AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

11–2–93
Vol. 58 No. 210

federal register

Tuesday
November 2, 1993

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

11–02–93
Vol. 58 No. 210
Pages 58483–58640

federal register

Tuesday
November 2, 1993

Briefing on How To Use the Federal Register
For information on briefing in New York, NY, see announcement on the inside cover of this issue.

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

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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.
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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.

NEW YORK, NY

WHEN: November 23, 9:00 am—12:00 pm

WHERE: National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY

RESERVATIONS: 1–800–347–1997

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 789

[Docket No. 931077–3277]

Revisions as to Deciding Officials on Appeals From Administrative Actions

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to reflect current agency practice that the Under Secretary for Export Administration is the BXA official who reviews and decides appeals from administrative actions covered by the appeals regulations of the EAR. Moreover, the rule makes clear that the Under Secretary has discretion to designate another Department of Commerce official to review and decide an appeal and also to designate an appeals coordinator to assist the Under Secretary in the review and processing of an appeal. Provision in the appeals regulations for a "presiding official" is removed, as the responsibilities of an appeals coordinator may include presiding over informal hearings. This rule does not impose new or additional requirements on the exporting community. It has applicability to all pending and future appeals under the appeals regulations.

EFFECTIVE DATE: This rule is effective November 2, 1993.

FOR FURTHER INFORMATION CONTACT: The Office of Chief Counsel for Export Administration, Telephone: (202) 482–5304.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule does not involve a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

2. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 603(b)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 789

Administrative practice and procedure, Exports.

Accordingly, part 789 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 789 is revised to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992); E.O. 12867 of September 30, 1993 (58 FR 51743, October 7, 1993; E.O. 12868 of September 30, 1993 (58 FR 51749, October 7, 1993).

PART 789—[AMENDED]

2. Section 789.1(b) is amended by removing the definitions for "Assistant Secretary" and "Presiding official" and by adding a definition for "Under Secretary", in alphabetical order, to read as follows:

§ 789.1 General provisions.

* * * * *

(b) * * *

Under Secretary. The Under Secretary of Commerce for Export Administration or, when the Under Secretary delegates the authority to review and decide an appeal to another official pursuant to § 789.2(a)(2), the term "Under Secretary" refers to such other official.

3. Section 789.2 is revised to read as follows:

§ 789.2 Appeals from an administrative action.

(a) *Grounds for appeal, scope of review, and appeal officials.* (1) Any person directly and adversely affected by an administrative action (excluding denial or probation orders, civil penalties, sanctions, or other actions under parts 787 and 788 of this subchapter) taken by the U.S. Department of Commerce may appeal to the Under Secretary for reconsideration of that administrative action. Regulations may not be appealed under this part. (See § 789.3.)

(2) The Under Secretary may delegate to the Deputy Under Secretary for Export Administration or to another Department of Commerce official the authority to review and decide the appeal. In addition, the Under Secretary may designate any Department official to be an appeals coordinator to assist in the review and processing of an appeal under this part. The responsibilities of

an appeals coordinator may include presiding over informal hearings.

(b) *Appeal procedures*—(1) *Filing.* An appeal under this part must be received by the Under Secretary for Export Administration, Bureau of Export Administration, room H–3886C, 14th Street and Pennsylvania Avenue, NW., U.S. Department of Commerce, Washington, DC 20230, not later than 45 days after the date appearing on the written notice of administrative action.

(2) *Content of appeal.* A full written statement in support of the appeal, including a precise statement of why the appellant believes the administrative action has a direct and adverse effect and should be reversed or modified, must be filed with the appeal. The Under Secretary may request any further submissions deemed helpful in resolving the appeal. The Under Secretary has the discretion to accept additional submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the appeal or of any requested submission.

(3) *Request for informal hearing.* In addition to the written statement submitted in support of an appeal, an appellant may request, in writing, at the time of filing an appeal, an opportunity for an informal hearing. However, the Under Secretary may grant or deny a request for an informal hearing. All hearings, if, granted, will be held in the District of Columbia unless the Under Secretary determines, based upon good cause shown, that another location would better serve the interests of justice.

(4) *Informal hearing procedures.*—(i) *Presentations.* The Under Secretary shall provide an opportunity for the appellant and/or representative to make an oral presentation based on the materials previously submitted by the appellant or made available by the Department in connection with the administrative action and may require that any facts in controversy be covered by affidavit or testimony given under oath or affirmation.

(ii) *Evidence.* The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material deemed by the Under Secretary to be relevant and material to the proceeding and not unduly repetitious shall be received and given appropriate weight.

(iii) *Procedural questions.* The Under Secretary shall have the authority to limit the number of people attending the hearing, to impose any time or other limitations deemed reasonable, and to determine all procedural questions.

(iv) *Transcript.* A transcript of an informal hearing shall not be made, unless the Under Secretary determines that the national interest or other good cause warrants it, or the appellant requests a transcript. If the appellant requests a transcript, the appellant shall pay all expenses.

(v) *Report.* When the Under Secretary designates a Departmental official to conduct an informal hearing, that official shall submit a written report containing a summary of the hearing and recommended action to the Under Secretary.

(c) *Decisions.*—(1) *Determination of appeals.* In addition to the documents specifically submitted in connection with the appeal, the Under Secretary shall consider any recommendations, reports, or relevant documents available to the Department of Commerce in determining the appeal, but shall not be bound by any such recommendation, nor prevented from considering any other information, or consulting with any other person or groups, in making a determination. The Under Secretary may adopt any other procedures deemed necessary and reasonable for considering an appeal. The Under Secretary shall decide an appeal within a reasonable time after receipt of the appeal. The decision shall be issued to the appellant in writing and shall contain a statement of the reasons for the action.

(2) *Effect of the determination.* The decision of the Under Secretary shall be final.

(d) *Effect of appeal.*—The taking of an appeal shall not stay the operation of any administrative action unless the Under Secretary, upon application by the appellant and with opportunity for response, shall grant a stay.

Dated: October 27, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–26923 Filed 11–01–93; 8:45 am]

BILLING CODE 3510–DT–P

National Oceanic and Atmospheric Administration

15 CFR Part 904

[Docket No. 931082–3282]

RIN 0648–AF96

Civil Procedure Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NOAA publishes this interim final rule to amend its civil procedure regulations to make them consistent with a Federal district court ruling on the Agency's consideration of a respondent's ability to pay when assessing a civil penalty. The amendment removes a provision which places the burden on the respondent to raise and prove inability to pay an assessed penalty when the statute involved requires NOAA to take ability to pay into account.

DATES: This rule is effective November 2, 1993. Comments must be received no later than January 3, 1994.

ADDRESSES: Send comments on the interim final rule to NOAA Office of the Assistant General Counsel for Enforcement and Litigation (GCEL), 8484 Georgia Avenue, Fourth Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Patricia Kraniotis, 301–427–2202.

SUPPLEMENTARY INFORMATION:

Discussion

Several statutes that NOAA enforces, including the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act), require that when the Agency assesses a civil penalty it take various factors into consideration, one of which is the ability of the respondent to pay the assessed penalty. NOAA Civil Procedure Regulations, 15 CFR 904.108, implement this requirement. The regulation treats consideration of "ability to pay" as an affirmative defense which must be raised and proved by the respondent. In a recent Federal district court case, *Diehl* v. *Franklin, Civ. No. 92–4084 (D.N.J., July 15, 1993),* which involved judicial review of an administrative hearing under the Magnuson Act, the district court ruled that the procedure was inconsistent with both the Magnuson Act and the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (APA).

Section 308 of the Magnuson Act, 16 U.S.C. 1858, states that in assessing a penalty NOAA "shall" consider the respondent's ability to pay. Section 556(d) of the APA, 5 U.S.C. 556(d) provides that the proponent of an order has the burden of proof. The district court held that because there was no information in the record respecting the respondent's ability to pay, NOAA could not have met its burden.

NOAA must take immediate steps to amend the regulation in order that consideration of ongoing cases comply with the *Diehl* decision and to avoid burdensome re-litigation of respondents' financial status. Therefore, this interim rule removes the provision placing the burden of proof on the respondent to

raise and prove inability to pay the assessed penalty with respect to those statutes which require consideration of this factor. Under the interim rule, where the respondent has requested a hearing on a penalty assessed in a Notice of Violation and Assessment (NOVA) under those statutes, the agency has the responsibility for producing evidence regarding the respondent's financial condition. (For the statutes, such as the Endangered Species Act, 16 U.S.C. 1531–1543, that do not require consideration of this factor, the burden remains with respondent to raise the issue and prove it.)

Diehl only addressed the case where a respondent had requested a hearing on alleged violation and assessed penalty, but did not address whether, and to what extent, NOAA must consider ability to pay prior to receiving a hearing request from the respondent. The interim rule addresses this initial stage of the penalty assessment process as well, consistent with the current procedures governing issuance of a NOVA, and taking into consideration the fact that until a case has been docketed for hearing the Agency has no power to obtain financial information by subpoena. Current procedures already provide that NOAA will consider any information available on the respondent's financial condition when issuing a NOVA (15 CFR 904.101(b)). The interim rule adds the requirement that the NOVA specifically advise the respondent of the right to seek to have the penalty assessed in the NOVA modified on "ability to pay" grounds. The respondent should provide adequate, verifiable, financial information to support the request for modification. The new interim procedures reflect, as recognized by courts that have addressed this issue, that circumstances respecting consideration of "ability to pay" are unique in the penalty assessment process in that the respondent peculiarly controls such financial information, and NOAA must seek it from the respondent.

At the hearing stage, the interim rule reflects that NOAA may rely heavily upon discovery practice to obtain adequate financial information about a respondent. The court in *Diehl*, as have other courts, recognized that an agency may seek to compel production of financial information from a respondent who refuses to provide it (or provides it in a selective, self-serving fashion), and that NOAA also may draw adverse inferences from a respondent's refusal to cooperate. The interim regulation reflects this consideration by amending the discovery provisions in the procedural rules (15 CFR 904.240) to allow NOAA to seek discovery of ability to pay information without having to first file a motion with the Administrative Law Judge (ALJ). It also makes clear that failure to respond to such a discovery request may result in an inference adverse to the respondent with respect to the information sought by the Agency.

Classification

Section 553(b)(A) of the APA exempts rules of agency practice and procedure such as part 904 from requirements of notice and opportunity for public comment. Moreover, NOAA has ongoing proceedings in various stages and it would be contrary to the public interest to proceed with them under the current rules or to suspend the assessment of penalties and holding hearings until completion of a comment period. Although not required by law to do so, NOAA is soliciting public comments on this rule, and will consider them when issuing a final rule.

Because neither the APA nor any other statute requires public notice and opportunity for comment on this rule, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis has been prepared.

The interim rule has been categorically determined to have no significant effect on the quality of the human environment under NOAA Directive 02–10. Therefore, no environmental assessment has been prepared.

Regulations governing civil and administrative actions such as this part 904 are exempt from the requirements of the Paperwork Reduction Act (5 CFR 1320.3(c)). This rule contains no information collection requests that are subject to the Act.

Under section 553(d) of the APA this procedural rule may be and is being made effective upon publication.

List of Subjects in 15 CFR Part 904

Administrative practice and procedure, Fisheries, Fishing, Penalties, Sanctions.

Dated: October 27, 1993.

Meredith J. Jones,

NOAA General Counsel.

For the reasons set out in the preamble, 15 CFR part 904 is amended as set forth below:

PART 904—CIVIL PROCEDURES

1. The authority citation for 15 CFR part 904 continues to read as follows:

Authority: 16 U.S.C. 1801–1882; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1407; 16 U.S.C. 3371–3378; 16 U.S.C. 1431–1439; 16 U.S.C. 773–773k; 16 U.S.C. 951–961; 16 U.S.C. 1021–1032; 16 U.S.C. 3631–3644; 42 U.S.C. 9101 *et seq.*; 30 U.S.C. 1401 *et seq.*; 16 U.S.C. 971–971i; 16 U.S.C. 781 *et seq.*; 16 U.S.C. 2401–2412; 16 U.S.C. 2431–2444; 16 U.S.C. 972–972h; 16 U.S.C. 916–916l; 16 U.S.C. 1151–1175; 16 U.S.C. 3601–3608; 16 U.S.C. 1851 note; 15 U.S.C. 4201 *et seq.*

2. Section 904.108 is amended by revising the first sentence of paragraph (c) and adding a new paragraph (g) to read as follows:

§ 904.108 Factors considered in assessing penalties.

* * * * *

(c) Except as provided in paragraph (g) of this section, if a respondent asserts that a penalty should be reduced because of an inability to pay, the respondent has the burden of proving such inability by providing verifiable, complete, and accurate financial information to NOAA. * * *

* * * * *

(g) Whenever a statute requires NOAA to take into consideration a respondent's ability to pay when assessing a penalty, NOAA will take into consideration information available to it concerning a respondent's ability to pay. In such case, the NOVA will advise, in accordance with section 904.102 of this part, that respondent may seek to have the penalty amount modified by Agency counsel on the basis that he or she does not have the ability to pay the penalty assessed. A request to have the penalty amount modified on this basis must be made in accordance with § 904.102 of this part and should be accompanied by supporting financial information. Agency counsel may request the respondent to submit such additional verifiable financial information as Agency counsel determines is necessary to evaluate the respondent's financial condition (such as by responding to a financial request form or written interrogatories, or by authorizing independent verification of respondent's financial condition). A respondent's failure to provide the requested information may serve as the basis for inferring that such information would not have supported the respondent's assertion of inability to pay the penalty assessed in the NOVA If the respondent has requested a hearing on the offense alleged in the NOVA, the Agency must submit information on the respondent's financial condition so that the Judge may consider that information, along with any other factors required to be considered, in the Judge's de novo assessment of a penalty. Agency counsel may obtain such financial information

through discovery procedures under § 904.240 of this part, or otherwise. A respondent's refusal or failure to respond to such discovery requests may serve as the basis for inferring that such information would have been adverse to any claim by respondent of inability to pay the assessed penalty, or result in respondent being barred from asserting financial hardship.

3. Section 904.240 is amended by revising the second sentence of paragraph (a) and adding a new sentence at the end of paragraph (b) to read as follows:

§ 904.240 Discovery generally.

(a) * * * Except for information regarding a respondent's ability to pay an assessed penalty, this document, which must be served on all other parties, will normally obviate the need for further discovery. * * *

(b) * * * With respect to information regarding a respondent's ability to pay an assessed penalty, the Agency may serve any discovery request (i.e., deposition, interrogatories, admissions, production of documents) directly upon the respondent without first seeking an order from the Judge.

* * * * *

[FR Doc. 93–26940 Filed 11–1–93; 8:45 am]
BILLING CODE 3510–22–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 526 and 556

Animal Drugs, Feeds, and Related Products; Pirlimycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by The Upjohn Co. The application provides for use of pirlimycin hydrochloride (Pirsue™) to be used as an aqueous gel as an intramammary infusion for dairy cattle. The regulations are also amended to provide for a tolerance for residues of pirlimycin in edible animal tissue and milk.

EFFECTIVE DATE: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center For Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1659.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed NADA 141–036 that provides for use of pirlimycin hydrochloride (Pirsue™) aqueous gel as an intramammary infusion for dairy cattle. The firm also provided data and information to establish tolerances for residues of pirlimycin in edible animal tissues and milk. The NADA is approved as of September 10, 1993, and 21 CFR 526.1810 and 556.515 are added to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years marketing exclusivity beginning September 10, 1993, because no active ingredient (including any ester or salt thereof) has been approved in any other application.

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

List of Subjects

21 CFR Part 526

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center For Veterinary Medicine, 21 CFR parts 526 and 556 are amended as follows:

PART 526—INTRAMAMMARY DOSAGE FORMS

1. The authority citation for 21 CFR part 526 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 526.1810 is added to read as follows:

§ 526.1810 Pirlimycin hydrochloride aqueous gel.

(a) *Specifications.* Each 10-milliliter syringe contains 50 milligrams of pirlimycin (as pirlimycin hydrochloride).

(b) *Sponsor.* See 000009 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.515 of this chapter.

(d) *Conditions of use.* (1) *Dose.* 50 milligrams in each infected quarter, repeated once after 24 hours.

(2) *Indications for use.* For lactating dairy cattle for the treatment of clinical and subclinical mastitis caused by *Staphylococcus* species, such as *Staphylococcus aureus*; and *Streptococcus* species, such as *Streptococcus agalactiae, Streptococcus dysgalactiae,* and *Streptococcus uberis.*

(3) *Limitations.* Milk taken from animals during treatment and for 36 hours (three milkings) following the last treatment must not be used for food. Treated animals must not be slaughtered for food use for 28 days following the last treatment. Cows with systemic clinical signs caused by mastitis should receive other appropriate therapy under the direction of a licensed veterinarian. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

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

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

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. New § 556.515 is added to subpart B to read as follows:

§ 556.515 Pirlimycin.

A tolerance is established for residues of parent pirlimycin (marker substance) in cattle liver (target tissue) of 0.5 part per million and in milk of 0.4 part per million.

Dated: October 25, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–26930 Filed 11–1–93; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of an amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, submitted on July 24, 1992, pertains to permit renewals, revisions, and amendments. The amendment revises the Wyoming program to be consistent with the corresponding Federal standards and to incorporate the additional flexibility afforded by the revised Federal rules.

EFFECTIVE DATE: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78684). Descriptions of subsequent actions concerning the Wyoming program and program amendments can be found at 30 CFR 950.12, 950.15 and 950.16.

II. Submission of Amendment

On July 24, 1992, the Wyoming Department of Environmental Quality—Land Quality Division (DEQ/LQD) submitted a proposed amendment (1E) to its program pursuant to SMCRA (Administrative Record No. WY–19–01). The DEQ/LQD proposes to amend the following rules and regulations by defining the term "amendment" at Chapter I, Section 2 (proposed as (e)), and modifying exceptions to the need for permit revisions for surface coal mining operations at Chapter XIV, Section 6(a).

OSM published a notice in the September 11, 1992, **Federal Register** (57 FR 41715) announcing receipt of the proposed amendment and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. The public comment period closed on October 13, 1992. A public hearing was not held because no one requested an opportunity to testify.

During the review of the amendment, OSM identified various concerns including procedural, informational, and public notice requirements for a permit amendment; whether amending a permit by up to 20 percent of the original permit acreage without public notice applies to coal mining operations; the meaning of various terms associated with the State's permitting process; and the need to clarify apparent conflicts in the level of detail needed for certain items in a permit application. OSM notified Wyoming of these concerns by letter dated November 17, 1992, (Administrative Record No. WY–19–08). Wyoming responded in a letter dated January 28, 1993, (Administrative Record No. WY–19–10) to all concerns identified in the November 17, 1992, OSM letter.

In the March 30, 1993, **Federal Register** (59 FR 16636), OSM announced receipt of Wyoming's January 28, 1993, letter and reopened the public comment period for the proposed amendment (Administrative Record No. WY–19–11). The Public comment period closed on April 14, 1993.

Wyoming has submitted a proposed amendment to its permanent regulatory program to recodify its rules. The proposed amendment, which can be found in the August 23, 1993, **Federal Register** (58 FR 44480), separates Wyoming's coal rules from its noncoal mining rules. Until the recodification and reorganization is approved by OSM, the number and letter designations of chapters and sections cited by OSM in this rule making are those previously approved and used.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment submitted by Wyoming on July 24, 1992, and the subsequent changes and clarifications of January 28, 1993.

1. Definition of "Amendment"

At Chapter I, Section 2., Wyoming proposes to define at (e), "amendment" to mean the addition of new lands to a previously approved permit area as allowed by W.S. 35–11–406(a)(xii). This definition is being proposed because the State recognizes that the term is used extensively in the LQD rules but has not been defined. Additionally, questions have been raised regarding the difference between the Wyoming terms "permit area" and "term-of-permit." Questions have also been raised concerning the public notice and information requirements for permit amendments.

The Federal program does not provide a definition for the term "amendment." However, the Federal regulations at 30 CFR 774.13(d) require that any extensions to an area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit. Wyoming is proposing to use an alternative term, "amendment," in place of "new permit." OSM recognizes that an alternative term may be used if it can be demonstrated that all informational, procedural, and public notice requirements applicable to a new permit application will also be applicable to an application for a permit "amendment." In the July 24, 1992, submittal under Analysis of Comments, Wyoming stated that its program "requires the State to follow all of the procedural and public notice requirements applicable to new permits in its review of permit amendments." This interpretation provided by Wyoming will assure that all procedural and public notice requirements of a "new permit" will be met in a "permit amendment." However, it was not clear that all the information required for a "new permit" would also be required for an amendment. OSM identified this and other concerns in a November 17, 1992, letter to Wyoming. The State responded by a letter dated January 28, 1993. The following is a discussion of the concerns raised by OSM regarding the proposed definition of "amendment."

(a) Informational Requirements for Amendments

OSM asked Wyoming to provide assurance that in addition to meeting all procedural and public notice requirements, all informational requirements applicable to new permits will also apply to permit amendments. Wyoming responded by asserting that Wyoming Statutes (W.S. 35–11–406(a)(xii)) require the same information for a permit amendment that is required for a new permit application, and that this is also true for the requirements contained in the regulations. With this clarification, OSM is satisfied that all informational requirements for a new

permit will apply to a permit amendment as well.

(b) Clarification of W.S. 35–11–406(a)(xii)

W.S. 35–11–406(a)(xii) currently reads, in part, that a—

> Permit is amendable, excepting permits for surface coal mining operations, without public notice or hearing if the area sought to be included by amendment does not exceed twenty percent (20) of the total permit acreage,

Wyoming was asked to clarify whether the phrase "excepting permits for surface coal mining operations" means that the amendment process does not apply to surface coal mining operations, or, if it means that surface coal mining permits cannot be amended "without public notice or hearing." Wyoming was also to clarify whether an incidental boundary revision of up to 20 percent of the original permit acreage and which does not require public notice, applies to surface coal mining permits. Wyoming responded that the statute allows permits to be amended without public notice only if they are non-coal permits; and, only if the amendment does not exceed 20 percent of the total permit acreage. The State further explained that the phrase does not prohibit a coal mining permit from being amended, nor does it exempt coal mining operations from public notice.

Wyoming is further proposing to modify its rule at Chapter XIV, Section 2.,(b) by deleting criterion (i). Subsection (b) that provides notice and opportunity for public hearing when an application for a permit revision proposes changes that are a significant deviation from that approved in the original permit. Subsection (b)(i), which is proposed for deletion, would consider a significant deviation to be more than a 20 percent increase in affected land above that approved in the original permit. Wyoming recognized that if Subsection (b)(i) were to remain in place, it would be possible to not provide the public with an opportunity for review and comment because the "significant deviation" criterion was not met.

With the above clarifications and proposed rule change, the Director finds that Wyoming's proposed definition of "amendment" at Chapter I, Section 2., (proposed (e)), will provide the same information, procedures, and public notice and hearing opportunities that are required for a new permit application. Therefore, the Director is approving Wyoming's proposed definition of "amendment" as being consistent with and no less effective than the Federal program requirements for a "new permit" application.

2. Permit Renewal

The Wyoming rule at Chapter XIV, Section 6, for surface coal mining operations currently provides an exception to the need for a permit revision for an extension to "the five-year area identified in Chapter II, Section 3.(b)(i)(A)." Currently, under the Wyoming regulation, such extensions must be made by an application for another permit, with public notice and a hearing when required thereby. Wyoming is proposing to modify this rule so that permit revisions for surface coal mining operations would not be allowed for extensions of the mine permit boundary, rather than the "five-year area," except for incidental boundary revisions. Under the proposed change, an operator would be required to submit an application for a permit amendment, rather than another permit, with public notice and hearing only when required thereby.

The Federal regulations at 30 CFR 774.13 allow an applicant to submit a request for a permit revision during the term of the permit. However, 30 CFR 774.13(d) requires that any extension to the area covered by the permit, except for incidental boundary revisions, shall be made by application for a new permit.

In order to fully evaluate and compare the Wyoming permitting process as now being proposed, and the various terms used by the State to describe that process, a brief overview of the Federal program permitting process and terms is provided. As defined by SMCRA, the term, "permit area," means an area of land on an approved map submitted with an operator's application, which area shall be covered by the operator's bond as required by section 509 of SMCRA, and is readily identifiable by appropriate markers on the site.

The September 28, 1983, preamble to the Federal regulations (48 FR 44344, 44372) that discusses 30 CFR 773.19(d) right of renewal, further clarifies that the permit application may be approved by the regulatory authority if it is accurate and complete; meets all of the requirements of the Act and the regulatory program; and the regulatory authority makes the necessary written findings for permit application approval per 30 CFR 773.15(c). The application must also have been subjected to the required public review process for a new application.

There is no limit to the size of the permit area or number of years that it may take to mine through the area; that can be proposed by the operator and approved by the regulatory authority. Therefore, the permit area can be larger than the area which will be mined in one five-year permit term. Section 506(b) of SMCRA limits the issuance of a permit to no more than a five-year permit term. However, the approved permit area carries with it the right of renewal upon the expiration of each five-year permit term. The permit term has no boundary, but instead is an element of time. The speed, sequence, or changes to the originally approved mining operation within the proposed permit area including the five-year permit term area are subject to permit revision considerations. The difference between the terms "permit area" and "five-year permit term" are critical to understanding the permitting process.

Wyoming's terminology is confusing in that it uses multiple terms that have a common meaning. In OSM's November 17, 1992, letter, Wyoming was asked to clarify the meaning of its terms "permit area", "mine permit boundary", and "life-of-mine permit area". Wyoming responded that the meaning of the three terms carry the same meaning. Further, Wyoming stated that the State administers the permit area concept in a fashion parallel to the Federal program intent as discussed in the September 28, 1993 **Federal Register** (48 FR 44344, 44372). The three terms used by Wyoming all have a meaning common to the Federal program term of "permit area."

Additional concerns raised by OSM in its November 17, 1992, letter to the State were as follows.

(a) Approved Permit Area

Wyoming was asked to clarify what it considered to be an approved permit area in order to assure that area identification, bonding requirements, and necessary findings would be in accordance with the Federal program requirements for an approved permit area. In response, Wyoming explained that its definition of permit area means the area of land and water included within the boundaries of the approved permit or permits during the entire life of the operation, including all affected lands and water. Also in Wyoming's rule at Chapter II, Section 1., (a) is a general requirement that all applications shall be filed in a format required by the administrator and shall include, at a minimum, all information required by the Wyoming Environmental Quality Act (EQA). Additionally, EQA at W.S. 35–11–406(a)(viii) and (ix) sets forth requirements for maps to be submitted for approval with an application for a mining permit. The map requirements

include a United States Geological Survey topographic map; and a map based upon public records showing the land to be affected, its surrounding immediate drainage area, and other physical features and descriptive information. Chapter XIII, Section 2, (d), (i), requires that liability under the applicants performance bond(s) shall be for the entire permit area; and Chapter IV, Section 3., (1), requires that uniform and durable signs and markers be posted by the operator and shall include mine and permit identification signs and perimeter markers. Wyoming also clarified that they consistently enforce the placement of signs and markers around the perimeter of the permit area. W.S. 35–11–406(n) requires the administrator to make various findings in the approval of a permit application including that it is accurate and complete; along with other necessary findings.

Based on the above, Wyoming has demonstrated that the approved permit area is identified by an approved map, is covered by a bond, that the permit area is appropriately marked, that the State finds the application is accurate and complete, and that necessary findings are made. This is consistent with the Federal program requirements for identification and approval of a permit area.

(b) Term-of-permit

Wyoming was asked to clarify its meaning of "term-of-permit." The State uses the phrase "term-of-permit boundary", as well as "five-year term-of-permit." "Term-of-permit" is not specifically defined in either the Federal or State programs. It appears that the two phrases mean the same thing. For OSM to determine if Wyoming's proposed changes are as stringent as and no less effective than the requirements of the Federal program, the State was asked for clarification of the use of the two phrases. Wyoming responded that prior to the proposed rule changes, its "term-of-permit" had a dual meaning. Not only did the term apply to a 5-year time period for the permit, but it also applied to a specific area inside the permit area. The State also noted that this rule making is intended to limit the meaning and applicability of the phrase "term-of-permit" only to the 5-year period of time for which a permit is valid. This interpretation is consistent with and no less effective than the Federal program's meaning of "term-of-permit."

(c) Qualifying Phrase—Only When Required Thereby

At Chapter XIV, Section 6., (a), Wyoming proposes to require that an extension of the mine permit boundary must be made by application for a permit amendment with public notice and hearing only when required thereby. The rule as proposed with the phrase, "only when required thereby," could be interpreted to provide discretion to the regulatory authority as to when public notice and opportunity for hearing for a mine permit boundary extension will be required. Such discretion is not allowed under the Federal program requirements. In responding to this concern, Wyoming proposes to further modify its rule at Chapter XIV, Section 6., (a), by deleting the phrase "only when required thereby." This will assure that for all mine permit boundary extensions (except for incidental boundary revisions) a permit amendment application will be required along with public notice. Wyoming also proposes an additional modification by inserting the language "opportunity for" in front of hearing. This is to clarify that amendments do not automatically require a hearing, but hearings are held when requested. This proposed rule change will satisfy OSM's concern that providing public notice and hearing opportunities could be discretionarily applied for permit amendment applications. The change now makes Wyoming's program consistent with and no less effective than the Federal program requirements regarding the opportunity for public review of proposed changes to a permit area boundary.

(d) Written Findings Based on Limited Baseline Information

At Chapter II, Section 3, of the Wyoming rules, certain permit application information requirements are limited to the five-year term-of-permit area rather than the permit area. For Wyoming to approve an application for a permit area all information pertinent to the entire permit area must be provided so that the regulatory authority can determine that the application is accurate and complete, insure that the public has an opportunity to review all potential impacts from the proposed mining operation, and to insure that the required written findings are based on the impacts to the entire permit area. Following are the specific rules identified in OSM's November 17, 1992, letter and Wyoming's January 28, 1993, response.

(1) Interest in Lands

Wyoming rule at Chapter II, Section 3., (a), (i), (D), requires a statement of all lands, interest in lands, options on pending bids held or made by the applicant for lands which are contiguous to the proposed term-of-permit area. Wyoming is proposing to modify this rule requirement by changing the existing language "* * * the proposed area to be mined during the term of the permit," to "* * * the proposed permit area." This will insure that information on "interest in lands" will be considered for the entire permit area, not just the term-of-permit area, which satisfies OSM's concern.

(2) Areas Unsuitable

Wyoming rule at Chapter II, Section 3., (a), (iv) requires the applicant to identify whether the proposed area to be mined during the term-of-permit is within an area designated unsuitable for surface coal mining. As with Finding 1 above, OSM was concerned that updates to lands unsuitable for mining would be tied to the term-of-permit area rather than the permit area. Wyoming responded that the purpose of this rule is to require an update of information for lands unsuitable each time the area to be mined during the term changes. These updates would occur upon renewal or upon major revisions that change the lands to be affected during the term of the permit. The requirement to provide information for lands unsuitable for mining for the entire permit area is found at Chapter XIII, Section 1., (a), (v), and Chapter II, Section 3., (a), (vi), (C), (VI). Chapter XIII, Section 1., (a), (v), requires and applicant to demonstrate, and the administrator to determine, that a surface coal mining operation is not proposed on lands where such operation is prohibited or limited by Section 522(e) of SMCRA, prior to approval of any complete application for a surface coal mining permit. Chapter II, Section 3., (a), (vi), (C), (VI), requires that such areas within or adjacent to the permit area be located on a map.

Wyoming's clarification satisfies OSM that the requirements of section 522(e) of SMCRA will be considered on a permit area basis.

3. Cross-sections and/or Maps and Plans

Chapter II, Section 3., (b), (i), (B), of Wyoming's rule requires cross-sections and/or maps and plans of the area to be mined during the term of the permit, rather than for the entire permit area. OSM was concerned that Wyoming's proposed change to require an

amendment to the permit area appears to conflict with information requirements at other areas of its rule. At Chapter II, Section 3, are requirements for information that is limited to the "term of permit." This includes a requirement for cross-sections, and/or maps and plans of the area to be mined during the term of the permit. The Federal regulations at 30 CFR 779.25, requires that cross-sections, maps, and plans be provided for the proposed permit area and adjacent areas. Wyoming responded that this proposed rule was also intended to address informational needs each time renewals or major revisions occurred. The requirement for cross-sections and plans for the entire permit area is found at W.S. 35–11–406(b)(v) and at Chapter II, Section 3., (a), (vi), (C). W.S. 35–11–406(b) provides general application requirements for a mining plan and a reclamation plan, including at (v), a typical cross-section showing the elevations of the surface, top, and bottom of the mineral seam and surface elevations for a distance beyond the outlines of the affected areas. Chapter II, section 3., (a), (vi), (C), requires, among other things, maps and cross-sections of the permit area and land to be affected, surface waters receiving discharge from affected areas, elevations and locations of test borings and core samples, monitoring stations, water supply intakes, location of area on which mining is limited or prohibited, slope measurements, and other information required by the administrator.

