefit small mining operations. In addition, the final standards clarify compliance responsibilities and adopt performance-oriented standards when possible.

In the following summary of the Regulatory Flexibility Analysis, MSHA has compared the costs associated with the final requirements to the costs associated with the existing

requirements. MSHA also has compared the benefits associated with the final requirements to the benefits associated with the existing requirements. A copy of the full analysis is available upon request.

MSHA estimates that the total first-year cost for compliance with the final rule is $2.7 million compared to $1.1 million for compliance with the existing standards, for an incremental impact of about $1.6 million. The total annual and annualized cost of complying with the existing rule is $0.9 million and of complying with the final rule is $2.4 million. The total annual and annualized incremental cost for complying with the final rule is $1.5 million.

MSHA expects that the final rule will result in reduced risk to employee safety. Full compliance with the final rule would have likely prevented or contributed to the prevention of 27 deaths and 190 nonfatal injuries over the past ten years, compared to 21 deaths and 166 nonfatal injuries which should have been prevented by full compliance with the existing standards. MSHA believes that the clarified compliance requirements in the final rule would have increased the likelihood of preventing at least an additional six deaths and 88 injuries over this same period.

For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees. The final rule affects about 4800 metal and nonmetal mining operations under MSHA jurisdiction that use explosive material, of which about 3400 are small business entities. MSHA estimates that small mines will incur first-year incremental compliance costs of about $603,000 or about $176 per mine and annual incremental compliance costs of about $590,000 or about $172 per mine. Although individual mines may incur significantly greater compliance costs, MSHA considers the impact to be insignificant industry wide.

List of Subjects in 30 CFR Parts 56 and 57

Mine safety and health, Metal and nonmetal mining, Explosives.

Dated: January 8, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Subparts E and F of part 56, subchapter N, chapter I, title 30 of the Code of Federal Regulations are amended as follows:

1. Revise subpart E to read as set forth below.

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

* * * * *

Subpart E—Explosives

Sec.

Authority: 30 U.S.C. 811, 956, and 961.

Subpart E—Explosives

§ 56.6000 Definitions.

The following definitions apply in this subpart.

Attended. Presence of an individual or continuous monitoring to prevent unauthorized entry or access.

Blasting agent. Any substance classified as a blasting agent by the Department of Transportation in 49 CFR 173.114(a), (1989 compilation). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Blast area. The area in which concussion (shock wave), flying material, or gases from an explosion may cause injury to persons.

In determining the blast area, the following factors shall be considered:

(1) Geology or material to be blasted.

(2) Blast pattern.

(3) Burden, depth, diameter, and angle of the holes.

(4) Blasting experience of the mine.

(5) Delay system, powder factor, and pounds per delay.

(6) Type and amount of explosive material.

(7) Type and amount of stemming.

Blast site. The area where explosive material is handled during loading, including the perimeter formed by the blastholes and 50 feet in all directions from loaded holes. The 50-foot requirement also applies in all directions along the full depth of the hole.

Detonating cord. A flexible cord containing a center core of high explosives which may be used to initiate other explosives.

Detonator. Any device containing a detonating charge used to initiate an explosive. These devices include electric or nonelectric instantaneous or delay blasting caps, and delay connectors. The

term "detonator" does not include detonating cord. Detonators may be either "Class A" detonators or "Class C" detonators, as classified by the Department of Transportation in 49 CFR 173.53, and 173.100, (1989 compilation). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Emulsion. An explosive material containing substantial amounts of oxidizers dissolved in water droplets, surrounded by an immiscible fuel.

Explosive. Any substance classified as an explosive by the Department of Transportation in 49 CFR 173.53, 173.88, and 173.100 (1989 compilation). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Explosive material. Explosives, blasting agents, and detonators.

Flash point. The minimum temperature at which sufficient vapor is released by a liquid to form a flammable vapor-air mixture near the surface of the liquid.

Igniter cord. A fuse that burns progressively along its length with an external flame at the zone of burning, used for lighting a series of safety fuses in a desired sequence.

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½ inch thick plywood, ½ inch thick gypsum wallboard, ⅛ inch thick low carbon steel, and ¼ inch thick plywood, bonded together in that order. Other combinations of material may be used, such as plywood, wood, or gypsum wallboard as insulators, and steel or wood as structural elements, provided that the partition is equivalent to a laminated partition for both insulation and structural purposes as determined by appropriate testing. The IME 22 container or compartment, described in IME Safety Library Publication 22 (Jan. 1985), meets the criteria of a laminated partition.

Loading. Placing explosive material either in a blasthole or against the material to be blasted.

Misfire. The complete or partial failure of explosive material to detonate as planned. The term also is used to describe the explosive material itself that has failed to detonate.

Multipurpose dry-chemical fire extinguisher. An extinguisher having a rating of at least 2–A:10–B:C and containing a nominal 4.5 pounds or more of dry-chemical agent.

Primer. A unit, package, or cartridge of explosives which contains a detonator and is used to initiate other explosives or blasting agents.

Safety switch. A switch that provides shunt protection in blasting curcuits between the blast site and the switch used to connect a power source to the blasting circuit.

Slurry. An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener.

Water gel. An explosive material containing substantial portions of water, oxidizers, and fuel, plus a cross-linking agent.

Storage

§ 56.6100 Separation of stored explosive material.

(a) Detonators shall not be stored in the same magazine with other explosive material.

(b) When stored in the same magazine, blasting agents shall be separated from explosives, safety fuse, and detonating cord to prevent contamination.

§ 56.6101 Areas around explosive material storage facilities.

(a) Areas surrounding storage facilities for explosive material shall be clear of rubbish, brush, dry grass, and trees for 25 feet in all directions, except that live trees 10 feet or taller need not be removed.

(b) Other combustibles shall not be stored or allowed to accumulate within 50 feet of explosive material. Combustible liquids shall be stored in a manner that ensures drainage will occur away from the explosive material storage facility in case of tank rupture.

§ 56.6102 Explosive material storage practices.

(a) Explosive material shall be—

(1) Stored in a manner to facilitate use of oldest stocks first;

(2) Stored according to brand and grade in such a manner as to facilitate identification; and

(3) Stacked in a stable manner but not more than 8 feet high.

(b) Explosives and detonators shall be stored in closed nonconductive containers except that nonelectric detonating devices may be stored on nonconductive racks provided the case-insert instructions and the date-plant-shift code are maintained with the product.

§ 56.6130 Explosive material storage facilities.

(a) Detonators and explosives shall be stored in magazines.

(b) Packaged blasting agents shall be stored in a magazine or other facility which is ventilated to prevent dampness and excessive heating, weather-resistant, and locked or attended. Facilities other than magazines used to store blasting agents shall contain only blasting agents.

(c) Bulk blasting agents shall be stored in weather-resistant bins or tanks which are locked, attended, or otherwise inaccessible to unauthorized entry.

(d) Facilities, bins or tanks shall be posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach.

§ 56.6131 Location of explosive material storage facilities.

(a) Storage facilities for an explosive material shall be—

(1) Located in accordance with appendix I to subpart E—MSHA Tables of Distances. However, where there is not sufficient area at the mine site to allow compliance with appendix I, storage facilities shall be located so that the forces generated by a storage facility explosion will not create a hazard to occupants in mine buildings and will not damage dams or electric substations; and

(2) Detached structures located outside the blast area and a sufficient distance from powerlines so that the powerlines, if damaged, would not contact the magazines.

(b) Operators should also be aware of regulations affecting storage facilities in 27 CFR part 55.

§ 56.6132 Magazine requirements.

(a) Magazines shall be—

(1) Structurally sound;

(2) Noncombustible or the exterior covered with fire-resistant material;

(3) Bullet resistant;

(4) Made of nonsparking material on the inside;

(5) Ventilated to control dampness and excessive heating within the magazine;

(6) Posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach, so located that a bullet passing through any of the signs will not strike the magazine;

(7) Kept clean and dry inside;

(8) Unlighted or lighted by devices that are specifically designed for use in magazines and which do not create a fire or explosion hazard;

(9) Unheated or heated only with devices that do not create a fire or explosion hazard;

(10) Locked when unattended; and

(11) Used exclusively for the storage of explosive material except for

essential nonsparking equipment used for the operation of the magazine.

(b) Metal magazines shall be equipped with electrical bonding connections between all conductive portions so the entire structure is at the same electrical potential. Suitable electrical bonding methods include welding, riveting, or the use of securely tightened bolts where individual metal portions are joined. Conductive portions of nonmetal magazines shall be grounded.

(c) Electrical switches and outlets shall be located on the outside of the magazine.

§ 56.6133 Powder chests.

(a) Powder chests (day boxes) shall be—

(1) Structurally sound, weather-resistant, equipped with a lid or cover, and with only nonsparking material on the inside;

(2) Posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach;

(3) Located out of the blast area once loading has been completed;

(4) Locked or attended when containing explosive material; and

(5) Emptied at the end of each shift with the contents returned to a magazine or other storage facility, or attended.

(b) Detonators shall be kept in separate chests from explosives or blasting agents, except if separated by 4 inches of hardwood, laminated partition, or equivalent.

Transportation

§ 56.6200 Delivery to storage or blast site areas.

Explosive material shall be transported without undue delay to the storage area or blast site.

§ 56.6201 Separation of transported explosive material.

Detonators shall not be transported on the same vehicle or conveyance with other explosives except as follows:

(a) Detonators in quantities of more than 1000 may be transported in a vehicle or conveyance with explosives or blasting agents provided the detonators are—

(1) Maintained in the original packaging as shipped from the manufacturer; and

(2) Separated from the explosives or blasting agents by 4 inches of hardwood, laminated partition, or equivalent. The hardwood, laminated partition, or the equivalent shall be fastened to the vehicle or conveyance.

(b) Detonators in quantities of 1000 or fewer may be transported with explosives or blasting agents provided the detonators are—

(1) Kept in closed containers; and

(2) Separated from the explosives or blasting agents by 4 inches of hardwood, laminated partition, or equivalent. The hardwood, laminated partition, or equivalent shall be fastened to the vehicle or conveyance.

§ 56.6202 Vehicles.

(a) Vehicles containing explosive material shall be—

(1) Structurally sound and well-maintained;

(2) Equipped with sides and enclosures higher than the explosive material being transported or have the explosive material secured to a nonconductive pallet;

(3) Equipped with a cargo space that shall contain the explosive material (passenger areas shall not be considered cargo space);

(4) Equipped with at least two multipurpose dry-chemical fire extinguishers or one such extinguisher and an automatic fire suppression system;

(5) Posted with warning signs that indicate the contents and are visible from each approach;

(6) Occupied only by persons necessary for handling the explosive material;

(7) Attended or the cargo compartment locked, except when parked at the blast site and loading is in progress; and

(8) Secured while parked by having—

(i) The brakes set;

(ii) The wheels chocked if movement could occur; and

(iii) The engine shut off unless powering a device being used in the loading operation.

(b) Vehicles containing explosives shall have—

(1) No sparking material exposed in the cargo space; and

(2) Only properly secured nonsparking equipment in the cargo space with the explosives.

(c) Vehicles used for dispensing bulk explosive material shall—

(1) Have no zinc or copper exposed in the cargo space; and

(2) Provide any enclosed screw-type conveyors with protection against internal pressure and frictional heat.

§ 56.6203 Locomotives.

Explosive material shall not be transported on a locomotive. When explosive material is hauled by trolley locomotive, covered, electrically insulated cars shall be used.

§ 56.6204 Hoists.

(a) Before explosive material is transported in hoist conveyances, the hoist operator shall be notified.

(b) Explosive material transported in hoist conveyances shall be placed within a container which prevents shifting of the cargo that could cause detonation of the container by impact or by sparks. The manufacturer's container may be used if secured to a nonconductive pallet. When explosives are transported, they shall be secured so as not to contact any sparking material.

(c) No explosive material shall be transported during a mantrip.

§ 56.6205 Conveying explosives by hand.

Closed, nonconductive containers shall be used to carry explosives and detonators to and from blast sites. Separate containers shall be used for explosives and detonators.

Use

§ 56.6300 Control of blasting operations.

(a) Only persons trained and experienced in the handling and used of explosive material shall direct blasting operations and related activities.

(b) Trainees and inexperienced persons shall work only in the immediate presence of persons trained and experienced in the handling and use of explosive material.

§ 56.6301 Blasthole obstruction check.

Before loading, blastholes shall be checked and wherever possible, cleared of obstructions.

§ 56.6302 Explosive material protection.

(a) Explosives and blasting agents shall be kept separated from detonators until loading begins.

(b) Explosive material shall be protected from impact and temperatures in excess of 150 °F when taken to the blast site.

§ 56.6303 Initiation preparation.

(a) Primers shall be made up only at the time of use and as close to the blast site as conditions allow.

(b) Primers shall be prepared with the detonator contained securely and completely within the explosive or contained securely and appropriately for its design in the tunnel or cap well.

(c) When using detonating cord to initiate another explosive, a connection shall be prepared with the detonating cord threaded through, attached securely to, or otherwise in contact with the explosive.

§ 56.6304 Primer protection.

(a) Tamping shall not be done directly on a primer.

(b) If cartridges of explosives or blasting agents exceed 4 inches in diameter, they shall not be dropped on the primer except where the blasthole is filled with or under water.

§ 56.6305 Unused explosive material.

Unused explosive material shall be moved to a protected location as soon as practical after loading operations are completed.

§ 56.6306 Loading and blasting.

(a) Vehicles and equipment shall not be driven over explosive material or initiating systems in a manner which could contact the material or system, or otherwise create a hazard.

(b) Once loading begins, the only activity permitted within the blast site shall be activity directly related to the blasting operation, and occasional haulage activity near the base of the highwall being loaded where no other haulage access exists.

(c) Loading shall be continuous except for emergency situations, shift changes, and up to two consecutive idle shifts.

(d) In electric blasting prior to hook-up of the power source and in nonelectric blasting prior to the attachment to an initiating device, all persons shall be removed from the blast area except persons in a blasting shelter or other location that protects from concussion (shock wave), flying material, or gases.

(e) Upon completion of loading and connecting of circuits, firing of blasts shall occur without undue delay.

(f) Before firing a blast—

(1) Ample warning shall be given to allow all persons to be evacuated;

(2) Clear exit routes shall be provided for persons firing the round; and

(3) All access routes to the blast area shall be guarded or barricaded to prevent the passage of persons or vehicles.

(g) No work shall resume in the blast area until a post-blast examination addressing potential blast-related hazards has been conducted by a person having abilities and experience that fully qualify the person to perform the duty assigned.

§ 56.6307 Drill stem loading.

Explosive material shall not be loaded into blastholes with drill stem equipment or other devices that could be extracted while containing explosive material. The use of loading hose, collar sleeves, or collar pipes is permitted.

§ 56.6308 Initiation systems.

Initiation systems shall be used in accordance with the manufacturer's instructions.

§ 56.6309 Fuel oil requirements for ANFO.

(a) Liquid hydrocarbon fuels with flash points lower than that of No. 2 diesel oil (125 °F) shall not be used to prepare ammonium nitrate-fuel oil, except that diesel fuels with flash points no lower than 100 °F may be used at ambient air temperatures below 45 °F.

(b) Waste oil, including crankcase oil, shall not be used to prepare ammonium nitrate-fuel oil.

§ 56.6310 Misfire waiting period.

When a misfire is suspected, persons shall not enter the blast area—

(a) For 30 minutes if safety fuse and blasting caps are used; or

(b) For 15 minutes if any other type detonators are used.

§ 56.6311 Handling of misfires.

(a) Faces and muck piles shall be examined for misfires after each blasting operation.

(b) Only work necessary to remove a misfire and protect the safety of miners engaged in the removal shall be permitted in the affected area until the misfire is disposed of in a safe manner.

(c) When a misfire cannot be disposed of safely, each approach to the area affected by the misfire shall be posted with a warning sign at a conspicuous location to prohibit entry, and the condition shall be reported immediately to mine management.

(d) Misfires occurring during the shift shall be reported to mine management not later than the end of the shift.

§ 56.6312 Secondary blasting.

Secondary blasts fired at the same time in the same work area shall be initiated from one source.

§ 56.6313 Blast site security

Areas in which loading is suspended or loaded holes are awaiting firing shall be attended, barricaded and posted, or flagged against unauthorized entry.

Electric Blasting

§ 56.6400 Compatibility of electric detonators.

All electric detonators to be fired in a round shall be from the same manufacturer and shall have similar electrical firing characteristics.

§ 56.6401 Shunting.

Except during testing—

(a) Electric detonators shall be kept shunted until connected to the blasting line or wired into a blasting round;

(b) Wired rounds shall be kept shunted until connected to the blasting line; and

(c) Blasting lines shall be kept shunted until immediately before blasting.

§ 56.6402 Deenergized circuits near detonators.