With this clarification, OSM is satisfied that Wyoming has general requirements for the cross-sections and/or maps and plans as required by the Federal program for its permit area application requirements.

4. Narrative

The Wyoming rule at Chapter II, Section 3., (b), (ii), requires a narrative covering the area to be mined during the term of the permit, rather than the entire permit area. As discussed at Finding 3. above, OSM was concerned that the State's proposed change to require an amendment to the permit area rather than another permit for extensions to the five-year area would conflict with information requirements at other areas of its rules. In its response to OSM's concern, Wyoming stated that W.S. 35–11–406(b) requires narrative information in general terms for the permit area, while this rule (Chapter II, Section 3., (b), (ii)) requires narrative information in greater detail for the area to be disturbed during the permit term. W.S. 35–11–406(b) and Chapter II, Section 3., (b), (ii), address general application requirements. OSM is satisfied that sufficient narrative will be provided in permit area applications in the Wyoming program and in a manner that is consistent with and no less effective than the Federal program requirements.

5. Blasting Plan

Chapter II, Section 3., (b), (iii), requires a blasting plan for the area to be mined during the term of the permit rather than the entire permit area. As discussed in Findings 3. and 4. above, the same conflict within different areas of the State proposed regulations was also apparent to OSM in the requirement for information on a blasting plan. The Federal regulations at 30 CFR 780.13 address the requirement for a blasting plan in the proposed permit area. In its January 28, 1993, response to OSM's inquiry, Wyoming stated that they rely upon the authority granted in W.S. 35–11–406(b)(xvii) to require a general blasting plan for the entire permit area. This statute, in turn, incorporates the requirements of W.S. 35–11–415(b)(xi) which provide the operator of a surface coal mine with procedures and standards for blasting. W.S. 35–11–415(b)(xi) further requires an operator, pursuant to an approved surface mining permit, to insure explosives are used only in accordance with existing State and Federal law and the Wyoming coal rules and regulations. The regulations referenced at W.S. 35–11–415(b)(xi) are found at Chapter VI of the State rules, which provide blasting performance standards for the permit area. W.S. 35–11–406(b)(xvii), and W.S. 35–11–415(b)(xi) together require a general blasting plan for the permit area, along with meeting requirements of State rules. Therefore, these two statutory provisions require the applicant to both meet the performance standards of the State rules and to provide a blasting plan showing how the applicant will meet the performance standards. With this clarification, OSM is satisfied that Wyoming will adequately address the impact of blasting for the permit area in a manner consistent with and no less effective than the Federal program and the Federal regulation requirements at 30 CFR 780.13.

With the above clarifications, Wyoming has demonstrated its ability and intent to secure the above information on a permit area basis in the permit application so that a complete and accurate application is provided for pubic review, and that the regulatory authority's decision is based on permit area considerations and impacts. The Director is satisfied that Wyoming's permit application requirements, processing, and approval parallels that of the Federal program requirements and is therefore approving Wyoming's proposed changes to its rules at Chapters II, and XIV, as being consistent with and no less effective than the Federal program requirements. This approval is conditioned upon the requirement that Wyoming promulgate as proposed, the proposed rules given in its January 28, 1993, response to concerns identified in OSM's November 17, 1992, letter to Wyoming. These include:

Chapter II, Section 3., (a),(i),(D), by deleting the phrase "[t]o be mined during the "term of the permit." and adding the term "permit" in front of "area."

Chapter XIV, Section 6, by deleting the phrase "[o]nly when required thereby." and adding "opportunity for" before "hearing."

Chapter XIV, Section 2., (b), by deleting "(i) More than a twenty percent increase in affected land from that which was approved in the original permit;"

IV. Summary and Disposition of Comments

1. Public Comments

OSM solicited pubic comments and provided an opportunity for a public hearing on the proposed amendment. A public hearing was not held because no one requested an opportunity to testify.

Written comments were received from the Wyoming Outdoor Council (WOC) on behalf of the WOC and the Powder River Basin Resource Council (PRBRC) (Administrative Record No. WY–19–09). The WOC expressed concern that the regulations are inconsistent with and less effective than the Federal law and regulations, as well as being in conflict with relevant Wyoming statutes. In support of this contention, WOC pointed out that the Federal program requires that any extension to the area covered by a permit, except incidental boundary revisions, must be made by application for a new permit. WOC further stated that, if an application for renewal of a valid permit included an extension to the mining operation boundary beyond that authorized in the existing permit, then the new land areas would be subject to the full standards applicable to a new permit. WOC contends that Wyoming's proposal would not require an application for a new permit where extensions to the area covered by the existing permit are sought. OSM does not agree with WOC's contention for the reasons discussed at Finding 1 of this notice. Wyoming has demonstrated and provided clarification

that its definition of the term "amendment" carries the same requirements for information, procedures, and public notice as does an application for a new permit. Also, an amendment is required for any boundary extension to the approved permit area, except for incidental boundary revisions, regardless of the (now recognized) separate process for "renewal" of the five-year term of permit.

WOC further contends that the Federal definition of a permit area is limited to the area within the five-year permit boundary, whereas, Wyoming's definition for permit area would include the entire life of the operation and includes all affected lands and water. WOC contends that Wyoming seeks to avoid the Federal mandate that all non-incidental permit boundary extensions go through a new application process. OSM does not agree with WOC's contention for the reasons discussed in Finding 2 of this notice. WOC has mistakenly interpreted the Federal definition of permit area. While a permit area could be limited in size to a five-year mining impact, it could also be an area that may take one year or 50 years to mine. As expressed in Finding 2, the size of a permit area is determined by various factors. The predominant factor in establishing the permit area boundary is the area of land indicated on an approved map submitted by the operator that identifies the permit area boundary in a complete and accurate application that has gone through the public review process. Another factor is that the application has been determined to meet all the requirements of the EQA and the regulatory program and has been approved by the regulatory authority. Any area within this approved map boundary/application will then carry with it the right of successive permit renewals. Each permit renewal cannot exceed a five-year term. Any extension to the permit area, other than incidental boundary revisions, shall be made by submission of a new application or, as proposed by Wyoming, a permit amendment.

WOC also pointed out areas of the Wyoming rule that require information for only the five-year permit term rather than the permit area. OSM agrees with this concern that it appeared that Wyoming's information requirements would not be applied to the permit area, regarding the following sections; interest in lands, areas unsuitable, cross sections and maps or plans, narrative, and blasting plan. Therefore, any decision of permit approval based upon a finding that all requirements of the EQA and regulations are being met for the entire permit area, could not be rendered. In its November 17, 1992, letter to Wyoming, OSM asked the State to clarify how the written findings for the application based upon the permit area could be complied with if certain information is limited to the permit term area only. Wyoming responded with both a proposed rule change and clarifications. A full discussion of Wyoming's response is provided at Finding 2., subsection (d), of this notice. In that Finding, it was concluded that Wyoming does, or will upon the Director's approval of the proposed rule changes submitted by Wyoming in this amendment, require life-of-mine/permit area information that will provide for the regulatory authority's required written findings and public notice on the entire permit area.

WOC contends that the proposed amendment will not provide public review and participation opportunities consistent with those of the Federal program for proposed extensions of the permit boundary. Specifically, WOC asserts that public notice would be reduced and weakened in situations of boundary extension of the five-year permit area that are not more than 20 percent of the originally permitted acreage, and for extensions to the life-of-mine boundary.

With regard to extensions to the five-year permit area, WOC explained that extensions to the five-year permit boundary would be subject to permit revision procedures. These procedures require a public notice and opportunity for public hearing when a "significant deviation" from the permit is proposed. The determination that a significant deviation is proposed in a revision is left to the discretion of the State administrator. One example of what constitutes a significant deviation is that the revision proposes a more than 20 percent increase in the affected land from that which was approved in the original permit. Therefore, any extension of less than 20 percent of the land approved in the five-year permit would not provide assurance that public notice or an opportunity for public hearing would be afforded. The absence of such public review is inconsistent with the Federal program, which provides notice and hearing opportunities regardless of the amount of acreage proposed for addition to the five-year permit area.

OSM refers that WOC to the discussion provided at Finding 2. of this notice concerning the Federal program concept of permit area versus the five-year permit term. In its remarks, WOC confuses the five-year permit term with a five-year boundary. A major reason Wyoming gave for proposing this amendment was to clarify the difference between the five-year permit term and the permit area. Wyoming correctly identified a five-year permit term as having no physical boundary. It is a period of time which, upon conclusion, requires a permit renewal action, not a permit revision action. The renewal action, among other things, does require public notice and an opportunity for a hearing. However, a permit revision may be required at any time during the operation and is initiated by a proposed deviation or change to the approved mining and reclamation plans (the permit). A significant deviation from, or significant change to the permit would require public notice. This is consistent with the Federal regulation requirements at 30 CFR part 774—Revision; Renewal, and Transfer, Assignments, or Sale of Permit Rights. With regard to the more than 20 percent increase in affected land continuing to be a measure of a "significant deviation," Wyoming is proposing to delete this criterion at Chapter XIV, Section 2.(b), for coal mining operations.

WOC expressed concern that where a permittee seeks to add lands to the area of land identified as affected during the life-of-mine (not just the five-year area) then public notice and hearing opportunity is required only if the area included in the amendment exceeds 20 percent of the total permit area. This would allow land that has never before been addressed in any manner, or subject to any public review, to be added to a permit without any public review. As previously discussed, Wyoming is proposing to delete the 20 percent criterion. Therefore, as now being proposed, the addition of new lands to a previously approved permit area (life-of-mine area/mine permit boundary) would require an amendment. The amendment action will require the same information, procedures, and public notice requirements as are specified for a new permit application. Thus, any new lands, except incidental boundary revisions, that are proposed to be added to the permit area, will require public notice and the opportunity for public hearing.

WOC contends that Wyoming's statement that an extension to a permit boundary requires neither a new permit nor a renewal, lacks reason or logic. The Federal program expressly provides that such an extension requires a new permit. Therefore, contends WOC, the proposed amendment must be disapproved.

Wyoming provided clarification regarding this statement in its January 28, 1993, letter to OSM. Wyoming stated that it was attempting to explain that it would not require a new permit for additional lands, but would require an amendment. Further, the requirements for an "amendment" and a "new permit" are essentially the same without the added burden of tracking and inspecting separate permits for the same operation. There is nothing in the Federal program that would prohibit this approach to the extension of a permit boundary. Therefore, for Wyoming to administer permit boundary changes in this fashion is consistent with and no less effective than the Federal program requirements.

WOC pointed out that the phrase "[e]xcepting permits for surface coal mining operations." at W.S. 35–11–406(a)(xii) expressly excepts surface coal mining from the amendment procedure while the proposed regulations defining amendment seek to bring surface coal mining operations within the ambit of W.S. 35–11–406. They further note that the results would be significant conflicts within Wyoming's program. OSM believes that the WOC is confused about the nature of a permit amendment, as defined in the State statute, and a permit revision, as defined in the State regulations. Any extension to a permit boundary can only be accomplished through a permit amendment, which is equivalent to a new permit under the Federal regulations, and subject to the same standards of a new permit application. The State proposal would not result in significant conflicts within the Wyoming program.

In its January 28, 1993, letter to OSM, Wyoming stated:

> Wyoming's interpretation of the phrase applies to the discussion following the phrase regarding public notice. The statute allows permits to be amended without public notice only if they are non-coal permits and only if the amendment does not exceed 20 percent of the total permit acreage. The phrase was added to prevent coal mining permits from being amended without public notice. The phrase does not prohibit a coal mining permit from being amended, nor does it exempt coal mining operations from public notice.

With the above interpretation, OSM is satisfied that the Wyoming statute and rules are consistent with each other and should not provide confusion, inconsistency, and ineffective administration of the State program as expressed by the WOC.

Additional comments were received from the WOC dated April 23, 1993, in response to the reopening and extension of the public comment period (Administrative Record No. WY–19–13). Although the comments were received after the close of the comment period, OSM elected to address them.

In its response, the WOC referenced OSM's November 17, 1992, letter to the State, and Wyoming's subsequent response of January 28, 1993, to OSM's letter. The WOC continues to be concerned that the State has not provided an adequate explanation of how all of the information requirements for new permits will also apply to permit amendments. Wyoming stated in its January 1993 submittal that a permit is amendable if the operator includes all information in the application to amend what is required at W.S. 35–11–406, which identifies the application requirements for a mining permit. The State further notes that the information requirements for permit applications in the regulations also apply to permit amendments. OSM believes that with this additional clarification, the State would require the same information for a permit amendment as is required for a new permit.

The WOC expressed concern that the State had not satisfactorily explained their proposed revised use of the phrases "permit area", and "term of permit" in relation to information required for permit applications at Chapter II, Section 3, of the State regulations. No explanation was furnished as to why the State's proposed changes are viewed as unsatisfactory. Wyoming's January 1993 response to OSM's November 1992 letter acknowledges that, prior to the proposed rule change, the terms had a dual meaning. To avoid confusion and to be consistent with the Federal use of the phrase, Wyoming is proposing to limit the applicability of the phrase "term of permit" to the five-year period of time for which a permit is valid. Further, in the subsections of Chapter II, Section 3, referenced by the WOC, the State proposes to amend their rules by requiring that information requested at these subsections will be for the entire permit area.

In its comments on Wyoming's statement of interest that must be described in an application, the WOC asserts that it is not entirely accurate that the State requires this information for the entire permit area. The WOC references W.S. 35–11–406(a)(xv), and states that the section "merely authorizes the administrator to request such other information where he deems it necessary". While OSM agrees that it is not apparent in the cited subsection that information for the entire permit area is required, OSM would refer the WOC to subsections (a)(iv) and (v) of Section W.S. 35–11–406, which require statements of interest for the permit area and lands adjacent to the permit area. Also, Wyoming's proposed revision is intended to clarify that the required information is for the permit area rather than the permit term.

The WOC provided comments concerning cross-sections, maps, and plans. OSM's November 1992 letter to the State expressed concern that information regarding cross-sections, maps, and plans would be for the term-of-permit rather than permit area. The concerns raised by the WOC address such issues as the States's failure to require all of the cross-sections, maps, and plans required by the Federal program; inconsistencies regarding slope measurements; and that many of the required elements are not identified in the section of the State regulations that pertain to the permit area.

OSM acknowledges these concerns. However, with the exception of the last item identified in the paragraph above, the concerns are not within the scope of this rulemaking. In regard to this item, in the supplemental information to the amendment, Wyoming identified a section in the State statutes and one in the regulations which makes reference to maps and cross-sections of the "affected lands" and the "area," respectively. With this additional clarification, Wyoming has demonstrated that cross-sections, maps, and plans will be provided for the permit area.

Two comments are offered by the WOC on the narrative required to accompany a proposed mining operation. The first concerns the State's use of the phrase "term-of-permit" rather than "permit area". In its January 1993 submission, the State acknowledged the dual use of "term-of-permit" and explained that the phrase had been used to also describe the "permit area". Wyoming proposes to remedy the situation by limiting the use of "term-of-permit" to mean the five-year permit term. For a more complete discussion on the use of the phrases, please see Finding 2.

The second comment concerns the assertion that the State does not require narrative descriptions under W.S. 35–11–406(b) of all of the information required at 30 CFR 780.11. While not a subject of this proposed amendment, OSM would refer the WOC to Chapter II, 2., (b) of the State regulations, which requires narrative statements. Finding 4. of this rule making action also provides additional discussion on "narrative" requirements of the Wyoming program.

In the last comment included in its April 23, 1993, submission the WOC asserted that the Wyoming regulation at Chapter II, 3., (b), (iii) requires the applicant to submit a blasting plan which applies to the "area to be mined during the term of the permit," rather than the "permit area". The WOC pointed out that the corresponding Federal regulation at 30 CFR 780.13(a) requires an applicant's blasting plan to apply to the permit area, not the area to be mined during the term of the permit. The WOC further noted that although W.S. 35–11–406(b)(xvii) does require a blasting plan for the permit area, it does not specifically require all of the information of the Federal rules at 30 CFR 780.13(a), (blasting plan) and is therefore, not equivalent to that regulation. As discussed at Finding 5. of this notice, OSM finds that the Wyoming statutory provisions at W.S. 35–11–406(b)(xvii) and W.S. 35–11–415(b)(xi), which reference the blasting performance standards of the State rules, require a blasting plan for the entire permit area which is equivalent to the blasting plan required by 30 CFR 780.13. OSM directs the WOC's attention to the discussion at Finding 5. of this notice for additional background regarding Wyoming's application of its blasting requirements.

2. Federal Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Wyoming program.

The U.S. Geological Survey responded that no geologic factors are involved and had no suggestions to make (Administrative Record No. WY–19–03(a)).

The Mine Safety and Health Administration (Arlington, Virginia) noted that one of the proposed modifications conflict with the regulations or policies of Mine Safety and Health Administration (Administrative Record No. WY–19–03(b); the Mine Safety and Health Administration (Denver, Colorado) responded that the amendment does not appear to conflict with any current MSHA regulations (Administrative Record No. WY–19–06).

The Bureau of Indian Affairs had no objection to the amendment as proposed stating that it would not affect Indian lands (Administrative Record No. WY–19–04(a).

The Bureau of Mines responded that it had no comment (Administrative Record No. WY–19–04(b).

The U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement (Cheyenne, Wyoming) expressed concern with the proposed rule change to limit public and possible agency review for the five-year term-of-permit to only significant changes. Further, that from a wildlife standpoint this may pose a concern if wildlife mitigation plans are not updated every five years or areas are mined that were not addressed in the current five-year term-of-permit mitigation plan (Administrative Record No. WY–19–05).

Any change in the approved permit will continue to be subject to the requirements of Chapter XIV—Permit Revisions. Any significant deviation will continue to require public notice and opportunity for public hearing. Therefore any change that would impact wildlife mitigation plans, or if such plans are not being followed, would be subject to permit revisions or enforcement actions. Furthermore, at the end of the five-year term, the permit is subject to renewal. At this time the regulatory authority must give public notice, obtain any additional revised or updated information, and find that the operation is in compliance with applicable laws and regulations. These, along with other program requirements, will assure that wildlife mitigation impacts receive the same consideration afforded under the Federal program.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and ACHP for comment. Neither agency responded with any comments.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that 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.*) By letter dated November 17, 1992, (Administrative Record No. WY–19–09) the EPA concurred that Wyoming's amendment 1E demonstrates the legal authority, administrative capability, and technical conformity with controlling National Pollutant Discharge Elimination System regulations. EPA further noted that any mining activities occurring within the mine permit boundary or the life-of-mine permit area, or any addition of new lands to a permit area must comply with Federal and State water quality standards and effluent limitation guidelines as required by the Clean Water Act.

V. Director's Decision

Based on the above findings, the Director approves Wyoming's proposed program amendment as submitted on July 24, 1992, and as supplemented on January 28, 1993.

The Federal regulations at 30 CFR part 950 codifying decisions concerning the Wyoming program are being amended to implement this decision. The Director is approving these regulations with the provision that they will be fully promulgated in a form identical to that submitted to and reviewed by OSM. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This final rule is not considered a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 (Regulatory Planning and Review). Therefore, review by the Office of Management and Budget under Section 6 of the Executive Order is not required prior to publication in the **Federal Register**.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA, 30 U.S.C. 1253 and 1255, and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA, 30 U.S.C. 1292(d), provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act 1969, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 22, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

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

PART 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 950.15 is amended by adding paragraph (q) to read as follows:

§ 950.15 Approval of regulatory program amendments.

* * * * *

(q) The revisions to the following provisions of the laws, rules and regulations of the Wyoming Department of Environmental Quality, Land Quality Division, relating to the permitting process for coal mining and reclamation operations, as submitted on July 24, 1992, and modified on January 28, 1993, are approved effective November 2, 1993. Definition of Amendments, Chapter I, Section 2(e); Deletion of the 20 Percent Criterion, Chapter XIV, Section 2., (b), (i); Public Notice and Opportunities for a Hearing—Exception, Chapter XIV, Section 6., (a); Statement of Interest, Chapter II, Section 3., (a), (i), (D).

[FR Doc. 93–26751 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

31 CFR Part 128

Departmental Offices; Reporting of International Capital and Foreign Currency Transactions and Positions

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on the monetary reserves of the United States as provided for by the International Investment and Trade in Services Survey Act and the Bretton Woods Agreements Act. In addition, this final rule establishes general guidelines for reporting on the nature and source of foreign currency transactions of large United States business enterprises and their foreign affiliates. The existing guidelines are being modified to provide a more general framework for the collection of information regarding international capital and foreign currency transactions and positions as specified in the above laws or as deemed necessary by the Secretary of the Treasury. The effect of this final rule is to simplify and generalize existing regulations governing the collection of this information.

EFFECTIVE DATE: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: T. Ashby McCown, Director, Office of Data Management, Department of Treasury, room 5460, 1500 Pennsylvania Avenue NW., Washington DC 20220, (202) 622–2250.

SUPPLEMENTARY INFORMATION:

Background

The International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*) (the Act) provides for the collection of comprehensive and reliable information concerning international investment while minimizing the reporting burden on respondents. The Act specifies that regular data collection programs and surveys, as outlined in the Act, or as deemed necessary by the Secretary of the Treasury pursuant to Executive Order (E.O.) 11961, shall be conducted to secure information on international capital flows and other information related to international portfolio investment, including information that may be necessary for computing and analyzing the U.S. balance of payments. The existing regulations (31 CFR part 128) implement certain provisions of the Act governing the reporting of portfolio capital positions and transactions for balance of payments purposes. These regulations further implement the reporting requirements provided in 22 U.S.C. 286f and E.O. 10033, whereby the Treasury is directed to collect information with respect to capital movements which are between persons within the United States and foreign countries and which pertain to the monetary reserves of the United States, except information pertaining to direct investment transactions, U.S. government foreign lending operations, and claims and liabilities of U.S. Government agencies (other than public debt operations). This information has been deemed essential to compliance by the United States with official data requests of the International Monetary Fund in accordance with section 8(a) of the Bretton Woods Agreements Act (22 U.S.C. 286f). Finally, the existing regulations implement the reporting requirements under 31 U.S.C. 5315 whereby the Secretary of the Treasury is authorized and directed to collect data on the nature and source of foreign currency transactions of large United States business enterprises and their affiliate.

The existing regulations specify and describe the respective forms respondents are to complete and submit. These regulations are being revised to generalize the reporting requirements to allow for changes in format and coverage of reporting forms as conditions warrant, including those arising from institutional changes and developments in international capital markets. These generalized reporting requirements do not include descriptions of specific report forms.

Notices of specific report forms and instructions will now be separately published in the Federal Register.

Special Analyses

Because these regulations concern a foreign affairs function of the United States, the notice, public procedure, and delayed effective date provisions of 5 U.S.C. 553 do not apply. Similarly, the provisions of E.O. 12866 do not apply. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*) do not apply.

Because this regulation is being issued without prior notice and public procedure pursuant to 5 U.S.C. 553, the recordkeeping requirement contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1505–0149. Comments concerning this recordkeeping requirement and the accuracy of the estimated average annual burden, and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (1505–0149), Washington DC 20503, and to the Office of Data Management, Department of the Treasury, room 5460, 1500 Pennsylvania Avenue NW., Washington DC 20220.

The recordkeeping requirement in this regulation is in § 128.5. This requirement is necessary to enable the Office of Data Management to verify reported information and to secure additional information concerning reported information as may be necessary. The recordkeepers are U.S. persons required to file reports covered by these regulations.

Estimated total annual recordkeeping burden: 6,000 hours.

Estimated number of recordkeeping: 2,000.

Estimated annual burden hours per recordkeeper: 3.

List of Subjects in 31 CFR Part 128

Banks, Banking, Brokers, Foreign currencies, Investments, Penalties, Reporting and recordkeeping requirements, Securities.

Dated: October 25, 1993.

Alicia H. Munnett,

Assistant Secretary for Economic Policy.

For the reasons set forth in the preamble, 31 CFR part 128 is revised to read as follows:

PART 128—REPORTING OF INTERNATIONAL CAPITAL AND FOREIGN-CURRENCY TRANSACTIONS AND POSITIONS

Subpart A—General Information

Sec.

128.1 General Reporting Requirements
128.2 Manner of Reporting
128.3 Use of Information Reported
128.4 Penalties
128.5 Recordkeeping Requirements

Subpart B—Reports on International Capital Transactions and Positions

128.11 Purpose of Reports
128.12 Periodic Reports
128.13 Special Survey Reports

Subpart C—Reports on Foreign Currency Positions

128.21 Purpose of Reports
128.22 Periodic Reports
128.23 Special Survey Reports

Appendix A to Part 128—Determination Made by National Advisory Council Pursuant to Section 2 (a) and (b) of E.O. 10033

Authority: 22 U.S.C. 286f and 3101 *et seq.*; 31 U.S.C. 5315 and 5321.

Subpart A—General Information

§ 128.1 General reporting requirements.

(a) *International capital transactions and positions.*

(1) In order to implement the International Investment and Trade in Services Survey Act, as amended (22 U.S.C. 3101 *et seq.*); and E.O. 11961, and to obtain information requested by the International Monetary Fund under the articles of agreement of the Fund pursuant to section 8(a) of the Bretton Woods Agreements Act (22 U.S.C. 286f) and E.O. 10033, persons subject to the jurisdiction of the United States are required to report information pertaining to—

(i) United States claims on, and liabilities to, foreigners;

(ii) transactions in securities and other financial assets with foreigners; and

(iii) the monetary reserves of the United States.

(2) Data pertaining to direct investment transactions are not required to be reported under this Part.

(3) Reports shall be made in such manner and at such intervals as specified by the Secretary of the Treasury. See subpart B of this part for additional requirements concerning these reports.

(b) *Foreign currency positions.*

(1) In order to provide data on the nature and source of flows of mobile capital, including transactions by large United States business enterprises (as determined by the Secretary) and their foreign affiliates as required by 31 U.S.C. 5315, persons subject to the jurisdiction of the United States are required to report information pertaining to—

(i) transactions in foreign exchange;

(ii) transfers of credit that are, in whole or part, denominated in a foreign currency; and

(iii) the creation or acquisition of claims that reference transactions, holdings, or evaluations of foreign exchange.

(2) Reports shall be made in such manner and at such intervals as specified by the Secretary. See subpart C of this part for additional requirements concerning these reports.

(c) *Notice of reports.* Notice of reports required by this part, specification of persons required to file report, and forms to be used to file reports will be published in the Federal Register. Persons currently required to file reports shall continue to file such reports using existing Treasury International Capital Forms BL–1/BL–1(SA), BL–2/BL–2(SA), BL–3, BC/BC(SA), BQ–1, BQ–2, CM, CQ–1, CQ–2, S, and existing Treasury Foreign Currency Forms FC–1, FC–2, FC–3, and FC–4 until further notice is published in the Federal Register.

§ 128.2 Manner of reporting.

(a) *Methods of reporting.*

(1) Prescribed forms.

(i) Except as provided in § 128.2(a)(2), reports required by this part shall be made on forms prescribed by the Secretary. The forms and accompanying instructions will be published in accordance with § 128.1(c).

(ii) Copies of forms and instructions prescribed by the Secretary for reporting under this Part may be obtained from any Federal Reserve Bank, or from the Office of the Assistant Secretary (Economic Policy), Department of the Treasury, Washington, DC 20220.

(2) Alternative methods of reporting. In lieu of reporting on forms prescribed by the Secretary pursuant to this part, reports may be filed on magnetic tape or other media acceptable to, and approved in writing by, the Federal Reserve district bank with which the report is filed, or by the Assistant Secretary (Economic Policy) in the case of a special exception filing pursuant to § 128.2(b)(3). The Secretary may require that magnetic tape or other machine-readable media, or other rapid means of communication be used for filing special survey reports under subpart B or C of this part.

(b) *Filing of periodic reports.*

(1) Banks and other depository institutions, International Banking Facilities, and bank holding companies.

Except as provided in § 128.2(b)(3), each bank, depository institution, International Banking Facility, and bank holding company in the United States required to file periodic reports under subpart B or C of this part shall file such reports with the Federal Reserve bank of the district in which such bank, depository institution, International Banking Facility or bank holding company has its principal place of business in the United States.

(2) Nonbanking enterprises and other persons. Except as provided in § 128.2(b)(3), nonbanking enterprises and other persons in the United States required to file periodic reports under subpart B or C of this part shall file such reports with the Federal Reserve Bank of New York.

(3) Special exceptions. If a respondent described in § 128.2(b)(1) or (2) is unable to file with a Federal Reserve district bank, such respondent shall file periodic reports with the Office of the Assistant Secretary (Economic Policy), Department of the Treasury, Washington, DC 20220, or as otherwise provided in the instructions to the periodic report forms.

(c) *Filing of special survey reports.* All respondents required to file special survey reports under subpart B or C of this part file such reports as provided in § 128.2(b) unless otherwise provided in the instructions to the special survey reports.

§ 128.3 Use of information reported.

(a) Except for use in violation and enforcement proceedings pursuant to the International Investment and Trade in Services Survey Act, 22 U.S.C. 3101 *et seq.*, information submitted by any individual respondent on reports required under subpart B of this part may be used only for analytical and statistical purposes within the United States Government and will not be disclosed publicly by the Department of the Treasury, or by any other Federal agency or Federal Reserve district bank having access to the information as provided herein. Aggregate data derived from these forms may be published or otherwise publicly disclosed only in a manner which will not reveal the amounts reported by any individual respondent. The Department may furnish information from these forms to the Federal Reserve Board and to Federal agencies to the extent permitted by applicable law.

(b) The information submitted by any individual respondent on reports required under subpart C of this part will not be disclosed publicly. Aggregated data may be published or disclosed only in a manner which will not reveal the information reported by any individual respondent. The Department may furnish to Federal agencies, the Board of Governors of the Federal Reserve System, and to Federal Reserve district banks data reported pursuant to subpart C of this part to the extent permitted by applicable law.

§ 128.4 Penalties.

(a) Whoever fails to file a report required by subpart B of this part shall be subject to a civil penalty of not less than $2,500 and not more than $25,000

(b) Whoever willfully fails to file a report required by subpart B of this part may be criminally prosecuted and upon conviction fined not more than $10,000 and, if an individual (including any officer, director, employee, or agent of any corporation who knowingly participates in such violation), may be imprisoned for not more than one year, or both.

(c) Whoever fails to file a report required by subpart C of this part shall be subject to a civil penalty of not more than $10,000.

§ 128.5 Recordkeeping requirements.

Banks, other depository institutions, International Banking Facilities, bank holding companies, brokers and dealers, and nonbanking enterprises subject to the jurisdiction of the United States shall maintain all information necessary to make a complete report pursuant to this Part for not less than three years from the date such report is required to be filed or was filed, whichever is later, or for such shorter period as may be specified in the instructions to the applicable report form. (Approved by the Office of Management and Budget under control number 1505–0149.)

Subpart B—Reports on International Capital Transactions and Positions

§ 128.11 Purpose of reports.

Reports on international capital transactions and positions provide timely and reliable information on international portfolio capital movements by U.S. persons. This information is needed for preparation of the capital accounts of the United States balance of payments and the international investment position of the United States.

§ 128.12 Periodic reports.

(a) *International capital positions.*

(1) Banks and other depository institutions, International Banking Facilities, bank holding companies, and brokers and dealers in the United States shall file monthly, quarterly and semiannual reports with respect to specified claims and liabilities positions with foreigners held for their own account and for the accounts of their customers.

(2) Nonbanking enterprises in the United States not described in § 128.12(a)(1) shall file monthly and quarterly reports with respect to deposits and certificates of deposit with banks outside the United States and specified claims and liabilities positions with unaffiliated foreigners.

(b) *Transactions in certain domestic and foreign long-term securities.* Banks and nonbanking enterprises in the United States shall file monthly reports on their transactions in domestic and foreign long-term securities or other financial assets with foreign residents.

(c) *Notice of periodic reports.*

Notice of periodic reports will be published in accordance with § 128.1(c).

§ 128.13 Special survey reports.

The Secretary may prescribe special survey reports at such times as the Secretary determines there is a need for detailed information on the aggregate data derived from current periodic reports or to provide additional qualitative information with respect to such data. Notice of special survey reports will be published in accordance with § 128.1(c).

Subpart C—Reports on Foreign Currency Positions

§ 128.21 Purpose of reports.

Reports by respondents on foreign currency positions provide data on the nature and source of flows of mobile capital, including transactions by large United States business enterprises (as determined by the Secretary) and their foreign affiliates as required by 31 U.S.C. 5315.

§ 128.22 Periodic reports.

Respondents shall file reports weekly, monthly and quarterly on the value of such items as outstanding foreign exchange contracts, dealing positions, derivative foreign currency instruments, and other assets and liabilities denominated in the currencies specified on the forms. Notice of periodic reports will be published in accordance with § 128.1(c).

§ 128.23 Special survey reports.

The Secretary may prescribe special survey reports with respect to foreign exchange positions and related information at such times as the Secretary determines that there is a need for prompt or expanded information on current conditions in the foreign exchange markets. Notice of special survey reports will be published in accordance with § 128.1(c).

Appendix A to Part 128—Determination Made by National Advisory Council Pursuant to Section 2(a) and (b) of E.O. 10033

I. Determination of the National Advisory Council pursuant to E.O. 10033

In an action dated September 7, 1965, the National Advisory Council on International Monetary and Financial Problems made the following determination pursuant to section 2(a) of E.O. 10033 of February 8, 1949.

Action 65 (E.O.)–49. The National Advisory Council, having consulted with the Director of the Bureau of the Budget, determines the current information with respect to international capital movements, derived from data on U.S. liabilities to and claims on foreigners and transactions in securities with foreigners, and current information with respect to U.S. gold holdings, foreign-currency holdings, and dollar liabilities to foreigners, are essential in order that the United States may comply with official requests of the International Monetary Fund for information with respect to the U.S. balance of payments and monetary reserves.

Action No. 320, March 17, 1949 is superseded by this determination and is hereby revoked.

II. Designation of the Treasury Department by the Director of the Bureau of the Budget pursuant to section 2(b) of E.O. 10033.

On December 1, 1965, the Treasury Department was designated, pursuant to section 2(b) of E.O. 10033 of February 8, 1949, to collect information for the International Monetary Fund under the National Advisory Council determination of September 7, 1965. The letter containing the designation reads as follows:

December 1, 1965.

Hon. Henry H. Fowler,
Secretary of the Treasury, Washington, DC 20220.

Dear Mr. Secretary: On September 7, 1965, the National Advisory Council after consultation with this Bureau in accordance with section 2(a) of Executive Order 10033, made the following determination (Action 65 (E.O.)–49:

"The National Advisory Council, having consulted with the Director of the Bureau of the Budget, determines that current information with respect to international capital movements, derived from data on U.S. liabilities to claims on foreigners and transactions in securities with foreigners, and current information with respect to U.S. gold holdings, foreign-currency holdings, and dollar liabilities to foreigners, are essential in order that the United States may comply with official requests of the International Monetary Fund for information with respect to the U.S. balance of payments and monetary reserves."

It is hereby determined pursuant to section 2(b) of Executive Order 10033, that the Treasury Department shall collect information pertaining to capital movements between the United States and foreign countries and pertaining to the monetary reserves of the United States, except information pertaining to direct-investment transactions, U.S. Government foreign lending operations, and claims and liabilities of U.S. Government agencies (other than public debt obligations), which is collected by the Department of Commerce.

This letter supersedes the earlier determination as to the responsibilities of the Treasury Department in this area, dated April 21, 1949, as amended May 4, 1950.

Sincerely yours,

Raymond T. Bowman,
Assistant Director for Statistical Standards.

[FR Doc. 93–26678 Filed 11–1–93; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Pittsburgh Regulation 93–08]

RIN 2115–AA97

Safety Zone Regulations; Ohio River, From Mile 88.0 to Mile 90.0.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River from mile 88.0 to mile 90.0. This regulation is needed to control vessel traffic in the regulated area during the demolition of stone bridge piers located in the Ohio River at mile 89.0. This regulation will restrict general navigation in the regulated area during demolition for the safety of vessels transitting the area.

EFFECTIVE DATE: This regulation is effective at 8 a.m. on October 19, 1993 and will terminate at 4 p.m. on November 12, 1993.

FOR FURTHER INFORMATION CONTACT: LT John Meehan, Port Operations Officer, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A.O. Denny, Project Attorney, Section Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, five stone bridge piers are being removed from the navigable waterway through explosive demolitions. The steel bridge that these stone piers once supported was demolished in September, 1993. Bridge removal operations pose inherent risks to the waterway because the structure is progressively weakened as the operation proceeds. Such is the case with these bridge piers, which have already been subjected to several explosive shocks associated with the demolition of the steel bridge. In order to remove these weakened stone bridge piers as quickly as possible, the contractor has sped up demolition work at the site and is now proceeding ahead of the original schedule, leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue regulations without waiting for a comment period, as immediate implementation of navigation restrictions is needed to ensure the safety of vessels and to minimize the time bridge piers in a weakened condition remain standing over the waterway.

Background and Purpose

The Wheeling Terminal Railroad Bridge, an inactive bridge located at mile 89.0 on the Ohio River, was demolished with explosives in August and September, 1993. Work on the removal of the steel bridge has been completed, but five stone support piers for the bridge remain in the river at this location. These piers, each standing over eighty feet above the river at pool stage, have been weakened by the successive explosions associated with the bridge demolition and are in need of immediate removal. The contractor proposes to remove these piers with explosive demolitions, which will create an obvious hazard to vessels transitting the area. Bridge pier demolition will occur in stages with individual piers being removed one at a time. The first pier scheduled for demolition is the one closest to the right descending bank. This pier will be demolished between 10 a.m. and 1 p.m. on October 19, 1993. Accordingly, during that three hour period, no traffic will be permitted in the safety zone as it would be unsafe for vessels attempting the transit. The contractor will commence clearing operations for bridge pier debris immediately after the demolition. It is anticipated that the debris from this and all subsequent bridge pier demolitions at this site will fall outside the channel line. Therefore, debris removal operations should not impede the safe navigation of the channel and vessel traffic will be restricted from the area only during the

three hour period allocated for the actual demolition of this bridge pier. For the remaining period that this safety zone is in effect after the first bridge pier demolition, the Captain of the Port will disseminate information as to when traffic will be restricted from the area due to ongoing pier demolitions through Broadcast Notice to Mariners and other means. Traffic will be permitted to proceed without restriction except during the actual demolition of the other bridge piers. These restrictions will last approximately 3 hours each and each will run from 10 a.m. to 1 p.m. The tentative dates of these other bridge pier demolitions are October 21, October 26, October 28, and November 2, 1993.

Regulatory Evaluation

This regulation is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to the relatively short duration of actual traffic restrictions and the relatively small size of the area regulated.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation under section 2.B.2.c. of Commandant Instruction M16475.1B.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping, Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T02–073 is added, to read as follows:

§ 165.T02–073 Safety Zone: Ohio River.

(a) *Location.* The Ohio River between mile 88.0 and mile 90.0 is established as a safety zone.

(b) *Effective dates.* This section becomes effective at 8 a.m. on October 19, 1993 and will terminate at 4 p.m. on November 12, 1993.

(c) *Regulations.* (1) All vessels may transit the area without restriction except during demolition operations.

(2) The Captain of the Port, Pittsburgh, Pennsylvania will announce periods of demolition operations by Marine Safety Information Radio Broadcast (Broadcast Notice to Mariners) on VHF Marine Band Radio, Channel 22 (157.1 MHZ). A safety boat on-scene will also disseminate information. Mariners may also call the Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808 for current information.

Dated: October 18, 1993.

M.W. Brown,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh, Pennsylvania.

[FR Doc. 93–26833 Filed 11–1–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL–4795–6]

Notice of Listing of Categories and Regulatory Schedule for Air Emissions From Other Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of listing of categories of sources of other solid waste incineration units under section 129 of the Clean Air Act (Act) and a schedule for promulgation of regulations.

SUMMARY: Section 129 of the Act requires the EPA to develop new source performance standards (NSPS) and emission guidelines (EG) for four classes of solid waste incineration units. These are municipal waste combustors (MWC's), medical waste incinerators (MWI's), industrial and commercial waste incinerators (ICWI's), and categories of other solid waste incinerators (OSWI's). This document announces the listing of types of incinerators to be included under the category of OSWI's and a regulatory schedule for these units, as required under section 129 of the 1990 Amendments to the Clean Air Act (1990 Amendments). This document includes public comments on the draft list of categories of sources and the regulatory schedule published in the **Federal Register** on June 2, 1993 (58 FR 31358), and EPA responses to the comments.

EFFECTIVE DATE: November 2, 1993.

ADDRESSES: *Docket.* Docket No. A–93–11 containing supporting information used in developing this document is available for public inspection and copying between the hours of 8:30 a.m. and 3:30 p.m., Monday through Friday, excluding Federal holidays, at the EPA's Air Docket, Waterside Mall, Room M–1500, 1st Floor, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this document, contact Mr. David Painter, Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5515.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this document.

I. Introduction
II. Discussion of Public Comments and Responses to Comments
III. Final List of Categories of Sources
IV. Regulatory Schedule

I. Introduction

This document presents a list of categories of OSWI sources which EPA will further investigate and a schedule for subsequent regulatory activities. Under a consent agreement (see Waxman, et al. vs. Reilly, No. 92–1230 (D.D.C.) consent decree entered January 25, 1993), the EPA agreed to publish this listing of source categories and schedule by December 31, 1993.

Prior to developing NSPS and EG for OSWI's, the EPA is required to list the categories of sources that comprise OSWI's and specify the regulatory schedule for promulgating standards for any of these sources. To identify categories of OSWI's, the EPA conducted a literature review of solid waste incineration technologies and contacted selected State air pollution control and solid waste management agencies, the U.S. Department of Energy,

incineration equipment manufacturers, and their trade associations. Through these efforts, information was gathered on potential categories of OSWI's, and a draft list of categories and a regulatory schedule were published in the **Federal Register** on June 2, 1993 (58 FR 31358). That document listed and described the categories of sources to be included under OSWI's as follows:

A. Small MWC's

This category includes MWC plants with capacities of 35 Mg/d (39 tons/d) or less. This includes, but is not limited to, incinerators burning municipal solid waste (MSW) which service communities or are located at prisons, schools, or other institutions.

These very small incinerators are not covered under the MWC regulations promulgated on February 11, 1991 (56 FR 5488 and 56 FR 5514), and are not currently expected to be covered by the NSPS and EG presently under development. Due to the differences in incineration technology and ownership between these small incinerators and larger MWC's, the EPA is proposing to include very small MWC's under OSWI's.

B. Residential Incinerators

This category includes small incinerators at single and multi-family dwellings, hotels and motels.

C. Agricultural Waste Incinerators

This category includes incinerators burning agricultural waste for the purpose of destruction of the waste and/or energy recovery. Agricultural waste includes material generated or used by an agricultural operation, including, for example, crop residue, rice hulls, and almond shells.

D. Wood Waste Incinerators

This category includes conical incinerators (including wigwam burners) and other types of incineration equipment burning solid waste that is predominately wood waste for the purpose of destruction of the waste and/or energy recovery. As directed by section 129 of the 1990 Amendments, this category does not include air curtain incinerators burning wood wastes, yard wastes, or clean lumber. However, the Administrator will establish opacity limitations for such units as required under the 1990 Amendments.

E. Construction and Demolition Waste Incinerators

This category covers incinerators burning construction and demolition waste for the purpose of destruction of the waste and/or energy recovery. Construction and demolition waste includes, for example, wood pallets, crates, used lumber, demolition wastes, etc., and is excluded from the definition of MSW.

F. Crematories

This category includes those units which cremate both human and animal remains.

G. Petroleum-Contaminated Soil Treatment Facilities

This category covers stationary facilities or portable units that treat petroleum-contaminated soil. Sections 104 and 127 of the Comprehensive Environmental Response, Compensation, and Liability Act exclude petroleum from the definition of hazardous substance, pollutant or contaminant. Therefore, petroleum-contaminated soil treatment facilities are not regulated as hazardous waste treatment facilities. The process involves heating the soil with natural gas, propane, or No. 2 fuel oil to remove hydrocarbons, which are then either combusted in the kiln or condensed for reuse.

As noted above, section 129 of the 1990 Amendments directs the EPA to develop NSPS and EG for categories of OSWI's. Prior to doing this, the EPA must define categories of OSWI's and determine a regulatory schedule for promulgating any standards. (Section 129 specifies the schedule for regulatory development for MWC's, MWI's, and ICWI's.) In the June 2, 1993 **Federal Register** document, the EPA noted that the emission reductions to be derived from regulating MWC's, MWI's, and ICWI's are expected to outweigh those that can be achieved in regulating the categories of incinerators included in the draft list of OSWI's. The categories of OSWI's included in the initial listing are smaller sources and controls for these are likely to be less cost-effective than controls for MWC's, MWI's, and ICWI's. Additionally, the EPA is still assessing and understanding the emission generation mechanisms, emission controls and control costs for the larger incineration sources, and it will be more efficient to take advantage of the information developed on these sources before beginning the further assessment of OSWI's.

For the above reasons, the EPA proposed to prioritize the use of its resources by focusing first on the MWC, MWI, and ICWI regulatory projects. Therefore, the EPA proposed November 15, 2000 as the regulatory deadline for promulgating NSPS and EG for OSWI's. Selection of this date was based upon the Administrator's judgment that the proposed categories of sources of OSWI's are of lesser significance than MWC's, MWI's, and ICWI's, and upon the Administrator's conclusion that it would be a more efficient use of the EPA's resources to regulate those three source categories first.

The EPA requested comments on whether the categories of sources included in the initial list were appropriate, and whether there were other categories that should be added to this list. The EPA also requested comments upon the appropriateness of its planned regulatory schedule.

II. Discussion of Public Comments and Responses to Comments

A. General

A total of seven comments were received. Three commenters expressed support for the inclusion of some or all of the seven categories of OSWI's in the proposed list. One of the commenters, representing a State agency, explained that the citizens of that State have been very concerned about the significant emissions of air toxics from all types of incinerators which may be impacting the quality of water in the Great Lakes and other bodies of water. The remaining commenters requested clarifications or modifications of the categories of OSWI. Those comments and EPA's responses are summarized below.

B. Small MWC's

One commenter stated that it is not clear whether incinerators installed at schools and other governmental agencies are included in the proposed list of categories of OSWI's. This commenter expressed support for including these incinerators under OSWI. The commenter stated that many incinerators owned and operated by schools and governmental agencies do not utilize state-of-the-art combustion and control equipment and have poor operation and maintenance.

The EPA agrees with the commenters that incinerators at schools and other governmental facilities belong in the category of small MWC's, as was previously indicated in the June 2, 1993 document. The commenters' concerns about the operation and emissions of these sources will be considered in a subsequent study to scope the category, and, if needed, to establish emission limits for this class of incinerators.

C. Residential Incinerators

One commenter stated that residential incinerators should include incinerators located at both apartment buildings and

residential homes. Another commenter expressed the opinion that residential incinerators should not be allowed to operate because they cannot be properly operated or monitored.

As was indicated in the June 2, 1993 document, the EPA is including incinerators located at both apartment buildings and residential homes in the category of residential incinerators. The commenters' concerns about the operation and control of these sources will be addressed in a subsequent study to scope the category, and, if needed, to establish emission limits for this class of incinerators.

D. Wood Waste Incinerators and Agricultural Waste Incinerators

One commenter representing an industry association, expressed support for narrow definitions of wood waste incinerators and agricultural waste incinerators to exclude current industry operations whose primary purpose is energy recovery, rather than material destruction. The commenter provided a list of wood waste energy recovery incineration operations to be exempted from the definitions. The commenter stated that these operations typically have fuel specifications (e.g., chip or pellet size, moisture content, acceptable contamination levels) that differentiate them from other typical incineration devices whose primary use is thermal destruction. In addition, the commenter said that such wood waste energy recovery incineration operations are already regulated under other EPA regulations, including the NSPS subpart D(b) and D(c) standards and are to be included in future maximum achievable control technology standards for industrial boilers. Also expressed was a concern that some of these energy recovery incinerators would be regulated under the OSWI category of agricultural waste incinerators because some of these incinerators also use agricultural products as a fuel, such as the material remaining after recovering chips from plantation-grown hybrid poplar or cottonwoods.

The EPA shares the concerns of the commenter with regard to the need to avoid overlap of possible new NSPS applicable to OSWI's with other regulations. In particular, the EPA examined the commenter's observations about the potential to overlap subparts D(b) and D(c) of the NSPS. The EPA notes that the purpose of the NSPS is to control criteria pollutants. Those same pollutants were included among the pollutants listed in section 129 of the 1990 Amendments. However, the additional focus of section 129 is on the control of hazardous air pollutants (HAP's) and, therefore, the Congress mandated that the EPA establish numerical limits for several HAP's in addition to those pollutants covered by subparts D(b) and D(c) of the NSPS. Additionally, the EPA notes that NSPS apply only to new sources and do not apply to the large number of existing sources. For these reasons, the EPA has concluded that the coverage of wood waste incinerators should not be narrowed any further than as was described in the June 2, 1993 document. The 1990 Amendments require the EPA to address such sources. However, the EPA will remain sensitive to the commenter's concerns about duplicative regulations. In addition, if regulations are later developed under section 129, the EPA will identify those sources which are excluded from coverage, such as those energy recovery facilities described in section 129(g)(1)(B).

The EPA has determined that facilities incinerating agricultural waste for energy recovery purposes are included in the OSWI category of agricultural waste incinerators. Air emissions from these incinerators are not regulated by any other standard, and the 1990 Amendments do not exempt energy recovery operations incinerating agricultural waste from its definition of solid waste incinerators.

E. Construction and Demolition Waste Incinerators

A commenter stated that demolition wastes should not be exempted from incineration regulations. This commenter said that demolition wastes may contain materials that will emit toxic fumes when burned and also expressed a concern about the presence of asbestos in demolition wastes.

It is the intent of the EPA that the incineration of demolition wastes is to be included in the category of construction and demolition waste incinerators. In assessing the need for regulating these sources, the EPA will investigate the emissions resulting from combustion of the toxic components of these types of wastes.

F. Crematories

One commenter expressed support for crematories being included in the proposed list. This commenter is concerned that some States still apply the same opacity standards to crematories as they do to other incinerators. The commenter stated that most opacity limits allow for higher levels of visible emissions during start-up operations. The commenter suggested that this may be reasonable for large municipal incinerators that start up once a week, but asserted that such allowances are not reasonable for crematories which undergo start-up operations at the beginning of each cremation.I11In assessing the need to develop emission limitations applicable to crematories, the EPA will specifically evaluate the commenter's concerns regarding possible excess emissions occurring during start-up.

G. Petroleum-Contaminated Soil Treatment Facilities

One commenter stated that the incineration of contaminated soil needs immediate attention and urged the EPA to regulate contaminated soil incinerators. Another commenter suggested that the EPA clarify how petroleum-contaminated soil treatment facilities are covered under the OSWI categories. The commenter said that petroleum-contaminated soil treatment facilities which treat soil that passes the Toxicity Characteristic (TC) Rule test for hazardous waste should be subject to the OSWI requirements since these facilities do not treat hazardous waste. The same commenter said that if the soil fails the TC Rule test, the facility would be regulated under the Solid Waste Disposal Act (SWDA), and therefore should be exempt from the OSWI requirements.

A third commenter stated that all treatment devices that heat hazardous wastes or polychlorinated biphenyls (PCB's) in an oxidizing environment should be regulated as incinerators. The commenter maintained that these types of devices are engaged in combustion and pose the same potential risks to human health and the environment that an incinerator does. The commenter urged the EPA to include under the ICWI category those thermal desorbers, sludge dryers, and other treatment units that do not fall within the definitions of MWC's or MWI's and that heat any portion of the waste in an oxidizing environment. As an alternative, the commenter recommended that the EPA add an eighth OSWI category to cover these devices. In support of this recommendation, the commenter incorporated, in its entirety, a petition that was submitted to the EPA onJuly 13, 1993 entitled, "Petition for Rulemaking to Amend EPA's Regulations to Address Thermal Oxidation of Hazardous Wastes and PCBs in Thermal Desorbers, Sludge Dryers, and Other Devices."

In response to the comments, the EPA has decided to expand the proposed category of "petroleum-contaminated soil treatment facilities" and to indicate this by dropping the word petroleum from the title. In the listing below, this class of incinerators has been listed as

"contaminated soil treatment facilities". This class of OSWI's covers all soil treatment facilities that are not required to have a permit under section 3005 of the SWDA.

The third commenter's request that the EPA include incineration of hazardous wastes and PCB's, thermal desorbers, and sludge driers under OSWI or ICWI rulemaking actions is beyond the purview of section 129. This is evidenced by the limited number of pollutants for which EPA must develop emission limits and by the restrictive language of the definition of a solid waste incineration unit in section 129(g)(1). The commenter's concerns about regulation of these particular types of sources will be the subject of EPA's response to the commenter's petition for their coverage under either the Toxic Substances Control Act or the Resource Conservation and Recovery Act.

H. Additional Categories to be Considered

One commenter contended that the proposed list should include tire incinerators and material recovery facilities. This commenter also maintained that cogeneration facilities should not be exempted from the proposed list because these facilities impact the health of people living nearby. In response, the EPA notes that the three categories the commenter mentioned (tire incinerators, material recovery facilities, and cogeneration facilities) are specifically excluded from the 1990 Amendments' definition of solid waste incinerators. Therefore, these categories of sources will not be included under OSWI's.

I. Regulatory Schedule

One commenter expressed support for the proposed promulgation schedule for OSWI's. A second commenter agreed that MWC's, MWI's, and ICWI's should have a higher priority than OSWI's, but contended, as did a third commenter, that the promulgation schedule for OSWI's represents an unreasonably long period of time, considering the potential for OSWI's to emit dangerous toxic air pollutants.

To support an argument for a shorter promulgation schedule, the second commenter provided a list of various types of solid waste materials incinerated by the seven proposed categories of incinerators and the resulting toxic substances that the commenter believed could potentially be emitted. Also, the commenter predicted that small MWC's will increasingly replace small landfills in many rural areas due to new landfill regulations which make small MWC's more economically attractive. This commenter postulates that small units will be constructed with inadequate air pollution controls to reduce costs and, thereby, cause negative human health consequences. The commenter suggested that locating small MWC's in rural areas may allow toxic emissions to affect the food chain more directly. The commenter further noted that some States cannot legally regulate OSWI's until the EPA does.

After considering the comments provided, the EPA has decided to adopt the proposed promulgation schedule of November 15, 2000 for OSWI's. The commenters who suggested a shorter promulgation period did not provide information to support their conclusion that the amounts of toxic pollutants potentially emitted from the OSWI categories of sources create more significant health and environmental impacts than other sources to be controlled pursuant to section 129 of the 1990 Amendments. Therefore, the EPA still believes that the November 15, 2000 promulgation date reasonably allows it to prioritize its resources by first focusing on MWC's, MWI's, and ICWI's. This date is a target date, and regulations for individual categories of OSWI's may be promulgated sooner.

III. Final List of Categories of Sources

After reviewing the comments provided, the EPA has decided to pursue regulatory development for the following categories of OSWI's:

1. Small MWC's—those MWC plants with capacities of 35 megagrams per day (Mg/d) [39 tons per day (tons/d)] or less;
2. Residential incinerators;
3. Agricultural waste incinerators;
4. Wood waste incinerators;
5. Construction and demolition waste incinerators;
6. Crematories; and
7. Contaminated soil treatment facilities.

The coverage of the classes is as originally published (see 58 FR 31358) subject to the clarifications and modifications described above. Due to the limited information available to date, the EPA cannot say at this time that regulations will be promulgated for all categories that are listed. However, each category listed will be further investigated and regulations will be developed and promulgated as appropriate.

IV. Regulatory Schedule

The scheduled date for promulgating NSPS and EG for OSWI's is November 15, 2000.

Dated: October 21, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–26677 Filed 11–1–93; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 33]

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to increase the maximum per diem rate for the Mississippi Gulf Coast area (Harrison, Jackson and Hancock counties). An analysis of data from a recent subsistence cost survey shows that subsistence costs have escalated in this area due to a significant increase in tourist travel. To provide adequate per diem reimbursement for Federal employee travel to the Gulf Coast area, the maximum lodging and meals and incidental expenses rates are adjusted to $59 and $30, respectively, resulting in a total per diem rate of $89.

DATES: This final rule is effective November 2, 1993, and applies for travel (including travel incident to a change of official station) performed on or after November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Karen Kinsella, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of October 4, 1993, because it is not likely to result in an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy

issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

For the reasons set out in the preamble, under 5 U.S.C. 5701–5709, E.O. 11609, July 22, 1971 (36 FR 13747), title 41, chapter 301 of the Code of Federal Regulations is amended as set forth below.

CHAPTER 301—TRAVEL ALLOWANCES

1. Appendix A to chapter 301 is amended by removing the entry "Gulfport/Pascagoula/Bay St. Louis" under Mississippi and by adding in its place "Biloxi/Gulfport/Pascagoula/Bay St. Louis" to read as follows:

APPENDIX A TO CHAPTER 301—PRESCRIBED MAXIMUM PER DIEM RATES FOR CONUS

* * * * *

Biloxi/Gulfport/Pascagoula/Bay St. Louis ...	Harrison, Jackson, and Hancock	59	30	89

* * * * *

Dated: October 22, 1993.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 93–26880 Filed 11–1–93; 8:45 am]

BILLING CODE 6820–24–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 406, 409, 410, 411, 412, 413, 418, and 489

[BPD–725–F]

RIN 0938–AF27

Medicare Program; Self-Implementing Coverage and Payments Provisions: 1990 Legislation

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Confirmation of final rule.

SUMMARY: This document confirms our revisions to Medicare regulations published on August 12, 1992 (57 FR 36006). The revisions conformed the regulations to certain self-implementing provisions on coverage of services and payment requirements. The provisions were included under the Omnibus Budget Reconciliation Act of 1990, the Omnibus Budget Reconciliation Act of 1989 and the Medicare Catastrophic Coverage Act of 1988. We also respond to the comments we received on the revisions to the regulations.

EFFECTIVE DATE: The confirmed provisions were effective September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Sue B. Brown, (410) 966–4658.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1990, Congress enacted the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Pub. L. 101–508. This law contains numerous provisions relating to coverage of services and payments for services furnished to Medicare beneficiaries. Some of these provisions are self-implementing—that is, the provisions are stated in terms that do not require, and sometimes do not permit, exercise of discretion in implementing them. Under these circumstances, the plain wording of the law causes a conflict with the provisions of several of our existing regulations or causes them to be incomplete.

In some cases, before we could amend our rules to reflect the OBRA '90 requirements, it was necessary for us to incorporate certain self-implementing provisions of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Pub. L. 101–239, and the Medicare Catastrophic Coverage Act of 1988 (MCCA), Pub. L. 100–360 (in cases where the provisions were not repealed by the Medicare Catastrophic Coverage Repeal Act of 1989 (MCCRA), Pub. L. 101–234) that have been further amended by OBRA '90.

On August 12, 1992, we published a final rule with comment period to include these self-implementing provisions in our regulations. (57 FR 36006) A discussion of the individual legislative provisions and the accompanying Federal regulation changes follows. We refer the reader to the August 12, 1992 rule for greater detail, such as legislative effective dates.

Summary of Revisions and Commenters' Concerns

Capital-Related Inpatient Hospital Costs

Section 1886(g)(3) of the Social Security Act (the Act) provides for certain reductions to capital-related costs of inpatient hospital services of hospitals that are paid under the prospective payment system (see section 1886(d) of the Act). Section 6002 of OBRA '89 mandated a reduction by 15 percent of payments for capital-related costs of inpatient hospital services identified under section 1886(d) attributable to portions of cost reporting periods or discharges occurring during the period beginning January 1, 1990 and ending September 30, 1990. Section 4001(a) of OBRA '90 extended the 15 percent reduction applicable to prospective payment hospitals to September 30, 1991. These provisions were incorporated into the regulations at § 412.113 in a document issued on August 30, 1991 (56 FR 43448).

We revised § 412.113(a)(2)(B), (C), and (D) to conform the dates and the percentages specified in these paragraphs to the statute. There were no public comments on these revisions.

Capital-Related Outpatient Hospital Costs

Section 6110 of OBRA '89 amended section 1861(v)(l)(S) of the Act to add a provision stipulating that, in determining the amount of payments that may be made with respect to all the capital-related costs of outpatient hospital services under the "reasonable cost" payment system, a reduction of 15 percent be made for payments attributable to portions of cost reporting periods occurring during fiscal year 1990.

Section 4151(a) of OBRA '90 further amended section 1861(v)(l)(S) of the Act to provide for an extension of the reduction to payments for capital-related costs for outpatient hospital services. Under the extension, a 15 percent reduction was made for portions of cost reporting periods occurring during fiscal year 1991 and a 10 percent reduction was slated for portions of cost reporting periods occurring during fiscal years 1992 through 1995. Sole community hospitals were exempted from any reduction in payments for capital-related outpatient costs under section 6110 of OBRA '89. Section 4151(a) of OBRA '90 exempted rural primary care hospitals from the reduction.

We amended § 413.130 by adding a new paragraph to incorporate both the OBRA '89 and OBRA '90 provisions in the Medicare regulations. There were no public comments on this revision.

Non-Capital Related Outpatient Hospital Costs

Section 4151(b) of OBRA '90 amended section 1861(v)(1)(S)(ii) of the Act, as added by section 6110 of OBRA '89 and further amended by section 4151(a) of OBRA '90, to add a new subsection (II) to mandate a reduction of non-capital operating costs for hospital outpatient services by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1991 through 1995. It also exempted sole community hospitals as defined in section 1886(d)(5)(D)(iii) of the Act and rural primary care hospitals as defined in section 1861(mm)(1) of the Act from this reduction.

We incorporated this provision in a new § 413.124. There were no public comments on this provision.

Payment for Physician Pathology Services

Section 4104 of OBRA '90 amended section 1834(f) of the Act to provide that the prevailing charge for physician pathology services furnished by a hospital-based physician during 1991 is reduced seven percent below the prevailing charge on or after April 1, 1990. Section 4104 also provides that the prevailing charge for a global physician pathology service furnished through an independent laboratory during 1991 is reduced by up to seven percent from the applicable prevailing charge for the global physician pathology service furnished by independent laboratories on or after April 1, 1990. However, the reduction cannot result in a prevailing charge that is less than 115 percent of the professional component prevailing charge for physician pathology services.

We incorporated these provisions in 42 CFR 405.556. A listing of the physician pathology codes that were reduced as a result of section 1834(f) of the Act, as amended by section 4104 of OBRA '90, is in Section 8318.2 of the Medicare Carrier's Manual.

Comment: One commenter representing physicians observed that the regulation text did not incorporate the legislative provision verbatim. Specifically, the regulation at § 405.556(d)(1) states that the 7 percent reduction applies "on or after January 1, 1991" and the statute states that it applies "during 1991." The commenter believed our wording could lead to an implication that the reasonable charge reduction will continue after 1991.

Response: We do not believe the regulation could be misinterpreted because physician payments after 1991 are no longer based on reasonable charges. As a result of section 6102 of the Omnibus Budget Reconciliation Act on 1989 (Pub. L. 101–239), a new section 1848 was added to the Social Security Act that, among other things, replaces the Medicare reasonable charge payment methodology with a fee schedule for physician services. Final rules on this subject were issued November 25, 1991 and codified at 42 CFR part 414 (see 56 FR 59502ff. and 57 FR 42492). Payment under the fee schedule provisions have been effective since January 1, 1992. Because the reasonable charge payment methodology did not continue beyond the end of 1991, the slight difference in wording is not material. The expression we used is consistent with the style and drafting approach used throughout our regulations and more precisely identifies when the reasonable charge reduction is made. Consequently, we are not revising the regulation.

Payment for Services of Physicians as Assistants-at-Surgery

Section 4107(a)(1) of OBRA '90 amended section 1848(i) of the Act to provide that in the case of a surgical service furnished by a physician, if payment is made separately for the services of a physician serving as an assistant-at-surgery, the fee schedule amount may not exceed 16 percent of the fee schedule amount otherwise determined for the global surgical service involved. However, payment is precluded for the services of assistants-at-surgery for procedures that have been determined by the Secretary to involve the services of assistants-at-surgery on average in less than 5 percent of such procedures nationally.

We revised § 405.502 of the Medicare regulations to incorporate the amendments made by section 4107 of OBRA '90.

Comment: Two commenters representing physicians stated the belief that Medicare should cover all medically necessary assistant-at-surgery services, no matter how infrequently they are required for a particular operation. One commenter acknowledged that the regulation accurately reflects the OBRA '90 provision. The other commenter requested that the regulation be expanded to require that residents and interns be included in the calculation of the 5 percent for Medicare Part B as well as for Part A payment.

Response: Since the purpose of the regulation was to accurately present OBRA '90 requirements, no revision is necessary. The suggestions of the commenters would require legislation to implement.

Payments for Ambulatory Surgical Procedures in Hospital Outpatient Departments

Section 4151(c)(1)(A) of OBRA '90 amended section 1833(i)(3)(B)(ii) of the Act to change the payment rate for ambulatory surgical center (ASC) procedures performed in an outpatient hospital department. Section 4151(c) modified both the cost and ASC proportions of the blended payment amount from a 50–50 blend to a 42–58 percent blend.