Electrical distribution circuits within 50 feet of electric detonators at the blast site shall be deenergized. Such circuits need not be deenergized between 25 to 50 feet of the electric detonators if stray current tests, conducted as frequently as necessary, indicate a maximum stray current of less than 0.05 ampere through a 1-ohm resistor as measured at the blast site.

§ 56.6403 Branch circuits.

(a) If electric blasting includes the use of branch circuits, each branch shall be equipped with a safety switch or equivalent method to isolate the circuits to be used.

(b) At least one safety switch or equivalent method of protection shall be located outside the blast area and shall be in the open position until persons are withdrawn.

§ 56.6404 Separation of blasting circuits from power source.

(a) Switches used to connect the power source to a blasting circuit shall be locked in the open position except when closed to fire the blast.

(b) Lead wires shall not be connected to the blasting switch until the shot is ready to be fired.

§ 56.6405 Firing devices.

(a) Power sources shall be capable of delivering sufficient current to energize all electric detonators to be fired with the type of circuits used. Storage or dry cell batteries are not permitted as power sources.

(b) Blasting machines shall be tested, repaired, and maintained in accordance with the manufacturer's instruction.

(c) Only the blaster shall have the key or other control to an electrical firing device.

§ 56.6406 Duration of current flow.

If any part of a blast is connected in parallel and is to be initiated from powerlines or lighting circuits, the time of current flow shall be limited to a maximum of 25 milliseconds. This can be accomplished by incorporating an arcing control device in the blasting circuit or by interrupting the circuit with an explosive device attached to one or both lead lines and initiated by a 25-millisecond delay electric detonator.

§ 56.6407 Circuit testing.

A blasting galvanometer or other instrument designed for testing blasting circuits shall be used to test each of the following:

(a) Continuity of each electric detonator in the blasthole prior to stemming or connection to the blasting line.

(b) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line.

(c) Continuity of blasting lines prior to the connection of electric detonator series.

(d) Total blasting circuit resistance prior to connection to the power source.

Nonelectric Blasting

§ 56.6500 Damaged initiating material.

A visual check of the completed circuit shall be made to ensure that the components are properly aligned and connected. Safety fuse, igniter cord, detonating cord, shock or gas tubing, and similar material which is kinked, bent sharply, or damaged shall not be used.

§ 56.6501 Nonelectric initiation systems.

(a) When blasting with any nonelectric initiation system where continuity cannot be tested, double trunklines or loop systems shall be used, except—

(1) When blasting with safety fuse and caps;

(2) When performing secondary blasting; or

(3) When blasting one or two rows using shock tube.

(b) When the nonelectric initiation system uses shock tube—

(1) Connections with other initiation devices shall be secured in a manner which provides for uninterrupted propagation;

(2) Factory made units shall be used as assembled and shall not be cut except that a single splice is permitted on the lead-in trunkline during dry conditions; and

(3) Connections between blastholes shall not be made until immediately prior to clearing the blast site when surface delay detonators are used.

(c) When the nonelectric initiation system uses detonating cord—

(1) The line of detonating cord extending out of a blasthole shall be cut from the supply spool immediately after the attached explosive is correctly positioned in the hole;

(2) In multiple row blasts, the trunkline layout shall be designed so that the detonation can reach each blasthole from at least two directions;

(3) Connections shall be tight and kept at right angles to the trunkline;

(4) Detonators shall be attached securely to the side of the detonating cord and pointed in the direction in which detonation is to proceed;

(5) Connections between blastholes shall not be made until immediately prior to clearing the blast area when surface delay detonators are used; and

(6) Lead-in lines shall be manually unreeled if connected to the trunklines at the blast site.

(d) When the nonelectric initiation system use gas tube, continuity of the circuit shall be tested prior to blasting.

§ 56.6502 Safety fuse.

(a) The burning rate of each spool of safey fuse to be used shall be measured, posted in locations which will be conspicuous to safety fuse users, and brought to the attention of all persons involved with the blasting operation.

(b) When firing with safety fuse ignited individually using handheld lighters, the safety fuse shall be of lengths which provide at least the minimum burning time for a particular size round, as specified in the following table.

TABLE E-1—SAFETY FUSE—MINIMUM BURNING TIME

Number of holes in a round	Minimum burning time
1	2 minutes*.
2–5	2 minutes 40 seconds.
6–10	3 minutes 20 seconds.
11 to 15	5 minutes.

* For example, at least a 36-inch length of 40-second-per-foot safety fuse or at least a 48-inch length of 30-second-per-foot safety fuse would have to be used to allow sufficient time to evacuate the area.

(c) Where flyrock might damage exposed safety fuse, the blast shall be timed so that all safety fuses are burning within the blastholes before any blasthole detonates.

(d) Fuse shall be cut and capped in dry locations.

(e) Blasting caps shall be crimped to fuse only with implements designed for that purpose.

(f) Safety fuse shall be ignited only after the primer and the explosive material are securely in place.

(g) Safety fuse shall be ignited only with devices designed for that purpose. Carbide lights, liquefied petroleum gas torches, and cigarette lighters shall not be used to light safety fuse.

(h) At least two persons shall be present when lighting safety fuse, and no one shall light more than 15 individual fuses. If more than 15 holes per person are to be fired, electric initiation systems, igniter cord and connectors, or other nonelectric initiation systems shall be used.

Extraneous Electricity

§ 56.6600 Loading practices.

If extraneous electricity is suspected in an area where electric detonators are used, loading shall be suspended until tests determine that stray current does not exceed 0.05 amperes through a 1-ohm resister when measured at the location of the electric detonators. If greater levels of extraneous electricity are found, the source shall be determined and no loading shall take place until the condition is corrected.

§ 56.6601 Grounding.

Electric blasting circuits, including powerline sources when used, shall not be grounded.

§ 56.6602 Static electricity dissipation during loading.

When explosive material is loaded pneumatically or dropped into a blasthole in a manner that could generate static electricity—

(a) An evaluation of the potential static electricity hazard shall be made and any hazard shall be eliminated before loading begins;

(b) The loading hose shall be of a semiconductive type, have a total of not more than 2 megohms of resistance over its entire length and not less than 1,000 ohms of resistance per foot;

(c) Wire-countered hoses shall not be used;

(d) Conductive parts of the loading equipment shall be bonded and grounded and grounds shall not be made to other potential sources of extraneous electricity; and

(e) Plastic tubes shall not be used as hole liners if the hole contains an electric detonator.

§ 56.6603 Air gap.

At least a 15-foot air gap shall be provided between the blasting circuit and the electric power source.

§ 56.6604 Precautions during storms.

During the approach and progress of an electrical storm, blasting operations shall be suspended and persons withdrawn from the blast area or to a safe location.

§ 56.6605 Isolation of blasting circuits.

Lead wires and blasting lines shall be isolated and insulated from power conductors, pipelines, and railroad tracks, and shall be protected from sources of stray or static electricity.

Blasting circuits shall be protected from any contact between firing lines and overhead powerlines which could result from the force of a blast.

Equipment/Tools

§ 56.6700 Nonsparking tools.

Only nonsparking tools shall be used to open containers of explosive material or to punch holes in explosive cartridges.

§ 56.6701 Tamping and loading pole requirements.

Tamping and loading poles shall be of wood or other nonconductive, nonsparking material. Couplings for poles shall be nonsparking.

Maintenance

§ 56.6800 Storage facilities.

When repair work which could produce a spark or flame is to be performed on a storage facility—

(a) The explosive material shall be moved to another facility, or moved at least 50 feet from the repair activity and monitored; and

(b) The facility shall be cleaned to prevent accidental detonation.

§ 56.6801 Vehicle repair.

Vehicles containing explosive material and oxidizers shall not be taken into a repair garage or shop.

§ 56.6802 Bulk delivery vehicles.

No welding or cutting shall be performed on a bulk delivery vehicle until the vehicle has been washed down and all explosive material has been removed. Before welding or cutting on a hollow shaft, the shaft shall be thoroughly cleaned inside and out and vented with a minimum ½ inch diameter opening to allow for sufficient ventilation.

§ 56.6803 Blasting lines.

Permanent blasting lines shall be properly supported. All blasting lines shall be insulated and kept in good repair.

General Requirements

§ 56.6900 Damaged or deteriorated explosive material.

Damaged or deteriorated explosive material shall be disposed of in a safe manner in accordance with the instructions of the manufacturer.

§ 56.6901 Black powder.

(a) Black powder shall be used for blasting only when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.

(b) Containers of black powder shall be—

(1) Nonsparking;

(2) Kept in a totally enclosed cargo space while being transported by a vehicle;

(3) Securely closed at all times when—

(i) Within 50 feet of any magazine or open flame,

(ii) Within any building in which a fuel-fired or exposed-element electric heater is operating, or

(iii) In an area where electrical or incandescent-particle sparks could result in powder ignition; and

(4) Opened only when the powder is being transferred to a blasthole or another container and only in locations not listed in paragraph (b)(3) of this section.

(c) Black powder shall be transferred from containers only by pouring.

(d) Spills shall be cleaned up promptly with nonsparking equipment. Contaminated powder shall be put into a container of water and shall be disposed of promptly after the granules have disintegrated, or the spill area shall be flushed promptly with water until the granules have disintegrated completely.

(e) Misfires shall be disposed of by washing the stemming and powder charge from the blasthole, and removing and disposing of the initiator in accordance with the requirement for damaged explosives.

(f) Holes shall not be reloaded for at least 12 hours when the blastholes have failed to break as planned.

§ 56.6902 Excessive temperatures.

(a) Where heat could cause premature detonation, explosive material shall not be loaded into hot areas, such as kilns or sprung holes.

(b) Special precautions shall be used when blasting sulfide ores that react with explosive material or stemming in blastholes.

§ 56.6903 Burning explosive material.

If explosive material is suspected of burning at the blast site, persons shall be evacuated from the endangered area and shall not return for at least one hour after the burning or suspected burning has stopped.

§ 56.6904 Smoking and open flames.

Smoking and use of open flames shall not be permitted within 50 feet of explosive material except when separated by permanent noncombustible barriers. This standard does not apply to devices designed to ignite safety fuse or to heating devices which do not create a fire or explosion hazard.

Appendix I to Subpart E MSHA Tables of Distances

TABLE. 1—SURFACE STORAGE OF EXPLOSIVE MATERIAL

Quantity of explosive material (pounds)	Minimum separation distances (feet)			
	From mine buildings, dams and electric substations		Between magazines	
Not Over	Barricaded	Unbarricaded	Barricaded	Unbarricaded
5	70	140	6	12
10	90	180	8	16
20	110	220	10	20
30	125	250	11	22
40	140	280	12	24
50	150	300	14	28
75	170	340	15	30
100	190	380	16	32
125	200	400	18	36
150	215	430	19	38
200	235	470	21	42
250	255	510	23	46
300	270	540	24	48
400	295	590	27	54
500	320	640	29	58
600	340	680	31	62

TABLE. 1—SURFACE STORAGE OF EXPLOSIVE MATERIAL—Continued

Quantity of explosive material (pounds)	Minimum separation distances (feet)			
	From mine buildings, dams and electric substations		Between magazines	
Not Over	Barricaded	Unbarricaded	Barricaded	Unbarricaded
700	355	710	32	64
800	375	750	33	66
900	390	780	35	70
1,000	400	800	36	72
1,200	425	850	39	78
1,400	450	900	41	82
1,600	470	940	43	86
1,800	490	980	44	88
2,000	505	1,010	45	90
2,500	545	1,090	49	98
3,000	580	1,160	52	104
4,000	635	1,270	58	116
5,000	685	1,370	61	122
6,000	730	1,460	65	130
7,000	770	1,540	68	136
8,000	800	1,600	72	144
9,000	835	1,670	75	150
10,000	865	1,730	78	156
12,000	875	1,750	82	164
14,000	885	1,770	87	174
16,000	900	1,800	90	180
18,000	940	1,880	94	188
20,000	975	1,950	98	196
25,000	1,055	2,000	105	210
30,000	1,130	2,000	112	224
35,000	1,205	2,000	119	238
40,000	1,275	2,000	124	248
45,000	1,340	2,000	129	258
50,000	1,400	2,000	135	270
55,000	1,460	2,000	140	280
60,000	1,515	2,000	145	290
65,000	1,565	2,000	150	300
70,000	1,610	2,000	155	310
75,000	1,655	2,000	160	320
80,000	1,695	2,000	165	330
85,000	1,730	2,000	170	340
90,000	1,760	2,000	175	350
95,000	1,790	2,000	180	360
100,000	1,815	2,000	185	370
110,000	1,835	2,000	195	390
120,000	1,855	2,000	205	410
130,000	1,875	2,000	215	430
140,000	1,890	2,000	225	450
150,000	1,900	2,000	235	470
160,000	1,935	2,000	245	490
170,000	1,965	2,000	255	510
180,000	1,990	2,000	265	530
190,000	2,010	2,010	275	550
200,000	2,030	2,030	285	570
210,000	2,055	2,055	295	590
230,000	2,100	2,100	315	630
250,000	2,155	2,155	335	670
275,000	2,215	2,215	360	720
300,000	2,275	2,275	385	770

For purposes of this table, "barricaded" means that the storage facility containing explosive material is screen effectively by a natural barricade or an artificial barricade consisting of a mound or revetted wall of earth with a minimum thickness of three feet.

TABLE 2.—MSHA TABLE OF SEPARATION DISTANCES

Quantity of ammonium nitrate of blasting agents (pounds)	Storage facilities—minimum separation distances when barricaded* (feet)		Minimum thickness of artifical barricades** (inches)
Not over	Ammonium nitrate	Blasting agents	
100	3	11	12
300	4	14	12
600	5	18	12
1,000	6	22	12
1,600	7	25	12
2,000	8	29	12
3,000	9	32	15
4,000	10	36	15
6,000	11	40	15
8,000	12	43	20
10,000	13	47	20

TABLE 2.—MSHA TABLE OF SEPARATION DISTANCES—Continued

Quantity of ammonium nitrate of blasting agents (pounds)	Storage facilities—minimum separation distances when barricaded* (feet)		Minimum thickness of artifical barricades** (inches)
Not over	Ammonium nitrate	Blasting agents	
12,000	14	50	20
16,000	15	54	25
20,000	16	58	25
25,000	18	65	25
30,000	19	68	30
35,000	20	72	30
40,000	21	76	30
45,000	22	79	35
50,000	23	83	35
55,000	24	86	35
60,000	25	90	35
70,000	26	94	40
80,000	28	101	40
90,000	30	108	40
100,000	32	115	40
120,000	34	122	50
140,000	37	133	50
160,000	40	144	50
180,000	44	158	50
200,000	48	173	50
220,000	52	187	60
250,000	56	202	60
275,000	60	216	60
300,000	64	230	60

*When the ammonium nitrate or blasting agents are not barricaded, the distances shown in the table must be multipled by six.
**For purposes of this table, "barricaded" means that the storage facility is screened effectually by a natural barricade or an artificial barricade consisting of amount or revetted wall or earth with the prescribed minimum thickness.

2. Add new §§ 56.7055 and 56.7056 to subpart F to read as follows:

Subpart F—Drilling and Rotary Jet Piercing

§ 56.7055 Intersecting holes.

Holes shall not be drilled where there is a danger of intersecting a misfired hole or a hole containing explosives, blasting agents, or detonators.

§ 56.7056 Collaring in bootlegs.

Holes shall not be collared in bootlegs.

Subparts E and F of part 57, subchapter N, chapter I, title 30 of the Code of Federal Regulations are amended as follows:

1. Revise subpart E to read as set forth below.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

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Subpart E—Explosives

Sec.

57.6000 Definitions.

Storage—Surface and Underground

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57.6101 Areas around explosive material storage facilities.
57.6102 Explosives material storage practices

Sec.

Storage—Surface Only

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Storage—Underground Only

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Transportation—Surface and Underground

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Sec.

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Nonelectric Blasting—Surface and Underground

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57.6600 Loading practices.
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57.6603 Air gap.
57.6604 Precautions during storms.
57.6605 Isolation of blasting circuits.

Equipment/Tools—Surface and Underground

57.6700 Nonsparking tools.
57.6701 Tamping and loading pole requirements.

Maintenance—Surface and Underground

57.6800 Storage facilities.
57.6801 Vehicle repair.
57.6802 Bulk delivery vehicles.
57.6803 Blasting lines.

General Requirements—Surface and Underground

57.6900 Damaged or deteriorated explosive material.
57.6901 Black powder.
57.6902 Excessive temperatures.

Authority: 30 U.S.C. 811, 956, and 961.

Subpart E—Explosives

§ 57.6000 Definitions.

The following definitions apply in this subpart.

Attend. Presence of an individual or continuous monitoring to prevent unauthorized entry or access. In addition, areas containing explosive material at underground areas of a mine can be considered attended when all access to the underground areas of the mine is secured from unauthorized entry. Vertical shafts shall be considered secure. Inclined shafts or adits shall be considered secure when locked at the surface.

Blasting agent. Any substance classified as a blasting agent by the Department of Transportation in 49 CFR 173.114(a) (1989) compilation). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Blast area. The area in which concussion (shock wave), flying material, or gases form an explosion may cause injury to persons.

In determining the blast area, the following factors shall be considered:

(1) Geology or material to be blasted.

(2) Blast pattern.

(3) Burden, depth, diameter, and angle of the holes.

(4) Blasting experience of the mine.

(5) Delay system, powder factor, and pounds per delay.

(6) Type and amount of explosive material.

(7) Type and amount of stemming.

Blast site. The area where explosive material is handled during loading, including the perimeter formed by the blastholes and 50 feet in all directions from loaded holes. The 50-foot requirement also applies in all directions along the full depth of the hole. In underground mines, 15 feet of solid rib or pillar can be substituted for the 50-foot distance.

Detonating cord. A flexible cord containing a center core of high explosives which may be used to initiate other explosives.

Detonator. Any device containing a detonating charge used to initiate an explosive. These devices include electric or nonelectric instaneous or delay blasting caps, and delay connectors. The term "detonator" does not include detonating cord. Detonators may be either "Class A" detonators or "Class C" detonators, as classified by the Department of Transportation in 49 CFR 173.53, and 173.100, (1989 compilation). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Emulsion. An explosive material containing substantial amounts of oxidizers dissolved in water droplets, surrounded by an immiscible fuel.

Explosive. Any substance classified as an explosive by the Department of Transportation in 49 CFR 173.53, 173.88, and 173.100, (1989 compilation). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Explosive material. Explosives, blasting agents, and detonators.

Flash point. The minimum temperature at which sufficient vapor is released by a liquid to form a flammable vapor-air mixture near the surface of the liquid.

Igniter cord. A fuse that burns progressively along its length with an external flame at the zone of burning, used for lighting a series of safety fuses in a desired sequence.

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½ inch thick plywood, ½ inch thick gypsum wallboard, ⅛ inch thick low carbon steel, and ¼ inch thick plywood, bonded together in that order. Other combinations of materials may be used, such as plywood, wood or gypsum wallboard as insulators, and steel or wood as structural elements, provided that the partition is equivalent to a laminated partition for both insulation and structural purposes as determined by appropriate testing. The IME 22 container or compartment, described in IME Safety Library Publication 22 (Jan. 1985), meets the criteria of a laminated partition.

Loading. Placing explosive material either in a blasthole or against the material to be blasted.

Misfire. The complete or partial failure of explosive material to detonate as planned. The term also is used to describe the explosive material itself that has failed to detonate.

Multipurpose dry-chemical fire extinguisher. An extinguisher having a rating of at least 2–A:10–B:C and containing a nominal 4.5 pounds or more of dry-chemical agent.

Primer. A unit, package, or cartridge of explosives which contains a detonator and is used to initiate other explosives or blasting agents.

Safety switch. A switch that provides shunt protection in blasting circuits between the blast site and the switch used to connect a power source to a blasting circuit.

Slurry. An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener.

Water gel. An explosive material containing substantial portions of water, oxidizers, and fuel, plus a cross-linking agent.

Storage—Surface and Underground

§ 57.6100 Separation of stored explosive material.

(a) Detonators shall not be stored in the same magazine with other explosive material.

(b) When stored in the same magazine, blasting agents shall be separated from explosives, safety fuse, and detonating cord to prevent contamination.

§ 57.6101 Areas around explosive material storage facilities.

(a) Areas surrounding storage facilities for explosive material shall be clear of rubbish, brush, dry grass, and trees for 25 feet in all directions, except that live trees 10 feet or taller need not be removed.

(b) Other combustibles shall not be stored or allowed to accumulatge within 50 feet of explosive material. Combustible liquids shall be stored in a manner that ensures drainage will occur away from the explosive material storage facility in case of tank rupture.

§ 57.6102 Explosive material storage practices.

(a) Explosive material shall be—

(1) Stored in a manner to facilitate use of oldest stocks first;

(2) Stored according to brand and grade in such a manner as to facilitate identification; and

(3) Stacked in a stable manner but not more than 8 feet high.

(b) Explosives and denotators shall be stored in closed nonconductive containers except that nonelectric detonating devices may be stored on nonconductive racks provided the case-insert instructions and the date-plant-shift code are maintained with the product.

Storage—Surface Only

§ 57.6130 Explosive material storage facilities.

(a) Detonators and explosives shall be stored in magazines.

(b) Packaged blasting agents shall be stored in a magazine or other facility which is ventilated to prevent dampness and excessive heating, weather-resistant, and locked or attended.

Facilities other than magazines used to store blasting agents shall contain only blasting agents.

(c) Bulk blasting agents shall be stored in weather-resistant bins or tanks which are locked, attended, or otherwise inaccessible to unauthorized entry.

(d) Facilities, bins or tanks shall be posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach.

§ 57.6131 Location of explosive material storage facilities.

(a) Storage facilities for any explosive material shall be—

(1) Located in accordance with appendix I for subpart E—MSHA Tables of Distances. However, where there is not sufficient area at the mine site to allow compliance with appendix I, storage facilities shall be located so that the forces generated by a storage facility explosion will not create a hazard to occupants in mine buildings and will not damage mine openings, mine ventilation fans, dams, or electric substations; and

(2) Detached structures located outside the blast area and a sufficient distance from powerlines to that the powerlines, if damaged, would not contact the magazines.

(b) Operators should also be aware of regulations affecting storage facilities in 27 CFR part 55.

§ 57.6132 Magazine requirements.

(a) Magazines shall be—

(1) Structurally sound;

(2) Noncombustible or the exterior covered with fire-resistant material;

(3) Bullet resistant;

(4) Made for nonsparking material on the inside;

(5) Ventilated to control dampness and excessive heating within the magazine;

(6) Posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach, so located that a bullet passing through any of the signs will not strike the magazine;

(7) Kept clean and dry inside;

(8) Unlighted or lighted by devices that are specifically designed for use in magazines and which do not create a fire or explosion hazard;

(9) Unheated or heated only with devices that do not create a fire or explosion hazard;

(10) Locked when unattended; and

(11) Used exclusively for the storage of explosive material except for essential nonsparking equipment used for the operation of the magazine.

(b) Metal magazines shall be equipped with electrical bonding connections between all conductive portions so the entire structure is at the same electrical potential. Suitable electrical bonding methods include welding, riveting, or the use of securely tightened bolts where individual metal portions are joined. Conductive portions of nonmetal magazines shall be grounded.

(c) Electrical switches and outlets shall be located on the outside of the magazine.

§ 57.6133 Powder chests.

(a) Powder chests (day boxes) shall be—

(1) Structurally sound, weather-resistant, equipped with a lid or cover, and with only nonsparking material on the inside;

(2) Posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach;

(3) Located out of the blast area once loading has been completed;

(4) Locked or attended when containing explosive material; and

(5) Emptied at the end of each shift with the contents returned to a magazine or other storage facility, or attended.

(b) Detonators shall be kept in separate chests from explosives or blasting agents, except if separated by 4-inches of hardwood, laminated partition, or equivalent.

Storage—Underground Only

§ 57.6160 Main facilities.

(a) Main facilities used to store explosive material underground shall be located—

(1) In stable or supported ground;

(2) So that a fire or explosion in the storage facilities will not prevent escape from the mine, or cause detonation of the contents of another storage facility;

(3) Out of the line of blasts, and protected from vehicular traffic, except that accessing the facility;

(4) At least 200 feet from work places or shafts;

(5) At least 50 feet from electric substations;

(6) A safe distance from trolley wires; and

(7) At least 25 feet from detonator storage facilities.

(b) Main facilities used to store explosive material underground shall be—

(1) Posted with warning signs that indicate the contents and are visible from any approach;

(2) Used exclusively for the storage of explosive material and necessary equipment associated with explosive material storage and delivery:

(i) Portions of the facility used for the storage of explosives shall only contain nonsparking material or equipment.

(ii) The blasting agent portion of the facility may be used for the storage of other necessary equipment.

(3) Kept clean, suitably dry, and orderly;

(4) Provided with unobstructed ventilation openings;

(5) Kept securely locked unless all access to the mine is either locked or attended; and

(6) Unlighted or lighted only with devices that do not create a fire or explosion hazard and which are specifically designed for use in magazines.

(c) Electrical switches and outlets shall be located outside the facility.

§ 57.6161 Auxiliary facilities.

(a) Auxiliary facilities used to store explosive material near work places shall be wooden, box-type containers equipped with covers or doors, or facilities constructed or mined-out to provide equivalent impact resistance and confinement.

(b) The auxiliary facilities shall be—

(1) Constructed of nonsparking material on the inside when used for the stage of explosives;

(2) Kept clean, suitably dry, and orderly;

(3) Kept in repair;

(4) Located out of the line of blasts so they will not be subjected to damaging shock or flyrock;

(5) Identified with warning signs or coded to indicate the contents with markings visible from any approach;

(6) Located at least 15 feet from all haulageways and electrical equipment, or placed entirely within a mined-out recess in the rib used exclusively for explosive material;

(7) Filled with no more than a one-week supply of explosive material;

(8) Separated by at least 25 feet from other facilities used to store detonators; and

(9) Kept securely locked unless all access to the mine is either locked or attended.

Transportation—Surface and Underground

§ 57.6200 Delivery to storage or blast site areas.

Explosive material shall be transported without undue delay to the storage area or blast site.

§ 57.6201 Separation of transported explosive material.

Detonators shall not be transported on the same vehicle or conveyance with other explosives except as follows:

(a) Detonators in quantities of more than 1000 may be transported in a vehicle or conveyance with explosives or blasting agents provided the detonators are—

(1) Maintained in the original packaging as shipped from the manufacturer; and

(2) Separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition, or equivalent. The hardwood, laminated partition, or equivalent shall be fastened to the vehicle or conveyance.

(b) Detonators in quantities of 1000 or fewer may be transported with explosives or blasting agents provided the detonators are—

(1) Kept in closed containers; and

(2) Separated from the explosives or blasting agents by 4-inches of hardwood, laminated partition, or equivalent. The hardwood, laminated partition, or the equivalent shall be fastened to the vehicle or conveyance.

§ 57.6202 Vehicles.

(a) Vehicles containing explosive material shall be—

(1) Structurally sound and well-maintained;

(2) Equipped with sides and enclosures higher than the explosive material being transported or have the explosive material secured to a nonconductive pallet;

(3) Equipped with a cargo space that shall contain the explosive material (passenger areas shall not be considered cargo space);

(4) Equipped with at least two multipurpose dry-chemical fire extinguishers or one such extinguisher and an automatic fire suppression system;

(5) Posted with warning signs that indicate the contents and are visible from each approach;

(6) Occupied only by persons necessary for handling the explosive material;

(7) Attended or the cargo compartment locked at surface areas of underground mines, except when parked at the blast site and loading is in progress; and

(8) Secured while parked by having—

(i) The brakes set;

(ii) The wheels chocked if movement could occur; and

(iii) The engine shut off unless powering a device being used in the loading operation.

(b) Vehicles containing explosives shall have—

(1) No sparking material exposed in the cargo space; and

(2) Only properly secured nonsparking equipment in the cargo space with the explosives.

(c) Vehicles used for dispensing bulk explosive material shall—

(1) Have no zinc or copper exposed in the cargo space; and

(2) Provide any enclosed screw-type conveyors with protection against internal pressure and frictional heat.

§ 57.6203 Locomotives.

Explosive material shall not be transported on a locomotive. When explosive material is hauled by trolley locomotive, covered, electrically insulated cars shall be used.

§ 57.6204 Hoists.

(a) Before explosive material is transported in hoist conveyances—

(1) The hoist operator shall be notified; and

(2) Hoisting in adjacent shaft compartments, except for empty conveyances or counterweights, shall be stopped until transportation of the explosive material is completed.

(b) Explosive material transported in hoist conveyances shall be placed within a container which prevents shifting of the cargo that could cause detonation of the container by impact or by sparks. The manufacturer's container may be used if secured to a nonconductive pallet. When explosives are transported, they shall be secured so as not to contact any sparking material.

(c) No explosive material shall be transported during a mantrip.

§ 57.6205 Conveying explosives by hand.

Closed, nonconductive containers shall be used to carry explosives and detonators to and from blast sites. Separate containers shall be used for explosives and detonators.

Use—Surface and Underground

§ 57.6300 Control of blasting operations.

(a) Only persons trained and experienced in the handling and use of explosive material shall direct blasting operations and related activities.

(b) Trainees and inexperienced persons shall work only in the immediate presence of persons trained and experienced in the handling and use of explosive material.

§ 57.6301 Blasthole obstruction check.

Before loading, blastholes shall be checked and wherever possible, cleared of obstructions.

§ 57.6302 Explosive material protection.

(a) Explosives and blasting agents shall be kept separated from detonators until loading begins.

(b) Explosive material shall be protected from impact and temperatures in excess of 150° F when taken to the blast site.

§ 57.6303 Initiation preparation.

(a) Primers shall be made up only at the time of use and as close to the blast site as conditions allow.

(b) Primers shall be prepared with the detonator contained securely and completely within the explosive or contained securely and appropriately for its design in the tunnel or cap well.

(c) When using detonating cord to initiate another explosive, a connection shall be prepared with the detonating cord threaded through, attached securely to, or otherwise in contact with the explosive.

§ 57.6304 Primer protection.

(a) Tamping shall not be done directly on a primer.

(b) If cartridges of explosives or blasting agents exceed 4 inches in diameter, they shall not be dropped on the primer except where the blasthole is filled with or under water.

§ 57.6305 Unused explosive material.

Unused explosive material shall be moved to a protected location as soon as practical after loading operations are completed.

§ 57.6306 Loading and blasting.

(a) Vehicles and equipment shall not be driven over explosive material or initiating systems in a manner which could contact the material or system, or otherwise create a hazard.

(b) Once loading begins, the only activity permitted within the blast site shall be activity directly related to the blasting operation, and occasional haulage activity near the base of the highwall being loaded where no other haulage access exists.

(c) Loading shall be continuous except for emergency situations, shift changes, and up to two consecutive idle shifts.

(d) In electric blasting prior to hook-up of the power source and in nonelectric blasting prior to the attachment to an initiating device, all persons shall be removed from the blast area except persons in a blasting shelter or other location that protects from concussion (shock wave), flying material, or gases.

(e) Upon completion of loading and connecting of circuits, firing of blasts shall occur without undue delay.

(f) Before firing a blast—

(1) Ample warning shall be given to allow all persons to be evacuated;

(2) Clear exit routes shall be provided for persons firing the round; and

(3) All access routes to the blast area shall be guarded or barricaded to prevent the passage of persons or vehicles.

(g) No work shall resume in the blast area until a post-blast examination addressing potential blast-related hazards has been conducted by a person having abilities and experience that fully qualify the person to perform the duty assigned.

§ 57.6307 Drill stem loading.

Explosive material shall not be loaded into blastholes with drill stem equipment or other devices that could be extracted while containing explosive material. The use of loading hose, collar sleeves, or collar pipes is permitted.

§ 57.6308 Initiation systems.

Initiation systems shall be used in accordance with the manufacturer's instructions.

§ 57.6309 Fuel oil requirements for ANFO.

(a) Liquid hydrocarbon fuels with flash points lower than that of No. 2 diesel oil (125° F) shall not be used to prepare ammonium nitrate-fuel oil, except that diesel fuels with flash points no lower than 100° F may be used at ambient air temperatures below 45° F.

(b) Waste oil, including crankcase oil, shall not be used to prepare ammonium nitrate-fuel oil.

§ 57.6310 Misfire waiting period.

When a misfire is suspected, persons shall not enter the blast area—

(a) For 30 minutes if safety fuse and blasting caps are used; or

(b) For 15 minutes if any other type detonators are used.

§ 57.6311 Handling of misfires.

(a) Faces and muck piles shall be examined for misfires after each blasting operation.

(b) Only work necessary to remove a misfire and protect the safety of miners engaged in the removal shall be permitted in the affected area until the misfire is disposed of in a safe manner.

(c) When a misfire cannot be disposed of safely, each approach to the area affected by the misfire shall be posted with a warning sign at a conspicuous location to prohibit entry, and the condition shall be reported immediately to mine management.

(d) Misfires occurring during the shift shall be reported to mine management not later than the end of the shift.

§ 57.6312 Secondary blasting.

Secondary blasts fired at the same time in the same work area shall be initiated from one source.

§ 57.6313 Blast site security.

Areas in which loading is suspended or loaded holes are awaiting firing shall be attended, barricaded and posted, or flagged against unauthorized entry.

Electric Blasting—Surface and Underground

§ 57.6400 Compatibility of electric detonators.

All electric detonators to be fired in a round shall be from the same manufacturer and shall have similar electrical firing characteristics.

§ 57.6401 Shunting.

Except during testing—

(a) Electric detonators shall be kept shunted until connected to the blasting line or wired into a blasting round;

(b) Wired rounds shall be kept shunted until connected to the blasting line; and

(c) Blasting lines shall be kept shunted until immediately before blasting.