Section 4151(c)(1)(B) of OBRA '90 extended the benefit of the 75 percent hospital specific and 25 percent ASC blended payment amount to qualifying eye and ear specialty hospitals beyond the previous September 30, 1990 cut-off date to cost reporting periods beginning before January 1, 1995.

We incorporated these two OBRA '90 changes under § 413.118(d) of the Medicare regulations. There were no public comments on this revision.

Payments for Radiology Services Performed in Hospital Outpatient Departments

Section 4151(c)(2) of OBRA '90 amended section 1833(n)(1)(B)(ii)(I) of the Act to change the payment rate for radiology services performed in a hospital outpatient department to a blend based on 42 percent cost and 58 percent fee schedule amount.

We have revised § 413.122 of the Medicare regulations to incorporate these changes. There were no public comments on this revision.

Hospice Benefit Extension

Section 4006 of OBRA '90 reinstates an extension of hospice benefits that was included originally under MCCA, and repealed by MCCRA. Section 4006 of OBRA '90 amends sections 1812(a)(4), (d)(l) and (d)(2)(B) and section 1814(a)(7)(A)(i) and (ii) of the Act and adds a new section 1814(a)(7)(A)(iii) to the Act to provide for a subsequent extension period of coverage for hospice care beyond the 210-day limit if the beneficiary is recertified as terminally ill by the medical director or the physician member of the interdisciplinary group of the hospice at the beginning of the period.

We amended §§ 418.1, 418.21, and 418.22 of the Medicare regulations to incorporate these legislative changes.

There were no public comments on this revision.

Enrollment of HMO Members in Medicare Part A

Section 4008(g) of OBRA '90 amended section 1818(c) of the Act by providing for a transfer enrollment period for Part B-only beneficiaries who are members of Medicare-contracting health maintenance organizations (HMOs) and competitive medical plans (CMPs) to enroll in premium hospital insurance under Medicare Part A.

We amended §§ 406.21 and 406.33 of the Medicare regulations to incorporate the provisions of section 4008(g) of OBRA '90.

In addition, we incorporated in § 406.22 a self-implementing provision of section 103 of MCCA. Section 103 of MCCA amended section 1818(d) of the Act to provide a new formula for computing the basic premium amount for premium hospital insurance of Medicare Part A.

There were no public comments on these revisions.

Coverage of Ostomy Supplies

Section 6112(e)(3) of OBRA '89 amended section 1866(a)(1) of the Act to add a paragraph (P) and sections 6112(e)(1) and (e)(2) of OBRA '89 amended sections 1861(m)(5) and 1834(a)(13) to provide for coverage of certain "ostomy supplies" as part of home health medical supplies furnished to Medicare beneficiaries. Section 4153(d) of OBRA '90 further amended section 1866(a)(1)(P), as added by OBRA '89, to expand the term "ostomy supplies".

We incorporated the provisions of these sections of OBRA '89 and OBRA '90 in 42 CFR 409.40 and 489.20. There were no public comments on these revisions.

Coverage of Post-Cataract Eyeglasses

Section 4153(b)(2)(A) and (B) of OBRA '90 amended section 1861(s)(8) and 1862(a)(7) of the Act to allow for Medicare Part B coverage of one pair of conventional eyeglasses or conventional contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens. (Previously, HCFA had covered conventional eyeglasses furnished to cataract patients after surgery as "prosthetic devices" under section 1861(s)(8) of the Act.)

We amended § 410.36, Coverage of Medical supplies, appliances, and devices, and § 411.15, Specific services excluded from coverage, to incorporate these new provisions. There were no public comments on these revisions.

Medicare Secondary Payer Provision For Individuals With ESRD

Section 4203(c) of OBRA '90 amended section 1862(b)(1)(C) of the Act to redefine and temporarily to expand from 12 to 18 months the period during which Medicare is secondary payer for persons entitled to Medicare solely on the basis of end-stage renal disease.

We amended §§ 411.60 and 411.62 of the Medicare regulations to incorporate this amendment.

Comment: One commenter suggested that we amend the regulations to make clear that the ESRD secondary payer provision sets only minimum standards for group health plans. The commenter's view of the provision was that it does not prohibit a group health plan from providing primary coverage, for individuals eligible for but not enrolled in Medicare, beyond the period during which the law obligates plans to be the primary payer. Specifically, the commenter suggested that the rule should include a provision that the specific contract language of each group health plan governs its obligation to pay primary benefits beyond the 18-month coordination period for individuals eligible for, but not entitled to, Medicare.

Response: The regulation does not need to be revised, but the commenter's concern does merit a response. The question of whether plans are obligated to pay primary benefits for Medicare eligible individuals with ESRD beyond the period prescribed in the Medicare law is not a Medicare issue because it is not addressed in the Medicare law. The ESRD Medicare secondary payer provision requires plans to be the primary payer only during the first 18 months of Medicare Part A eligibility or entitlement.

For individuals entitled to Medicare based on ESRD, Medicare becomes the primary payer after the 18-month coordination period. For those individuals eligible for, but not entitled to, Medicare, plans may decline to be the primary payer after the 18th month of Medicare eligibility. Such action by a plan would be wholly consistent with the ESRD Medicare secondary payer (MSP) provision.

The fact that the 18-month period may represent a period of Medicare eligibility, as distinguished from Medicare entitlement, is significant. The "eligibility" provision prevents an individual, of his own volition, from indefinitely maintaining primary plan coverage simply by deferring enrollment in Medicare. If the 18-month primary payment period were predicated strictly upon Medicare entitlement, plans could be required to provide primary coverage indefinitely for plan enrollees who contracted ESRD, and who declined to enroll in Medicare, because the plan would never reach the point beyond which its primary payer status would be limited to 18 months.

However, since the Congress clearly imposed limited primary payment obligations on plans with regard to individuals eligible for Medicare based solely on ESRD, a plan may direct a plan enrollee who is eligible for Medicare to enroll in Medicare once the 18-month primary payment period has expired. In other words, it would be consistent with the ESRD MSP provision for a plan to inform a Medicare-eligible plan enrollee that he continues to be eligible for plan benefits, but only to the extent that those benefits exceed what would be payable by Medicare if the individual were actually entitled to Medicare.

Clearly, a plan may continue primary coverage for a Medicare-eligible individual beyond the 18-month period prescribed in the Medicare law without violating the ESRD MSP provision. But nothing in the ESRD MSP provision requires a plan to continue primary coverage beyond the 18th month of ESRD-based Part A Medicare eligibility.

Technical Amendments—Application of Blood Deductible Under Medicare Part A

Section 102(l) of the MCCA amended section 1813(a)(2)(A) of the Act to make the Part A blood deductible applicable on the basis of the calendar year rather than the "spell of illness" (which in HCFA regulations is referred to as the "benefit period"). Accordingly, we amended §§ 409.87 and 489.31 to change "benefit period" to "calendar year." We received no comments on this revision.

Other Subjects

We also discussed four other subjects to which legislation applied, but since we did not make any regulations revisions to implement them in our August 12, 1992 final rule with comment and no one commented on them, we are not discussing them in this rule. They concerned: The treatment of a preentitlement stay in a psychiatric hospital under the limit on payment for inpatient hospital services; payments to dialysis facilities; payment rates for epoietin (EPO); and prior authorization requirements for certain durable medical equipment.

Comment: Two commenters recommended additional regulation sections that need to be amended to include OBRA '90 provisions.

Response: Our intention in issuing the regulation of August 12, 1992 was to include only items that clearly are self-executing. We appreciate the commenters observations and have also begun to prepare additional regulations that make necessary OBRA '90 revisions.

Regulatory Impact Statement

Since this document does not make any revisions to the final rule published on August 12, 1992, the regulatory impact statement needs no revision. We refer interested readers to that rule.

Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Confirmation of Final Rule

Neither the commenters' views nor our evaluation of issues they raised require revisions to the final rule with comment period published on August 12, 1992. Therefore, the final rule is confirmed without revision.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney disease, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural area, X-rays.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Recovery against third parties, Secondary payments.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney disease, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 20, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 30, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–26877 Filed 11–01–93; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–610–4111–02–24 1A; Circular No. 2650]

RIN 1004–AA66

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 7: Disposal of Produced Water; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendments and corrections.

SUMMARY: This document corrects errors and omissions in the final rule issuing Onshore Oil and Gas Order No. 7, Disposal of Produced Water, under the provisions of 43 CFR subpart 3164, published in the **Federal Register** on September 8, 1993 (58 FR 47354).

EFFECTIVE DATE: October 8, 1993.

ADDRESSES: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: T.R. Beaven, (307) 775–6200, or Erick Kaarlela, (202) 452–0340.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections issued Onshore Oil and Gas Order No. 7—Disposal of Produced Water, which affects oil and gas operators on public lands, and governs disposal and beneficial use of waste water produced during oil and gas operations.

Need for Correction

As published, the final rule contained errors that may prove to be misleading and are in need of clarification. Some of the errors appeared in the chart in 43 CFR 3164.1(b), and others appeared in the test of the Order, which is an appendix to 43 CFR part 3160 and does not itself appear in the CFR.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands-mineral resources, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

The following correcting amendments are made in the final rule issuing Onshore Oil and Gas Order No. 7, Disposal of Produced Water, which was published on September 8, 1993 (58 FR 47354):

1. The authority citation for part 3160 is revised to read:

Authority: 43 U.S.C. 1733; 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 306; 25 U.S.C. 396, 396d, 398e, 399; 42 U.S.C. 6508; 30 U.S.C. 1701 *et seq.*

Subpart 3164—Onshore Oil and Gas Orders

2. Section 3164.1(b) is amended by revising entries 6. and 7. of the table to read as follows:

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	FR reference	Supersedes
*	*	*	*	*
6.	Hydrogen Sulfide Operations	Jan. 22, 1991	55 FR 48958	None.
7.	Disposal of Produced Water	Oct. 8, 1993	58 FR 47354	NTL–2B
*	*	*	*	*

The following corrections are made in the final rule issuing Onshore Oil and Gas Order No. 7, Disposal of Produced Water, which was published on September 8, 1993 (58 FR 47354):

3. On page 47361, middle column, correct the last line of the second full paragraph to read "clearance numbers 1004–0134 and 1004–0135."

Appendix—[Corrected]

4. On page 47362, left column, in section C., Scope, change "non-Federal leases" to read "lands other than Federal and Indian lands" in lines 5 and 6.

5. On page 47362, middle column, in section N., Toxic constituents, add the words "specified by Federal or State regulations" after "concentration" in line 3, and in the last line correct the reference "CFR 116" to read "CFR 261."

6. On page 47362, middle column, section D., Underground Injection Control (UIC), remove the word "waste" in line 5.

7. On page 47363, left column, the last two lines of the first partial paragraph before "2. Off-lease Disposal" are corrected to read "approve the proposal without the prior approval of the Forest Service."

8. On page 47363, middle and right columns, in the first paragraph of section D. Informational requirements for pits, remove the two sentences beginning in the next to last line of the middle column and ending in the third line of the right column that read "A reclamation plan should be included as appropriate. If requested, a contingency plan as prescribed by the authorized officer shall be provided."

9. On page 47363, right column, item D.1.e., at the end of line 2, add the phrase", and a copy of the appropriate disposal permit, if any."

10. On page 47364, right column, item F.1., correct the phrase "order or assessment of penalties" to read "order, assessments, or penalties" in lines 4 and 5.

11. On page 47365, left column, item 9., in line 2, add at the end of the first sentence a phrase to read as follows: ", or more often if required by the authorized officer in appropriate circumstances."

12. On page 47365, right column, Section IV., remove the phrase "or State" in the last line of the paragraph.

Dated: October 22, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–26879 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–182; RM–8269]

Radio Broadcasting Services; Columbiana, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 268A to Columbiana, Alabama, as the community's first local aural transmission service, in response to a petition for rule making filed on behalf of Columbiana Broadcasting Company. See 58 FR 37696, July 13, 1993. Coordinates used for Channel 268A at Columbiana are 33–10–04 and 86–38–45. With this action, the proceeding is terminated.

DATES: Effective December 13, 1993. The window period for filing applications on Channel 268A at Columbiana, Alabama, will open on Dec. 14, 1993, and close on January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process for Channel 268A at Columbiana should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–182, adopted Oct. 12, 1993, and released Oct. 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Columbiana, Channel 268A.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–26865 Filed 11–1–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–160; RM–8238]

Radio Broadcasting Services; Window Rock, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 274C1 for Channel 276A at Window Rock, Arizona, and modifies the authorization for Station KHAC–FM to specify operation on the higher powered channel, as requested by Western Indian Ministries, Inc. See 58 FR 34025, June 23, 1993. Coordinates for Channel 274C1 at Window Rock are 35–35–00 and 109–02–00. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 13, 1993.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–160, adopted September 30, 1993, and released October 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

1. Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the table of FM Allotments under Arizona, is amended by removing Channel 276A and adding Channel 274C1 at Window Rock.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–26868 Filed 11–1–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–145; RM–8235]

Radio Broadcasting Services; Limon, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 276C2 to Limon, Colorado, as that community's first local FM service, in response to a petition for rulemaking filed by Anastasis Broadcasting Co. See 58 FR 31687, June 4, 1993. Coordinates used for Channel 276C2 at Limon are 39–15–50 and 103–41–30. With this action, the proceeding is terminated.

DATES: Effective December 13, 1993. The window period for filing applications on Channel 276C2 at Limon, Colorado, will open on December 14, 1993, and close on January 13, 1994.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–145, adopted October 8, 1993, and released October 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Limon, Channel 276C2.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–26866 Filed 11–1–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–113; RM–8212]

Radio Broadcasting Services; Newport, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Charlotte McNaughton, substitutes Channel 224C2 for Channel 224C3 at Newport, Oregon, and modifies Station KCLM's construction permit to specify operation on the higher class channel. See 58 FR 26528, May 4, 1993. Channel 224C2 can be allotted to Newport in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.7 kilometers (7.9 miles) north, at coordinates North Latitude 44–45–22 and West Longitude 124–02–54, to accommodate petitioner's desired transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 13, 1993.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–113, adopted October 7, 1993, and released October 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73 Radio Broadcasting

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 224C3 and adding Channel 224C2 at Newport.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–26864 Filed 11–1–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 9305 30–3233; I.D. 081693B]

RIN 0648–AE82

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS adopts as final without change an interim rule published June 18, 1993, that changed the drift gillnet quota and the longline and harpoon quota in the Atlantic swordfish fishery. The intent of this action is to protect the swordfish resource while allowing

harvests of swordfish consistent with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

EFFECTIVE DATE: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish (FMP) and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA).

Under the framework procedure of the FMP, NMFS reevaluated the TAC, the annual directed-fishery quota, the annual bycatch quota, bycatch limits in the non-directed fishery, and the harpoon gear set-aside in the Atlantic swordfish fishery. The reevaluation was done in accordance with the factors and procedures specified in 50 CFR 630.24(d). Information considered in the reevaluation and the rationale for the decisions regarding the harvest specifications were summarized in the interim final rule (58 FR 33568, June 18, 1993) and are not repeated here.

TAC remains at the current level, 7.56 million pounds (3.43 million kg), for 1993. Therefore, there is no change in the directed fishery quotas—except for minor corrections to the drift gillnet and longline/harpoon quotas resulting from a revised estimation of the 1988 (base year) drift gillnet landings. Likewise, there is no change in the bycatch quota, bycatch limits in the non-directed fishery, and the harpoon gear set-aside.

Comments and Responses

Comments on the interim final rule were received from a commercial fisheries organization and a marine conservation organization. Responses to the comments are provided below.

Comment: A marine conservation organization commented that conservation of Atlantic swordfish requires a more conservative fishery management regime than is currently allowed under the 1990 Fishery Conservation Amendments. The comments included reference to acknowledged uncertainties in the latest stock assessment, the 1992 U.S. statement to ICCAT regarding the possible need for additional reduction in the 1993 catch level, and the management constraints imposed by the Fishery Conservation Amendments of 1990. While recognizing the constraints on management options, the commenter suggested that amendment of the Magnuson Act and the ATCA is needed to remedy the situation. The commenter also took exception to the statement that the interim final rule was intended to protect the swordfish resource.

Response: NMFS believes that the position taken in the interim final rule, i.e., no change in TAC for 1993, is consistent with existing mandates. As indicated in the interim final rule, NMFS believes that a future reduction of fishing effort may still be needed to rebuild the stock to a level that could produce maximum sustainable yield. NMFS will continue to pursue necessary reductions, consistent with the best available scientific information, through ICCAT. Amendment of the Magnuson Act and the ATCA are beyond the scope of this rule. Finally, NMFS believes that the stated intended effect of the rule is accurate; continuation of the reduced level of TAC does provide protection for the swordfish resource.

Comment: The commercial fisheries organization suggested that (1) the bycatch quota, 560,000 pounds (254,014 kg), should be substantially reduced and the balance transferred to the directed fishery quota to forestall potential closure of the fishery; (2) the revision of historical landings data for all gear components should be a high priority in preparation for the next stock assessment; and (3) a moratorium on the issuance of swordfish permits is an essential first step in developing effective direct effort controls. The commenter also suggested that the bycatch limits applicable to the longline sector be revised based on data from fall tuna trips and that additional information regarding the source of the corrected gillnet landings be provided.

Response: The bycatch quota was reviewed by NMFS and the Swordfish Review Panel, and no change was recommended. NMFS believes that adjustment of the bycatch quota is not necessary at this time. It appears there is a low probability that the longline/harpoon sector will reach the 1993 quota. Although still preliminary, the most recent estimate of January-June landings is approximately 1.0 million pounds (0.45 million kg) under the semiannual quota. Any remaining balance from the January-June period can be made available to the longline/harpoon sector during the July-December period. This reduces the likelihood of a closure this year, despite some potential for increased effort due to shifts of effort from other fisheries. Further, the regulations provide for inseason transfer of any unused bycatch quota to the directed fishery quota. NMFS believes that use of the inseason adjustment, if necessary, is the best approach for the duration of this season. The bycatch quota will be reevaluated prior to establishing the 1994 quotas.

NMFS agrees that revision of historical landings, based upon validated data, is important prior to initiating the next stock assessment.

NMFS supports consideration of access controls, including consideration of a moratorium on issuance of additional swordfish permits. Scoping meetings to receive public comment on this issue have been scheduled during September 1993.

Bycatch limits for the longline sector apply only after a closure of the directed fishery for that category. As indicated above, closure of the longline sector during 1993 appears unlikely. Therefore, NMFS believes that reevaluation of the bycatch limit is not a high priority at this time. Bycatch limits will be reevaluated during the annual review prior to determination of 1994 allowable catch levels.

The 1988 gillnet landings were corrected based upon validated landings data provided by industry members. The additional data substantiated that a portion of the 1988 swordfish landings at Montauk, New York, that were assumed to have been longline landings in absence of any gear specification, were, in fact, landed by drift gillnet.

Final Rule

Because there were no changes made as a result of the comments, the interim final rule is adopted as final without change.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this final rule is necessary for the conservation and management of the Atlantic swordfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The AA determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking was required by 5 U.S.C. 553, a regulatory flexibility analysis is

not required under the Regulatory Flexibility Act and none has been prepared.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

For the reasons set forth in the preamble, the interim final rule amending 50 CFR part 630, which was published at 58 FR 33568 on June 18, 1993, is adopted as final without change.

Dated: October 27, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 93–26892 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–22–P

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50 CFR Part 642

[Docket No. 930819–3269; ID #081793B]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS changes the management regime for the Gulf of Mexico migratory group of king mackerel in the eastern zone, in accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Specifically, this rule implements trip limits for Gulf group king mackerel in each of two sub-zones of the eastern zone, the Florida east coast and Florida west coast sub-zones, which have been created by a separate rulemaking. The intended effects of this rule are to reduce daily catches, thus preventing market gluts and extending the season, and to reduce the likelihood of exceeding the king mackerel quotas.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and in the Gulf of Mexico only, bluefish) is managed under the FMP. The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented through regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

In accordance with the FMP and its implementing regulations, the Councils recommended and NMFS published a proposed rule containing changes in certain management measures applicable to Gulf group king mackerel in the eastern zone (58 FR 47428, September 9, 1993). That proposed rule (1) described the framework procedures of the FMP through which the Councils recommended the changes; (2) specified the recommended changes; and (3) described the need and rationale for the recommended changes. Those descriptions are not repeated here.

Comments and Responses

Five responses from participants in the commercial fishery were received during the comment period. A minority report signed by three members of the Gulf of Mexico Fishery Management Council also was received. Three commercial fishermen opposed the unlimited harvest season proposed for the Florida west coast fishery. A fourth commentor and the minority report expressed opposition to the trip limits proposed for the Florida east coast. In contrast, the fifth respondent supported the east coast trip limit proposal as a well-reasoned, fair approach that would benefit both the fishing industry and the resource. Specific comments and responses, by category, are as follows.

Florida West Coast Sub-Zone Trip Limits

Comment: Three commercial hook-and-line fishermen from southwest Florida opposed taking the first 75 percent of the west coast sub-zone quota without daily harvest constraints. They contended that unrestrained harvest under the unlimited daily vessel possession/landing limits would trigger derby fishing thereby conferring unfair harvest advantage on a small number of gillnet fishermen who have demonstrated capacity to take most, if not all, of the quota within a few days. They believe that the resultant rapid harvest and abbreviated season will penalize all fishermen, in varying degrees, by glutting the market with a low quality product that will decrease both exvessel prices and profits. They fear that catches under the short unlimited harvest season and the final 25 percent of the quota reserved for the season-ending 50-fish trip limit may be insufficient to meet expenses, thus causing socioeconomic hardships. To avoid such potential socioeconomic problems, they recommend prohibition of net gear from the fishery or, if that is not feasible, the establishment of separate and equitable quotas for the two permitted gear types, hook and line and run-around gillnets.

Response: The Councils and NMFS believe that the trip limits recommended for the west coast sub-zone, although not ideally suited to all participants, represent a reasonable compromise to manage the fishery during the 1993/94 fishing year. Failing to determine a specific trip limit amount (pounds or numbers of fish) that would satisfy and meet the specific operational requirements of both hook-and-line and gillnet fishermen, the Councils decided that an unlimited harvest season was the most viable alternative, given the time available to develop, review, and implement a program for this fishing year. The Councils had only a limited amount of time to prepare a program that would avoid the socioeconomic problems experienced during the previous fishing year.

The Councils believe that the unlimited harvest period will afford vessel operators the opportunity to equitably compete for the available quota while independently determining the optimum amount to harvest each trip. Operators will have leeway to determine their optimal catch per trip depending on hold capacity, duration of trip, distance to fishing grounds, and encumbered expenses. Also, for certain vessels that have economic dependency on other concurrent seasonal fisheries (e.g., Spanish mackerel, bluefish, spiny lobster, stone crab, etc.), the unlimited daily harvest will promote quick realization of their quota share and transition to the desired coincident fishery. For those fishermen having no such alternatives and desiring a slower king mackerel harvest rate over a more extended fishing period, the Councils recommended a 50-fish daily trip limit for the taking of the last quarter of the quota. This reduced harvest rate also will reduce the risks of overrunning the quota, which would delay achievement of the FMP goal to rebuild the overfished Gulf group king mackerel resource by the 1996/97 fishing year.

NMFS believes that, in recognition of their historical participation in the Florida king mackerel fishery, both hook and line and run-around gillnets are entitled to an equitable share of the quota even under the current overfished status and reduced allocations. Accordingly, for these two permitted gear types, the Councils have developed management measures that will provide fair and equitable harvesting access. Additional measures are being developed under Amendment 7 to manage Florida's commercial fishery for Gulf group king mackerel. Amendment

7 is scheduled for implementation prior to the onset of the 1994/95 season. In addition to various trip limit options and establishment of equal quotas for Florida's east and west coast fisheries, the Councils in Amendment 7 are recommending equal apportionment of the west coast sub-zone quota between hook-and-line and gillnet sectors. Recent and historic lands suggest equal seasonal harvest between the two gear sectors, and many fishery participants, including some of those who commented on this rule, also seem supportive of a 50/50 quota split. Previously, this option was considered but rejected during the development of amendment 5, which was implemented in August 1990.

Florida East Coast Sub-Zone Trip Limits

Comment: The minority report expressed strong opposition to the 50-fish daily vessel trip limit proposed for harvesting the first half of the Florida east coast quota. The three Gulf Council signatories believe that this proposal is inconsistent with national standard 4 because it, along with the 25-fish trip limit proposed for taking the final half of the quota, would unfairly exclude run-around gillnet use in that area, thereby allocating the entire east coast quota to the hook-and-line sector. They further contended that these trip limits, if implemented, will permanently exclude the more efficient gillnets from the fishery even if the overfished Gulf group king mackerel resource improves and the commercial allocation is increased.

Response: In view of the recent landings and the quota history for the past 8 years under the management measures implemented by Amendment 1, NMFS does not concur that the trip limits proposed for the Florida east coast are inconsistent with national standard 4. Run-around gillnet harvest has been non-apparent or insignificant in the east coast fishery for the past 8 years. Since the implementation of regulations under FMP Amendment 1 (August 1985), the determining factors precluding gillnet harvest have been low quotas and closures before February and March when king mackerel previously became vulnerable to gillnet capture. Moreover, this year's east coast sub-zone quota again appears insufficient to support gillnet harvest. Like quotas for the previous 8 years, it is much lower than the unregulated yields of the 1970s and early 1980s that once supported east coast gillnet fishing. Also, no TAC increase was approved for Gulf group king mackerel for the 1993/94 fishing year.

Furthermore, NMFS does not concur that future use of gillnets off the east coast will be denied permanently by implementing this regulatory amendment. Rather, future access will be dependent upon increased quotas related to the recovery of the overfished Gulf group king mackerel resource, management changes affected by stock identification studies, and other pertinent changes approved under annual adjustments (e.g., vessel trip limits, gear restrictions, closed seasons or areas, etc.) and amendment processes. During the interim, no vessel holding a Federal commercial mackerel permit will be excluded from commercially fishing for Gulf group king mackerel under the trip limits and quotas.

Management of king mackerel in the Florida east coast winter mixing area may be changed significantly under future FMP amendments. Stock identification findings to be reported next spring could support a program to apportion winter catches in this area between the Gulf and Atlantic migratory groups of king mackerel based on a scientifically determined mixing ratio. Considering that preliminary analyses suggest the Atlantic group is the predominant group in this area, some gillnet catches in the future may be available under vessel trip limits that may be proposed for this group.

Comment: One Florida east coast hook-and-line fisherman opposed the 50-fish vessel trip limit proposed for taking of the first half of the sub-quota. He contended that the 50-fish daily landing limit is insufficient to support commercial king mackerel fishing off the most northern part (Volusia County) of the Florida east coast sub-zone. If implemented, he believes it will cause economic hardships for fishermen in his area who have unique needs because they are further removed from adjacent offshore fishing grounds than more southern participants. To offset expenses and make a profit under these conditions, he indicated that fishermen must make multiple day trips (usually 2 to 3 days) and capture quantities of king mackerel in excess of 50 fish. He further asserts, that the smaller fish (ca. 6-pound (2.72-kg) average) captured in this area, make profitable trips nonachievable under the daily 50-fish vessel possession/landing limit. Therefore, he argues that an initial vessel landing limit in this area must be greater than 50-fish; however, he would accept the implementation of the 50-fish trip limit after 50 to 75 percent of the quota was taken. In addition, he does not believe that the expected benefit of higher ex-vessel prices will be sustained throughout the season. He perceives that prices will decline with increasing market competition from the Florida west coast and North Carolina.

Response: NMFS believes that the Council's recommended vessel trip limits for the Florida east coast fishery satisfy the FMP objective of optimizing the social and economic benefits of the coastal migratory pelagic fisheries. Although the Councils initially considered a higher initial trip limit as a concession to more northern fishery participants, they ultimately determined that the 50/25-trip limit regime was the most reasonable option to accommodate the fishing habits and provide the most equitable distribution of the quota among most Florida east coast king mackerel fishermen. Their determination also reflected historical/traditional production and socioeconomic considerations of associated industry and community infrastructure. The Councils, therefore, determined that the foremost objective desired by fishermen, to prolong harvest and optimize exvessel price, was reasonably achievable through the 50/25 trip limit proposal. Many Florida east coast fishermen offered testimony to the Councils supporting the trip limits, even those from the four southernmost counties (Martin, Palm Beach, Broward, and Dade) where about 10 percent of the catch has been taken from 1985–1993.

In making their decision, the Councils also considered the declining king mackerel production off Volusia County taken by a small number of participants, the economic necessity and historical trend for fishermen to follow migrating king mackerel to major east coast production ports, the reported success of the 25-fish trip limit during the February/March 1993 emergency, and the economic importance of supplying Lenten season markets when Florida east coast production is expected to dominate and subsequently command a higher price. The Councils also realized that greater daily production during the early season under a higher trip limit, which may have helped more northern participants, would have speeded quota harvest, accelerated closure, and decreased the opportunity to capture potentially lucrative Lenten markets, thus, diluting the major objective to prolong harvest and increase revenue to fishermen. Finally, the Councils recognize that the trip limits are not permanent and can be changed under the FMP as needed.

Approval of the Framework Measure

The Director, Southeast Region, NMFS, concurs that the Council's recommendations are necessary to

protect the stocks and prevent overfishing and that they are consistent with goals and objectives of the FMP, the Magnuson Act, and other applicable law. Accordingly, the proposed rule, which contained the Councils' recommended changes, is adopted as final.

Emergency Rule

The trip limits of this final rule apply when the eastern zone of Gulf group king mackerel is separated into Florida east coast and Florida west coast sub-zones and separate quotas are established in each. Such sub-zones and quotas have been implemented by an emergency rule (58 FR 51789, October 5, 1993) that is effective through January 3, 1994. It is expected that the effectiveness of the emergency rule will be extended through March 31, 1994.

Classification

The Councils prepared a regulatory impact review on this action, the conclusions of which were summarized in the proposed rule and are not repeated here.

The Councils prepared an initial regulatory flexibility analysis (initial RFA) for this action. The initial RFA has been adopted as final without change. The final RFA concludes that this final rule will have a significant economic impact on a substantial number of small entities, as summarized in the proposed rule.

On November 1, each fishing year, the boundary separating the Gulf and Atlantic migratory groups of king mackerel shifts from the west coast to the east coast of Florida. On November 1, 1993, the Florida east coast sub-zone and quota come into existence via the emergency rule discussed above. To attain the full benefit of the trip limits in this final rule, it is necessary that they become effective at the same time as the east coast sub-zone and quota. Accordingly, the Assistant Administrator finds for good cause under section 553(d)(3) of the Administrative Procedure Act that the effective date of this rule should not be delayed later than November 1, 1993.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 27, 1993.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

2. In § 642.7, a new paragraph (u) is added to read as follows:

§ 642.7 Prohibitions.

* * * * *

(u) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.31(a), or transfer at sea such king mackerel, as specified in § 642.31(e).

3. A new § 642.31 is added, to read as follows:

§ 642.31 Commercial trip limits for Gulf group king mackerel in the eastern zone.

The provisions of this section apply when the eastern zone of Gulf group king mackerel is separated into Florida east coast and Florida west coast zones and separate quotas are established in each. See § 642.25(a)(1) for such zones and quotas.

(a) *Trip limits. (1) Florida east Coast Zone.* In the Florida east coast zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4,

(i) From November 1, each fishing year, until 50 percent of the zone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day; and

(ii) From the date that 50 percent of the zone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast zone has been effected under § 642.26—in amounts not exceeding 25 king mackerel per day.

(2) *Florida west coast zone.* In the Florida west coast zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4,

(i) From July 1, 1993, until 75 percent of the zone's fishing year quota of king mackerel has been harvested—in unlimited amounts of king mackerel; and

(ii) From the date that 75 percent of the zone's fishing year quota of king mackerel has been harvested until a closure of the Florida west coast zone has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

(b) *Notice of trip limit changes.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(1) and (a)(2) when the requisite harvest levels have been reached or are projected to be reached.

(c) *Closures.* A closure of the Florida east coast zone or the Florida west coast zone will be effected as specified in § 642.26(a). During the period of effectiveness of such a closure, the provisions of § 642.26(b) apply.

(d) *Combination of trip limits.* A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a)(1) or (a)(2)(ii) of this section applies may not transfer at sea from one vessel to another a king mackerel—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such king mackerel was taken.

[FR Doc. 93–26855 Filed 10–28–93; 10:38 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 210
Tuesday, November 2, 1993

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–18]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received January 3, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on October 25, 1993.

Michael Chase,

Acting Assistant Chief Counsel for Regulations

Petitions for Rulemaking

Docket No.: 27473

Petitioner: Aircraft Owner's and Pilots Association

Regulations Affected: 14 CFR 61.23(c)

Description of Rulechange Sought: To extend the duration of a third class medical certificate from 24 to 48 months for non-instrument rated private, recreational, and student pilots.

Petitioner's Reason for the Request: The petitioner feels that supporting data for this petition is based on the successful extension of the third class medical examination interval to five years in the United Kingdom since 1986. Granting the amendment would reduce a regulatory and economic burden on the public and reduce the administrative cost and paperwork burden on the FAA, while maintaining safety assurances.

Docket No.: 27398

Petitioner: Mr. James H. Owen

Regulations Affected: 14 CFR 43.9 and 43.11

Description of Rulechange Sought: To combine or restate portions of the affected regulations to make recordkeeping a combined effort between the pilot and the maintenance personnel.

Petitioner's Reason for the Request: To explain the regulatory recordkeeping requirement of the general aviation industry, and make this area more realistic.

[FR Doc. 93–26906 Filed 11–1–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 121, 127, 135, and 145

[Docket No. 17551; SFAR No. 36–6; Notice No. 93–15]

Special Federal Aviation Regulation No. 36, Development of Major Repair Data; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (Docket No. 17551), which was published Thursday, October 21, 1993 (58 FR 54478). The proposed rulemaking addresses amending the current Special Federal Aviation Regulation No. 36 to clarify the scope of the authorization given and to extend its provisions to those that qualify.

FOR FURTHER INFORMATION CONTACT: Todd Thompson (202) 267–7218.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, a notice of proposed rulemaking Notice Number was inadvertently omitted; this correction supplies that information.

Correction of Publication

Accordingly, the publication on October 21, 1993, of the notice of proposed rulemaking (Docket No. 17551), page 54478, column 1, is corrected to add the Notice Number to the heading as follows:

[Docket No. 17551; SFAR 36–6; Notice No. 93–15]

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 93–26904 Filed 11–1–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 965

[Docket No. R-93-1676; FR-3275-P-01]

RIN 2577-AB21

Lead-Based Paint Liability Insurance Coverage for Housing Authorities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: Public housing agencies and Indian housing authorities (collectively, housing authorities or HAs) conducting lead-based paint testing and abatement activities need to assure that they have adequate liability insurance coverage to cover the hazards inherent in these activities, in order to comply with insurance requirements of their Annual Contributions Contracts with HUD. This rule prescribes the nature and quality of liability insurance to protect HAs and contractors performing this work for HAs. The rule is being issued to comply with directions in the Department's appropriation act for Fiscal Year 1992 to adopt regulations specifying the nature and quality of insurance to cover HAs in the performance of this work.

DATES: Comment Due Date: January 3, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: John Comerford, Director, Financial Management Division, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1872. A telecommunications device for hearing or speech-impaired persons is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for a HA to purchase this insurance or to obtain from a contractor a certificate of insurance from an insurance company and assure that it complies with this rule. Information on the estimated public reporting burden is provided in paragraph III.G. of this Preamble. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, at the address stated above; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

II. Background

A. HUD Contract Requirements for Insurance

Under their Annual Contributions Contract (ACC) or Mutual Help Annual Contributions Contract (MHACC) with HUD, Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) (hereinafter referred to as HAs) must carry adequate (1) owner's, landlord's, and tenant's public liability insurance; and (2) manufacturers and contractors public liability insurance (both now combined and referred to by the insurance industry as commercial general liability insurance). When the conditions of the ACC or MHACC were formulated in 1969, it was not anticipated that there was any reason to address the issue of bodily injury due to the ingestion of lead-based paint, since the health hazard of this chemical was not well-known. Also, at that time, no pollution exclusion in the general liability policy was thought to apply to claims of this nature.

However, during subsequent years, as environmental claims started arising, insurance companies began to exclude pollution and environmental liability; and it is the opinion of most insurance companies that, since lead is a chemical which is included in the definition of a "pollutant", claims arising from lead poisoning are excluded from current policies. However, some courts have differed with the insurance companies' position on pollution exclusions.

HAs are engaging in lead-based paint testing and abatement, often funded by HUD under the Comprehensive Improvement Assistance Program or Comprehensive Grant Program, which support rehabilitation work needed to improve the condition of public housing units. The Department published a document in the **Federal Register** to guide these activities, entitled "Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing" (55 FR 14556, April 18, 1990, and revised 55 FR 39874, September 28, 1990, and 56 FR 21556, May 9, 1991). Use of these guidelines is the subject of other program regulations and notices of funding availability, and it is not addressed in this rule.

B. Master Insurance Policy

In view of the position being taken by insurance companies in regard to the pollution exclusion being applicable to lead poisoning, and the scarcity of specialty insurance to cover this hazard, in 1990 HUD assisted the Housing Authority of the City of High Point, North Carolina, in preparing specifications and obtaining bids for a master policy under which any HA could be insured for lead-based paint liability coverage. At that time, contractors were reluctant to conduct lead-based paint testing and abatement without insurance for the activity. The bid specifications called for the contractor and architect/engineer, as well as the HA, to be listed as an insured under the policy. The Department concluded then that the master policy concept was the most appropriate, since it would provide the most convenient and cost effective method for coverage to be secured, and it would expedite the testing and abatement process.

The master policy was awarded to the American Empire Surplus Lines Insurance Company. It was the only company to meet the bid specifications, and its premium was considerably lower than any other bidder. Many companies were not interested in providing this type of coverage and refused to bid.

Since establishment of the master policy program, other insurance entities have objected to the program and the coverage it provides. Questions regarding the adequacy of coverage have also been brought to the attention of Congress resulting in an investigation by the HUD Inspector General. The Inspector General's Office agreed with some of these concerns which prompted

Congress to include this subject in the 1992 Appropriations Act.

The American Empire Insurance Company has notified the Department that it is not willing to renew this policy when it expires on October 1, 1993, nor is it willing to extend the policy period for HAs that have testing or abatement work in progress after that date. The Department does not plan to assist HAs in obtaining another master policy but is instead providing the standards for insurance in this rule. Therefore, HAs insured under the master policy must make other arrangements for coverage after the policy expiration date.

C. Appropriations Act

The Departments of Veterans Affairs and Housing and Urban Development Appropriations Act for Fiscal Year 1992, Public Law 102–139, 105 Stat. 736 (approved October 28, 1991) ("1992 Act") included an express provision concerning selection of insurance to protect against the liability hazards involved in the testing and abatement of lead-based paint, at 758 and 759:

> Hereafter, until the Department of Housing and Urban Development has adopted regulations specifying the nature and quality of insurance covering the potential personal injury liability exposure of public housing authorities and Indian housing authorities (and their contractors, including architectural and engineering services) as a result of testing and abatement of lead-based paint in federally subsidized public and Indian housing units, said authorities shall be permitted to purchase insurance for such risk, as an allowable expense against amounts available for capital improvements (modernization): Provided, That such insurance is competitively selected and that coverage provided under such policies, as certified by the authority, provides reasonable coverage for the risk of liability exposure, taking into consideration the potential liability concerns inherent in the testing and abatement of lead-based paint, and the managerial and quality assurance responsibilities associated with the conduct of such activities.

In other words, the Department cannot require HAs to participate in a master policy. HAs may proceed with lead-based paint abatement activities, selecting their own lead-based paint liability coverage so long as they (a) comply with applicable competitive selection procedures, (b) certify that they are obtaining reasonable coverage, and (c) supervise the lead-based paint testing and abatement process to assure that the work is done in compliance with appropriate procedures, i.e., the HUD interim guidelines.

D. Broader LBP Testing Requirements

The Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992 (42 U.S.C. 4851–4856), will require other public and private housing owners to engage in lead-based paint testing and abatement. Since contractors performing these operations will need insurance when working for other housing owners, the Department believes that a master policy providing coverage for the contractor only while performing work for housing authorities is no longer necessary or practical.

E. Contractor Coverage

During the past few years, a number of specialty insurance companies have begun to provide this type of coverage for contractors. The Department believes that the most efficient method for a HA to assure appropriate liability insurance coverage for its lead-based paint testing and abatement activities is to require the contractor to have in effect a liability insurance policy covering claims that may arise from these operations. The HA will then require the contractor to add the HA as an additional insured on the policy and to furnish the HA with a certificate of insurance from the contractor's insurance company to that effect. This is standard procedure for general liability policies in the insurance industry and should create no difficulties in implementation. However, the rule will still allow HAs to purchase insurance directly, with the HA as the named insured, and will require that procedure when the testing and abatement work is being done by HA employees.

F. Insurance Standards

The 1992 Act provides that HUD is to adopt final regulations on the issue of lead-based paint insurance coverage, specifying the "nature" and "quality" of the insurance. In the opinion of the Department, these terms are vague when applied to insurance. Insurance against this hazard is a very specialized type of coverage, and if these terms are narrowly defined, it will tend to restrict the availability of insurance.

In this rule, the Department is specifying the nature and quality of insurance only as follows:

1. If the policy is written in the name of the contractor, the HA must be added as an additional insured with respect to liability arising out of work performed by the contractor on behalf of the HA.

2. The policy must be written on an "occurrence" form and not on a "claims made" form. Under an "occurrence" form policy, coverage applies to any loss if the policy was in effect when the loss occurred, regardless of when the claim is made. The "claims made" form policy provides coverage only if the claim is made during the term of the policy, or during an extended reporting period.

3. The minimum acceptable limit per occurrence is $500,000. However, higher limits are encouraged.

4. Any supplementary payments (including the costs of defending against claims) must be in addition to, and not as a reduction of, the limit of liability.

5. At least a 30-day advance notice must be given to the named insured and additional insureds if the policy is canceled.

6. A deductible, if any, may not exceed $5,000.

7. An aggregate limit (the most that will be paid for the sum of all losses occurring during the policy term), if any, must be no less than $1,000,000. However, higher limits are encouraged.

We note that a separate final rule on "Financial Standards for Housing Authority-Owned Insurance Entities" was published on October 1, 1993. That rule specifies quality standards for responsible nonprofit insurance entities owned by HAs from which HAs may purchase insurance coverage to cover risks, without being subject to competitive selection procedures.

G. Consideration of Inspector General Report Issues

In response to a request from Congress, the HUD Inspector General prepared a report analyzing the adequacy of coverage under the master policy and the method of selection of the insurance company. In its report to Congress concerning the master policy, the HUD Inspector General raised several concerns. In the conference report for the 1992 Act (H.R. Rep. No. 226, 102d Cong., 1st Sess. 33 (1991)), the Congress suggested that HUD's adoption of final regulations should take place after the Department addresses the major deficiencies identified in the Inspector General's report.

Major concerns identified in the Inspector General's report were as follows:

1. The lack of a cost/benefit analysis to justify use of a master policy.

2. Inadequate consultation with legal and technical experts in developing the policy.

3. Inadequate evidence of reasonableness of the premium rate.

4. Possible inadequacy of coverage to protect HAs, and ultimately the Federal Government, from substantial financial liability.

The Department has considered these alleged deficiencies in the master policy. Now that liability coverage for lead-based paint testing and abatement is becoming available, in response to

activities by housing owners other than HAs, the Department has consulted with insurance industry representatives to determine what types and amounts of coverage can be obtained and would provide the best coverage. In addition, legal experts have been consulted at two points since the procurement of the master policy. During the development of the Inspector General's report, the Department consulted with outside legal counsel. In response to the report, the General Counsel considered the type of coverage that should be obtained on behalf of housing agencies, under the master policy or otherwise. These efforts address the concerns expressed in item number 2 above.

This rule does not specify the amount of premium that is acceptable, subjects of items number 1 and 3 above, but leaves it to the HA or contractor to seek the most reasonable rate.

To assure adequate coverage, in response to item number 4, the rule does prescribe that the "occurrence" form be used, such as the CG 00 01 form issued by the Insurance Services Office, Inc., so that claims made after the period of testing and abatement work would be covered; that coverage must be maintained throughout the period of work; that defense costs not be subject to any aggregate limit on payment under the policy (since litigation may occur over how and when lead-based paint poisoning occurred); and that any aggregate limit on liability under a policy must be at least $1,000,000. We believe that these requirements are essential to carry out the Congressional mandate that HAs have adequate insurance to meet potential liability associated with lead-based paint testing and abatement.

The Department welcomes the opinions of HAs, as well as those involved in the insurance industry, concerning the appropriate scope of coverage for potential liability associated with lead-based paint testing and abatement and welcomes submission of sample insurance policies.

H. Existence Hazard

Although the 1992 Act only addresses insurance for the hazards involved in the testing or abatement of lead-based paint, there are concerns on the part of the HUD, HAs, and Congress about a possible need for insurance coverage that would protect HAs against claims arising from exposure to the hazard of existence of lead-based paint prior to the abatement process. At this time, HUD is not requiring that HAs have this type of insurance. We have determined that few companies insure against this hazard, and coverage that is available is very restrictive and expensive. This rule permits HAs to obtain this coverage if, in the opinion of the HA, the policy meets the HA's requirements, the premium is reasonable, and the policy is obtained in accordance with applicable procurement standards (see 24 CFR part 85 and 24 CFR 965.701 and 965.705, or, for Indian Housing, 24 CFR part 905, subpart B).

III. Findings and Certifications

A. OMB Review

This rule was reviewed by the Office of Management and Budget as a significant rule under the Executive on Regulatory Planning and Review issued by the President on September 30, 1993.

B. Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, S.W., Washington, DC 20410–0500.

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule merely gives standards used by HUD in approving the sources of insurance coverage selected by HAs in accordance with longstanding provisions of the contracts between them and HUD. As a result, the rule is not subject to review under the order.

D. Impact on the Family

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

E. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is limited to specifying the nature and quality of liability insurance for the hazards of testing for and abatement of lead-based paint. These procedures are not more onerous for small HAs than for larger ones.

F. Regulatory Agenda

This rule was listed as sequence 1637 under the Office of Public and Indian Housing in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56448) under Executive Order 12866 and the Regulatory Flexibility Act. It was requested by and submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)).

G. Public Reporting Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contained information collection requirements:

PUBLIC REPORTING BURDEN

Section of rule affected	Number of respondents	Number of responses/ respondents	Total annual responses	Hours per response	Total hours
905.195(b) and 965.215(b)	200	1	200	10 min.	33
Total burden hours					33

H. Catalog

The Catalog of Federal Domestic Assistance numbers for the public housing and Indian housing programs affected by this rule are 14.850 and 14.851.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

Accordingly, the Department proposes to amend 24 CFR parts 905 and 965 as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 would continue to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

2. A new § 905.195 would be added, to read as follows:

§ 905.195 Lead-based paint liability insurance coverage.

(a) *General.* In accordance with the IHA's ACC or MHACC with HUD, the IHA must assure that it has reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint that it undertakes.

(b) *Insurance coverage requirements.* When the IHA undertakes lead-based paint testing and abatement, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by IHA employees, the IHA must obtain a liability insurance policy directly to protect the IHA. If the work is being done by a contractor, the IHA may obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the IHA as an additional insured; or it may obtain such insurance directly. Insurance must remain in effect during the entire period of testing and abatement and must comply with the following requirements:

(1) *Named insured.* If purchased by the IHA, the policy shall name the IHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the IHA as an additional insured, in connection with performing work under the IHA's lead-based paint testing and abatement contract. If the IHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the IHA, the RMC shall be an additional insured under the policy in connection with the lead-based paint testing and abatement contract. (The duties of the RMC are similar to those of a real estate management firm.)

(2) *Coverage Limits.* The minimum limit of liability shall be $500,000 per occurrence written, with a combined single limit for bodily injury and property damage.

(3) *Deductible.* A deductible, if any, may not exceed $5,000 per occurrence.

(4) *Supplementary payments.* Payments for such supplementary costs as the costs of defending against a claim must be in addition to, and not as a reduction of, the limit of liability.

(5) *Occurrence form policy.* The form used must be an "occurrence" form. A "claims made" form is not acceptable. (Under an occurrence form, coverage applies to any loss if the policy was in effect when the loss occurred, regardless of when the claim is made.)

(6) *Aggregate limit.* If the policy contains an aggregate limit, the minimum acceptable limit is $1,000,000.

(7) *Cancellation.* In the event of cancellation, at least 30 days' advance notice is to be given to the insured and any additional insured.

(c) *Use of Master Policy.* Insurance already purchased through the master insurance policy approved by HUD which provides coverage for the hazards involved in testing for and abatement of lead-based paint satisfies the requirements of this section. The master policy expires on October 1, 1993.

(d) *Insurance for the existence hazard.* An IHA may also purchase special liability insurance against the existence hazard of lead-based paint, although it is not a required coverage. An IHA may purchase this coverage if, in the opinion of the IHA, the policy meets the IHA's requirements, the premium is reasonable, and the policy is obtained in accordance with applicable procurement standards of this subpart B. If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

(e) *IHA's responsibilities.* An IHA must assure that it has insurance coverage that meets the requirements of this section and that provides reasonable coverage for the risk of liability exposure, taking into consideration the potential liability concerns inherent in testing and abatement of lead-based paint. The IHA also is responsible for assuring that lead-based paint testing and abatement activities are conducted in a responsible manner.

PART 965—PHA-OWNED OR LEASED PROJECTS; MAINTENANCE AND OPERATION

3. The authority citation for part 965 would continue to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

4. A new § 965.215 would be added, to read as follows:

§ 965.215 Lead-based paint liability insurance coverage.

(a) *General.* In accordance with the HA's ACC with HUD, the HA must assure that it has reasonable insurance coverage with respect to the hazards associated with testing for and

abatement of lead-based paint that it undertakes.

(b) *Insurance coverage requirements.* When the PHA undertakes lead-based paint testing and abatement, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by PHA employees, the PHA must obtain a liability insurance policy directly to protect the PHA. If the work is being done by a contractor, the PHA may obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the PHA as an additional insured; or it may obtain such insurance directly. Insurance must remain in effect during the entire period of testing and abatement and must comply with the following requirements:

(1) *Named insured.* If purchased by the PHA, the policy shall name the PHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the PHA as an additional insured, in connection with performing work under the PHA's lead-based paint testing and abatement contract. If the PHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the PHA, the RMC shall be an additional insured under the policy in connection with the lead-based paint testing and abatement contract. (The duties of the RMC are similar to those of a real estate management firm.)

(2) *Coverage Limits.* The minimum limit of liability shall be $500,000 per occurrence written, with a combined single limit for bodily injury and property damage.

(3) *Deductible.* A deductible, if any, may not exceed $5,000 per occurrence.

(4) *Supplementary payments.* Payments for such supplementary costs as the costs of defending against a claim must be in addition to, and not as a reduction of, the limit of liability.

(5) *Occurrence form policy.* The form used must be an "occurrence" form. A "claims made" form is not acceptable. (Under an occurrence form, coverage applies to any loss if the policy was in effect when the loss occurred, regardless of when the claim is made.)

(6) *Aggregate limit.* If the policy contains an aggregate limit, the minimum acceptable limit is $1,000,000.

(7) *Cancellation.* In the event of cancellation, at least 30 days' advance notice is to be given to the insured and any additional insured.

(c) *Use of master policy.* Insurance already purchased through the master insurance policy approved by HUD which provides coverage for the hazards involved in testing for and abatement of lead-based paint satisfies the requirements of this section. The master policy expires on October 1, 1993.

(d) *Insurance for the existence hazard.* A PHA may also purchase special liability insurance against the existence hazard of lead-based paint, although it is not a required coverage. A PHA may purchase this coverage if, in the opinion of the PHA, the policy meets the PHA's requirements, the premium is reasonable, and the policy is obtained in accordance with applicable procurement standards. (See 24 CFR part 85 and § 965.205.) If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

(e) *PHA's responsibilities.* A PHA must assure that it has insurance coverage that meets the requirements of this section and that provides reasonable coverage for the risk of liability exposure, taking into consideration the potential liability concerns inherent in testing and abatement of lead-based paint. The PHA also is responsible for assuring that lead-based paint testing and abatement activities are conducted in a responsible manner.

5. A new § 965.705 would be added, to read as follows:

§ 965.705 Insurance coverage.

For the requirements concerning a PHA's obligation to obtain reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint, see § 965.215.

Dated: October 27, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–26914 Filed 11–1–93; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 253

Oil Spill Financial Responsibility for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting the Minerals Management Service will conduct to acquire information and data pertinent to the development of regulations implementing financial responsibility requirements of the Oil Pollution Act of 1990 (OPA). An advance notice of proposed rulemaking on this matter was published in the **Federal Register** on August 25, 1993 (58 FR 44797). It describes issues relating to the development of regulations to ensure that parties responsible for offshore facilities have sufficient financial resources to ensure the payment of oil-spill cleanup costs and associated damages.

DATES: The meeting is scheduled for November 30, 1993, 8:30 a.m. to 5 p.m., in San Francisco, California.

ADDRESSES: The Ramada Inn at Fisherman's Wharf, telephone (415) 885–4700.

FOR FURTHER INFORMATION CONTACT: Jeff Zippin, Chief, Inspection, Compliance and Training Division; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817; telephone (703) 787–1576.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in public meetings to address the following issues:

- Types and locations of "offshore facilities" subject to OPA financial responsibility requirements;
- Methods available to evidence OPA financial responsibility;
- Interaction of State/Territories and Federal Government to enforce OPA financial responsibility;
- Protection for the responsible parties, the guarantors, and other financial participants; and
- Effects on the local and national economic conditions of OPA financial responsibility requirements.

Additional meetings on these matters are tentatively being considered for other locations. Announcement of the addresses and dates of any additional meetings will be made at a later time.

PRESENTATIONS: Presentations by interested parties should focus on the following:

- Proposals and suggestions for addressing the financial responsibility requirement.
- Economic impacts on affected parties of the financial responsibility requirements.

REGISTRATION: There will be no registration fee for the meeting. Participants need not register prior to arrival at the meeting. However, prior notification to Richard Giangerelli,

Minerals Management Service; Mail Stop 4800; 381 Elden Street; Herndon, Virginia 22070–4817; or telephone (703) 878–1574, FAX (703) 787–1599, is requested in order to assess the probable number of participants. Seating is limited and will be on a first-come-first-seated basis.

Dated: October 26, 1993

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 93–26893 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 784 and 817

RIN 1029–AB69

Permanent Regulatory Program; Underground Mining Permit Application Requirements; Underground Mining Performance Standards

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

ACTION: Notice of public hearings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) published a proposed rule which would amend the regulations applicable to underground coal mining and the control of subsidence-caused damage to lands and structures through the adoption of a number of permitting requirements and performance standards. OSM has received requests to hold public hearings on the proposed rule and is announcing that public hearings will be held.

DATES: Public hearings are scheduled for: November 8, 1993, in Harrisburg, Pennsylvania, at 1 p.m. local time; November 9, 1993, in Columbus, Ohio, at 9 a.m. local time; November 16, 1993, in Whitesburg, Kentucky, at 7 p.m. local time; November 19, 1993, in Washington, DC, at 9 a.m. local time; and November 22, 1993, in Washington, Pennsylvania, at 1:00 p.m. local time.

ADDRESSES: The public hearings will be held at the Sheraton Inn Harrisburg East, 800 East Park Drive, Harrisburg, Pennsylvania; the Dover Room of the Ramada Inn East, 2100 Brice Road, Columbus, Ohio; the Appal Shop Theatre, 306 Madison Street, Whitesburg, Kentucky; the South Interior Building, 1951 Constitution Avenue NW., room 220, Washington, DC; and the Holiday Inn Meadow Lands, 340 Race Track Road, Washington, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Nancy R. Broderick, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202) 208–2564.

SUPPLEMENTARY INFORMATION: On September 24, 1993 (58 FR 50174), OSM published a proposed rule which would require all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations; rehabilitate, restore, or replace identified structures and compensate owners in the full amount of the diminution in value resulting from the subsidence; replace water supplies which have been adversely affected by underground coal mining operations; perform a pre-subsidence survey and repair or compensate for subsidence-related damage caused by underground mining activities to structures or facilities; and provide, when necessary, an additional performance bond to cover subsidence-related material damage. The proposed rule provides for broader protection of structures by removing the provision that imposes a State law limitation on an underground coal mine operator's liability for damage to structures. Performance standards required by the Energy Policy Act of 1992 would be enforceable nationwide immediately upon the effective date of the final rule.

OSM has received requests to hold public hearings on the proposed rule. As a result, OSM has scheduled five public hearings on the Subsidence proposed rule in Harrisburg, Pennsylvania; Columbus, Ohio; Whitesburg, Kentucky; Washington, DC; and Washington, Pennsylvania. Refer to **DATES** and **ADDRESSES** for the times, dates and locations for each hearing. A notice for the public hearing in Columbus, Ohio was previously published in the **Federal Register** on October 27, 1993 (58 FR 57766). Notice of that hearing is included here so that those wishing to attend a public hearing may choose the most convenient location. The hearings will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony.

Dated: October 28, 1993.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 93–26931 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–93–028]

Drawbridge Operation Regulations; Lake Washington, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Washington State Department of Transportation (WSDOT), the Coast Guard is considering the reinstatement of the recent temporary regulations governing the operation of the Evergreen Point Bridge (SR–520) across Lake Washington between Seattle and Bellevue, Washington. The Coast Guard proposes that the temporary regulations would be in effect through June 30, 1994.

This change would insure safe operation of the drawspan while malfunctions of the operating mechanism are being diagnosed and repaired.

This action should provide for the reasonable needs of navigation by allowing the bridge owner to provide limited openings for navigation during periods of reduced vehicular traffic. Also, It should provide the time needed to return the draw to the closed position before the next period of peak vehicular traffic on this heavily used commuter route.

DATES: Comments must be received on or before December 17, 1993.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 South Second, Seattle, Washington 98174–1067. The comments and other materials reference in this notice will be available for inspection and copying at 915 Second Avenue, room 3410. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (206) 220–7270.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this

proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

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

Drafting Information

The drafters of this notice are Austin Pratt, project officer, and Lieutenant Laticia J. Argenti, project attorney.

Discussion of the Proposed Regulation

On September 21, 1992, the Coast Guard put into effect this same proposed regulation. This regulation expired in September 1993. The proposed regulations are for the purpose of accommodating repair to the opening mechanism of the drawspan. Serious electrical malfunctions have plagued this mechanism for years. In the interest of safety to road and waterway traffic, the Coast Guard granted the departure from the operating regulations by allowing the bridge to only open for the passage of vessels late at night. If approved, the temporary regulations would require that the drawspan open on signal from 11 p.m. to 2 a.m. Sunday night through Friday morning and from 11 p.m. to 5 a.m. Friday night through Sunday morning, if at least 12 hours notice is given. This mode of operation would allow WSDOT to limit openings and possible malfunctions during periods of low traffic counts on the roadway. The proposed regulation would be in effect through June 30, 1994.

Federalism Assessment

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

Economic Assessment

This proposal is not a significant regulatory action under Executive Order 12866 on Federal Regulation and is not significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The Evergreen Point Bridge has averaged 29.5 openings per year for vessels over the last five years. This level of activity is expected to remain fairly consistent. Although some vessel operators may be inconvenienced during the exercise of the temporary regulation, openings will still be provided on a daily basis. No complaints have been received during the previous period when this same temporary regulation was in effect. Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard certifies that the proposed regulations, if adopted, will not have a significant impact on a substantial number of small entities.

Environmental Assessment

This action has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.1049 is amended by removing and reserving paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 117.1049 Lake Washington.

* * * * *

(a) The draw shall open on signal for the passage of vessels from 11 p.m. to 2 a.m. Sunday night through Friday morning and from 11 p.m. to 5 a.m. Friday night through Sunday morning if at least 12 hours notice is given. At all other times the draw need not open.

* * * * *

(c) All non-self-propelled vessels, rafts, and other watercraft navigating this waterway which require an opening of the draw shall be towed by a suitable self-propelled vessel while passing through the draw.

(d) [Reserved]

* * * * *

Dated: October 15, 1993.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 93–26832 Filed 11–01–93; 8:45 am]

BILLING CODE 4910–14–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM94–2]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules governing the Postal Service's rate filings (39 CFR 3001.54) to require a more detailed and comprehensive description of the data and procedures that the Postal Service uses to forecast domestic mail revenues.

DATES: Comments responding to these proposed amendments may be submitted by December 2, 1993.

ADDRESSES: Comments and correspondence should be sent to Charles L. Clapp, Secretary of the Commission, suite 300, 1333 H Street, NW., Washington, DC 20268–0001 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: Stephen Sharfman, Acting Legal Advisor, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001 (telephone: (202)/789–6820).

SUPPLEMENTARY INFORMATION: The Commission supports the Postal Service's efforts to improve its services and develop new revenue sources through classification changes that are consistent with the Postal Reorganization Act. One purpose of these proposed amendments to the Commission's Rules of Practice is to expedite the Commission's processing of Postal Service classification proposals, particularly in the context of omnibus rate cases.

When the Postal Service proposes changes in the rate structure of a mail class or subclass, the response of both volumes and revenues to the proposed change must be estimated in order to evaluate the cost recovery characteristics of the restructured class. The effect of price changes on class

revenue depends, in part, on the response of class volume to those changes. Therefore, the revenue effect of restructuring prices is usually estimated in an iterative fashion in which revenue estimating techniques interact with similar, but distinct, volumes estimating techniques. If the assumptions underlying these distinct techniques are clearly explained, the estimating methods fully described, and the data used to estimate revenue effects and volume effects are comparable in their level of detail, it will facilitate the Commission's evaluation of the Postal Service's proposals. These are the objectives of the following proposed amendments to Rule 54.

Revenue Estimating Data

Proposed Rule 54(j)(3)

Proposed rule 54(j)(3) requires a comprehensive presentation of the sources of mail revenue disaggregated to the rate element level, i.e., a complete set of billing determinants used to estimate revenues. Current rule 54(j)(3) requires data disaggregated to the subclass level. This amendment would bring the filing requirements for revenue data into conformity with those now in effect for volume data.

Description of Methods

Proposed Rule 54(j)(4)

Proposed rule 54(j)(4) would require that the Postal Service present its subclass revenue calculations in detail. It would complement proposed rule 54(j)(3), which would require that the sources of Postal Service revenue be presented in detail. Proposed rule 54(j)(4) differs from current rule 54(j)(4) in that it would require specific descriptions of the Postal Service's method for calculating subclass revenues where its methods differ from precedent, or involve redesigned rates. This amendment would bring the filing requirements for revenue estimation into conformity with those currently in effect for volume estimation. Proposed rule 54(j)(4) would make it clear that the billing determinants required by rule 54(l) include the billing determinants used to forecast subclass revenues.

Price Indices

Proposed Rule 54(j)(6)(vi)(e)

The Postal Service forecasts mail volume using econometric models of how volume responds to changes in price and other key variables. The "price" of a given subclass of mail is the set of charges for various subclass rate elements (pieces, pounds, presort level, etc.) weighted by the frequency with which they occur in the subclass. To make the volume forecasting equation for a subclass manageable, the Postal Service reduces this set of weighted charges to a single composite or "indexed" price.

During the post-hearing phase of Docket No. R90–1, the Postal Service explained that when it forecasts subclass volumes it does not necessarily attempt to construct an indexed price that is a balanced composite of the billable characteristics of a subclass as they might be expected to vary over the forecasting period. Instead, it often uses a fixed weight index (FWI) price that reflects only subclass billing determinants actually observed in the base year.

To forecast total subclass revenues, the Postal Service distributes forecasted subclass volume over what it considers to be an appropriate set of billing determinants (usually base year billing determinants) and multiplies them by the rates under examination (current or proposed). When it proposes to restructure subclass rates, however, the Postal Service sometimes will adjust base year billing determinants to reflect the proposed rate structure in the test year. This, of course, produces a different estimate of test year revenues than the Postal Service's volume forecast would imply, since the FWI price it uses in its volume forecast assumes that base year billable characteristics will remain unaltered through the test year.

An outcome of this kind occurred in Docket No. R90–1 in connection with the Postal Service's proposed discount for prebarcoded nonpresorted First-Class letters. The Postal Service estimated the test year after-rate volume using a FWI price reflecting base-year billing determinants, which did not include a prebarcode discount. In estimating test-year after-rate revenue, however, it used billing determinants that had been adjusted to include an estimate of volumes that would receive the prebarcode discount. It multiplied this volume estimate by its proposed discount and subtracted that amount of revenue from total subclass revenue.

Ideally, a price index should fairly represent billable mail characteristics throughout the forecast period, from base year to test year. The Commission recognizes, however, that there is often no one "correct" rule to follow in constructing a representative price index. By basing its test-year after-rate volume forecast on a price index that ignored its proposed prebarcode discount, the Postal Service failed to capture the extra subclass volume that a discounted price would stimulate. By basing its test-year after-rate revenue calculation on billing determinants that recognized its proposed test-year discount, the Postal Service fully captured the subclass revenue loss that a prebarcode discount would cause. By assuming no discount in its volume forecast, and a fully-implemented discount in its revenue calculation, the Postal Service arguably biased its revenue estimate downward.