§ 57.6402 Deenergized circuits near detonators.

Electrical distribution circuits within 50 feet of electric detonators at the blast site shall be deenergized. Such circuits need not be deenergized between 25 to 50 feet of the electric detonators if stray current tests, conducted as frequently as necessary, indicate a maximum stray current of less than 0.05 amperes through a 1-ohm resistor as measured at the blast site.

§ 57.6403 Branch circuits.

(a) If electric blasting includes the use of branch circuits, each branch shall be equipped with a safety switch or equivalent method to isolate the circuits to be used.

(b) At least one safety switch or equivalent method of protection shall be located outside the blast area and shall be in the open position until persons are withdrawn.

§ 57.6404 Separation of blasting circuits from power source.

(a) Switches used to connect the power source to a blasting circuit shall be locked in the open position except when closed to fire the blast.

(b) Lead wires shall not be connected to the blasting switch until the shot is ready to be fired.

§ 57.6405 Firing devices.

(a) Power sources shall be capable of delivering sufficient current to energize all electric detonators to be fired with the type of circuits used. Storage or dry cell batteries are not permitted as power sources.

(b) Blasting machines shall be tested, repaired, and maintained in accordance with manufacturer's instructions.

(c) Only the blaster shall have the key or other control to an electrical firing device.

§ 57.6406 Duration of current flow.

If any part of a blast is connected in parallel and is to be initiated from powerlines or lighting circuits, the time of current flow shall be limited to a maximum of 25 milliseconds. This can be accomplished by incorporating an arcing control device in the blasting circuit or by interrupting the circuit with an explosive device attached to one or both lead lines and initiated by a 25-millisecond delay electric detonator.

§ 57.6407 Circuit testing.

A blasting galvanometer or other instrument designed for testing blasting circuits shall be used to test the following:

(a) In surface operations—

(1) Continuity of each electric detonator in the blasthole prior to stemming and connection to the blasting line;

(2) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line;

(3) Continuity of blasting lines prior to the connection of electric detonator series; and

(4) Total blasting circuit resistance prior to connection to the power source.

(b) In underground operations—

(1) Continuity of each electric detonator series; and

(2) Continuity of blasting lines prior to the connection of electric detonators.

Nonelectric Blasting—Surface and Underground

§ 57.6500 Damaged initiating material.

A visual check of the completed circuit shall be made to ensure that the components are properly aligned and connected. Safety fuse, igniter cord, detonating cord, shock or gas tubing, and similar material which is kinked, bent sharply, or damaged shall not be used.

§ 57.6501 Nonelectric initiation systems.

(a) When blasting with any nonelectric initiation system where continuity cannot be tested, double trunklines or loop systems shall be used, except—

(1) When blasting with safety fuse and caps;

(2) When performing secondary blasting; or

(3) When blasting one or two rows using shock tube.

(b) When the nonelectric initiation system uses shock tube—

(1) Connections with other initiation devices shall be secured in a manner which provides for uninterrupted propagation;

(2) Factory made units shall be used as assembled and shall not be cut except that a single splice is permitted on the lead-in trunkline during dry conditions; and

(3) Connections between blastholes shall not be made until immediately prior to clearing the blast site when surface delay detonators are used.

(c) When the nonelectric initiation system uses detonating cord—

(1) The line of detonating cord extending out of a blasthole shall be cut from the supply spool immediately after the attached explosive is correctly positioned in the hole;

(2) In multiple row blasts, the trunkline layout shall be designed so that the detonation can reach each blasthole from at least two directions;

(3) Connections shall be tight and kept at right angles to the trunkline;

(4) Detonators shall be attached securely to the side of the detonating cord and pointed in the direction in which detonation is to proceed;

(5) Connections between blastholes shall not be made until immediately prior to clearing the blast area when surface delay detonators are used; and

(6) Lead-in lines shall be manually unreeled if connected to the trunklines at the blast site.

(d) When nonelectric initiation systems use gas tube, continuity of the circuit shall be tested prior to blasting.

§ 57.6502 Safety fuse.

(a) The burning rate of each spool of safety fuse to be used shall be measured, posted in locations which will be conspicuous to safety fuse users, and brought to the attention of all persons involved with the blasting operation.

(b) When firing with safety fuse ignited individually using handheld lighters, the safety fuse shall be of lengths which provide at least the minimum burning time for a particular size round, as specified in the following table.

TABLE E-1 —SAFETY FUSE—MINIMUM BURNING TIME

Number of holes in a round	Minimum buring time
1	[1] 2 minutes.
2–5	2 minutes 40 seconds.
6–10	3 minutes 20 seconds.
11 to 15	5 minutes.

[1] For example, at least a 36-inch length of 40-second-per-foot safety fuse or at least 48-inch length of 30-second-per-foot safety fuse would have to be used to allow sufficient time to evacuate the area.

(c) Where flyrock might damage exposed safety fuse, the blast shall be timed so that all safety fuses are burning within the blastholes before any blast hole detonates.

(d) Fuse shall be cut and capped in dry locations.

(e) Blasting caps shall be crimped to fuse only with implements designed for that purpose.

(f) Safety fuse shall be ignited only after the primer and the explosive material are securely in place.

(g) Safety fuse shall be ignited only with devices designed for that purpose. Carbide lights, liquefied petroleum gas torches, and cigarette lighters shall not be used to light safety fuse.

(h) At least two persons shall be present when lighting safety fuse, and no one shall light more than 15 individual fuses. If more than 15 holes per person are to be fied, electric initiation system, igniter cord and connectors, or other nonelectric initiation systems shall be used.

Extraneous Electricity—Surface and Underground

§ 57.6600 Loading practices.

If extraneous electricity is suspected in an area where electric detonators are used, loading shall be suspended until tests determine that stray current does not exceed 0.05 amperes through a 1-ohm resister when measured at the location of the electric detonators. If greater levels of extraneous electricity are found, the source shall be determined and no loading shall take place until the condition is corrected.

§ 57.6601 Grounding.

Electric blasting circuits, including powerline sources when used, shall not be grounded.

§ 57.6602 Static electricity dissipation during loading.

When explosive material is loaded pneumatically or dropped into a blasthole in a manner that could generate static electricity—

(a) An evaluation of the potential static electricity hazard shall be made and any hazard shall be eliminated before loading begins;

(b) The loading hose shall be of a semiconductive type, have a total of not more than 2 megohms of resistance over its entire length and not less than 1000 ohms of resistance per foot;

(c) Wire-countered hoses shall not be used;

(d) Conductive parts of the loading equipment shall be bonded and grounded and grounds shall not be made to other potential sources of extraneous electricity; and

(e) Plastic tubes shall not be used as hole liners if the hole contains an electric detonator.

§ 57.6603 Air gap.

At least a 15-foot air gap shall be provided between the blasting circuit and the electric power source.

§ 57.6604 Precautions during storms.

During the approach and progress of an electrical storm—

(a) Surface blasting operations shall be suspended and persons withdrawn from the blast area or to a safe location.

(b) Underground electrical blasting operations that are capable of being initiated by lightning shall be suspended and all persons withdrawn from the blast area or to a safe location.

§ 57.6605 Isolation of blasting circuits.

Lead wires and blasting lines shall be isolated and insulated from power conductors, pipelines, and railroad tracks, and shall be protected from sources of stray or static electricity. Blasting circuits shall be protected from any contact between firing lines and overhead powerlines which could result from the force of a blast.

Equipment/Tools—Surface and Underground

§ 57.6700 Nonsparking tools.

Only nonsparking tools shall be used to open containers of explosive material or to punch holes in explosive cartridges.

§ 57.6701 Tamping and loading pole requirements.

Tamping and loading poles shall be of wood or other nonconductive, nonsparking material. Couplings for poles shall be nonsparking.

Maintenance —Surface and Underground

§ 57.6800 Storage facilities.

When repair work which could produce a spark or flame is to be performed on a storage facili'y—

(a) The explosive material shall be moved to another facility, or moved at least 50 feet from the repair activity and monitored; and

(b) The facility shall be cleaned to prevent accidental detonation.

§ 57.6801 Vehicle repair.

Vehicles containing explosive material and oxidizers shall not be taken into a repair garage or shop.

§ 57.6802 Bulk delivery vehicles.

No welding or cutting shall be performed on a bulk delivery vehicle until the vehicle has been washed down and all explosive material has been removed. Before welding or cutting on a hollow shaft, the shaft shall be thoroughly cleaned inside and out and vented with a minimum ½ inch diameter opening to allow for sufficient ventilation.

§ 57.6803 Blasting lines.

Permanent blasting lines shall be properly supported. All blasting lines shall be insulated and kept in good repair.

General Requirements—Surface and Underground

§ 57.6900 Damaged or deteriorated explosive material.

Damaged or deteriorated explosive material shall be disposed of in a safe manner in accordance with the instructions of the manufacturer.

§ 57.6901 Black powder.

(a) Black powder shall be used for blasting only when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.

(b) Containers of black powder shall be—

(1) Nonsparking;

(2) Kept in a totally enclosed cargo space while being transported by a vehicle;

(3) Securely closed at all times when—

(i) Within 50 feet of any magazine or open flame,

(ii) Within any building in which a fuel-fired or exposed-element electric heater is operating, or

(iii) In an area where electrical or incandescent-particle sparks could result in powder ignition; and

(4) Opened only when the powder is being transferred to a blasthole or another container and only in locations not listed in paragraph (b)(3) of this section.

(c) Black powder shall be transferred from containers only by pouring.

(d) Spills shall be cleaned up promptly with nonsparking equipment. Contaminated powder shall be put into a container of water and shall be disposed of promptly after the granules have disintegrated, or the spill area shall be flushed promptly with water until the granules have disintegrated completely.

(e) Misfires shall be disposed of by washing the stemming and powder charge from the blasthole, and removing and disposing of the initiator in accordance with the requirement for damaged explosives.

(f) Holes shall not be reloaded for at least 12 hours when the blastholes have failed to break as planned.

§ 57.6902 Excessive temperatures.

(a) Where heat could cause premature detonation, explosive material shall not be loaded into hot areas, such as kilns or sprung holes.

(b) Special precautions shall be used when blasting sulfide ores that react with explosive material or stemming in blastholes.

§ 57.6903 Burning explosive material.

If explosive material is suspected of burning at the blast site, persons shall be evacuated from the endangered area and shall not return for at least one hour after the burning or suspected burning has stopped.

§ 57.6904 Smoking and open flames.

Smoking and use of open flames shall not be permitted within 50 feet of explosive material except when separated by permanent noncombustible barriers. This standard does not apply to devices designed to ignite safety fuse or to heating devices which do not create a fire or explosion hazard.

General Requirements—Underground Only

§ 57.6960 Mixing of explosive material.

(a) The mixing of ingredients to produce explosive material shall not be conducted underground unless prior approval of the MSHA district manager is obtained. In granting or withholding approval, the district manager shall consider the potential hazards created by—

(1) The location of the stored material and the storage practices used;

(2) The transportation and use of the explosive material;

(3) The nature of the explosive material, including its sensitivity;

(4) Any other factor deemed relevant to the safety of miners potentially exposed to the hazards associated with the mixing of the bulk explosive material underground.

(b) Storage facilities for the ingredients to be mixed shall provide drainage away from the facilities for leaks and spills.

Appendix I to Subpart E MSHA Tables of Distances

TABLE 1.—SURFACE STORAGE OF EXPLOSIVE MATERIAL

Quantity of explosive material (pounds)	Minimum separation distances (feet)			
	From mine buildings, dams and electric substations		Between magazines	
Not over	Barricaded	Unbarricaded	Barricaded	Unbarricaded
5	70	140	6	12
10	90	180	8	16
20	110	220	10	20
30	125	250	11	22
40	140	280	12	24
50	150	300	14	28
75	170	340	15	30
100	190	380	16	32
125	200	400	18	36
150	215	430	19	38
200	235	470	21	42
250	255	510	23	46
300	270	540	24	48
400	295	590	27	54
500	320	640	29	58

TABLE 1.—SURFACE STORAGE OF EXPLOSIVE MATERIAL—Continued

Quantity of explosive material (pounds) Not over	Minimum separation distances (feet)			
	From mine buildings, dams and electric substations		Between magazines	
	Barricaded	Unbarricaded	Barricaded	Unbarricaded
600	340	680	31	62
700	355	710	32	64
800	375	750	33	66
900	390	780	35	70
1,000	400	800	36	72
1,200	425	850	39	78
1,400	450	900	41	82
1,600	470	940	43	86
1,800	490	980	44	88
2,000	505	1,010	45	90
2,500	545	1,090	49	98
3,000	580	1,160	52	104
4,000	635	1,270	58	116
5,000	685	1,370	61	122
6,000	730	1,460	65	130
7,000	770	1,540	68	136
8,000	800	1,600	72	144
9,000	835	1,670	75	150
10,000	865	1,730	78	156
12,000	875	1,750	82	164
14,000	885	1,770	87	174
16,000	900	1,800	90	180
18,000	940	1,880	94	188
20,000	975	1,950	98	196
25,000	1,055	2,000	105	210
30,000	1,130	2,000	112	224
35,000	1,205	2,000	119	238
40,000	1,275	2,000	124	248
45,000	1,340	2,000	129	258
50,000	1,400	2,000	135	270
55,000	1,460	2,000	140	280
60,000	1,515	2,000	145	290
65,000	1,565	2,000	150	300
70,000	1,610	2,000	155	310
75,000	1,655	2,000	160	320
80,000	1,695	2,000	165	330
85,000	1,730	2,000	170	340
90,000	1,760	2,000	175	350
95,000	1,790	2,000	180	360
100,000	1,815	2,000	185	370
110,000	1,835	2,000	195	390
120,000	1,855	2,000	205	410
130,000	1,875	2,000	215	430
140,000	1,890	2,000	225	450
150,000	1,900	2,000	235	470
160,000	1,935	2,000	245	490
170,000	1,965	2,000	255	510
180,000	1,990	2,000	265	530
190,000	2,010	2,010	275	550
200,000	2,030	2,030	285	570
210,000	2,055	2,055	295	590
230,000	2,100	2,100	315	630
250,000	2,155	2,155	335	670
275,000	2,215	2,215	360	720
300,000	2,275	2,275	385	770

For purposes of this table, "barricaded" means that the storage facility containing explosive material is screened effectively by a natural barricade or an artificial barricade consisting of a mound or revetted wall of earth with a minimum thickness of three feet

TABLE 2.—MSHA TABLE OF SEPARATION DISTANCES

Quantity of ammonium nitrate of blasting agents (pounds) Not over	Storage facilities—minimum separation distances when barricaded* (feet)		Minimum thickness of artificial barricades** (inches)
	Ammonium nitrate	Blasting agents	
100	3	11	12
300	4	14	12
600	5	18	12
1,000	6	22	12
1,600	7	25	12
2,000	8	29	12
3,000	9	32	15
4,000	10	36	15
6,000	11	40	15
8,000	12	43	20

TABLE 2.—MSHA TABLE OF SEPARATION DISTANCES—Continued

Quantity of ammonium nitrate of blasting agents (pounds)	Storage facilities—minimum separation distances when barricaded* (feet)		Minimum thickness of artificial barricades** (inches)
Not over	Ammonium nitrate	Blasting agents	
10,000	13	47	20
12,000	14	50	20
16,000	15	54	25
20,000	16	58	25
25,000	18	65	25
30,000	19	68	30
35,000	20	72	30
40,000	21	76	30
45,000	22	79	35
50,000	23	83	35
55,000	24	86	35
60,000	25	90	35
70,000	26	94	40
80,000	28	101	40
90,000	30	108	40
100,000	32	115	40
120,000	34	122	50
140,000	37	133	50
160,000	40	144	50
180,000	44	158	50
200,000	48	173	50
220,000	52	187	60
250,000	56	202	60
275,000	60	216	60
300,000	64	230	60

*When the ammonium nitrate or blasting agents are not barricaded, the distances shown in the table must be multiplied by six.
**For purposes of this table, "barricaded" means that the storage facility is screened effectually by a natural barricade or an artificial barricade consisting of amount or revetted wall or earth with the prescribed minimum thickness.

2. Add new §§ 57.7055 and 57.7056 to subpart F to read as follows:

Subpart F—Drilling and Rotary Jet Piercing

§ 57.7055 Intersecting holes.

Holes shall not be drilled where there is a danger of intersecting a misfired hole or a hole containing explosives, blasting agents, or detonators.

§ 57.7056 Collaring in bootlegs.

Holes shall not be collared in bootlegs.

[FR Doc. 91-1135 Filed 1-17-91, 8:45 am]
BILLING CODE 4510-43-M

federal register

Friday
January 18, 1991

Part III

Department of Education

Applications for New Awards Under Training Personnel for the Education of Individuals with Disabilities for Fiscal Year 1991; Notice

DEPARTMENT OF EDUCATION

CFDA No. 84.029

Office of Special Education Programs

Applications for New Awards Under Training Personnel for the Education of Individuals with Disabilities for Fiscal Year 1991

AGENCY: Department of Education.

Purpose of Program: This notice for minority institutions projects relates to a new component of the program that serves to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities through the provision of awards to support the preservice training of personnel for careers in special education, related services, early intervention, supervision and administration, research, and personnel preparation.

Deadline for Transmittal of Applications: March 11, 1991.

Deadline for Intergovernmental Review: May 10, 1991.

Applications Available: January 23, 1991.

Available Funds: $1,500,000.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES

[Application Notice for Fiscal Year 1991]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards (per year)	Estimated size of awards (per year)	Estimated number of awards	Project period in months
Minority Institutions Projects (84.029E)	3-11-91	5-10-91	1,500,000	60,000-100,000	80,000	20	Up to 60

Project Period: Up to 60 months.

Competition: In carrying out section 631(a)(1) of the Individuals with Disabilities Education Act (IDEA) the Secretary is required to make grants to minority institutions. These institutions are:

(1) Historically Black Colleges and Universities, and

(2) Other Institutions of Higher Education whose minority student enrollment is at least 25%.

Eligible applicants may apply for support in any of the program areas listed in IDEA section 631(1)(a). This includes support for training special educators, related services personnel, and early intervention specialists; and leadership training.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; (b) the regulations for Individuals with Disabilities Education Act—Training Personnel for the Education of the Handicapped—Careers in Special Education and Related Services, 34 CFR part 318, subject to changes made in IDEA section 631(a)(1), which expand the scope of special education, related services, and early intervention training.

FOR FURTHER INFORMATION CONTACT: Angele Thomas, Division of Personnel Preparation, Office of Special Education Programs, 400 Maryland Avenue, SW (Switzer Building, room 3518–M.S. 2651), Washington, DC 20202. Telephone: Angele Thomas (202) 732–1100.

(Catalog of Federal Domestic Assistance No. 84.029E, Training Personnel for the Education of Individuals with Disabilities)

Dated: January 15, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–1292 Filed 1–17–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
January 18, 1991

Part IV

Environmental Protection Agency

40 CFR Part 265

Hazardous Waste Management System: Amendments To Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations at Hazardous Waste Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 265

[FRL-3866-8]

Hazardous Waste Management System: Amendments To Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations at Hazardous Waste Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and notice of availability.

SUMMARY: The Environmental Protection Agency ("EPA" or "the Agency") is proposing to amend 40 CFR 265.91 to allow alternate placement of hydraulically downgradient monitoring wells at interim status facilities where existing physical obstacles prevent installations at the limit of the waste management area.

DATES: Written comments on today's proposed rule must be received on or before March 19, 1991.

ADDRESSES: Comments should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (room 2427) (OS–305), 401 M Street, SW., Washington, DC 20460. One original and two copies should be sent and identified by regulatory docket reference number F–91–DGWP–FFFFF. The Docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials, and should call the docket clerk at (202) 475–9327 for appointments. The public may copy, free of charge, a maximum of one hundred pages of material from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information about this rulemaking, contact the RCRA Hotline, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424–9346 (tollfree) or (202) 382–3000 in the Washington, DC metropolitan area. For technical information contact Neal D. Durant, Office of Solid Waste (OS–341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475–7371.

Preamble Outline

I. Authority

These regulations are issued under the authority of sections 1006, 2002(a), 3001, 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, (42 U.S.C. 6905, 6912(a), 6921, 6924, 6925, and 6935).

II. Background

On May, 19, 1980, EPA promulgated comprehensive standards under 40 CFR part 265 for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) that qualify for interim status. (45 FR 33153). A facility owner or operator who has fully complied with the requirements for interim status specified in section 3005(e) of RCRA and 40 CFR 270.70 may comply with the part 265 regulations in lieu of part 264 pending final disposition of the permit application. Part 265, subpart F contains ground-water monitoring requirements applicable to owners and operators of interim status landfills, surface impoundments, and land treatment facilities. Several challenges to the 1980 interim status regulations are currently pending before the United States Court of Appeals for the District of Columbia Circuit, including a challenge to the ground-water monitoring requirements of 40 CFR 265.91(a)(2). (*Shell Oil Co., et. al.* v. *EPA*, No. 80–1532 (DC Cir.)).

III. Summary of Today's Proposed Rule

Section 265.91(a) currently requires interim status facility owners and operators to install and operate a ground-water monitoring system consisting, in part, of at least three hydraulically downgradient monitoring wells located at the limit of the waste management area. The number, locations, and depths of these wells must ensure immediate detection of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

The current regulations governing ground-water monitoring at permitted TSDFs also require well installation at the hydraulically downgradient limit of the waste management area or "point of compliance". (40 CFR 264.95). On July 26, 1988, the Agency proposed to amend § 264.95(a) to allow the Regional Administrator to select alternate hydraulically downgradient monitoring well locations at permitted TSDFs where existing physical obstacles (e.g., natural geologic features, buildings, highways, or railroads) prevent the installation of monitoring wells at the point of compliance. This provision would be limited to units existing on the effective date of the rule. New units, lateral expansions, and replacement units would not be eligible for the provision. (53 FR 28163). The Agency is evaluating public comments on the proposal and preparing the final rule for publication.

Petitioners in Shell Oil, have requested review of whether the requirement in § 265.91(a)(2) to locate hydraulically downgradient wells "at the limit of the waste management area" is arbitrary and capricious or otherwise not in accordance with law. They have explained to the Agency that they believe § 264.91(a) should be amended to allow alternate placement of hydraulically downgradient ground-water monitoring wells where existing physical obstacles prevent installation at the limit of the waste management area. EPA agrees and has agreed to propose the change requested. Pursuant to the Settlement Agreement, the Agency is today proposing to amend the well placement requirements for interim status facilities consistent with the proposed amendments to § 264.95 for permitted TSDFs. Specifically, proposed § 265.91(a)(3) provides that the owner or operator of an existing facility may demonstrate that an alternate hydraulically downgradient monitoring well location will meet the criteria in § 265.91(a)(2). The demonstration must be in writing and kept at the facility. Additionally, the demonstration must be certified by a qualified geologist or geotechnical engineer and establish that: (1) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area, (2) the selected alternate downgradient location is as close to the waste management area as practical; and (3) the selected alternate downgradient location ensures immediate detection of any statistically significant amounts of hazardous waste or hazardous constituents that migrate from the waste management area to the uppermost aquifer consistent with § 265.91(a)(2). EPA believes that alternate locations for downgradient wells meeting these criteria will protect human health and the environment by continuing to ensure the earliest possible detection of migrating contaminants.

In addition to geologic features, buildings, highways, or railroads, the Agency believes that factors affecting the safety of personnel may also qualify

as "physical obstacles". For example, the presence of overhead or underground electrical cables and wires may prevent a safe well installation at the hydraulically downgradient limit of the waste management area at some sites. In these cases an alternate well location should be selected that meets the performance standard of immediately detecting any statistically significant increases in constituent concentrations in the uppermost aquifer.

Alternate locations of downgradient wells are not appropriate when physical obstacles at the limit of the waste management area may be avoided. For example, physical obstacles may be avoided in some circumstances through the use of alternate drilling techniques (e.g., directional drilling) or by interrupting power in overhead electrical cables during installation of monitoring wells to ensure the safety of the drilling crew.

Proposed § 265.91(a)(3) also limits the availability of alternate locations of downgradient wells to units existing on the effective date of this proposed amendment. Owners or operators of new, expanding or replacement units are not eligible to select alternate downgradient monitoring well locations as a result of physical obstacles. The limitation to existing interim status units is consistent with the proposed requirements under § 264.96(a) for permitted facilities.

New, expanding, or replacement units can and should be designed to ensure that physical obstacles do not impede monitoring well placement at the downgradient limit of the waste management area. The Agency continues to believe that wells placed at the hydraulically downgradient limit of the waste management area generally provide the greatest assurance of immediate detection. However, some of the comments received on the July 26, 1988 proposal for permitted facilities urged the Agency to allow alternate hydraulically downgradient monitoring wells to avoid physical obstacles at all units, regardless of whether the units were in existence at the effective date of the rule. Although in the vast majority of situations EPA expects that owners and operators of new, expanding, or replacement units should be able to plan construction to avoid the need for alternate point of compliance wells, the Agency is soliciting comment on whether this provision should be expanded to apply to new, expanding, and replacement units in addition to existing units. The Agency requests comment on whether proposed § 265.91(a)(2) should treat new, expanding, and replacement units in interim status differently than units existing at the effective date of the final rule.

As discussed above, demonstrations of the necessity and location of alternate hydraulically downgradient monitoring wells must be certified by a qualified geologist or geotechnical engineer. Certifications by qualified geologists or geotechnical engineers are currently required under two interim status provisions; § 265.90(c) demonstrations for waiver of ground-water monitoring requirements, and ground-water quality assessment plans submitted to the Regional Administrator under § 265.93(d)(2). Certification is required under each of these provisions, similar to proposed § 265.91(a)(3), because they require facility owners or operators to make judgements or assessments concerning complex hydrogeologic conditions. Given the largely self-implementing nature of the interim status program, certification by qualified geologists or geotechnical engineers is necessary to provide the oversight to ensure technically sound decision-making in regard to these conditions.

The terms "qualified geologist" and "qualified geotechnical engineer" are not defined in existing federal regulations. State registration or licensing requirements for geologists can vary significantly among those states that have such requirements. For example, geologist registration codes in one state require a bachelor's degree in geology, at least five additional years of experience in geology, and the successful completion of the state examination; while another state does not require completion of a state exam, and instead requires the approval of members from a national geologist association. Because state geologist registration requirements vary significantly among states and do not explicitly require study and experience in hydrogeology, individuals desiring to become "qualified geologists" may need to meet supplemental criteria in addition to state registration.

The Agency believes that a "qualified geologist" is an individual who has completed a degree in geological sciences from an accredited university, has met any state or local requirements for geologist registration, and has gained sufficient training and experience in ground-water hydrogeology, thus enabling that individual to make sound professional judgements regarding hydrogeologic processes and contaminant transport. The Agency also believes that if the individual practices in a state without registration requirements, he or she is a "qualified geologist" if the supplemental criteria outlined above have been met.

All states have relatively comparable exams for registering professional engineers, but few states have programs for registering engineers in the field of geotechnical engineering. The Agency believes that a "qualified geotechnical engineer" is an individual who is a registered professional engineer in the state in which they practice, has met any state and local requirements concerning registration of civil and geotechnical engineers, and has gained sufficient training and experience in the application of soil and hydrological sciences as demonstrated by completion of accredited university programs and state certification examinations that enable that individual to make sound professional judgments regarding soil and ground-water processes, including contaminant transport. The Agency also believes that if an individual practices in a state without geotechnical engineer registration requirements, he or she is a "qualified geotechnical engineer" if the above criteria have been met.

The Agency requests comments on all provisions of proposed § 265.91.

IV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have independent enforcement authority.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Today's rule proposes standards that are not effective in authorized States since the requirements are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the requirements will be effective only in those States that do not have final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect more stringent Federal program changes, and must subsequently submit the modification to EPA for approval. Generally, these authorized State programs must be revised to adopt those changes in a Federal program that are more stringent or broader in scope than existing Federal standards.

For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See § 271.1(k). Today's proposed rule would reduce the stringency of § 265.91(a). Therefore, authorized States may but are not required to modify their programs to adopt requirements equivalent or substantially equivalent to those proposed in today's rule. Because the requirements proposed today are less stringent than the existing Federal requirements, it is unlikely that any authorized State has requirements equivalent to those proposed.

V. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation that is likely to 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, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that today's proposed rule is not a major rule, because it does not meet the above criteria. Today's proposed action will add flexibility to the current interim status ground-water monitoring requirements, and will not impose further resource burdens on the regulated community.

B. Paperwork Reduction Act

The information collection and recordkeeping requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Recordkeeping burden on the public for this proposal is estimated at 1800 hours for the respondents, with an average of 20 hours per response. These burden estimates include all aspects of the recordkeeping effort and may include time for reviewing instructions, searching existing data sources, and gathering and maintaining necessary data.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, contact Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 (202–382–2745); and Paperwork Reduction Project (2050–0033), Office of Management and Budget, Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 265

Hazardous waste, Hazardous materials, Reporting and recordkeeping requirements, Ground-water monitoring.

Dated: January 11, 1991.

F. Henry Habicht,

Acting Administrator.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. In § 265.91 by adding paragraph (a)(3) to read as follows:

§ 265.91 Ground-water monitoring system.

(a) * * *

(3) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location will meet the criteria in § 265.91(a)(2). The demonstration must be in writing and kept at the facility. Additionally, the demonstration must be certified by a qualified geologist or geotechnical engineer and establish that:

(i) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and

(ii) The selected alternate downgradient location is as close to the limit of the waste management area as practical; and

(iii) The location ensures immediate detection of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer. Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this paragraph.

* * * * *

[FR Doc. 91–1299 Filed 1–17–91; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
January 18, 1991

Part V

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 575
Iraqi Sanctions Regulations

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 575

Iraqi Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On August 2, 1990, upon Iraq's invasion of Kuwait, the President issued Executive Order No. 12722. In that order he declared a national emergency with respect to Iraq, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.),* ordered specified sanctions against Iraq, and authorized the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as might be necessary to carry out the purposes of the Order. Pursuant to this declaration of national emergency, the President also issued Executive Order No. 12723, at the request of the recognized Government of Kuwait, blocking all property and interests in property of the Government of Kuwait as a protective measure. On August 9, 1990, the President issued Executive Orders No. 12724 and No. 12725, imposing additional sanctions on Iraq, consistent with Resolution 661, dated August 6, 1990, of the United Nations Security Council, and imposing similar sanctions on Kuwait to ensure that no benefit from the United States flowed to the Government of Iraq in militarily-occupied Kuwait. In implementation of those Orders, the Treasury Department is issuing the Iraqi Sanctions Regulations ("Regulations").

The Regulations block all property and interests in property of the Government of Iraq or any person purporting to be the Government of Iraq, its agencies, instrumentalities, and controlled entities, including the Central Bank of Iraq, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches. The Regulations also generally prohibit: (a) Imports into the United States of goods or services from Iraq; (b) exports from the United States of goods, technology or services to Iraq or entities operated from Iraq; (c) any dealing by any U.S. person in Iraqi-origin goods or any other goods from Iraq or intended for Iraq; (d) transactions by U.S. persons relating to travel by U.S. citizens and permanent resident aliens to Iraq, including their activities within Iraq; (e) transactions by U.S. persons relating to transportation to or from Iraq; transportation services to or from the United States by Iraqi persons, vessels, or aircraft; or the sale in the United States by any person holding authority under the Federal Aviation Act of any transportation by air which includes any stop in Iraq; (f) performance by U.S. persons of contracts in support of industrial, commercial, public utility, or governmental projects in Iraq; and (g) any transfer of funds by U.S. persons to the Government of Iraq or any person in Iraq.

EFFECTIVE DATE: January 18, 1991.

FOR FURTHER INFORMATION: Contact William B. Hoffman, Chief Counsel, tel.: (202) 535–6020, or Steven I. Pinter, Chief of Licensing, tel.: (202) 535–9449, Office of Foreign Assets Control, Department of the Treasury, Washington, DC.

SUPPLEMENTARY INFORMATION: All General Licenses issued by the Office of Foreign Assets Control prior to January 18, 1991 may continue to be relied on to validate actions prior to this date during the period of their validity. Specific licenses issued prior to this date continue in effect according to their terms unless modified by the Office of Foreign Assets Control.

Authorizations contained in General Licenses issued prior to publication of these regulations can now be found in the following sections:

Issuance date	License number	Regulation section
Aug. 8, 1990.	General License No. 2.	§ 575.509
Aug. 8, 1990.	General License No. 3.	Amended
October 15, 1990.	General License No. 3, amended.	§ 575.512
Aug. 8, 1990.	General License No. 4.	Revoked 10/2/90
Aug. 15, 1990.	General License No. 6.	§ 575.513
Aug. 15, 1990.	General License No. 7.	Amended
Oct. 18, 1990.	General License No. 7, amended.	§ 575.510
Aug. 23, 1990.	General License No. 8.	§ 575.514
Aug. 27, 1990.	General License No. 9.	§ 575.515
Aug. 30, 1990.	General License No. 10.	§ 575.505
Sept. 1, 1990.	General License No. 11.	§ 575.508
Sept. 26, 1990.	General License No. 12.	§ 575.518
Oct. 3, 1990.	General License No. 13.	§ 570.517

Transactions otherwise prohibited under this part may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in § 575.801 of subpart H.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations. These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collections of information contained in these regulations are being submitted to the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project (1505–****), Washington, DC 20503, with copies to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220. Any such comments should be submitted not later than March 19, 1991. Notice of OMB action on these requests will be published in the **Federal Register.**

The collections of information in these regulations are contained in §§ 575.503, 575.509–575.512, 575.517, 575.518, 575.520, 575.521, subpart F, and §§ 575.703 and 575.801. This information is required by the Office of Foreign Assets Control for licensing, compliance, civil penalty and enforcement purposes. This information will be used to determine the eligibility of applicants for the benefits provided through specific licenses, to determine whether persons subject to the regulations are in compliance with applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate. The likely respondents and recordkeepers are individuals and business organizations.