Whether using different assumptions such as those described above will significantly bias revenue forecasts for a given subclass can only be determined instance by instance. Our proposed amendments to the Postal Service's filing requirements do not proscribe different assumptions underlying volume and revenue forecasts. Proposed rule 3001.54(j)(5)(vi)(e) would, instead, require that if there is a significant difference between the test-year revenue that the Postal Service estimates for a subclass and the test-year revenue implied by the indexed price that the Postal Service uses to forecast volumes for that subclass, the Postal Service's filing must take note of and explain the difference.

The proposed rule would define a significant difference as one that exceeds either $20 million, or three percent of subclass revenue. The first threshold would trigger the rule when the difference between the Postal Service's actual and implied revenue estimates for a subclass would have a substantial impact on estimated system revenues. The second threshold would trigger the rule when the difference between the Postal Service's actual and implied revenue estimate would have a substantial impact at the subclass level.

List of Subjects in 39 CFR Part 3001

Administrative practices and procedure, Postal service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 USC 404(b), 3603, 3622–24, 3661, 3662, 84 Stat. 759–62, 764, 90 Stat. 1303; [5 U.S.C. 553], 80 Stat. 383.

2. We propose to amend § 3001.54 (j)(3) and (j)(4) to read as follows:

§ 3001.54 Contents of formal requests.

* * * * *

(j) Revenues and volumes.

* * * * *

(3) Subject to paragraphs (a)(2) and (j)(4) of this section, the actual and estimated revenues referred to in paragraphs (j)(1) and (2) of this section shall include all payments received,

discounts foregone and other accruals, as follows:

(i) In total.

(ii) For each domestic class and subclass of mail and postal service.

(iii) For each element of the effective or suggested domestic rates, discounts and fees.

(iv) For all other sources from which the Postal Service collects revenues.

(4) Each revenue presentation required by paragraph (j)(1), (j)(2) and (j)(3) of this section shall, subject to paragraph (a)(2) of this section, be supported by:

(i) An identification of the methods and procedures employed.

(ii) A specific description of the application of these methods and procedures wherever new or redesigned rates, discounts or fees are proposed.

(iii) A specific description of the application of these methods and procedures wherever the method or procedure differs from that applied in the last formal request for a change in rates and fees.

(iv) Billing determinants as described in paragraph 54(l).

§ 3001.54 [Amended]

3. We propose to amend current § 3001.54(j)(5) by adding paragraphs (5)(iv) through (5)(vi) to read as follows:

* * * * *

(j) * * *

(5) * * *

(iv) The actual or estimated revenue at the prefiled rates that is attributable to each element of the suggested rates, discounts, and fees for each fiscal year, beginning with the most recent complete fiscal year, and ending one year beyond the future fiscal year.

(v) The estimated annual revenue, assuming the effectiveness of the suggested rates, that is attributable to each element of the suggested rates, discounts and fees for each fiscal year beginning with the year in which the rates are assumed to become effective and ending one year beyond the future fiscal year.

(vi) When price indices have been used to estimate volumes or revenues for the presentations required in paragraphs (j)(5)(ii), (j)(5)(iii), (j)(5)(iv), or (j)(5)(v), these presentations shall be supported by:

(a) An identification of the methods and procedures employed to derive the price indices.

(b) A specific description of the application of these methods and procedures wherever new or redefined categories of rates, discounts and fees are proposed.

(c) A specific description of the application of these methods and procedures wherever the method or procedure differs from that applied in the last formal request for a change in rate and fees.

(d) For each class or subclass of mail in the future fiscal year, revenue calculated by applying to forecast volume the indexed price used to forecast that volume.

(e) An explanation for any difference between revenue calculated under paragraph (j)(5)(vi)(d) above, and corresponding revenue provided under paragraphs j(5)(iv) or j(5)(v) above, if the difference exceeds (1) three percent of subclass revenue, or, (2) twenty million dollars of total system revenue.

Issued by the Commission on October 27, 1993.

Charles L. Clapp,

Secretary.

[FR Doc. 93–26856 Filed 11–1–93; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–4796–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to grant a petition submitted by Conversion Systems, Inc. (CSI), Horsham, Pennsylvania, to exclude certain solid wastes generated by CSI's electric arc furnace dust (EAFD) treatment facilities from the lists of hazardous wastes contained in §§ 261.31 and 261.32. This action responds to a delisting petition submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations, and under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The Agency is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until December 17, 1993. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision by filing a request with the Director, Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by November 17, 1993. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to James Kent, Delisting Section, Waste Identification Branch, CAD/OSW (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–93–CSEP–FFFFF."

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (Room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (5304), U.S. Environmental

Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in § 261.31 and § 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, § 260.20 and § 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the Agency on procedural grounds. *Shell Oil Co.* v. *EPA*, 950 F.2d 741 (DC Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). The Agency plans to address issues related to waste mixtures and residues in a future rulemaking.

B. Approach Used To Evaluate This Petition

CSI's petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11 (a)(2) and (a)(3). Based on this review, the Agency agreed with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, the Agency used such information to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The Agency determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for CSI's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the Agency is proposing to use a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of CSI's petitioned waste on human health and the environment. Specifically, the Agency used the maximum estimated waste volume and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually

reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that it would be inappropriate to request ground-water monitoring data. Specifically, CSI currently disposes of the petitioned waste generated at its operating Sterling, Illinois treatment facility in an on-site, RCRA hazardous waste landfill (which is not owned/operated by CSI). This landfill, which was constructed in 1980, accepted unstabilized EAFD and spent pickle liquor (EPA Hazardous Waste Nos. K061 and K062, respectively), and did not begin accepting the petitioned waste (stabilized EAFD) generated by the Sterling treatment facility until 1989. In other words, the petitioned waste comprises a small fraction of the total waste managed in the unit, while the mixed wastestreams contain unstabilized waste constituents that are more mobile and hazardous. The Agency, therefore, believes that any ground-water monitoring data from the landfill would not be meaningful for an evaluation of the specific effect of the petitioned waste on ground water. Nonetheless, the Agency notes that CSI did submit some ground-water monitoring data collected from monitoring wells installed at the landfill. Specifically, CSI submitted two sampling events worth of data (February 1992 and June 1992) showing that no hazardous constituents were migrating from the unit. (These ground-water monitoring data are included in the RCRA Public Docket for today's proposed decision.)

CSI petitioned the Agency for a "multiple-site" exclusion based on a description of its treatment system, and analytical data from both the full-scale Sterling, Illinois treatment facility and the laboratory-scale processing of EAFD from 12 other steel mills at CSI's laboratory located in Horsham, Pennsylvania. CSI, therefore, is petitioning for both a conditional exclusion for its Sterling, Illinois facility and an upfront exclusion for wastes to be generated at facilities yet to be constructed (CSI initially is planning to construct 12 other facilities nationwide).

Similar to other facilities seeking upfront exclusions, the upfront portion of CSI's multiple-site exclusion (if granted) would be contingent upon CSI conducting analytical testing of representative samples of the petitioned waste at each of the newly constructed facilities once the Super Detox treatment system is brought on-line. This testing would be necessary to verify that the treatment system is operating as demonstrated by both CSI's full-scale Sterling, Illinois facility and CSI's laboratory-scale processing at its Horsham, Pennsylvania laboratory. Specifically, the verification testing requirements from the conditional portion of CSI's multiple-site exclusion (if granted), will be implemented in order to demonstrate that each newly constructed Super Detox processing facility, once on-line, will generate a non-hazardous waste (*i.e.*, a waste that meets the Agency's verification testing conditions).

Upon successfully demonstrating that each newly constructed Super Detox treatment facility meets the verification testing requirements, the Agency will add the newly constructed facility to CSI's multiple-site exclusion. The Agency's proposed decision to delist wastes from new CSI treatment facilities is based on the information submitted in support of today's rule, *i.e.*, CSI's description of the treatment system and analytical data from both the full-scale Sterling, Illinois facility and the laboratory-scale processing of EAFD from 12 other steel mills at CSI's laboratory located in Horsham, Pennsylvania. If the new facility is constructed and operated according to CSI's petition, and if the verification testing data meet the exclusion levels proposed in today's rule, the Agency will publish a notice in the Federal Register that amends CSI's exclusion to add the new site.

From the evaluation of CSI's delisting petition, a list of constituents was developed for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (*i.e.*, "delisting levels") are part of the proposed verification testing conditions of the exclusion.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents will be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delistings will allow new facilities to receive exclusions prior to generating wastes, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional testing requirements to verify that the delisting levels are achieved by the fully operational treatment systems will ensure that only non-hazardous wastes are removed from Subtitle C control.

In the past, the Agency has granted numerous conditional delistings, including conditional delistings for waste treatment facilities located at multiple sites (see 51 FR 41323, November 14, 1986, and 51 FR 41494, November 17, 1986), as well as an upfront delisting that allows an additional treatment unit to be added at the same site (see 56 FR 32993, July 18, 1991). This is the first time the Agency has proposed an upfront delisting that allows new treatment units at different sites to be added, provided the verification testing conditions are satisfied.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Conversion Systems, Inc., Horsham, Pennsylvania

A. Petition for Exclusion

Conversion Systems, Inc. (CSI), located in Horsham, Pennsylvania, petitioned the Agency for a multiple-site exclusion for chemically stabilized electric arc furnace dust (CSEAFD) resulting from the Super Detox™ treatment process as modified by CSI. (The original Super Detox treatment process was developed by Bethlehem Steel Corporation and used at its Johnstown and Steelton, Pennsylvania facilities.) The resulting CSEAFD is presently listed, in accordance with 40 CFR 261.3(c)(2)(i) (*i.e.*, the "derived from" rule), as EPA Hazardous Waste No. K061—"Emission control dust/sludge from the primary production of steel in electric furnaces." The listed constituents of concern for EPA Hazardous Waste No. K061 are cadmium, hexavalent chromium, and lead. CSI petitioned to exclude Super Detox treatment residues because it does not believe that the CSEAFD meets the

criteria for which it was listed. CSI also believes that the Super Detox process, as modified by CSI, generates a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. CSI further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Lastly, CSI believes that a multiple-site delisting will save both EPA and CSI the cost and administrative burden of multiple petitions each providing essentially the same, duplicative information of a process already well known and accepted by the Agency as effective in treating EAFD (see Final Exclusions for Bethlehem Steel Corporation's Johnstown and Steelton, Pennsylvania facilities, 54 FR 21941; May 22, 1989). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C 6921(f), and 40 CFR 260.22(d) (2)–(4).

B. Background

On August 31, 1992, CSI petitioned the Agency to exclude electric arc furnace dust when treated by CSI using the Super Detox process, as licensed by Bethlehem Steel Corporation and modified by CSI, from the lists of hazardous wastes contained in § 261.31 and § 261.32, and subsequently provided additional information to complete its petition. Specifically, CSI requested that the Agency grant a multiple-site exclusion for CSEAFD generated by CSI using its modified Super Detox process at the existing Sterling, Illinois facility at Northwestern Steel and future facilities to be constructed (CSI initially is planning to construct 12 other facilities nation-wide).

In support of its petition, CSI submitted: (1) Detailed descriptions and schematics of the Super Detox treatment process for both wet and dry electric arc furnace dust (EAFD) [1]; (2) total constituent analyses results for the eight Toxicity Characteristic (TC) metals listed in 40 CFR 261.24 and six other metals from representative samples of the untreated (non-stabilized) EAFD; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) results for the eight TC metals from a representative sample of untreated EAFD; (4) TCLP results for the eight TC metals and six other metals from representative samples of the uncured CSEAFD; (5) Multiple Extraction Procedure (MEP, SW–846 Method 1320) results for the TC metals and six other metals from representative samples of the uncured CSEAFD; (6) total oil and grease (TOG), total cyanide, and total sulfide results from representative samples of the untreated EAFD; (7) information and test results regarding the hazardous waste characteristics of ignitability, corrosivity, and reactivity for the CSEAFD; and (8) ground-water monitoring data from the landfill containing the CSEAFD generated from CSI's Sterling, Illinois Super Detox facility.

As discussed above, CSI currently has one full-scale Super Detox treatment facility and initially plans to construct 12 more Super Detox treatment facilities across the nation. CSI also may construct additional Super Detox treatment facilities in the future. This multiple-site exclusion (if granted) will be applicable to these additional sites once CSI confirms that each new Super Detox treatment facility operates as demonstrated in its petition. Any wastes generated from these Super Detox treatment facilities prior to such a demonstration will be considered hazardous. The aspects of this demonstration are detailed in the testing conditions of this notice (see Section F—*Verification Testing Conditions*). Today's proposal serves as notice that, if the verification conditions are met, the Agency will amend CSI's multiple-site exclusion to include new Super Detox treatment facilities. The Agency specifically requests comments on the possibility of amending CSI's multiple-site exclusion to include newly constructed Super Detox facilities.

CSI claims that its modified Super Detox treatment process operates on both chemical and physical levels as the heavy metals contained in EAFD are physically absorbed and entrapped into a pozzolanic calcium-aluminum-silicate matrix. CSI currently operates this Super Detox treatment process as a contractor at Northwestern Steel, Sterling, Illinois. CSI also intends to operate the same Super Detox treatment process as a contractor at other steel mills located nation-wide, to treat either dry or wet type of EAFD. In the Super Detox treatment process, dry EAFD is pneumatically conveyed from the steel mill's baghouse to a receiving silo at CSI's on-site facility. Wet EAFD is transported from the steel mill to a double walled pit and then removed by a "clam shell" crane to a storage hopper at CSI's on-site facility. CSI will treat EAFD only, and will not accept or manage any other wastes, at its Super Detox treatment facilities.

On a batch process basis, precise quantities of EAFD (dry or wet) and treatment reagents are combined in a mixing apparatus; all ingredients are weighed or metered in precise amounts in accordance with treatment formulations developed at CSI's laboratory located in Horsham, Pennsylvania. The weighing and metering of EAFD and treatment reagents are controlled and monitored by programmable logic controllers (PLCs) interfaced with a personal computer (PC). The PLCs and PC also maintain a daily log of each batch of EAFD treated and can make adjustments for alkalinity, solids, or other factors as programmed. CSI claims that the weight addition of Super Detox treatment reagents is only approximately 25 to 45 percent, while volume increases approximately 10 to 15 percent.

The EAFD/treatment reagents mixture is then blended in a mixing apparatus for a precise period of time, ranging from 20 minutes to one hour depending on the chemistry of the specific batch of EAFD being processed. After mixing, the uncured treatment residue (CSEAFD) is poured from the mixing apparatus to a plastic-lined, roll-off container under cover. There are no side streams or discharges resulting from the Super Detox treatment process; washdown water generated from the maintenance and cleaning of the mixing apparatus is sent to a slop tank for reuse as an additive in the treatment process. The CSEAFD becomes fully cured in several weeks and hardens into the pozzolanic calcium-aluminum-silicate matrix of low permeability.

CSI collects a sample of the uncured CSEAFD as it is poured into the roll-off container in order to ensure that the EAFD has been sufficiently treated to meet the appropriate treatment standards. CSI, based on more than three years of operation at its Sterling, Illinois facility, claims that greater than 99.5 percent of all batches processed meet the appropriate treatment standards. CSEAFD that fails to meet the appropriate treatment standards is reprocessed using a special formulation and feed rate; 100 percent of retreated batches meet the appropriate treatment standards. CSI also claims that nearly all first-time rejections are attributed to mechanical failures.

In support of its petition, CSI used a hollow tube sampler to obtain samples of dry EAFD from baghouses, baghouse

[1] CSI has claimed some treatment process descriptions, including information on how they improved the original Super Detox™ treatment process, as confidential business information (CBI). This information, therefore, is not available in the RCRA public docket for today's notice.

hopper sampling ports, or storage silos and a scoop to randomly remove wet EAFD from vacuum filter presses. In both cases (*i.e.*, dry or wet EAFD), several grab samples were composited into a one-gallon container. CSI collected a total of 26 samples of untreated EAFD for total constituent analysis; one sample was from CSI's Sterling, Illinois facility and the other 25 were from the 12 steel mills at which CSI initially intends to build Super Detox treatment facilities. Of the 26 untreated EAFD samples, one sample was analyzed for the eight TC metals and zinc; one sample was analyzed for the eight TC metals, nickel, and zinc; four samples were analyzed for the eight TC metals and nickel; twenty samples (including the one sample from CSI's Sterling, Illinois facility) were analyzed for the eight TC metals, antimony, beryllium, nickel, thallium, vanadium, and zinc. Seven of the untreated EAFD samples also were analyzed for total cyanide, total sulfide, and total oil and grease (TOG) content.

CSI also collected one sample of untreated EAFD from a steel mill at which CSI intends to build a Super Detox treatment facility and analyzed the TCLP extract from the untreated sample for the eight TC metals.

CSI collected a total of 67 samples of uncured CSEAFD as the material was being poured out of the mixer and analyzed them using the Toxicity Characteristic Leaching Procedure (TCLP) (i.e., mass of a particular constituent per unit volume of extract); 25 samples were from CSI's Sterling, Illinois facility and the other 42 were from the 12 steel mills at which CSI initially intends to build Super Detox treatment facilities. Of the 67 uncured CSEAFD samples, one was analyzed for arsenic, barium, cadmium, chromium, lead, mercury, and silver; two samples were analyzed for the eight TC metals and nickel; and 64 samples were analyzed for the eight TC metals, antimony, beryllium, nickel, thallium, vanadium, and zinc (including all 25 samples from CSI's Sterling, Illinois facility). Seven of the uncured CSEAFD samples were also analyzed using the Multiple Extraction Procedure (MEP)[2] to demonstrate the long-term leaching characteristics of the treatment residue. One sample was from CSI's Sterling, Illinois facility and the other six were from six steel mills at which CSI initially intends to build Super Detox treatment facilities. All seven samples were analyzed for the eight TC metals, antimony, beryllium, nickel, thallium, vanadium, and zinc.

C. Agency Analysis

CSI used SW–846 Methods 7041 through 7950 to quantify the total constituent concentrations of the TC metals, antimony, beryllium, nickel, thallium, vanadium and zinc in both the raw EAFD (i.e., non-stabilized) and the uncured CSEAFD. CSI used SW–846 Method 9010 to quantify the total constituent concentrations of cyanide in the raw EAFD. CSI used SW–846 Method 1311 (TCLP) to quantify the extractable concentrations of the TC metals, antimony, beryllium, nickel, thallium, vanadium and zinc in the uncured CSEAFD. Table 1 presents the maximum, average, and 95% upper confidence limit (UCL) total constituent concentrations of the metals, cyanide, and sulfide for the untreated EAFD. Table 2 presents the maximum, average, and 95% upper confidence limit TCLP extract concentrations of the metals in the uncured CSEAFD.

TABLE 1.—MAXIMUM, AVERAGE, AND 95% UPPER CONFIDENCE LIMIT TOTAL CONSTITUENT CONCENTRATIONS

[Untreated EAFD—Dry Weight]

Constituents	Concentrations (mg/Kg)		
	Maximum[1]	Average[2]	95% UCL[2]
Antimony	374	202	230
Arsenic	307	44	67
Barium	270	196	210
Beryllium	97	48	59
Cadmium	988	369	440
Chromium (Total)	5,740	1,107	1,500
Lead	28,500	15,381	17,000
Mercury	3.54	0.81	1.2
Nickel	635	219	270
Selenium	652	194	270
Silver	969	297	400
Thallium	94	32	46
Vanadium	304	73	100
Zinc	246,000	123,884	140,000
Total Cyanide	1.1	0.54	0.80
Total Sulfide	<50	<50	<50
Total Oil and Grease	1,700	640	1,000

< Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentrations of the constituents found in any samples of the untreated EAFD collected by CSI. These levels do not necessarily represent the specific levels found in one sample.

[2] The average was calculated by counting non-detectable measurements at the detection limits. 95% Upper Confidence Limit (UCL) is the estimated upper 95 percent confidence interval for the average of sample concentrations based on the Student-t distribution applied to random samples.

[2] The MEP is a test developed by the Agency to assist in predicting the long-term leachability of stabilized wastes. The MEP consists of the TCLP extraction, followed by nine sequential extractions on the same sample using synthetic acid rain to simulate multiple washings of percolating rainfall in the field. It is estimated that these extractions simulate approximately 1,000 years of rainfall (see 47 FR 52687, November 22, 1982). Per Agency instructions, CSI modified the MEP (SW–846 Method 1320) by substituting the TCLP for the Extraction Procedure (EP) in Step 7.1 of the MEP.

TABLE 2.—MAXIMUM, AVERAGE, AND 95% UPPER CONFIDENCE LIMIT TCLP EXTRACT CONCENTRATIONS
[Uncured CSEAFD—Wet Weight]

Constituents	Concentrations (mg/l)		
	Maximum [1]	Average [2]	95% UCL [2]
Antimony	0.05	0.012	0.013
Arsenic	0.05	0.034	0.038
Barium	<1	<1.0	<1.0
Beryllium	0.002	0.001	0.0011
Cadmium	0.03	0.008	0.0094
Chromium (Total)	0.09	0.052	0.054
Lead	0.10	0.054	0.056
Mercury	<0.002	<0.002	<0.002
Nickel	<0.2	<0.084	<0.097
Selenium	0.1	0.042	0.047
Silver	<0.05	<0.050	<0.050
Thallium	<0.01	<0.010	<0.010
Vanadium	0.14	0.057	0.061
Zinc	0.61	0.076	0.097
Total Cyanide [3]	<0.055	<0.027	<0.040

< Denotes that the constituent was not detected at the detection limit specified in the table.
[1] These levels represent the highest concentration of each constituent found in any of the CSEAFD samples and do not necessarily represent the specific levels found in one sample.
[2] The average was calculated by counting non-detectable measurements at the detection limits. 95% Upper Confidence Limit (UCL) is the estimated upper 95 percent confidence interval for the average of sample concentrations based on the Student-t distribution applied to random samples.
[3] Calculated from the maximum total cyanide concentration of 1.1 mg/Kg, by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with two liters of water) and a theoretical worst-case leaching of 100 percent.

CSI used SW–846 Method 1320 (MEP method modified by replacing the extraction procedure with the TCLP in Step 7.1) to quantify the leachable concentrations of the TC metals, antimony, beryllium, nickel, thallium, vanadium and zinc in seven samples of the uncured CSEAFD. All MEP concentrations of the TC metals, antimony, beryllium, nickel, vanadium, and zinc were below or equal to the TCLP extract concentrations, except for one lead and one thallium extraction (0.16 and 0.014 mg/l, respectively).

Detection limits in Tables 1 and 2 represent the lowest concentrations quantifiable by CSI when using the appropriate SW–846 analytical method to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Using SW–846 Method 9071, CSI determined that the untreated EAFD had a maximum oil and grease content of 0.017 percent; therefore, the TCLP for metals was not modified in accordance with the Oily Waste Extraction Procedure (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase, which may not be assessed using the standard TCLP, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW–846 Method 1330 for the Oily Waste Extraction Procedure.

CSI provided information, pursuant to § 260.22, indicating that the CSEAFD is not expected to demonstrate the characteristics of ignitability or corrosivity. See § 261.21 and § 261.22, respectively.

CSI submitted a signed certification stating that, based on projected annual waste generation, the maximum annual generation rate of CSEAFD to be produced by any one of CSI's facilities will be 63,050 cubic yards. The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate the estimated waste generation rate. EPA accepts CSI's certified estimate of 63,050 cubic yards of CSEAFD per facility.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

D. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for CSI's CSEAFD and decided, based on the information provided in the petition, that disposal in a Subtitle D landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated CSI's petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground-water contamination from wastes that are landfilled. (See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting.) This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (*i.e.*, a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. The DAFs generated using the EPACML

vary from a maximum of 100 for smaller annual volumes of waste (*i.e.*, less than 1,000 cubic yards per year) to DAFs approaching ten for larger volume wastes (*i.e.*, 400,000 cubic yards per year). The Agency requests comments on the use of the EPACML as applied to the evaluation of CSI's waste.

For the evaluation of CSI's petitioned waste, the Agency used the EPACML to evaluate the mobility of hazardous inorganic constituents detected in the extract from CSI's CSEAFD. Typically, the Agency uses the maximum annual waste volume to derive a petition-specific DAF. The 63,050 cubic yards/year to be generated by the Sterling facility would lead to a DAF of 17. The Agency, however, notes that in this particular case, CSI is requesting a "multiple-site" exclusion (*i.e.*, other sites may be added which will generate more CSEAFD).

CSI identified one existing and 12 planned sites in its petition, and stated that up to 400,000 tons (approximately 330,000 cubic yards) per year of EAFD may ultimately be treated. However, due to the uncertainty in the number and location of the sites that may use CSI's treatment process, it is difficult for the Agency to estimate the volume of CSI's CSEAFD that might ultimately be disposed of in the same landfill.

The Agency assumed that a landfill containing CSI's CSEAFD may be as large as a landfill corresponding to the 95th percentile in size for the Subtitle D landfills contained in EPA's database. Based on a 20-year life, the 95th percentile Subtitle D landfill would receive approximately 400,000 cubic yards of waste per year (see the OSW Survey of Solid Waste Landfills in the docket for today's proposed rule). Therefore, in the absence of more specific information on maximum waste volume, the Agency used a DAF of 10 corresponding to 400,000 cubic yards/year as a worst-case assumption in this case.

The Agency used a DAF of 10 to evaluate the 95th percent upper confidence limit for the TCLP extract concentrations given in Table 2. Table 3 contains the compliance-point concentrations calculated, using a DAF of 10, for the constituents of concern. Table 3 also contains the results using the maximum TCLP levels for all constituents (except lead and thallium, for which the MEP extract concentrations were greater than the TCLP extract concentrations).

TABLE 3.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM)
[Uncured CSEAFD]

Constituents	Compliance-point concentrations (mg/l)		Levels of regulatory concern (mg/l)[1]
	Maximum[2]	95% upper confidence limit	
Antimony	0.005	0.0013	0.006
Arsenic	0.005	0.0038	0.05
Beryllium	0.0002	0.00011	0.004
Cadmium	0.003	0.00094	0.005
Chromium (Total)	0.009	0.0054	0.1
Lead	0.016	0.0056	0.015
Selenium	0.01	0.0047	0.05
Thallium	0.0014	0.0010	0.002
Vanadium	0.014	0.0061	0.2
Zinc	0.061	0.0097	7

[1] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22", July 1992, located in the RCRA public docket.
[2] Maximums correspond to maximum TCLP levels, except for lead and thallium, which are based on maximum MEP levels.

The uncured CSEAFD exhibited antimony, arsenic, beryllium, cadmium, chromium, lead, selenium, thallium, vanadium, and zinc levels at the compliance point below the health-based levels used in delisting decision-making. The Agency did not evaluate the mobility of barium, mercury, nickel, and silver from the uncured CSEAFD because they were neither detected in the TCLP nor MEP extracts using the appropriate SW–846 analytical test methods and adequate detection limits (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment. In addition, the Agency did not evaluate the maximum theoretical leachate concentration of cyanide using the EPACML model because the maximum theoretical leachate concentration of <0.055 mg/l (see Table 2) is less than the health-based level of 0.2 mg/l used in delisting decision-making.

As shown in Table 3, only the maximum predicted compliance-point concentration of lead (0.016 mg/l) exceeded the health-based level (0.015 mg/l) used in delisting-decision making. The Agency, however, does not believe that this exceedance is significant for the following reasons. First, based on 67 TCLP tests on the uncured CSEAFD for lead, the 95% upper confidence limit extractable concentration was 0.056 mg/l. The predicted compliance-point concentration using the 95% upper confidence limit is 0.0056 mg/l, which is well below the regulatory level of concern.

Second, the level of 0.16 mg/l was obtained from only one of the 63 extracts analyzed as part of the seven MEP analyses performed. The maximum concentration of 0.16 mg/l was obtained from day four of one of the seven MEP tests, and the concentration then fell to <0.05 mg/l on days five through nine of the same analysis; none of the other six samples analyzed with the MEP method exhibited a failing concentration for lead. Of the seven samples subjected to the MEP, lead was not detected at all in five samples (at a detection limit of 0.05 mg/l), and only one extract out of 63 failed for lead. Therefore, the one MEP data point does not appear to be significant.

Third, at the time when CSI stabilized these EAFD wastes, CSI assumed a target treatment level for lead of 0.315

mg/l (based on a previous health-based level and model used in delisting). Thus, at the time stabilization occurred, CSI was not aware that the maximum allowable leachable concentration would be 0.15 mg/l for its waste based on a DAF of 10. See Section F—*Verification Testing Conditions* below for a description of how the maximum allowable leachable concentrations are established. The preponderance of data demonstrates that the Super Detox treatment process can effectively immobilize lead so that CSI's uncured CSEAFD will exhibit leachable levels of lead below the maximum allowable level of 0.15 mg/l.

The Agency further notes that CSI performed both TCLP and MEP analyses on uncured CSEAFD samples. However, the CSEAFD will cure and solidify over time, and thus the levels of leachable constituents in fully cured (*i.e.*, fully stabilized) CSEAFD are expected to be lower than those detected in uncured samples.

As reported in Table 1, the maximum concentrations of total cyanide and total sulfide in the untreated EAFD are 1.1 mg/kg and <50 mg/kg, respectively. Because reactive cyanide and reactive sulfide are a specific subcategory of the general class of cyanide and sulfide compounds, the maximum level of reactive cyanide and reactive sulfide will not exceed 1.1 mg/kg and 50 mg/kg, respectively. Thus, the Agency concludes that the concentration of reactive cyanide and reactive sulfide will be below the Agency's interim standard of 250 mg/kg and 500 mg/kg, respectively. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency Memorandum in the RCRA public docket.

The Agency concluded, after reviewing CSI's processes that no other hazardous constituents, other than those tested for, are likely to be present in CSI's CSEAFD, and that the likelihood of migration of the hazardous constituents from the waste has been substantially reduced. In addition, on the basis of test results and information provided by CSI, pursuant to § 260.22, the Agency concludes that the CSEAFD does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22, and § 261.23, respectively.

During its evaluation of CSI's petition, the Agency also considered the potential impact of the petitioned waste via non-ground-water routes. With regard to airborne dispersal of waste contaminants in particular, the Agency believes that exposure to airborne contaminants from this waste is not likely to occur since the resulting CSEAFD is wet initially and solidified when cured. Therefore, no appreciable air releases are likely from CSI's CSEAFD under any likely disposal conditions. Nonetheless, the Agency evaluated the potential hazards resulting from airborne exposure to waste contaminants from the CSEAFD using an air dispersion model, if releases from a landfill were to occur. The results indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from CSI's CSEAFD (see the docket for today's proposed rule).

The Agency also considered the potential impact of the petitioned wastes via a surface water route. Due to the stabilized/solidified form of the CSEAFD, contamination of surface water through run-off from the waste disposal area is unlikely. The Agency also believes that containment structures at municipal solid waste landfills can effectively control surface water run-off, as the recently promulgated Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters.

Furthermore, the leachable concentrations of any hazardous constituents in the run-off will tend to be lower than the extraction procedure test results reported in today's notice because of the aggressive acidic media used for extraction in the TCLP and the MEP. The Agency believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution/attenuation of hazardous constituents will also occur. Significant releases to surface water through erosion and runoff of landfilled CSEAFD are unlikely due to the stabilized/solidified form of the waste. Furthermore, in the unlikely event that CSEAFD reached surface water, the stabilized form of the waste would mitigate any impact. Leachable concentrations provide a direct measure of the solubility of a toxic constituent in water, and are indicative of the fraction of the constituent that may be mobilized in surface water, as well as ground water. The reported TCLP and MEP extraction data show that the metals in CSI's CSEAFD are essentially immobile in aqueous solution. For example, the maximum leachable lead level was 0.16 mg/l, which is less than 0.01% of the lead present in the CSEAFD. Therefore, CSEAFD that might be released to surface water would be likely to remain undissolved. Finally, any transported contaminants would be further diluted in the receiving surface water body due to relatively large flows of the streams/rivers of concern.

Nevertheless, the Agency evaluated the potential hazards resulting from releases of CSI's CSEAFD to surface water. The results indicated that the surface water concentrations of the hazardous constituents of concern are below the Agency's health-based levels as well as the chronic Water Quality Criteria for fresh water organisms (see the docket for today's proposed rule). The Agency, therefore, concluded that CSI's CSEAFD is not a significant hazard to human health or the environment via the surface water exposure pathway.

E. Conclusion

The Agency believes that CSI's operation of the Super Detox treatment process as modified by CSI, upon meeting certain verification testing requirements, can treat EAFD generated at both CSI's Sterling, Illinois facility and other facilities yet to be constructed nation-wide to produce non-hazardous CSEAFD. The Agency also believes that the sampling procedures used by CSI were adequate, and that the samples are representative of the typical variations in constituent concentrations found in EAFD. The Agency, however, believes that the concentration of the constituents of concern may vary somewhat depending on the type and quality of scrap metal charged in the steel-making process. Therefore, the Agency is proposing to require periodic analyses of CSI's CSEAFD to ensure that the Super Detox treatment system is effectively handling any potential variation in constituent concentrations (see Section F—*Verification Testing Conditions).*

The Agency, therefore, is proposing that the CSEAFD generated by CSI using the Super Detox treatment process, as modified by CSI and described in CSI's petition, be considered non-hazardous and not subject to regulation under RCRA Subtitle C, provided certain verification testing requirements are met. Each new Super Detox treatment facility, once constructed and brought on-line must also meet both initial verification testing and subsequent testing requirements in order for the CSEAFD generated at the new facility to be excluded.