Estimated total annual reporting and/or recordkeeping burden: 2000 hours.

The estimated annual burden per respondent/recordkeeper varies from 30

minutes to 10 hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents and/or recordkeepers: 500.

Estimated annual frequency of responses: 1–12.

List of Subjects in 31 CFR Part 575

Banking and finance, Blocking of assets, Exports, Imports, Iraq, Kuwait, Loans, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 575 is added as follows:

PART 575—IRAQI SANCTIONS REGULATIONS

Subpart A—Relation to this Part to Other Laws and Regulations

Sec.

Subpart B—Prohibitions

Subpart C—General Definitions

Subpart D—Interpretations

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

Subpart F—Reports

Subpart G—Penalties

Subpart H—Procedures

Subpart I—Paperwork Reduction Act

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Public Law 101–513, 104 Stat. 2047–55 (Nov. 5, 1990); 3 U.S.C. 301; E.O. 12722, 55 FR 31803 (Aug. 3, 1990); E.O. 12724, 55 FR 33089 (Aug. 13, 1990).

Subpart A—Relation of This Part to Other Laws and Regulations

§ 575.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 575.201 Prohibited transactions involving property in which the Government of Iraq has an interest; transactions with respect to securities.

(a) Except as authorized by regulations, rulings, instructions, licenses, or otherwise, no property or interests in property of the Government of Iraq that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons,

including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, the transfer (including the transfer on the books of any issuer or agent thereof), the endorsement or guaranty of signatures on, or any other dealing in any security (or evidence thereof) registered or inscribed in the name of the Government of Iraq and held within the possession or control of a U.S. person is prohibited, irrespective of the fact that at any time either at or subsequent to the effective date the registered or inscribed owner thereof may have, or appears to have, assigned, transferred, or otherwise disposed of any such security.

§ 575.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date, which is in violation of any provision of this part or of any regulation, ruling, instruction, license, or other direction or authorization hereunder and involves any property in which the Government of Iraq has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property in which the Government of Iraq has an interest, or has had an interest since such date, unless the person with whom such property is held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, the United Nations Participation Act, this part, and any ruling, order, regulation, direction, or instruction issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) Promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization hereunder, or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control, or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained;

the person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer. The filing of a report in accordance with the provisions of this paragraph shall not be deemed evidence that the terms of paragraphs (d) (1) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of the Government of Iraq.

§ 575.203 Holding of certain types of blocked property in interest-bearing accounts.

(a) Any person, including a U.S. financial institution, currently holding property subject to § 575.201 which, as of the effective date or the date of receipt if subsequent to the effective date, is not being held in an interest-bearing account, or otherwise invested in a manner authorized by the Office of Foreign Assets Control, must transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account or interest-bearing status in a U.S. financial institution as of the effective date or the date of receipt if subsequent to the effective date of this section, unless otherwise authorized or directed by the Office of Foreign Assets Control. This requirement shall apply to currency, bank deposits, accounts, and any other financial assets, and any proceeds resulting from the sale of tangible or intangible property. If interest is credited to an account separate from that in which the interest-bearing asset is held, the name of the account party on both accounts must be the same and must clearly indicate the blocked Government of Iraq entity having an interest in the accounts.

(b) For purposes of this section, the term "interest-bearing account" means a blocked account in a U.S. financial institution earning interest at rates that are commercially reasonable for the amount of funds in the account. Except as otherwise authorized, the funds may not be invested or held in instruments the maturity of which exceeds 90 days.

(c) This section does not apply to blocked tangible property, such as chattels, nor does it create an affirmative obligation on the part of the holder of such blocked tangible property to sell or liquidate the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.

§ 575.204 Prohibited importation of goods or services from Iraq.

Except as otherwise authorized, no goods or services of Iraqi origin may be imported into the United States, nor may any U.S. person engage in any activity that promotes or is intended to promote such importation.

§ 575.205 Prohibited exportation and reexportation of goods, technology, or services to Iraq.

Except as otherwise authorized, no goods, technology (including technical data or other information), or services may be exported from the United States, or, if subject to U.S. jurisdiction, exported or reexported from a third country to Iraq, to any entity owned or controlled by the Government of Iraq, or to any entity operated from Iraq, except donated foodstuffs in humanitarian circumstances, and donated supplies intended strictly for medical purposes,

the exportation of which has been specifically licensed pursuant to § 575.507, 575.517 or 575.518.

§ 575.206 Prohibited dealing in property.

Except as otherwise authorized, no U.S. person may deal in property of Iraqi origin exported from Iraq after August 6, 1990, property intended for exportation to Iraq, or property intended for exportation from Iraq to any other country, nor may any U.S. person engage in any activity that promotes or is intended to promote such dealing.

§ 575.207 Prohibited transactions relating to travel to Iraq or to activities within Iraq.

Except as otherwise authorized, no U.S. person may engage in any transaction relating to travel by any U.S. citizen or permanent resident alien to Iraq, or to activities by any U.S. citizen or permanent resident alien within Iraq, after the effective date, other than transactions:

(a) Necessary to effect the departure of a U.S. citizen or permanent resident alien from Kuwait or Iraq;

(b) Relating to travel and activities for the conduct of the official business of the United States Government or the United Nations; or

(c) Relating to journalistic activity by persons regularly employed in such capacity by a newsgathering organization.

This section prohibits the unauthorized payment by a U.S. person of his or her own travel or living expenses to or within Iraq.

§ 575.208 Prohibited transportation-related transactions involving Iraq.

Except as otherwise authorized, the following are prohibited:

(a) Any transaction by a U.S. person relating to transportation to or from Iraq;

(b) The provision of transportation to or from the United States by any Iraqi person or any vessel or aircraft of Iraqi registration; or

(c) The sale in the United States by any person holding authority under the Federal Aviation Act of any transportation by air which includes any stop in Iraq.

(d) *Example.* Unless licensed or exempted, no U.S. person may insure, or provide ticketing, ground, port, refueling, bunkering, clearance, or freight forwarding services, with respect to any sea, ground, or air transportation the destination of which is Iraq, or which is intended to make a stop in Iraq.

§ 575.209 Prohibited performance of contracts.

Except as otherwise authorized, no U.S. person may perform any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Iraq.

§ 575.210 Prohibited transfer of funds to the Government of Iraq or any person in Iraq.

Except as otherwise authorized, no U.S. person may commit or transfer, directly or indirectly, funds or other financial or economic resources to the Government of Iraq or any person in Iraq.

§ 575.211 Evasions; attempts; conspiracies.

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this subpart, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is hereby prohibited.

§ 575.212 Effective dates.

The effective dates of the prohibitions and directives contained in this subpart B are as follow:

(a) With respect to §§ 575.201, 575.202, 575.204, 575.205, 575.207, 575.208, 575.209, and 575.211, 5 a.m., Eastern Daylight Time ("e.d.t."), August 2, 1990;

(b) With respect to §§ 575.206, and 575.210, 8:55 p.m. e.d.t., August 9, 1990; and

(c) With respect to § 575.203, January 18, 1991.

Subpart C—General Definitions

§ 575.301 Blocked account; blocked property.

The terms "blocked account" and "blocked property" shall mean any account or property in which the Government of Iraq has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from OFAC authorizing such action.

§ 575.302 Effective date.

The term "effective date" refers to the effective date of the applicable prohibition, as identified in § 575.212.

§ 575.303 Entity.

The term "entity" includes a corporation, partnership, association, or other organization.

§ 575.304 Entity of the Government of Iraq; Iraqi Government entity.

The term "entity of the Government of Iraq" or "Iraqi Government entity" includes:

(a) Any corporation, partnership, association, or other entity in which the Government of Iraq owns a majority or controlling interest, any entity managed or funded by that government, or any entity which is otherwise controlled by that government;

(b) Any agency or instrumentality of the Government of Iraq, including the Central Bank of Iraq.

§ 575.305 General license.

The term "general license" means any license or authorization the terms of which are set forth in this part.

§ 575.306 Government of Iraq.

The term "Government of Iraq" includes:

(a) The state and the Government of Iraq, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iraq;

(b) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any other person or organization determined by the Director of the Office of Foreign Assets Control to be included within this section.

§ 575.307 Government of Kuwait.

The term "Government of Kuwait" includes:

(a) The State and Government of Kuwait and any entity purporting to be the Government of Kuwait, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Kuwait;

(b) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(c) Any person to the extent that such person is or has been, or to the extent that there is reasonable cause to believe that such person is or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing;

(d) Any other person or organization determined by the Director or the Office

of Foreign Assets Control to be included within this section.

§ 575.308 Interest.

Except as otherwise provided in this part, the term "interest" when used with respect to property (*e.g.*, "an interest in property") means an interest of any nature whatsoever, direct or indirect.

§ 575.309 Iraq; Iraqi.

The term "Iraq" means the country of Iraq and any territory under the jurisdiction or authority thereof, legal or illegal. The term "Iraqi" means pertaining to Iraq as defined in this section.

§ 575.310 Kuwait; Kuwaiti.

The term "Kuwait" means the country of Kuwait and any territory under the jurisdiction or authority thereof. The term "Kuwaiti" means pertaining to Kuwait as defined in this section.

§ 575.311 Iraqi origin.

The term "goods or services of Iraqi origin" includes:

(a) Goods produced, manufactured, grown, or processed within Iraq;

(b) Goods which have entered into Iraqi commerce;

(c) Services performed in Iraq or by a Iraqi national who is acting as an agent, employee, or contractor of the Government of Iraq, or of a business entity located in Iraq. Services of Iraqi origin are not imported into the United States when such services are provided in the United States by an Iraqi national employed in the United States.

§ 575.312 Iraqi person.

The term "Iraqi person" means an Iraqi citizen, any person organized under the laws of Iraq, or any person owned or controlled, directly or indirectly, by a Iraqi national or the Government of Iraq.

9§ 575.313 License.

Except as otherwise specified, the term "license" means any license or authorization contained in or issued pursuant to this part.

§ 575.314 Person.

The term "person" means an individual, partnership, association, corporation, or other organization.

§ 575.315 Property; property interest.

The terms "property" and "property interest" include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 575.316 Special license.

The term "specific license" means any license or authorization not set forth in this part but issued pursuant to this part in response to an application.

§ 575.317 Transfer.

The term "transfer" means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decrease of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 575.318 UNSC Resolution 661.

The term "UNSC Resolution 661" means United Nations Security Council Resolution No. 661, adopted August 6, 1990, prohibiting certain transactions with respect to Iraq and Kuwait.

§ 575.319 United States.

The term "United States" means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 575.320 U.S. financial institution.

The term "U.S. financial institution" means any U.S. person (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including, but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 575.321 United States person; U.S. person.

The term "United States person" or "U.S. person" means any United States citizen; permanent resident alien; juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; or any person in the United States.

Subpart D—Interpretations

§ 575.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 575.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not,

unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 575.403 Termination and acquisition of an interest of the Government of Iraq.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) from the Government of Iraq, such property shall no longer be deemed to be property in which the Government of Iraq has or has had an interest unless there exists in the property another such interest, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to the Government of Iraq, such property shall be deemed to be property in which there exists an interest of the Government of Iraq.

§ 575.404 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

No debits may be made to a blocked account to pay obligations to U.S. persons or other persons, including payment for goods, technology or services exported prior to the effective date, except as authorized pursuant to this part.

§ 575.405 Acquisition of instruments including bankers acceptances.

No U.S. person may acquire or deal in any obligation, including bankers acceptances, where the documents evidencing the obligation indicate, or the U.S. person has actual knowledge, that the underlying transaction is in violation of §§ 575.201, 575.204, or § 575.205. This interpretation does not apply to obligations arising from an underlying transaction licensed or otherwise authorized pursuant to this part.

§ 575.406 Extensions of credits or loans to Iraq.

(a) The prohibition in § 575.210 applies to the unlicensed renewal of credits or loans in existence on the effective date, whether by affirmative action or operation of law.

(b) The prohibition in § 575.210 applies to credits to loans extended in any currency.

§ 575.407 Payments in connection with certain authorized transactions.

Payments are authorized in connection with transactions authorized in or pursuant to subpart E.

§ 575.408 Offshore transactions.

(a) The prohibitions contained in §§ 575.201 and 575.206 apply to transactions by U.S. persons in locations outside the United States with respect to property in which the U.S. person knows, or has reason to know, that the Government of Iraq has or has had an interest since the effective date.

(b) Prohibited transactions include, but are not limited to, importation into locations outside the United States of, or dealings within such locations in, goods or services of Iraqi origin.

(c) Examples. (1) A U.S. person may not, within the United States or abroad, purchase, sell, finance, insure, transport, act as a broker for the sale or transport of, or otherwise deal in, Iraqi crude oil or petroleum products refined in Iraq.

(2) A U.S. person may not, within the United States or abroad, conduct transactions of any nature whatsoever with an entity that the U.S. person knows or has reason to know is an Iraqi Government entity unless the entity is licensed by the Office of Foreign Assets Control to conduct such transactions with U.S. persons.

§ 575.409 Transhipments through the United States prohibited.

(a) The prohibitions in § 575.205 apply to the importation into the United States, for transshipment or transit, of goods which are intended or destined for Iraq, or an entity operated from Iraq.

(b) The prohibitions in § 575.204 apply to the importation into the United States, for transshipment or transit, of goods of Iraqi origin which are intended or destined for third countries.

(c) Goods in which the Government of Iraq has an interest which are imported into or transshipped through the United States are blocked pursuant to § 575.201.

§ 575.410 Imports of Iraqi goods from third countries; transhipments.

Importation into the United States from third countries of goods, including refined petroleum products, containing raw materials or components of Iraqi origin is prohibited. In light of the universal prohibition in UNSC Resolution 661 on the importation of goods exported from Iraq or Kuwait after August 6, 1990, substantial transformation of Iraqi-origin goods in a third country does not exempt the third-country products from the prohibitions contained in this part.

§ 575.411 Exports to third countries; transshipments.

Exportation of goods or technology (including technical data and other information) from the United States to third countries is prohibited if the exporter knows, or has reason to know, that the goods or technology are intended for transshipment to Iraq (including passage through, or storage in, intermediate destinations). The exportation of goods and technology intended specifically for incorporation or substantial transformation into a third-country product is also prohibited if the particular product is to be used in Iraq, is being specifically manufactured to fill a Iraqi order, or if the manufacturer's sales of the particular product are predominantly to Iraq.

§ 575.412 Release of Iraqi goods from bonded warehouse or foreign trade zone.

Section 575.204 does not prohibit the release from a bonded warehouse or a foreign trade zone of goods of Iraqi origin imported into a bonded warehouse or a foreign trade zone either prior to the effective date or in a transaction authorized pursuant to this part after the effective date.

Note: Pursuant to § 575.201, property in which the Government of Iraq has an interest may not be released unless authorized or licensed by the Office of Foreign Assets Control.

§ 575.413 Goods intended for export to Iraq.

The prohibitions contained in § 575.201 do not apply to goods manufactured, consigned, or destined for export to Iraq and not subject to § 575.517, if the Government of Iraq has never held or received title to such goods on or after the effective date, and if any payment received from the Government of Iraq with respect to such goods is placed in a blocked account in a U.S. financial institution pursuant to § 575.503. The prohibitions of § 575.205 apply to goods subject to this section.

§ 575.414 Imports of Iraqi goods and purchases of goods from Iraq.

The prohibitions contained in § 575.201 shall not apply to the importation of Iraqi-origin goods and services described in § 575.204 if the importation of such goods is permitted by an authorization or license issued pursuant to this part. However, any payments in connection with such

importation are subject to the prohibitions contained in §§ 575.201 and 575.210.

§ 575.415 Setoffs prohibited.

A setoff against a blocked account, whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 575.201 if effected after the effective date.

§ 575.416 Travel transactions for journalistic activity in Iraq.

(a) Section 575.207 does not prohibit travel transactions in Iraq by persons regularly employed in journalistic activity by recognized newsgathering organizations.

(b) For purposes of this part:

(1) A person is considered regularly employed as a journalist if he or she is employed in a constant or regular manner by a recognized newsgathering organization. Free-lance journalists should have an assignment from a recognized newsgathering organization requiring travel to Iraq, or be able to demonstrate that publication by a recognized newsgathering organization of a work requiring such travel is likely. The latter may be demonstrated by providing a resume listing previously-published free-lance works or copies of previously-published works.

(2) "Recognized newsgathering organizations" include those entities regularly and principally engaged in collecting news for publication in the public press, transmission by wire services, or broadcast by radio or television.

(c) Authorized travel transactions are limited to those incident to travel for the purpose of collecting and disseminating information for a recognized newsgathering organization, and do not include travel transactions related to any other activity in Iraq.

§ 575.417 [Reserved]

§ 575.418 Transactions incidental to a licensed transaction.

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except a transaction by an unlicensed, blocked person or involving an unlicensed debit to a blocked account.

(b) Example. A license authorizing the Government of Iraq to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, brokers, transfer agents, banks, etc.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 575.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in Subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 575.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 575.503 Payments and transfers to blocked accounts in U.S. financial institutions.

(a) Any payment of funds or transfer of credit or other assets, including any payment or transfer by any U.S. person outside the United States, to a blocked account in a U.S. financial institution located in the United States in the name of the Government of Iraq is hereby authorized, including incidental foreign exchange transactions, provided that such payment or transfer shall not be made from any blocked account if such payment or transfer represents, directly or indirectly, a transfer of any interest of the Government of Iraq to any other country or person.

(b) This section authorizes transfer of the funds of a blocked demand deposit account to a blocked interest-bearing account under the same name or designation as was the demand deposit account, as required pursuant to § 575.203 or at the instruction of the depositor, at any time. If such transfer is to a blocked account in a different U.S. financial institution such transfer must be made to a blocked account in a U.S. financial institution located in the United States, and the transferee financial institution must furnish within 10 business days of the date of transfer, the notification described in paragraph (h) of this section to the Office of Foreign Assets Control, Blocked Assets Section.

(c) This section does not authorize any transfer from a blocked account within the United States to an account held outside the United States.

(d) This section does not authorize any payment or transfer to any blocked account held in a name other than that of the Government of Iraq where such government is the ultimate beneficiary of such payment or transfer.

(e) This section does not authorize any payment or transfer of credit comprising an integral part of a transaction which cannot be effected without the subsequent issuance of a further license.

(f) This section does not authorize the crediting of the proceeds of the sale of securities or other assets, held in a blocked account or a sub-account thereof, or the income derived from such securities or assets, to a blocked account or sub-account, under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such securities or assets were or are held.

(g) This section does not authorize any payment or transfer from a blocked account in a U.S. financial institution to a blocked account held under any name or designation which differs from the name or designation of the specified blocked account or sub-account from which the payment or transfer is made.

(h) The authorization in paragraph (a) of this section is subject to the condition that written notification from the U.S. financial institution receiving an authorized payment or transfer is furnished to the Office of Foreign Assets Control, Blocked Assets Section, within

10 business days from the date of payment or transfer. This notification shall confirm that the payment or transfer has been deposited in a blocked account under the regulations in this part, and shall provide the account number, the name and address of the Government of Iraq entity in whose name the account is held, the name and address of the transferee U.S. financial institution, and the amount of the payment or transfer.

(i) This section authorizes the transfer of assets between blocked accounts in U.S. financial institutions at the instruction of the depositor for purposes of investment and reinvestment of assets in which the Government of Iraq has an interest, as authorized in § 575.512. If such transfer is to a blocked account in a different U.S. financial institution, the transferee financial institution must furnish within 10 business days of the date of transfer, the notification described in paragraph (h) of this section to the Office of Foreign Assets Control, Blocked Assets Section.

§ 575.504 [Reserved]

§ 575.505 Completion of certain transactions related to bankers acceptances authorized.

(a) Persons other than the Government of Iraq are authorized to buy, sell, and satisfy obligations with respect to bankers acceptances, and to pay under deferred payment undertakings, involving an interest of the Government of Iraq as long as the bankers acceptances were created or the deferred payment undertakings were incurred prior to the effective date.

(b) Persons other than the Government of Iraq are authorized to buy, sell, and satisfy obligations with respect to bankers acceptances, and to pay under deferred payment undertakings, involving the importation or exportation of goods to or from Iraq that do not involve an interest of the Government of Iraq as long as the bankers acceptances or the deferred payment undertakings were accepted prior to the effective date.

(c) Nothing in this section shall authorize or permit a debit to a blocked account. Specific licenses for the debiting of a blocked account may be issued on a case-by-case basis.

§ 575.506 Payment by the Government of Iraq of obligations to persons within the United States authorized.

(a) The transfer of funds after the effective date by, through, or to any U.S. financial institution or other U.S. person solely for the purpose of payment of obligations of the Government of Iraq to persons or accounts within the United States is authorized, provided that the obligation arose prior to the effective date, and the payment requires no debit to a blocked account. Property is not blocked by virtue of being transferred or received pursuant to this section.

(b) A person receiving payment under this section may distribute all or part of that payment to any person, provided that any such payment to the Government of Iraq must be to a blocked account in a U.S. financial institution.

(c) The authorization in this section is subject to the condition that written notification from the U.S. financial institution or U.S. person transferring or receiving funds is furnished to the Office of Foreign Assets Control, Blocked Assets Section, within 10 business days from the date of transfer or receipt. The notification shall provide the account number, name and address of the transferor and/or transferee U.S. financial institution or person, and the account number, name and address of the person into whose account payment is made.

§ 575.507 Certain exports to Iraq authorized.

(a) All transactions ordinarily incident to the exportation of any item, commodity, or product from the United States to or destined for Iraq are authorized if:

(1) such exports would ordinarily be authorized under one of the following regulations administered by the Department of Commerce: 15 CFR 371.6—General license BAGGAGE (accompanied and unaccompanied baggage); 15 CFR 371.13—General license GUS (shipments to personnel and agencies of the U.S. Government); or,

(2) such exports are for the official use of the United Nations, its personnel and agencies (excluding its relief or developmental agencies).

(b) All transactions related to exportation or reexportation not otherwise authorized in this part, are prohibited unless licensed pursuant to the procedures described in § 575.801 by the Office of Foreign Assets Control.

§ 575.508 Import of household and personal effects from Iraq authorized.

The importation of household and personal effects of Iraqi origin, including baggage and articles for family use, of persons arriving in the United States directly or indirectly from Iraq is authorized. Articles included in such effects may be imported without limitation provided they were actually used by such persons or their family members abroad, are not intended for any other person or for sale, and are not otherwise prohibited from importation.

§ 575.509 Payments and transfers authorized for shipments of oil under contract and en route to the United States prior to the effective date.

(a) Oil of Iraqi origin or oil in which the Government of Iraq has an interest may be imported into the United States only if:

(1) Prior to the effective date, the oil was loaded for ultimate delivery to the United States on board a vessel in Iraq, Kuwait, or a third country;

(2) The oil was imported into the United States before 11:59 p.m. Eastern Daylight Time, October 1, 1990; and

(3) The bill of lading accompanying the oil was issued prior to the effective date.

(b) Any payment owed or balance not paid to or for the benefit of the Government of Iraq prior to the effective date for oil imported pursuant to paragraph (a) must be paid into a blocked account in a U.S. financial institution.

(c) Transactions conducted pursuant to this section must be reported in writing to the Office of Foreign Assets Control, Blocked Assets Section, no later than 10 days after the date of importation.

Note: Transactions authorized by this provision have been completed prior to January 18, 1991. The text of this license is included for the convenience of the user.

§ 575.510 Payments and transfers authorized for goods and services exported to Iraq prior to the effective date.

(a) Specific licenses may be issued on a case-by-case basis to permit payment involving an irrevocable letter of credit issued or confirmed by a U.S. bank, or a letter of credit reimbursement confirmed by a U.S. bank, from a blocked account or otherwise, of amounts owed to or for the benefit of a person with respect to goods or services exported prior to the effective date directly or indirectly to Iraq or Kuwait, or to third countries for an entity operated from Iraq or Kuwait, or for the benefit of the Government of Iraq, where the license application presents evidence satisfactory to the Office of Foreign Assets Control that:

(1) The exportation occurred prior to the effective date (such evidence may include, *e.g.*, the bill of lading, the air waybill, the purchaser's written confirmation of completed services, customs documents, and insurance documents); and

(2) If delivery or performance occurred after the effective date, due diligence was exercised to divert delivery of the goods from Iraq and to

effect final delivery of the goods to a non-prohibited destination, or to prevent performance of the services.

(b) Specific license applications must also contain the following information:

(1) The name and address of any Iraqi broker, purchasing agent, or other participant in the sale of goods or services exported to Iraq; and an explanation of the facts and circumstances surrounding the entry into and execution of the transaction; and

(2) a notarized statement by the applicant certifying that no ownership interest greater than five (5) percent is held by the Government of Iraq or an Iraqi person in the beneficiary of the letters of credit, or if such interest exists, the name, address and ownership interest of the Government of Iraq entity or Iraqi person holding such interest.

(c) This section does not authorize exportation or the performance of services after the effective date pursuant to a contract entered into or partially performed prior to the effective date.

(d) Transactions conducted under specific licenses granted pursuant to this section must be reported in writing to the Office of Foreign Assets Control, Blocked Assets Section, no later than 10 days after the date of payment.

(e) Separate criteria may be applied to the issuance of licenses authorizing payment from an account of or held by a blocked U.S. bank owned or controlled by the Government of Iraq.

§ 575.511 Extensions or renewals authorized.

(a) The extension or renewal, at the request of the account party, of a letter of credit or a standby letter of credit issued or confirmed by a U.S. financial institution is authorized.

(b) Transactions conducted pursuant to this section must be reported to the Office of Foreign Assets Control, Blocked Assets Section, within 10 days after completion of the transaction.

§ 575.512 [Reserved]

§ 575.513 Transactions related to telecommunications authorized.

All transactions of U.S. common carriers with respect to the receipt and transmission of telecommunications involving Iraq are authorized, provided that any payment owed to the Government of Iraq or persons in Iraq is paid into a blocked account in a U.S. financial institution.

§ 575.514 Transactions related to mail authorized.

All transactions by U.S. persons, including payment and transfers to common carriers, incident to the receipt or transmission of mail between the United States and Iraq are authorized, provided that mail is limited to personal communications not involving a transfer of anything of value and not exceeding 12 ounces.

§ 575.515 [Reserved]

§ 575.516 [Reserved]

§ 575.517 Procedures established for export transactions initiated prior to effective date.

Goods awaiting exportation to Iraq on the effective date and seized or detained by the U.S. Customs Service on the effective date or thereafter may be released to the exporter, provided the following documents are filed with Customs officials at the port where such goods are located:

(a) A copy of the contract governing the exportation (sale or other transfer) of the goods to Iraq or, if no contract exists, a written explanation of the circumstances of exportation, including in either case a description of the manner and terms of payment received or to be received by the exporter (or other person) for, or by reason of, the exportation of the goods;

(b) An invoice, bill of lading, or other documentation fully describing the goods; and

(c) A statement by the exporter substantially in the following form:

> Any amount received from or on behalf of the Government of Iraq by reason of the attempted exportation of the goods released to [name of exporter] by the U.S. Customs Service on [date], and fully described in the attached documents, has been or will be placed into a blocked account in a U.S. bank and the Office of Foreign Assets Control, Blocked Assets Section, will be immediately notified. [Name of exporter] agrees to fully indemnify the U.S. Government for any amount ultimately determined by a court of competent jurisdiction to be due or payable to or for the benefit of any person by reason of the failure of [name of exporter] to properly pay into a blocked account any amount received for the goods from or on behalf of the Government of Iraq. [Name of exporter] also agrees to waive all claims (1) against any payments received and placed into a blocked account, except as may be later authorized by law, regulations, or license, and (2) against the U.S. Government with regard to the disposition of the amounts placed into a blocked account.

The statement should be dated and signed by the exporter or by a person authorized to sign on the exporter's behalf. The Customs Service may release the goods to the exporter upon receipt of the documentation and statement described above, provided it is satisfied that all customs laws and regulations have been complied with, including the execution of such hold harmless assurances as it shall determine to be appropriate. The documentation and statement received by Customs will be forwarded to the Office of Foreign Assets Control for review and appropriate action.

§ 575.518 Certain standby letters of credit and performance bonds.

(a) Notwithstanding any other provision of law, payment into a blocked account in a U.S. financial institution by an issuing or confirming bank under a standby letter of credit in favor of a beneficiary that is the Government of Iraq or a person in Iraq is prohibited by § 575.201 and not authorized, notwithstanding the provisions of § 575.503, if:

(1) The account party is a U.S. person; and

(2)(a) a specific license has been issued pursuant to the provisions of paragraph (b) of this section, or

(b) 10 business days have not expired after notice to the account party pursuant to paragraph (b) of this section.

(b) Whenever an issuing or confirming bank shall receive such demand for payment under such a standby letter of credit, it shall promptly notify the account party. The account party may then apply within five business days for a specific license authorizing the account party to establish a blocked account on its books in the name of the Iraqi beneficiary in the amount payable under the credit, in lieu of payment by the issuing or confirming bank into a blocked account and reimbursement therefor by the account party. Nothing in this section relieves any such bank or such account party from giving any notice of defense against payment or reimbursement that is required by applicable law.

(c) Where there is outstanding a demand for payment under a standby letter of credit, and the issuing or confirming bank has been enjoined from making payment, upon removal of the injunction, the account party may apply for a specific license for the same purpose and in the same manner as that set forth in paragraph (b) of this section. The issuing or confirming bank shall not make payment under the standby letter of credit unless:

(1) 10 business days have expired since the bank has received notice of the removal of the injunction, and

(2) A specific license issued to the account party pursuant to the provisions of this paragraph has not been presented to the bank.

(d) If necessary to assure the availability of the funds blocked, the

Director of the Office of Foreign Assets Control may at any time require the payment of the amounts due under any letter of credit described in paragraph (a) of this section into a blocked account in a U.S. financial institution or the supplying of any form of security deemed necessary.

(e) Nothing in this section precludes the account party on any standby letter of credit or any other person from at any time contesting the legality of the demand from an Iraqi beneficiary or from raising any other legal defense to payment under the standby letter of credit.

(f) This section does not affect the obligation of the various parties to the instruments covered by this section if the instruments and payments thereunder are subsequently unblocked.

(g) The section does not authorize any U.S. person to reimburse a non-U.S. bank for payment to a Iraqi beneficiary under a standby letter of credit, except by payments into a blocked account in accordance with § 575.503 or paragraph (b) or (c) of this section.

(h) A person receiving a specific license under paragraph (b) or (c) of this section shall certify to the Office of Foreign Assets Control within 5 business days after receipt of that license that it has established the blocked account on its books as provided in those paragraphs. However, in appropriate cases, this time period may be extended upon application to the Office of Foreign Assets Control when the account party has filed a petition with an appropriate court seeking a judicial order barring payment by the issuing or confirming bank.

(i) For the purposes of this section:

(1) The term "standby letter of credit" shall mean a letter of credit securing performance of, or repayment of, any advance payments or deposits under a contract, or any similar obligation in the nature of a performance bond;

(2) The term "account party" shall mean the person for whose account the standby letter of credit is opened; and

(3) The term "Iraqi beneficiary" shall mean a beneficiary that is

(i) A person in Iraq,

(ii) An entity operated from Iraq, or

(iii) The Government of Iraq.

§ 575.519 Certain imports for diplomatic or official personnel authorized.

All transactions ordinarily incident to the importation of any goods or services into the United States destined for official or personal use by personnel employed by the diplomatic missions of the Government of Iraq to the United States and to international organizations located in the United States are authorized, not for resale, and unless the importation is otherwise prohibited by law.

§ 575.520 Donations of food to relieve human suffering authorized.

(a) Specific licenses may be issued on a case-by-case basis to permit exportation to Iraq of donated food intended to relieve human suffering.

(b) In general, specific licenses will only be granted for donations of food to be provided through the United Nations in accordance with United Nations Security Council Resolutions 661 and 666 and in cooperation with the International Committee of the Red Cross or other appropriate humanitarian agencies for distribution by them or under their supervision, or in such other manner as may be approved under United Nations Security Council Resolution 666 and any other applicable Security Council resolutions, in order to ensure that such donations reach the intended beneficiaries.

(c) Applications for specific licenses pursuant to paragraph (a) of this section shall be made in advance of the proposed exportation, and provide the following information:

(1) The nature, quantity, value, and intended use of the donated food; and

(2) The terms and conditions of distribution, including the intended method of compliance with such terms and conditions of distribution as may have been adopted by the United Nations Security Council or a duly authorized body subordinate thereto to govern the shipment of foodstuffs under applicable United Nations Security Council resolutions, including Resolutions 661 and 666.

§ 575.521 Donations of medical supplies authorized.

(a) Specific licenses may be issued on a case-by-case basis to permit exportation to Iraq of donated supplies intended strictly for medical purposes, in accordance with the provisions of United Nations Security Council Resolutions 661 and 666 and other applicable Security Council resolutions.

(b) In general, specific licenses will only be granted for the exportation of medical supplies through the International Committee of the Red Cross or other appropriate humanitarian agencies for distribution by them or under their supervision, or in such other manner as may be approved under applicable Security Council resolutions, in order to ensure that such supplies reach the intended recipient.