The Agency proposes to grant a conditional multiple-site exclusion to CSI for CSEAFD when using the Super Detox treatment process described in its petition to treat EPA Hazardous Waste No. K061. The Agency's proposed decision to exclude CSEAFD is based on process descriptions, characterization of both untreated EAFD and uncured

CSEAFD, and on the use of verification testing conditions as part of the exclusion. Under the proposed rule, the petitioned CSEAFD generated at CSI's current facility located in Sterling, Illinois, and future facilities to be constructed nation-wide would no longer be subject to regulation as a hazardous waste under RCRA, provided the conditions of the exclusion are met.

The Agency proposes to add to CSI's delisting CSEAFD from all constructed Super Detox treatment facilities that meet the verification testing conditions. The Agency's proposed decision to delist these wastes is based on the analytical data obtained from both CSI's full-scale Sterling, Illinois facility, and CSI's laboratory-scale processing of EAFD from 12 other steel mills at its laboratory located in Horsham, Pennsylvania. If today's proposed rule is finalized, the delisting of wastes from new CSI treatment facilities will be conditioned on the ability of each new facility to meet the verification testing conditions of CSI's exclusion. If the Agency's review of the data for the new CSI treatment facility indicates that the new facility will consistently meet the conditional exclusion levels proposed in today's rule, the Agency will publish a notice amending the CSI's exclusion to include the new treatment facility. This notice would modify Table 2 of 40 CFR part 261, appendix IX such that the location of the Super Detox treatment facility and name of the steel mill contracting CSI's services is specified in CSI's multiple-site exclusion. If the Agency's review of the data for the new CSI treatment facility indicates that the new facility does not consistently meet the delisting levels established in today's rule, the Agency would notify CSI that the new facility would not be added to the exclusion.

F. Verification Testing Conditions

As stated earlier, the proposed multiple-site exclusion contains verification testing requirements. These testing requirements are to be conducted in two phases, initial and subsequent. The initial testing requirements apply to the first 20 days of full-scale operation of each newly constructed Super Detox treatment facility, and do not apply to CSI's existing facility located in Sterling, Illinois. The subsequent testing requirements for each CSI Super Detox treatment facility would apply, if the Agency has added the new facility to CSI's existing exclusion. The subsequent testing also would apply to CSI's existing facility located in Sterling, Illinois.

The initial testing requirements would have to be fulfilled by a newly constructed Super Detox treatment facility once it is operated as an on-line, full-scale system. CSI would collect and analyze composite samples of the CSEAFD (comprised of representative samples of every batch of CSEAFD generated) during the first 20 days of operation. These composite samples would be analyzed to verify that the new Super Detox treatment facility is operating as portrayed in the petition and can meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). CSI would submit the analytical test data to the Agency, including quality control information, obtained during this initial period no later than 90 days after the generation of the first batch of CSEAFD from the full-scale system.

If EPA determines that the information submitted is complete and the delisting levels are consistently met, the Agency would publish a notice to add the location of the CSI's new Super Detox treatment facility and the name of the steel mill contracting CSI's services to CSI's exclusion. If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox treatment facility fails to consistently meet the conditions of the exclusion, the Agency will not publish a notice to add the newly constructed site.

The proposed exclusion for CSI's Sterling, Illinois Super Detox treatment facility and each new Super Detox treatment facility constructed and operated by CSI is conditioned upon the following requirements:

(1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies.

(A) *Initial Verification Testing:* During the first 20 operating days of full-scale operation of a newly constructed Super Detox treatment facility, CSI must analyze a minimum of four (4) composite samples of CSEAFD representative of the full 20-day period. Composites must be comprised of representative samples collected from every batch generated. The CSEAFD samples must be analyzed for the constituents listed in Condition (3). CSI must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 60 days after the generation of the first batch of CSEAFD.

(B) *Addition of New Super Detox Treatment Facilities to Exclusion:* If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox treatment facility consistently meets the delisting levels specified in Condition (3), the Agency will publish a notice adding to this exclusion the location of the new Super Detox treatment facility and the name of the steel mill contracting CSI's services. If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox treatment facility fails to consistently meet the conditions of the exclusion, the Agency will not publish the notice adding the new facility.

These proposed conditions are specific to the conditional multiple-site exclusion petitioned for by CSI. The Agency may choose to modify these proposed conditions based on comments received during the public comment period for this proposed rule. Because CSI has already generated data from a full scale Super Detox system (*i.e.*, the Sterling, Illinois facility), the Agency believes that 20 days are sufficient for new facilities to collect the appropriate data necessary to verify that the newly constructed Super Detox treatment process will operate correctly.

In order to ensure that CSI's Super Detox treatment process effectively handles possible variation in constituent concentrations in EAFD, the Agency is proposing a subsequent verification testing condition. The proposed subsequent testing will verify that CSI's Super Detox treatment facilities (including the existing Sterling, Illinois facility) will continue to generate CSEAFD that does not exhibit unacceptable levels of toxic constituents. Therefore, the Agency is proposing to require CSI to analyze monthly composites of the CSEAFD.

(C) *Subsequent Verification Testing:* For the Sterling, Illinois facility and any new facility subsequently added to CSI's conditional multiple-site exclusion, CSI must collect and analyze at least one composite sample of CSEAFD each month. The composite samples must be composed of representative samples collected from all batches treated in each month. These monthly representative samples must be analyzed, prior to the disposal of the CSEAFD, for the constituents listed in Condition (3). CSI may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.

The Agency believes that collecting monthly composite samples as proposed in Condition (1)(C) will ensure that CSI's Super Detox treatment process is able to handle the potential changes in constituent concentrations. Future conditional, multiple-site delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the manufacturing and treatment processes, the waste characteristics, waste variability, the volume of waste, and other factors

normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (*e.g.*, 51 FR 41323, November 14, 1986), may require more frequent continuous batch testing.

The Agency believes that collecting monthly composite samples will ensure that CSI's Super Detox treatment process is not adversely affected by the potential variability in concentrations of the constituents listed in Condition (3). These monthly representative samples must be analyzed, prior to the disposal of the corresponding residual solids, for the constituents listed in Condition (3) to verify that the CSEAFD continues to meet the Agency's delisting levels.

(2) *Waste Holding and Handling:* CSI must store as hazardous all CSEAFD generated until verification testing as specified in Conditions (1)(A) and (1)(C), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of CSEAFD do not exceed the levels set forth in Condition (3), then the CSEAFD is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the CSEAFD generated during the time period corresponding to this sample must be retreated until it meets these levels, or managed and disposed of in accordance with Subtitle C of RCRA. CSEAFD generated by a new CSI treatment facility must be managed as a hazardous waste prior to the addition of the name and location of the facility to the exclusion. After addition of the new facility to the exclusion, CSEAFD generated during the verification testing in Condition (1)(A) is also non-hazardous, if the delisting levels in Condition (3) are satisfied.

The purpose of Condition (2) is to ensure that CSEAFD which contains hazardous levels of specific metals is managed and disposed of in accordance with Subtitle C of RCRA. Holding the CSEAFD until characterization is complete will protect against improper handling of hazardous material.

(3) *Delisting Levels:* All leachable concentrations for those metals must not exceed the following levels (ppm): antimony—0.06; arsenic or selenium—0.5; barium—20; beryllium—0.04; cadmium—0.05; chromium or nickel—1; lead—0.15; mercury or thallium—0.02; silver or vanadium—2; and zinc—70. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24.

Condition (3) provides the levels of constituents for which CSI must test the leachate from the CSEAFD, below which the CSEAFD waste would be considered non-hazardous. The Agency selected the set of inorganic constituents specified in Condition (3) after reviewing information about the composition of EAFD and CSEAFD, descriptions of CSI's Super Detox treatment process, and the health-based levels used in delisting decision-making.

The Agency established the proposed delisting levels for Condition (3) by back-calculating the maximum allowable leachate concentrations (MALs) from the health-based levels (HBLs) for the constituents of concern using the EPACML DAF of 10 (see previous discussions in Section D—*Agency Evaluation*), *i.e.*, MAL = HBL x DAF. These delisting levels correspond to the allowable levels measured in the TCLP extract of the CSEAFD.

The Agency is also considering the option of applying the generic exclusion levels for K061 high temperature metals recovery (HTMR) nonwastewater residues specified in § 261.3(c)(2)(ii)(C) to establish the delisting levels for CSI's CSEAFD. In that rulemaking (see 56 FR 41164, August 19, 1991 and 57 FR 37194, August 18, 1992), the Agency established generic exclusion levels for HTMR residuals, which if met, allow the residuals to be handled as nonhazardous waste (*i.e.*, solid waste). If finalized as proposed, this "multiple-site" exclusion for CSI's CSEAFD would be similar in some ways to the industry-wide generic exclusion.

The Agency requests comments on whether the generic exclusion levels for leachable metals set under § 261.3(c)(2)(ii)(C) should apply to CSI's CSEAFD for the sake of national consistency. EPA also does not wish to discourage the use of HTMR technologies that effectively reclaim metals in K061 for further use. The Agency established the generic exclusion levels using an approach similar to that used in today's proposed rule. That is, an EPACML-derived DAF of 10 was used to establish exclusion levels for the leachable metals of concern (see 57 FR 37194, August 18, 1992). However, because the generic exclusion was linked to HTMR as the Best Demonstrated Available Technology (BDAT) under the Land Disposal Restrictions, the Agency also established the exclusion levels for some metals using BDAT standards. For five of the metals, the technology-based standards were slightly lower than the EPACML-based levels, and EPA decided to use the slightly lower levels for the generic exclusion levels. (Note that CSI's process routinely meets these slightly lower standards as well as the EPACML-based levels, see Table 2.)

Therefore, if EPA chooses the option of using the generic exclusion levels for CSI's delisting, the delisting levels for seven of the constituents in Condition (3) would be replaced as follows: antimony—0.10; barium—7.6; beryllium—0.010; chromium—0.33; mercury—0.009; selenium—0.16; silver—0.30.

(4) *Changes in Operating Conditions:* After initiating subsequent testing as described in Condition (1)(C), if CSI significantly changes the stabilization process established under Condition (1) (*e.g.*, use of new stabilization reagents), CSI must notify the Agency in writing. After written approval by EPA, CSI may handle CSEAFD wastes generated from the new process as non-hazardous, if the wastes meet the delisting levels set in Condition (3).

Condition (4) would allow CSI the flexibility of modifying its stabilization process (*e.g.*, use of new stabilization reagents) to improve its treatment process. However, CSI must demonstrate the effectiveness of the modified process and request approval from the Agency. CSEAFD generated during the new process demonstration must be managed as a hazardous waste until written approval has been obtained and unless Condition (3) is satisfied.

(5) *Data Submittals:* At least one month prior to operation of a new Super Detox treatment facility, CSI must notify the Section Chief, Delisting Section (see address below) when the Super Detox treatment facility is scheduled to be on-line. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (5304), U.S. EPA, 401 M Street, SW, Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State in which the CSI facility is located, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the

verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

To provide appropriate documentation that CSI's facilities are properly treating K061, all analytical data obtained through Condition (1), including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Condition (5) requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State where the Super Detox treatment facility is located.

If made final, the proposed exclusion would apply to CSI's Super Detox treatment facility located at Northwestern Steel in Sterling, Illinois, and to other CSI facilities after successful verification testing. Specifically, CSI would be required to notify EPA at least one month prior to establishing a new Super Detox treatment facility. CSEAFD generated from a new Super Detox treatment facility would be excluded if and when the Agency publishes a notice adding the new site to CSI's exclusion as specified in Condition (1)(B). CSI would require a new exclusion if the treatment process specified for any treatment facility is significantly altered (except for changes in the process allowed as described in Condition (4)). In such a case, the facility would need to file a new delisting petition for a new process. The facilities must manage wastes generated from a changed process as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, may impose more stringent regulatory requirements than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are normally urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States (*e.g.*, Georgia, Illinois) are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned CSEAFD will be transported to any State with delisting authorization, CSI must obtain delisting authorization from that State before the CSEAFD may be managed as nonhazardous in the State.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as non-hazardous. There is no additional impact, therefore, due to today's proposed rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule 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, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: October 18, 1993.

Bruce R. Weddle,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

1. The authority citation for part 261 continues to read as follows:

2. In Table 2 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Conversion Systems, Inc. ..	Horsham, PA	Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Conversion Systems, Inc. (CSI) using the Super Detox treatment process as modified by CSI to treat EAFD (EPA Hazardous Waste No. K061) generated at the following sites: —Northwestern Steel, Sterling, Illinois after [insert date of final rule]. CSI must implement a testing program for each site that meets the following conditions for the exclusion to be valid: (1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. (A) *Initial Verification Testing:* During the first 20 operating days of full-scale operation of a newly constructed Super Detox treatment facility, CSI must analyze a minimum of four (4) composite samples of CSEAFD representative of the full 20-day period. Composites must be comprised of representative samples collected from every batch generated. The CSEAFD samples must be analyzed for the constituents listed in Condition (3). CSI must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 60 days after the generation of the first batch of CSEAFD. (B) *Addition of New Super Detox treatment facilities to Exclusion:* If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox treatment facility consistently meets the delisting levels specified in Condition (3), the Agency will publish a notice adding to this exclusion the location of the new Super Detox treatment facility and the name of the steel mill contracting CSI's services. If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox treatment facility fails to consistently meet the conditions of the exclusion, the Agency will not publish the notice adding the new facility. (C) *Subsequent Verification Testing:* For the Sterling, Illinois facility and any new facility subsequently added to CSI's conditional multiple-site exclusion, CSI must collect and analyze at least one composite sample of CSEAFD each month. The composite samples must be composed of representative samples collected from all batches treated in each month. These monthly representative samples must be analyzed, prior to the disposal of the CSEAFD, for the constituents listed in Condition (3). CSI may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are non-hazardous. (2) *Waste Holding and Handling:* CSI must store as hazardous all CSEAFD generated until verification testing as specified in Conditions (1)(A) and (1)(C), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of CSEAFD do not exceed the levels set forth in Condition (3), then the CSEAFD is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the CSEAFD generated during the time period corresponding to this sample must be retreated until it meets these levels, or managed and disposed of in accordance with Subtitle C of RCRA. CSEAFD generated by a new CSI treatment facility must be managed as a hazardous waste prior to the addition of the name and location of the facility to the exclusion. After addition of the new facility to the exclusion, CSEAFD generated during the verification testing in Condition (1)(A) is also non-hazardous, if the delisting levels in Condition (3) are satisfied. (3) *Delisting Levels:* All leachable concentrations for those metals must not exceed the following levels (ppm): Antimony—0.06; arsenic or selenium—0.5; barium—20; beryllium—0.04; cadmium—0.05; chromium or nickel—1; lead—0.15; mercury or thallium—0.02; silver or vanadium—2; and zinc—70. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. (4) *Changes in Operating Conditions:* After initiating subsequent testing as described in Condition (1)(C), if CSI significantly changes the stabilization process established under Condition (1) (e.g., use of new stabilization reagents), CSI must notify the Agency in writing. After written approval by EPA, CSI may handle CSEAFD wastes generated from the new process as non-hazardous, if the wastes meet the delisting levels set in Condition (3).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* At least one month prior to operation of a new Super Detox treatment facility, CSI must notify the Section Chief, Delisting Section (see address below) when the Super Detox treatment facility is scheduled to be on-line. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (5304), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State in which the CSI facility is located, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

[FR Doc. 93–26745 Filed 11–1–93; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–272, RM–8361]

Radio Broadcasting Services; Madrid, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Madrid Broadcasting Company seeking the allotment of Channel 241A to Madrid, Iowa, as the community's first local aural transmission service. Channel 241A can be allotted to Madrid in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.5 kilometers (8.4 miles) north, at coordinates North Latitude 41–52–30 and West Longitude 93–49–12, to avoid short-spacings to Station KCOB–FM, Channel 240A, Newton, Iowa, and Station KEFM, Channel 241C, Omaha, Nebraska.

DATES: Comments must be filed on or before December 20, 1993, and reply comments on or before January 4, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, Suite 500, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro or Stanley Schmulewitz (engineering issues), Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–272, adopted October 12, 1993, and released October 28, 1993. The full text of this Commission decision is available for inspection an copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–26863 Filed 11–1–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–181, RM–7696, RM–7817]

Radio Broadcasting Services; Ashland, California, Rolla & Monroe City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order to show cause.

SUMMARY: This document directs Monroe City Broadcasting, Inc., licensee of Station KDAM, Channel 292A, Monroe City, Missouri, to show cause why its license should not be modified to specify operation on Channel 298A instead of Channel 292A. This action would allow Sobocomo Radio, Inc., permittee of Channel 291C2, Ashland, Missouri, to upgrade its facility to Channel 291C1. Channel 298A can be substituted for Channel 292A at the current site of Station KDAM, Monroe City, at coordinates 39–35–12 and 91–47–57. The coordinates for Channel 291C1 at Ashland are 38–43–39 and 92–40–39. This Order does not afford additional opportunity either to comment on the merits of the conflicting proposal or for the acceptance of additional counterproposals.

DATES: Comments must be filed on or before December 20, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David G. O'Neil, Haley, Bader & Potts, 4350 North Fairfax Drive, Suite 900, Arlington, Virginia 22203–1633 (counsel for Sobocomo Radio, Inc.).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order to Show Cause, MM Docket No. 91–181, adopted September 30, 1993, and released October 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–8300.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–26867 Filed 11–1–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB

Endangered and Threatened Wildlife and Plants; Notice of Public Meeting on California Candidate Plant Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public meeting.

SUMMARY: As part of the 1991 settlement of litigation over the Fish and Wildlife Service's (Service) progress in proposing for listing as endangered or threatened species approximately 159 California plants designated as "category 1" listing candidates, the Service is holding the third annual public meeting. The meeting will provide a forum for discussing issues related to proposing the plants for listing under the Endangered Species Act.

DATES: The public meeting will be held from 9:30 a.m. to 12:30 p.m. on November 10, 1993 near Willows, California.

ADDRESSES: The public meeting will be held at the Sacramento National Wildlife Refuge, 7 miles south of Willows off Highway 99W (just east of Interstate 5).

FOR FURTHER INFORMATION CONTACT: Jan Knight, Branch Chief for Endangered Plants, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, California 95825 (telephone 916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1991, the U.S. District Court for the Eastern District of California approved a settlement of a lawsuit brought by the California Native Plant Society to challenge delays by the Service in proposing to list 159 species of California plants as endangered or threatened. Under the terms of the settlement approved by the court, the Service is holding the third annual public meeting to discuss the Service's progress in proposing the plants for listing as well as other issues related to development of listing proposals for the plants. The meeting will be held at the Sacramento National Wildlife Refuge near Willows, California, on November 10, 1993, at the time and place specified above.

Author

The primary author of this notice is Jan Knight, Botanist, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, California 95825 (telephone 916/978–4866).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.)

List of Subjects in 50 CFR Part 17

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

Dated: October 25, 1993.

William F. Shake,

Acting Regional Director, Portland, Oregon.

[FR Doc. 93–26859 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 210
Tuesday, November 2, 1993

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

Agricultural Marketing Service

[Docket No. TB–94–01]

Public Hearing Regarding Establishment of a New Tobacco Auction Market

Notice is hereby given of a public hearing regarding an application to combine the Williamston, Robersonville, and Windsor, North Carolina, tobacco markets.

Dates: November 19, 1993.

Time: 10 a.m. local time.

Place: Superior Court Courtroom, Martin County Governmental Center, Main Street, Williamston, North Carolina.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Williamston, Robersonville, and Windsor, North Carolina. The application was made by Ronald Ray, Rogers Warehouse, and William C. Lilley, New Dixie Warehouse, Williamston, North Carolina; Harry T. Gray, Gray's Red Front and Central Warehouse, and Kenneth Robinson, Hardee Warehouse, Robersonville, North Carolina; J.R. Freshwater, Jr., Center Warehouse, and C.B. Griffin, Jr., Planters Tobacco Warehouse, Windsor, North Carolina.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3).

Dated: October 26, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93–26890 Filed 11–11–93; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Mohammad Danesh, Also Known as Don Danesh; Order Denying Permission To Apply For or Use Export Licenses

On August 25, 1992, following his agreement to plead guilty to several counts of a 19-count indictment, Mohammad Danesh, also known as Don Danesh (hereinafter referred to as Danesh), was convicted in the U.S. Court for the Central District of California of, among other crimes, three counts of violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. § 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–10, March 27, 1993)) (the EAA), by conspiring to export and exporting U.S.-origin electronic test and measurement equipment from the United States to Iran without the required export licenses from the U.S. Department of Commerce. Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of a violation of the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Danesh's conviction for violating the EAA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Danesh permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on August 25, 2002. I have also decided to revoke all export licenses pursuant to the EAA in which Danesh had an interest at the time of his conviction.

Accordingly, *It is Hereby*

Ordered

I. All outstanding individual validated licenses in which Danesh appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Danesh's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until August 25, 2002, Mohammad Danesh, also known as Don Danesh 27591 Bocina, Mission Viejo, California 92692, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the EAA.

of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Danesh by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or in directly, any of these transactions.

V. This order is effective immediately and shall remain in effect until August 25, 2002.

VI. A copy of this Order shall be delivered to Danesh. This order shall be published in the **Federal Register**.

Dated: October 23, 2993.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 93–26927 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–DT–M

Bureau of the Census

[Docket No. 931079–3279]

1993 Company Organization Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In conformity with title 13, United States Code, sections 182, 224, and 225, I have determined that a 1993 Company Organization Survey is needed to update the multiestablishment companies in the Standard Statistical Establishment List. The survey, which has been conducted for many years, is designed to collect information on the number of employees, payrolls, geographic location, current status, and kind of business for the establishments of multiestablishment companies. These data will have significant application to the needs of the public and to governmental agencies and are not publicly available from nongovernmental or governmental sources.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk at (301) 763–2536.

SUPPLEMENTARY INFORMATION: The data collected in this survey will be within the general scope, type, and character of those that are covered in the economic censuses. The 1993 Company Organization Survey includes an added health care plan item and expansion upon the foreign ownership item.

The Office of Management and Budget approved the proposed survey August 24, 1993 under Control No. 0607–0444 in accordance with the Paperwork Reduction Act, Pub. L. 96–511, as amended. Report forms will be furnished to organizations included in the survey, and additional copies of the form are available on request to the Director, Bureau of the Census, Washington, DC 20233.

I have, therefore, directed that a survey be conducted for the purpose of collecting these data.

Dated: October 27, 1993.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 93–26901 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

[A–588–090]

Certain Small Electric Motors of 5 to 150 Horsepower From Japan; Notice of Intent To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended investigation on Certain Small Electric Motors of 5 to 150 Horsepower from Japan. Domestic interested parties who object to this termination must submit their comments in writing not later than thirty days from the publication date of this notice.

EFFECTIVE DATE: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Bruce Harsh or Linda Ludwig, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1980, the Department of Commerce (the Department) published a suspension of investigation on Certain Small Electric Motors from Japan (53 FR 52358). The Department has not received a request to conduct an administrative review of this suspended investigation for at least four consecutive annual anniversary months.

In accordance with 19 CFR 353.25(d)(4)(iii), the Secretary of Commerce will conclude that a suspended investigation is no longer of interest to interested parties and will terminate the suspended investigation if no domestic interested party objects to termination and no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by section 353.25(d)(4)(i) of the Department's regulations, we are notifying the public of our intent to terminate the suspended investigation.

Opportunity To Object

Not later than thirty days after publication date of this notice, domestic interested parties, as defined in section 353.2 (k)(3), (k)(4), (k)(5), and (k)(6) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), and if no domestic interested parties object to the Department's intent to terminate pursuant to this notice, we shall conclude that the suspension agreement is no longer of interest to interested

parties and shall proceed with the termination.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: October 28, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–26932 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–517–501]

Carbon Steel Wire Rod From Saudi Arabia; Preliminary Results of Countervailing Duty Administrative Review; Intent to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review; intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on carbon steel wire rod from Saudi Arabia. We preliminarily determine the total bounty or grant to be 0.18 percent *ad valorem* for the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. If these preliminary results are sustained in the final results of this review, the Department will revoke the countervailing duty order because the Saudi Iron and Steel Company (HADEED), the sole producer and exporter of the subject merchandise in Saudi Arabia, has not applied for or received any net subsidy on the merchandise for five consecutive years, and has certified that it will not in the future apply for or receive any net subsidy on the merchandise. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Richard Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1992, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administration Review" (57 FR 3740) of the countervailing duty order on carbon steel wire rod from Saudi Arabia. During March 1992, HADEED, the sole producer and exporter of the subject merchandise in Saudi Arabia, requested an administrative review covering the period January 1, 1991 through December 31, 1991. A timely request for revocation of the countervailing duty order, accompanied by the required certifications under 19 CFR 355.25 of the Department's regulations, was submitted by HADEED. We initiated the review on March 16, 1992 (57 FR 9104). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by the review are shipments of Saudi carbon steel wire rod. Carbon steel wire rod is a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Such merchandise is classifiable under item numbers 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00 and 7213.50.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991, and three programs. During the review period, there was only one Saudi producer and/or exporter of the subject merchandise, the Saudi Iron and Steel Company (HADEED).

The Department intends to revoke the countervailing duty order, if at the time the Department publishes the final results of this review, HADEED has demonstrated that it has not applied for or received any net subsidy on the merchandise for five consecutive years and is not likely in the future to apply for or receive any net subsidy on the merchandise. As required by § 355.25(c)(2)(ii) of the Department's regulations, the Department conducted a verification of the questionnaire responses submitted by the Government of Saudi Arabia and HADEED.

Analysis of Programs

(1) Public Investment Fund Loan to HADEED

The Public Investment Fund (PIF) was established in 1971 as one of five specialized credit institutions set up by the Government of Saudi Arabia. The other specialized credit institutions are the Saudi Industrial Development Fund (SIDF), the Saudi Agricultural Bank, the Saudi Credit Bank and the Real Estate Development Fund. These specialized credit institutions are funded completely by the Saudi government and were the only sources of long-term financing in Saudi Arabia during the review period.

The PIF was established in 1971 to provide financing to large-scale, commercially productive projects that have some equity participation of the Saudi government. PIF by-laws exclude firms or projects without Saudi government equity from applying to the PIF for financing. Because the application of the government equity participation requirement has limited benefits under this program to a small number of enterprises, we have previously determined that PIF loans are provided to a specific group of enterprises in Saudi Arabia, and that the PIF loan to HADEED is contervailable to the extent that it is given on terms inconsistent with commercial considerations (see, Carbon Steel Wire Rod from Saudi Arabia; Final Results of Countervailing Duty Administrative Reviews, 56 FR 48158 (September 24, 1991)). No new information of changed circumstances regarding this program was provided that would lead the Department to revise this conclusion.

The loan contract between the PIF and HADEED requires that HADEED pay a variable commission, or interest, on the outstanding balance based on its profitability in the preceding semester. During 1991, HADEED made repayments of loan principal and commission on its PIF loan.

Using the two sources for medium- to long-term industrial financing available in Saudi Arabia, private commercial banks and the SIDF, we have constructed a composite interest rate benchmark for 1991 to determine whether the PIF loan to HADEED was on terms inconsistent with commercial considerations. Since the PIF loan covered 60 percent of HADEED's total project costs, for our benchmark we assumed that HADEED could have financed 50 percent of its total project costs with a SIDF loan (the maximum eligibility for a company with at least 50 percent Saudi ownership) and the remaining 10 percent of project costs with a Saudi commercial bank loan. The SIDF loan portion of the benchmark was used because, of all the specialized credit institutions, it is the only fund besides the PIF which lends to industrial or manufacturing projects and, is most representative of what

HADEED would otherwise have to pay for long-term loans in Saudi Arabia. We used the 2 percent flat rate of interest applied to SIDF loans in 1991. The commercial bank portion of the benchmark was based on the average Saudi Interbank Offering Rate (SIBOR) for 1991, plus a one-quarter of one percent spread. Because the composite benchmark for 1991 is less than the actual commission, or interest rate, that HADEED paid on its PIF loan in 1991, we preliminarily determine that the PIF loan was not inconsistent with commercial considerations for the period January 1, 1991 through December 31, 1991.

(2) SABIC's Transfer of SULB Shares to HADEED

The Saudi Arabian Basic Industries Corp. (SABIC) was established in 1976 by the Government of Saudi Arabia as an industrial development corporation. SABIC has been the majority shareholder in HADEED since the steel company's inception in 1979. In 1982, SABIC acquired all of the remaining shares in the Steel Rolling Company (SULB), a Saudi producer of steel reinforcing bars of which SABIC had been the majority shareholder since 1979. In December 1982, SABIC decided to transfer its shares in SULB to HADEED in return for new HADEED stock. Through the stock transfer, SULB became a wholly-owned subsidiary of HADEED.

In Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia, (51 FR 4206; February 3, 1986) (Saudi Wire Rod), we determined that HADEED was unequityworthy in December 1982 and that the transfer of SABIC's shares in SULB to HADEED in exchange for additional shares in HADEAED was inconsistent with commercial considerations.

For this review, we preliminarily determine that the most appropriate methodology to use in measuring the benefit from equity infusions made or provided on terms inconsistent with commercial considerations is what we call the "grant" approach. (For a full discussion of this issue, see the Equity section of the General Issues Appendix to Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria, 58 FR 37217, July 9, 1993). We calculated that benefit to HADEED from the acquisition of SULB by using the declining balance methodology described in the Department's Proposed Rules (see, § 355.49(b)(3) of Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366, May 31, 1989). For the discount rate we used the 2 percent flat rate of interest applied to SIDF loans during the year of the infusion, 1983, as representative of the national average long-term interest rate (HADEED contracted no long-term loans, in 1983 that could have been used as a benchmark). We then divided the amount of the grant allocated to the review year by HADEED's total sales in 1991. On this basis, we preliminarily determine the benefit from this equity infusion to be 0.17 percent *ad valorem* for the period January 1, 1991 through December 31, 1991.

(3) Preferential Provision of Equipment to HADEED

Under a lease/purchase arrangement, the Royal Commission for Jubail and Yanbu built for HADEED two bulk ship unloaders at the Jubail industrial port for unloading iron ore, and constructed a conveyor belt system for transporting iron ore from the pier to HADEED's plant in the Jubail Industrial Estate. When construction of these facilities was completed in 1982, the Commission transferred custody to HADEED under a lease/purchase agreement.

As originally planned, the bulk ship unloader and conveyor system was built to serve both HADEED and an adjacent plant in the Jubail Industrial Estate. The second plant was not built, however, leaving HADEED as the sole user of this equipment. The terms of the lease/purchase agreement require that HADEED must repay the equipment and construction costs plus a two-percent fee for the cost of money in 20 annual installments. The annual payments are stepped, with the lowest payment levels occurring at the beginning and the highest payment levels occurring at the end of the 20-year period.

In the *Saudi Wire Rod*, we found that the two-percent cost-of-money fee is the Commission's standard charge for recovery of costs on other facilities in the Jubail Industrial Estate. Of the projects examined, a urea berthside handling system built for the exclusive use of another company located in the Estate was the most comparable to HADEED's ship unloader and conveyor system. Therefore, we compared the repayment schedule for HADEED's ship unloader and conveyor system to the repayment schedule for a berthside handling system. Although both agreements carried the standard cost-of-money fee, we found that HADEED's end-loaded, stepped repayment schedule was more advantageous than the annuity-style repayment schedule on the berthside handling system. Therefore, we determined that HADEED's ship unloader and conveyor system was provided on preferential terms. Moreover, because the equipment is used exclusively by HADEED, we found that it was provided to a specific enterprise and, thus, confers a bounty or grant. No new information or evidence of changed circumstances has been provided to alter that determination.

To calculate the benefit, we compared the principal and fees being paid in each year by HADEED to the principal and fees that would be paid under the repayment schedule used for the berthside handling system. We allocated the sum of the present values of the differences in the two repayment schedules over 20 years, using a two-percent discount rate. The resulting benefit for 1991 was divided by HADEED's total sales in 1991. On this basis, we preliminarily determine the benefit from the preferential provision of the unloader and conveyor system to be 0.01 percent *ad valorem* for the period January 1, 1991 through December 31, 1991.

Preliminary Results of Review

As a result of the review, we preliminarily determine the total bounty or grant to be 0.18 percent *ad valorem* for the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR § 355.7, any aggregate net subsidy rate less than 0.50 percent *ad valorem* is *de minimis*, and will be disregarded.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1991 and exported on or before December 31, 1991.