(c) Applications for specific licenses pursuant to paragraph (a) shall be made in advance of the proposed exportation, and provide the following information:

(1) The nature, quantity, value, and intended use of the medical supplies;

(2) The terms and conditions of distribution, including the intended method of compliance with such terms and conditions of distribution as may have been adopted by the United Nations Security Council or a duly authorized body subordinate thereto to govern the shipment of medical supplies under applicable Security Council resolutions.

Subpart F—Reports

§ 575.601 Required records.

Every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each such transaction in which that person engages, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 2 years after the date of such transaction.

§ 575.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the person required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Director of Foreign Assets Control may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnessess, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnessess and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

§ 575.603 Report on certain correspondent bank accounts.

(a) U.S. financial institutions are required to file a monthly report concerning any bank account held by them in the name of a bank in which the Government of Iraq holds an equity

interest of 10% or more (*i.e.*, a correspondent bank account).

(b) The report, consisting of a copy of a monthly bank statement for the account, must:

(1) Include a summary of the average balance in the account for the period covered by the report,

(2) List the actual date on which account statements are made available to account holders, and

(3) State the exact location at which documents showing debits from and credits to the account may be reviewed and the name and telephone number of a person responsible for the content of the report.

(The report should not include copies of documents showing debits and credits.)

(c) A report filed pursuant to this section must arrive at the Office of Foreign Assets Control, Compliance Section, no later than the last business day of the month following the activity summarized in the report. The report may be sent by facsimile to (202) 377–7222 or mailed to the following address: Compliance Unit—603, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW.—2131 Annex, Washington, DC 20220.

Subpart G—Penalties

§ 575.701 Penalties.

(a) Section 586E of the Iraq Sanctions Act of 1990, Public Law 101–513, 104 Stat. 2049, provides that, notwithstanding section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) and section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b))—

(1) A civil penalty of not to exceed $250,000 may be imposed on any person who, after the enactment of this Act, violates or evades or attempts to violate or evade Executive Order Number 12722, 12723, 12724, 12725, or any license, order, or regulation issued under any such Execution Order;

(2) Whoever after the date of enactment of this Act willfully violates or evades or attempts to violate or evade Executive Order Number 12722, 12723, 12724, or 12725 or any license, order, or regulation issued under any such Executive Order—

(i) shall, upon conviction, be fined not more than $1,000,000 if a person other than a natural person; or

(ii) if a natural person, shall, upon conviction, be fined not more than $1,000,000, be imprisoned for not more than 12 years, or both.

(3) Any officer, director, or agent of any corporation who knowingly participates in a violation, evasion, or attempt described in paragraph (a)(2) of this section may be punished by imposition of the fine, imprisonment (or both) specified in paragraph (a)(2)(ii) of this section.

(b) Attention is directed to the United Nations Participation Act, 22 U.S.C. 287c(b), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section shall, upon conviction, be fined not more than $10,000 or, if a natural person, be imprisoned for not more than ten years, or both; and the officer, director or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a similar fine, imprisonment or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

§ 575.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 575.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

§ 575.704 Penalty notice.

(a) *No Violation.* If, after considering and presentations made in response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of the determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

§ 575.705 Referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director within 30 days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 575.801 Licensing.

(a) *General Licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in Subpart B of this part. All such licenses in effect on the date of publication are set forth in subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses. Failure to file such reports or statements will nullify the authority of the general license.

(b) *Specific licenses*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in subpart B of this part which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information or discuss or argue the application may do so at any time before or after decision. Arrangements for oral presentation shall be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220.

§ 575.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 575.803 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, whether general or specific, authorizations, instructions, orders, or forms issued hereunder may be amended, modified, or revoked at any time.

§ 575.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

§ 575.805 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order No. 12723 and Executive Order No. 12725 may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 575.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as part 1 of this title 31 of the Code of Federal Regulations, 32 FR 9562 (July 1, 1967).

(b) Any form issued for use in connection with the Iraqi Sanctions Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220, or by calling (202) 566–2701.

Subpart I—Paperwork Reduction Act

§ 575.901 [Reserved]

Dated: January 14, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 15, 1991.

Peter K. Nunez,

Assistant Secretary

(Enforcement).

[FR Doc. 91–1461 Filed 1–17–91; 8:45 am]

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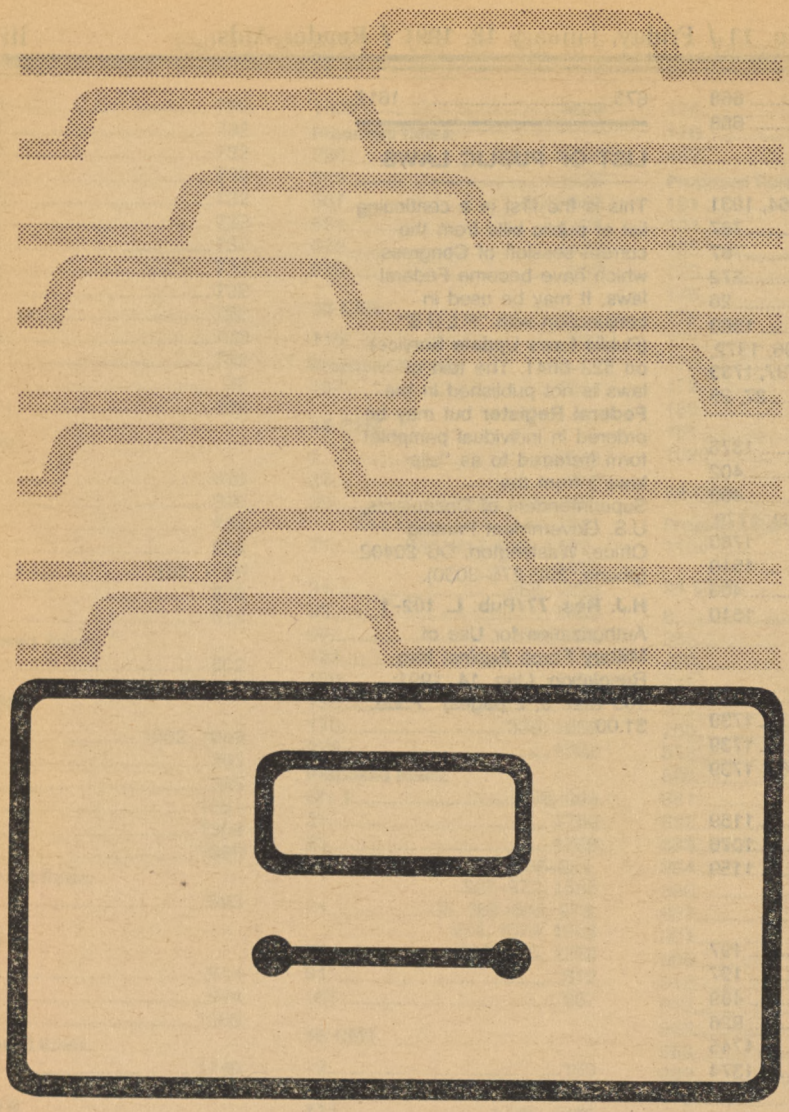

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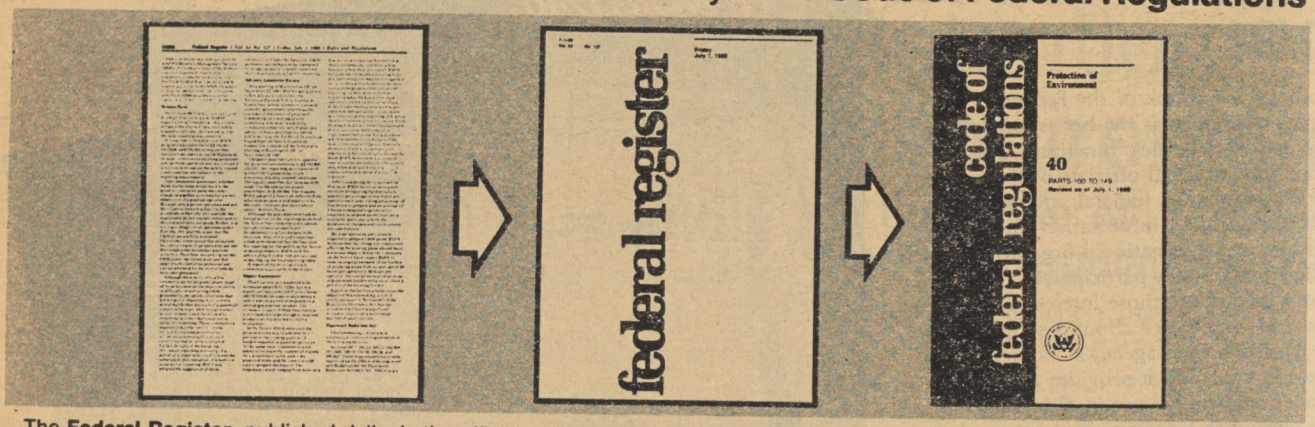

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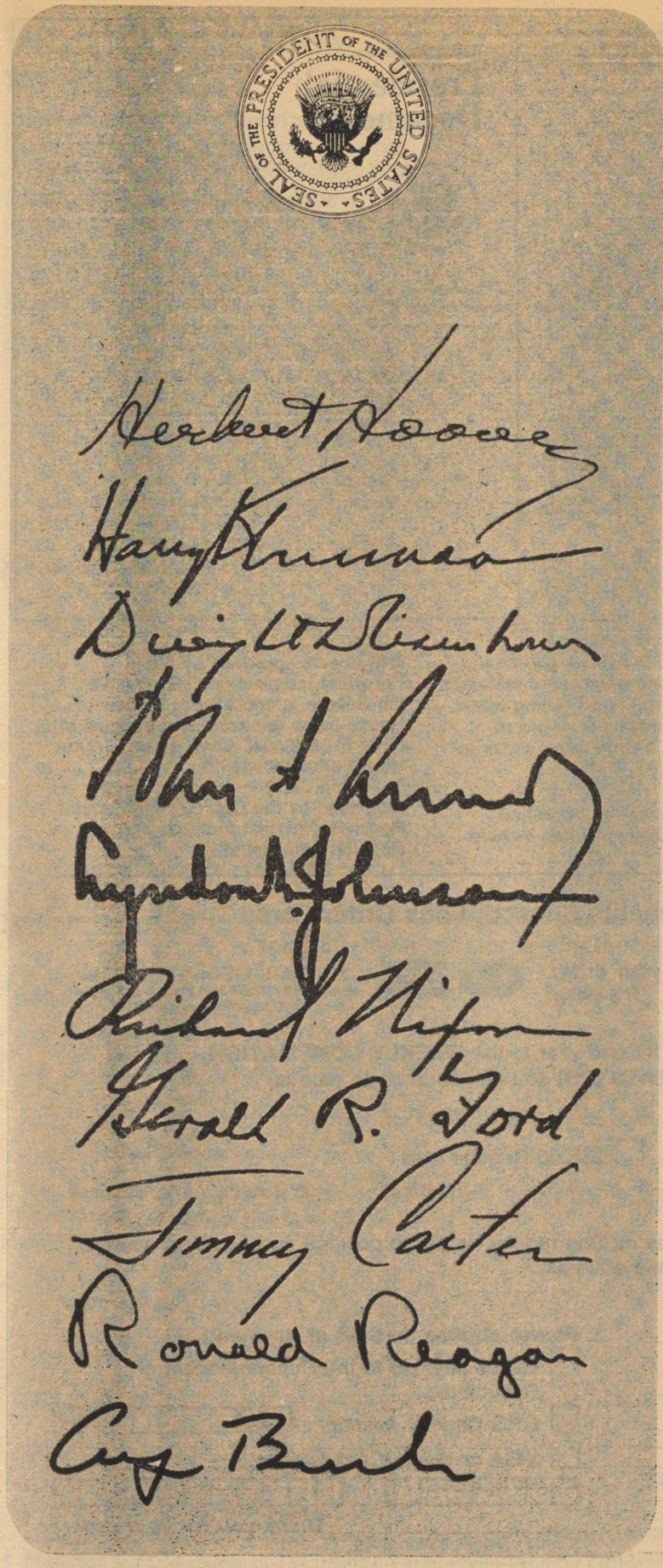

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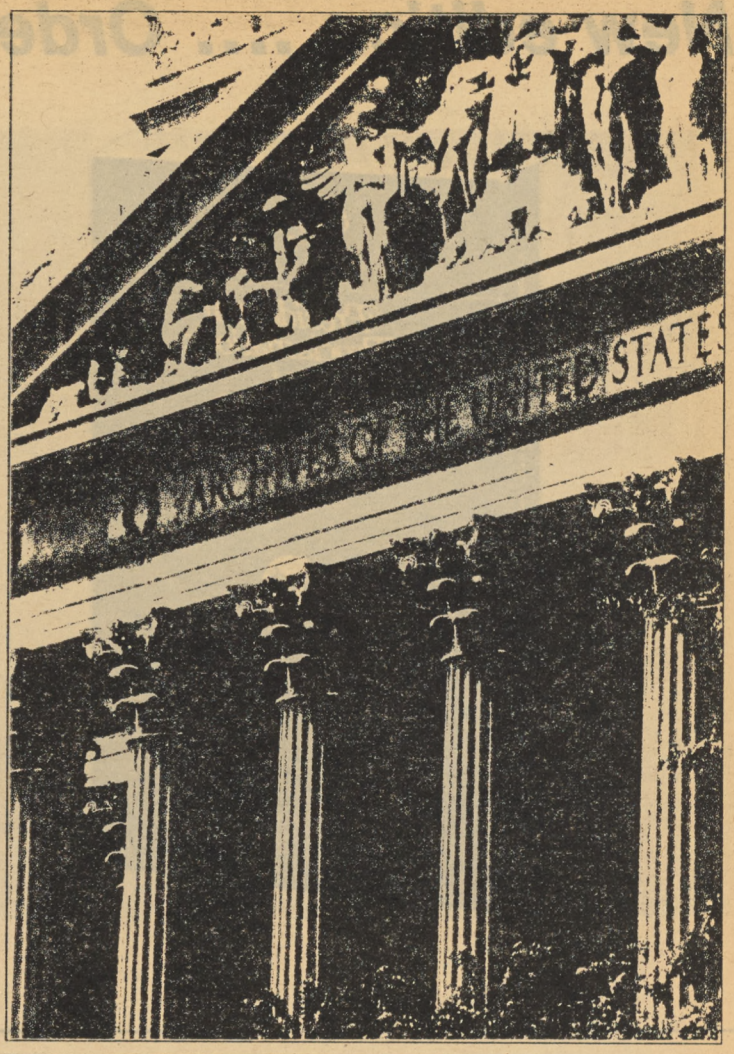

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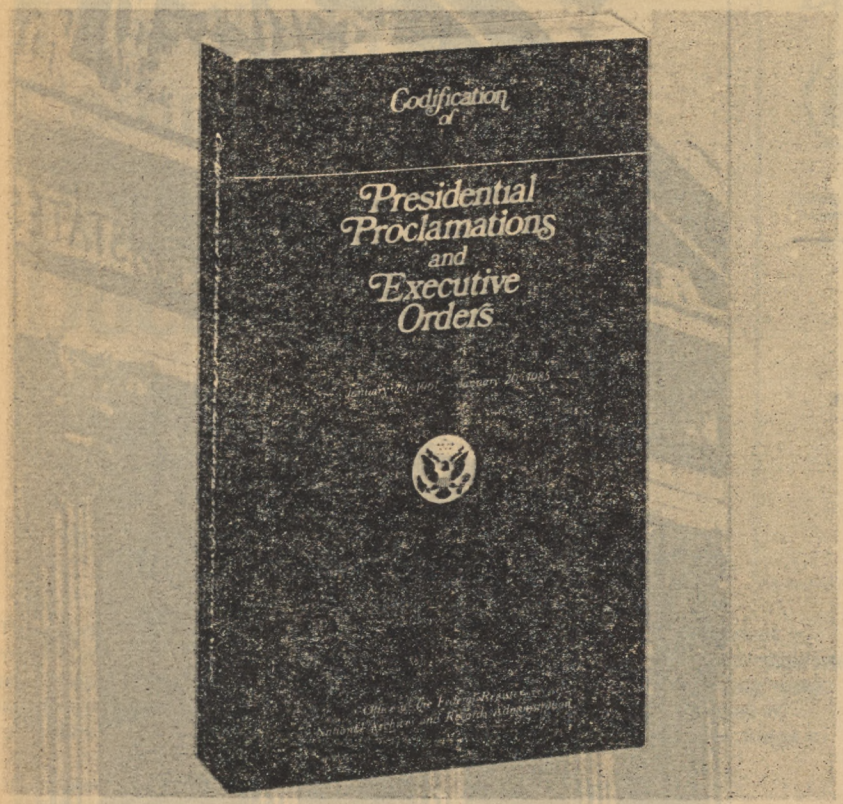

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