The Department also 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 (as amended), on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this 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 355.38(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 than 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: October 15, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–26933 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–DS–M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Change of Venue of Board Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (app. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will hold its Fall Meeting on November 4, 1993, from 10:30 a.m. to 5 p.m., at the Grand Hyatt Hotel, Farragut Square Room, in Washington, D.C.

The original notice of the TTAB meeting was listed on October 7, 1993 (reference document no. 52276).

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the meeting.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1860, U.S. Department of Commerce, Washington, D.C. 20230 (telephone: 202–482–1904), will respond to public requests for information about the meeting.

Leslie R. Doggett,

Acting Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 93–27014 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Import Charges for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in China

October 26, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and charges.

EFFECTIVE DATE: October 27, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of the 1993 limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to adjust the 1992 limits for certain categories for swing. Also, for goods exported in 1992, imports charged to the 1993 limits for certain categories are being deducted from the 1993 charges and charged back to the corresponding categories for 1992.

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 57 FR 54976, published on November 23, 1992). Also see 56 FR 60976, published on November 29, 1991; and 57 FR 62304, published on December 30, 1992.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on October 27, 1993, you adjust the restraint limits established in the directive dated November 22, 1991 for textile products in the following categories, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extended through December 31, 1992:

Category	Adjusted limit [1]
Levels not in a group	
219	491,645 square meters.
300/301	1,610,063 kilograms.
360	5,156,563 numbers of which not more than 4,837,887 numbers shall be in Category 360–P [2].
369–H [3]	2,722,715 kilograms.
369–L [4]	2,710,336 kilograms.
607	724,409 kilograms.
613	6,916,855 square meters.
641	1,056,776 dozen.
645/646	658,112 dozen.
647	1,280,420 dozen.
648	880,049 dozen.
652	2,060,568 dozen.
659–H [5]	2,546,639 kilograms.
659–S [6]	565,801 kilograms.
669–P [7]	1,815,997 kilograms.
831	455,669 dozen pairs.
Group II	126,923,582 square meters equivalent.
Group III	343,348,841 square meters equivalent.
Group IV	27,107,591 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 360–P: only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[3] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[4] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[6] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[7] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

Also, you are directed to deduct, for goods exported in 1992, the following amounts from the charges made to the limits established in the directive dated December 23, 1992 for the following categories for the period which began on January 1, 1993 and extends through December 31, 1993. These same amounts shall be charged to the 1992 limits for the corresponding categories.

Category	Amount to be deducted/charged
613	329,374 square meters.
659–H	78,701 kilograms.
659–S	26,943 kilograms.
669–P	85,039 kilograms.
831	22,311 dozen pairs.
Group II	5,931,009 square meters equivalent.
Group III	16,044,338 square meters equivalent.
Group IV	1,266,710 square meters equivalent.

This letter will be published in the **Federal Register.**

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26939 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of an Import Restraint Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in Guam from Imported Parts

October 26, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for a new agreement year.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The provision for sweaters assembled in Guam from imported parts and exported from Guam to the United States is being continued for the period November 1, 1993 through October 31, 1994. The limit established for the new period is being increased to 238,516 dozen.

A certification will continue to be required and will be issued by the authorities in Guam prior to exportation as verification of assembly in Guam. A facsimile of the certification stamp was published in the **Federal Register** on March 4, 1985 (50 FR 8649).

For those sweaters properly certified, no export visa or license will be required from the country of origin of the merchandise, and imports entered under this procedure will not be charged to limits established for exports from the country of origin. Exports of sweaters in Categories 345, 445, 446, 645 and 646, which are not accompanied by a certification and those in excess of 238,516 dozen, will require the appropriate visa or export license from the country of origin and will be subject to any other applicable restriction.

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 57 FR 54976, published on November 23, 1992). Also see 57 FR 48513, published on October 26, 1992. Information regarding the 1994 CORRELATION will be published in the **Federal Register** at a later date.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, effective on November 1, 1993, you are directed to permit entry or withdrawal from warehouse for consumption in the United States of 238,516 dozen cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646, the product of any foreign country or foreign territory, as determined under 19 C.F.R. Part 12.130 and which have been certified as assembled in Guam and exported to the United States during the twelve-month period beginning on November 1, 1993 and extending through October 31, 1994. You are directed not to require any otherwise applicable export visa or license and not to charge against any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the authorities in Guam prior to exportation as verification of assembly in Guam. A facsimile of the certification stamp has been provided.

Imports of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646 assembled in Guam, but not of Guam origin, which are not accompanied by a certification and those in excess of 238,516 dozen exported during the twelve-month period beginning on November 1, 1993 and extending through October 31, 1994 will require the appropriate visa or export license from the country of origin and will be charged to any applicable quota.

Imports charged to the category limit for the period November 1, 1992 through October 31, 1993 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26936 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

October 26, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on

embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for special shift.

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 57 FR 54976, published on November 23, 1992). Also see 58 FR 31190, published on June 1, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 1993.

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 May 25, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1993 and extends through June 30, 1994.

Effective on November 2, 1993, you are directed to amend further the directive dated May 25, 1993, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	6,674,803 square meters.
313	12,298,494 square meters.
314	42,861,645 square meters.
317/617/326	18,632,321 square meters of which not more than 2,798,654 square meters shall be in Category 326.
331/631	1,368,136 dozen pairs.
340/640	1,167,000 dozen.
625/626/627/628/629	19,836,109 square meters.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26938 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

October 27, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 27, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 331/631 and 340/640 are being increased by application of swing, reducing the Group II limit to account for the increases.

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 57 FR 54976, published on November 23, 1992). Also see 57 FR 54772, published on November 20, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1993.

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 November 17, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 27, 1993, you are directed to amend further the directive dated November 17, 1993 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
331/631	1,824,506 dozen pairs.
340/640	1,093,586 dozen.
Group II	
201, 222–224, 229, 239, 330, 332, 349, 352–354, 359–362, 369, 400–434, 436, 438–O [2], 439, 440, 443, 444, 447, 448, 459, 464–469, 600–603, 606, 607, 611, 618–622, 624–630, 632, 633, 643, 644, 649, 652–654, 659, 665–670, 831–834, 836, 838, 839, 840 and 843–859, as a group.	31,984,594 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.3020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.0072, 6114.10.0020 and 6117.90.0023.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26937 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Nepal

October 27, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Talllarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 340 and 341 are increased by application of swing, reducing the limits for Categories 347/348 and 342, respectively, to account for the increases.

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 57 FR 54976, published on November 23, 1992). Also see 57 FR 54976, published on November 23, 1992, announcing the 1993 limits for Nepal.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1993.

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 November 17, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 4, 1993, you are directed to amend the directive dated November 17, 1993 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit [1]
340	258,204 dozen.
341	860,680 dozen.
342	110,801 dozen.
347/348	549,662 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26934 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Taiwan; Correction

October 27, 1993.

In the letter to the Commissioner of Customs published in the **Federal Register** on October 4, 1993 (58 FR 51620), third column under the entry for Categories 647/648, correct the sublevel for Categories 647–W/648–W from 5,346,918 dozen to 5,084,491 dozen.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–26935 Filed 11–1–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Office of the Secretary of the Army; Draft Environmental Impact Statement To Assess the Impacts of Stationing Mechanized or Armored Forces at Fort Lewis, Washington

AGENCY: United States Army, Department of Defense.

ACTION: Notice of availability.

SUMMARY: As part of the reorganization of its force structure throughout the world, the Army proposes to station heavy (armored or mechanized) combat units at Fort Lewis, Washington. This Draft Environmental Impact Statement (DEIS) analyzes two stationing alternatives (one or two brigades) and the No Action Alternative. The One-Brigade Alternative would result in approximately 4,000 additional troops and 500 tracked vehicles. Under the Two-Brigade Alternative, approximately 10,400 additional troops and 1,100 tracked vehicles would be assigned to Fort Lewis and its sub installation, Yakima Training Center (YTC). New construction would be required to support either stationing alternative

This DEIS will be available for public review and comment for 45 days. Public hearings will be held during the public review process to receive comments on the DEIS. After the public comment period has ended, a Final EIS will be prepared.

ADDRESSES: Copies of the Environmental Impact Statement can be requested by contacting Mr. Randall W. Hanna, Chief, Environmental and Natural Resources Division, Headquarters, I Corps and Fort Lewis, ATTN: AFZH–DEQ, Fort Lewis, Washington 98433–5000.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environmental, Safety, and Occupational Health) OASA (IL&E).

[FR Doc. 93–26861 Filed 11–1–93; 8:45 am]

BILLING CODE 3710–08–M

Intrastate Personal Property Program: Proposed Change

AGENCY: Headquarters, Military Traffic Management Command (HQMTMC).

ACTION: Notice of proposed changes in procurement policy.

SUMMARY: The Military Traffic Management Command (MTMC) is proposing a change to the intrastate personal property rate program. This program is the method by which intrastate household goods rates are procured for Department of Defense-sponsored intrastate household goods shipments. The proposed change involves rates filed to and from Adak, Alaska, for intrastate service. The proposed change will require rates to be solicited by MTMC as a one-time only (OTO).

DATES: Comments must be received on or before December 2, 1993.

ADDRESSES: Comments may be mailed to Headquarters, Military Traffic Management Command, ATTN: MTOP–T–NI, Room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Janet Nemier at (703) 756–1190.

SUPPLEMENTARY INFORMATION: Due to the nature of the barge transportation service for intrastate shipments moving to and from Adak, Alaska, MTMC proposes a change in procurement method for intrastate rates. The current barge service provides service from Adak, Alaska, to Seattle, Washington. Shipments destined to mainland Alaska are loaded on another barge in Seattle. This changes the nature of the shipment to interstate. The reverse routing occurs from mainland Alaska, to Adak, Alaska.

It is proposed that intrastate rates will no longer be solicited to and from Adak, Alaska, under the current intrastate personal property program. Personal property shipping offices will be required to request intrastate Adak, Alaska, rates under the MTMC OTO program. The intrastate program will be modified to reflect this change.

MTMC proposes implementation of the OTO program for Adak intrastate rates on January 1, 1994.

Industry comments in response to the **Federal Register** item will be considered prior to implementation.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 93–26899 Filed 11–1–93; 8:45 am]

BILLING CODE 5000–03–M

Department of the Air Force

Supplemental Record of Decision (ROD) for the Disposal and Reuse of George Air Force Base (AFB) CA

On September 21, 1993, the Air Force signed the Supplemental ROD for the Disposal and Reuse of George AFB. The decisions included in this Supplemental ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) filed with the Environmental Protection Agency on March 6, 1992.

George AFB was closed on December 15, 1992, pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (BRAC) (Pub. L. 100–526) and recommendations of the Defense Secretary's Commission on Base Realignment and Closure. This Supplemental ROD documents certain disposal decisions which this office previously deferred, and modifies certain previous decisions made in the January 14, 1993, ROD for George AFB. The decisions in this document, coupled with those in the previous ROD complete the disposal decisions for the entirety of George AFB.

The decision conveyed by the initial ROD was to dispose of George AFB in a manner that enabled the development of a regional airport with the capacity for commercial and industrial development. This allowed for the central theme of the proposed future land use plans discussed in the EIS to be fully implemented. The environmental findings and mitigations contained in the initial ROD remain fully applicable.

No property at George AFB will be retained for continued Department of Defense use. The 34 acres initially reserved for homeless assistance are declared surplus to the needs of the Federal Government. In total, approximately 900 acres are reserved for transfer to another Federal Agency and 4168 acres are surplus to the needs of the Federal Government. The base has been divided into twelve (12) parcels of land, railroad right of way, roads and utilities. Two (2) airfield parcels are to be conveyed for public benefit (airport use), three (3) parcels will be conveyed by negotiated sales, two (2) parcels will be conveyed to the Department of Education, two (2) parcels are to be conveyed for public benefit (homeless assistance), one (1) parcel is to be conveyed to the Department of Justice and two (2) parcels to be conveyed by public sale. The railroad right of way will be included in one of the parcels as a negotiated sale. The roads will be transferred as part of the specific conveyances (i.e., airport, education, and negotiated or public sale) with easements for access as appropriate. Roads that fall within a parcel completely will be included as part of the parcel. The utility systems are totally integrated systems, prohibiting their separation among the various parcels. Therefore disposal of the utility systems will include conditions under which the recipients must provide service to all parcels. Utility easements will be granted to all parcels as appropriate. Gas, electric and telephone (including electrical substation, underlying land, and attendant electrical and utility systems with associated infrastructure) will be conveyed by negotiated sale to respective utility purveyors. Water and sewage may be conveyed by negotiated sale, public benefit transfer or public sale.

The implementation of the closure and reuse action and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and environment.

Any questions regarding this matter should be directed to Mr. John E. B. Smith or Ms. De Carlo Ciccel at (703) 696–5534. Correspondence should be sent to: AFBDA/SP, 1700 North Moore Street, suite 2300, Arlington, VA 22209–2802.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–26900 Filed 11–1–93; 8:45 am]

BILLING CODE 3910–01–W

Department of the Navy

Intent To Grant Exclusive Patent License; Wyle Laboratories

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant exclusive patent license; Wyle Laboratories.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Wyle Laboratories, a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S. Patent No. 4,893,655 entitled "Double Valve Mechanism for an Acoustic Modulator".

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

Written objections are to be filed with the Chief of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Chief of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: October 20, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–26898 Filed 11–1–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 94–04; Advanced Battery Technology Research and Development

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Energy Research (ER), U.S. Department of Energy, hereby announces its interest in receiving grant applications to support a continuing program for advanced battery technology research and development focused on batteries for the consumer market.

Batteries and battery-like devices are a mainstay of contemporary electronic, information, and transportation industries. The performance of batteries is often the limiting factor that hinders the development of improved portable devices such as cellular telephones, laptop computers, hand-held tools, and other consumer products. Stringent environmental requirements impose restrictions on the use of battery materials and components deemed to be harmful not only to the environment but also to human well-being.

The objective of this effort is to develop new generic battery technology for a wide range of non-automotive uses, with particular emphasis on improvements in battery size, weight, life, and recharge cycles. The interest is in novel research and technology development, and not in research leading to incremental improvements in existing devices. For the purpose of this notice, batteries for transportation and fuel cells are excluded from consideration.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., January 13, 1994, to be accepted for merit review in early 1994 and to permit timely consideration for award in Fiscal Year 1994.

ADDRESSES: Formal applications referencing Program Notice 94–04 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, Washington, DC 20585, Attn: Program Notice 94–04. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Marianelli, Office of Basic Energy Sciences, Chemical Sciences Division, ER–14, GTN, U.S. Department of Energy, Washington, DC 20585. Telephone: (301) 903–5804.

SUPPLEMENTARY INFORMATION: The Department's intention for this program is to use a limited amount of money to stimulate as much research and development as possible on new battery technologies. Accordingly, applicants are encouraged to collaborate with industry and to incorporate cost sharing and consortia wherever feasible. The extent of collaboration and cost sharing may be considered when DOE selects applicants for support under this program.

Appropriate topics for research are: Electrode research including investigations of graphitized and composite electrodes for Li+ cells; metal hydrides; bifunctional air electrodes; fundamental studies of composite electrode structures; the failure and degradation of active electrode materials; and, thin-film electrodes, electrolytes, and interfaces. Consideration will also be given to secondary aqueous zinc cells and the problems of overcharge/overdischarge, power capability, and cyclability of anodes in lithium cells, oxidative degradation of electrolytes by high voltage cathodes, and highly conductive thin-film ceramic electrodes. Appropriate topics in the area of characterization and methodologies include problems of electrode morphology, zinc corrosion, separator/electrolyte stability and stable microelectrodes. Also of interest are investigations in computational chemistry, modeling, and simulations, including property predictions, phenomenological studies of reactions and interactions at critical interfaces, film formation, phase change effects on electrodes and characterization of crystalline and amorphous materials. Other topics of interest include novel battery separators and the transport properties of electrode and electrolyte materials and surface films. A detailed listing of research needs for battery technology appears in the report of a "Workshop on Advanced Battery Technology Research and Development." Copies are available on request from the U.S. Department of Energy, Chemical Sciences Division, Office of Energy Research, ER–14, Washington, DC 20585. Telephone requests may be made by calling (301) 903–5804.

It is anticipated that $600,000 will be available for grant awards during FY 1994, contingent upon availability of appropriated funds. The number of awards and the range of funding will depend on the number of applications received and selected for award. During FY 1993, fourteen grants were awarded ranging from $66,000 to $250,000 and totaling approximately $2,039,000.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The application guide is available from the U.S. Department of Energy, Chemical Sciences Division, Office of Energy Research, ER–14, Washington, DC 20585. Telephone requests may be made by calling (301) 903–5804.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on October 25, 1993.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 93–26913 Filed 11–1–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER94–41–000, et al.]

Alabama Power Company, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 26, 1993.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Company

[Docket No. ER94–41–000]

Take notice that on October 20, 1993, Alabama Power Company submitted for filing a letter agreement executed September 24, 1993, revising the Interconnection Agreement between Alabama Electric Cooperative, Inc. and Alabama Power company, and the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative, Inc. The letter agreement reflects refinements to the methodology currently used to determine the incremental price of energy under the above-referenced agreements. Adoption of such refinements will also constitute a change in practice under the contract between Alabama Power Company and the Southeastern Power Administration.

Comment date: November 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Washington Water Power Company

[Docket No. ER93–980–000]

Take notice that on September 30, 1993, Washington Water Power Company (WWP) tendered for filing a Notice of Termination of Rate Schedule FERC Electric Tariff No. 1 between WWP and Bonneville Power Administration.

Comment date: November 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Sierra Pacific Power Company and Idaho Power Company

[Docket No. ER94–40–000]

Take notice that on October 19, 1993, Sierra Pacific Power Company and Idaho Power Company (Sierra/Idaho Power) tendered for filing pursuant to 18 CFR part 35 *et seq.* and pursuant to the July 30, 1993, Final Order in Docket No. PL93–2–002 the following executed contracts:

(1) "North Valmy Station Operating Procedures Criteria" dated February 11, 1993, (The "1993 Criteria"); and

(2) "Agreement for the Operation of the North Valmy Power Plant Project" dated December 12, 1978, (The "Operation Agreement").

In order to be in strict compliance with the Commission's notice requirements, Sierra/Idaho Power propose that this filing be made effective on December 18, 1993, that being the date 60 days after the date of the filing. However, Sierra/Idaho Power request that the Commission reject the filing of the 1993 Criteria and the Operation Agreement on the basis that both contracts are not subject to the Commission's jurisdiction.

If the Commission does not reject the filing of either contract, Sierra/Idaho Power request that the Commission waive the notice requirements of section 205 of the Federal Power Act and accept the contract effective on a retroactive basis. The requested effective date for the 1993 Criteria would be February 11, 1993. The requested effective date for the Operation Agreement would be December 12, 1978.

Comment date: November 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. ER93–491–000]

Take notice that on October 21, 1993, Idaho Power Company (IPC) supplemented its filing in the above referenced docket regarding a Service Agreement between Idaho Power Company and P.U.D. No. 1 of Anohomish County. The filing was supplemented to reflect the Commission's recision of a previously ordered refund.

Comment date: November 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER93–639–000]

Take notice that on October 21, 1993, Idaho Power Company (IPC) amended its filing in the above referenced docket regarding the Agreement for the Purchase and Sale of Power and Energy between Idaho Power Company and The Montana Power Company dated October 15, 1990, (Agreement). The filing was amended to submit additional information requested by the Commission staff. Idaho Power has renewed its request for an effective date not more than 60 days after the original filing date which was May 10, 1993.

Comment date: November 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER93–313–000]

Take notice that on October 21, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment to its Power Sales Tariff which provides for sales of system capacity and/or energy or resource capacity and/or energy. The Amendment is a letter requesting a deferral of 20 days so that Niagara Mohawk can submit additional information in support of its Tariff.

A copy of this filing has been served upon the New York State Public Service Commission.

Comment date: November 9, 1993, in accordance with Standard Paragraph E end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket Nos. ER93–208–000, ER93–209–000, ER93–210–000, ER93–211–000, ER93–213–000, ER93–214–000, and ER93–215–000]

Take notice that on October 21, 1993, Consolidated Edison Company of New York, Inc. (Con Edison), in response to the Commission Staff's request for additional information, tendered for filing additional information relative to the below-listed interconnection agreements.

Docket No.	Person receiving service
ER93–208–000	Orange & Rockland & Utilities, Inc. (O&R).
ER93–209–000	New York Power Authority (NYPA).
ER93–210–000	Central Hudson Gas & Electric Corporation (CH).
ER93–211–000	O&R.
ER93–213–000	NYPA.
ER93–214–000	O&R.
ER93–215–000	NYPA.

Con Edison states that a copy of this filing has been served by mail upon O&R, NYA and CH.

Comment date: November 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER94–43–000]

Take notice that on October 20, 1993, Boston Edison Company (Edison) tendered for filing a Borderline Sales Tariff, designated as FERC Electric Tariff, Original Volume No. 7, that provides for the sale of power to borderline customers. Edison also tendered for filing an executed service agreement with Massachusetts Electric Company (MECo), a neighboring utility in whose territory Edison services borderline customers. Edison seeks a waiver of the Commission's notice requirements so that these transactions may become effective as specified in the Service Agreement.

Edison states that it has served the filing on MECo and the Massachusetts Department of Public Utilities.

Comment date: November 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Company Services, Inc.

[Docket No. ER94–42–000]

Take notice that on October 20, 1993, Southern Company Services, Inc., acting

as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies"), submitted for filing Amendment No. 3 to the Intercompany Interchange Contract dated October 21, 1988, as well as letter agreements concerning revisions to certain agreements with Florida Power & Light Company, Florida Power Corporation, Jacksonville Electric Authority, and the City of Tallahassee, Florida. The filed agreements reflect refinements to the methodology currently used to determine the incremental price of energy under certain agreements among Southern Companies and those parties. Adoption of such refinements will also constitute changes in practice under interchange contracts between Southern Companies and various unaffiliated utilities, including Mississippi Power & Light Company, South Carolina Electric & Gas Company, South Carolina Public Service Authority, Florida Power & Light Company, Florida Power Corporation, Jacksonville Electric Authority, Gulf States Utilities Company, Cajun Electric Power Cooperative, Inc., and Duke Power Company.

Comment date: November 9, 1993, 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 protest 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. 93–26849 Filed 11–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA91–39–001]

Boston Edison Company; Filing

October 27, 1993.

Take notice that on September 3, 1993, Boston Edison Company tendered for filing its refund report in the above referenced docket.

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 18 CFR 385.214). All such motions or protests should be filed on or before November 10, 1993. 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. 93–26847 Filed 11–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–14–000]

Idaho Power Company; Filing

October 27, 1993.

Take notice that on October 8, 1993, Idaho Power Company (Idaho) tendered for filing a Service Agreement with Western Area Power Administration in order to do business with Idaho.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 10, 1993. 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. 93–26845 Filed 11–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TX94–1–000]

Minnesota Municipal Power Agency; Filing

October 27, 1993

Take notice that on October 21, 1993, the Minnesota Power Agency (MMPA) filed an Application for Order Requiring Transmission Service to be provided by Northern States Power Company (NSP). The application and complaint has been filed pursuant to section 211 of the Federal Power Act, as amended by the Energy Policy Act of 1992 (16 U.S.C. sections 824j).

The Applicant is a Minnesota political subdivision formed to sell electric energy at wholesale to its members and customers who are the Cities of Anoka, Arlington, Brownton, Chaska, LeSueur, North Saint Paul, Olivia, Shakopee, and Winthrop, Minnesota. The Applicant alleges that NSP has failed to offer MMPA a transmission service agreement, proposed unduly discriminatory terms and conditions, and proposed a transmission service rate that is unduly discrminatory.

A copy of the filing was served on NSP.

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 18 CFR 385.214). All such motions or protests should be filed on or before November 24, 1993. 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. 93–26848 Filed 11–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA92–38–001]

Nevada Power Company; Filing

October 27, 1993.

Take notice that on September 20, 1993, Nevada Power Company tendered for filing its refund report in the above-referenced docket.

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, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 10, 1993. 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. 93–26846 Filed 11–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA92–45–001]

Yankee Atomic Electric Company; Filing

October 27, 1993.

Take notice that on March 31, 1993, Yankee Atomic Electric Company tendered for filing its refund report in the above-referenced docket.

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 18 CFR 385.214). All such motions or protests should be filed on or before November 10, 1993. 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. 93–26844 Filed 11–1–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

National Coal Council, Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Friday, November 19, 1993, 8:15–11 AM

Place: Ritz-Carlton Hotel, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, DC 20585, Telephone: 202/586–3876.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda

—Call to order by William R. Wahl, Chairman of the National Coal Council.
—Remarks by Chairman Wahl.
—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy (Invited).
—Informal dialogue with the Secretary of Energy.
—Report of the Coal Policy Committee
—Report of the Finance Committee.
—Discussion of any other business properly brought before the Council.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 AM and 4 PM, Monday through Friday, except Federal holidays.

Issued at Washington, DC., on October 28, 1993.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–26911 Filed 11–1–93; 8:45 am]

BILLING CODE 6450–01–M

Coal Policy Committee of the National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council (NCC).

Date and Time: Thursday, November 18, 1993, 8:30–11:30 a.m.

Place: Ritz-Carlton Hotel, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, (FE–5), Washington, DC 20585, Telephone: 202/586–3867.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: The draft study on the "The Export of Coal and Coal Technologies" will be presented for discussion and recommendations. There will also be a progress report on the study "Future Direction of the Clean Coal Technology Program."

Tentative Agenda

—Call to order and opening remarks by Joseph Craft, Chairman of the Coal Policy Committee.
—Remarks by Department of Energy representative.
—Discussion and recommendations on the study "The Export of Coal and Coal Technologies."
—Progress report on the study "Future Direction of the Clean Coal Technology Program."
—Presentation on development of the electric car.
—Discussion of any other business to be properly brought before the Committee.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, On October 28, 1993.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–26912 Filed 11–1–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4796–7]

Clean Water Act Class II; Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding: Wichita, KS and Boeing Co.

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the city of Wichita, Kansas and the Boeing Company.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order to participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 30, 1993, EPA commenced the following Class II proceedings for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Wichita, Kansas and The Boeing Company, EPA Docket No. VII–93–W–0010.

The Complaint proposes a penalty of $113,200 for discharging broken concrete, metal reinforcing bar, dirt, wood, metal and plastic conduit, and miscellaneous demolition rubble into the Arkansas River without a permit as required by the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaints or other documents filed in this proceeding, comment upon the proposed penalty assessments, or otherwise participate in the proceedings should contact the Regional Hearing Clerk identified above.

The administrative records for the proceedings are located in the EPA Regional Office at the address stated above, and the files will be open for public inspection during normal business hours. All information submitted by Wichita, Kansas and The Boeing Company is available as part of the administrative records, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final orders assessing penalties in these proceedings prior to thirty (30) days from the date of this notice.

Dated: October 18, 1993.

William W. Rice,

Acting Regional Administrator.

[FR Doc. 93–26895 Filed 11–1–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4795–7]

Hydrogen Fluoride Study; Report to Congress; Section 112(n)(6) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: Section 112(n)(6) of the Clean Air Act, as amended, required the Environmental Protection Agency to complete a study of the commercial and industrial uses of hydrofluoric acid (HF, hydrogen fluoride) and the hazards it may present to public health and the environment. The study has been completed and is now available to the public. The Agency is interested in continued dialogue on the study with interested members of the public and will consider preparing an addendum to this report if warranted.

DATES: Those who wish to express their views concerning the material contained in the report should contact Edward L. Freedman by December 15, 1993 at the address below.

ADDRESSES: Edward L. Freedman, Chemical Emergency Preparedness and Prevention Office, OS–120, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The Emergency Planning and Community Right-to-Know Information Hotline at (800) 535–0202. To order copies of the report, please FAX requests to the Hotline at (703) 412–3333. For technical information, contact Edward L. Freedman, (202) 260–7934, Chemical Emergency Preparedness and Prevention Office, OS–120, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dated: October 22, 1993.

Elaine Davies,

Acting Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 93–26896 Filed 11–1–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4796–9]

Clean Air Act; Final Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Permits.

SUMMARY: The U.S. Environmental Protection Agency [EPA] is issuing five-year Acid Rain permits, according to the Acid Rain Program regulations (40 CFR part 72), to the following 5 utility plants: Breed in Indiana; C P Crane, Conemaugh, and Martin's Creek in Pennsylvania; and Kammer in West Virginia.

FOR FURTHER INFORMATION CONTACT: For Breed: Patrick Gimino at (312) 353–8651. Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd. (A–18J), Chicago, IL 60604.

For C P Crane: Kimberly Peck at (215) 597–9839; for Conemaugh: Jim Topsale at (215) 597–6553; for Kammer and Martin's Creek: David Campbell at (215) 597–9781. Air, Radiation and Toxics Division, EPA Region 3 (3AT–22), 841 Chestnut Bldg., Philadelphia, PA 19107.

Dated: October 27, 1993.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–26894 Filed 11–1–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4795–8]

CWA 304(1); Approvals and Proposed Approvals of State Lists; Availability of State Lists

AGENCY: Environmental Protection Agency, Region II.

ACTION: Notice.

SUMMARY: This notices announces EPA's final approval of the amended lists submitted to the U.S. Environmental Protection Agency (EPA) pursuant to Clean Water Act (CWA) sections

304(1)(1)(A)(i), 304(1)(1)(A)(ii), 304(1)(1)(B), and 304(1)(1)(C) by the State of New York and the State of New Jersey on January 17, 1990 and February 3, 1990, respectively. The amended lists and EPA's final approval documents, which include EPA's response to public comments, are available to the public.

This notice includes the schedule for completion of Total Maximum Daily Loads (TMDLs) and Waste Load Allocations (WLAs) for metals of concern in the New York/New Jersey Harbor and related Individual Control Strategies (ICSs).

Finally, this notice announces EPA's intent to approve and make available to the public, the lists submitted to EPA by the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands pursuant to the remand of EPA regulations interpreting section 304(1)(1)(C) of the CWA on February 25, 1993, January 15, 1993, September 13, 1993, and August 6, 1992, respectively. EPA is soliciting public comment on its intent to approve these lists.

DATES: Comments on EPA's intent to approve the lists submitted pursuant to the remand must be submitted to EPA on or before December 2, 1993.

ADDRESSES: Copies of: (1) EPA's approval including Responsiveness Summaries; (2) amended lists; (3) a detailed schedule and summary of the New York/New Jersey Harbor TMDL/WLA process; and (4) lists submitted pursuant to the remand, can be obtained by writing to Mr. Wayne Jackson, Technical Evaluation Section, U.S. Environmental Protection Agency Region II, Jacob K. Javitz Federal Building, 26 Federal Plaza, New York, New York 10278 or calling (212) 264–5685.

EPA is soliciting comments on the lists submitted pursuant to the remand only. Comments on these lists should be sent to Mr. Wayne Jackson at the above address on or before December 2, 1993.

The administrative record containing EPA's documentation of its decisions of final approval of the list of waters and proposed approval of the new list of sources are on file and may be inspected at the U.S. EPA, Region II office between the hours of 9 a.m. and 4:30 p.m., Monday through Friday except holidays. Arrangements to examine the administrative record may be made by contacting Mr. Wayne Jackson.

FOR FURTHER INFORMATION CONTACT:

Mr. Wayne Jackson, telephone (212) 264–5685.

SUPPLEMENTARY INFORMATION:

I. Background
II. History of original amended submissions pursuant to CWA sections 304(1)(1)(A)(i), 304(1)(1)(A)(ii), 304(1)(1)(B), and 304(1)(1)(C)
A. Comments regarding the State of New York's submission.
B. Comments regarding the State of New Jersey's submission.
III. Schedule for completion of TMDLs/WLAs for metals of concern in the New York/New Jersey Harbor and associated ICSs
IV. History of submissions pursuant to the remand of CWA section 304(l)(1)(C)

I. Background

Section 304(1) of the CWA, as amended by the Water Quality Act of 1987, requires each state to submit to EPA lists of impaired waters, identify certain point sources and amounts of pollutants causing toxic impact, and to develop ICSs for each point source. The original deadline for submitting lists of waters, point sources, amounts of pollutants, and the ICSs was February 4, 1989.

The first list (the "B List" or "Short List") is of those waters that the state does not expect to achieve applicable water quality standards, after application of technology-based controls, due entirely or substantially to discharges of any toxic pollutants from point sources (section 304(l)(1)(B), 33 U.S.C. 1314(l)(1)(B)). The second, or "Mini" list, consists of waters that are not meeting the new state water quality standards developed under section 303(c)(2)(B) for toxic pollutants because of pollution from point and nonpoint sources (section 304(l)(1)(A)(i), 33 U.S.C. 1314(l)(1)(A)(i)). The third, or "Long" list, includes all waters on the other two lists, plus any waters, which are the implementation of technology-based controls, are not expected to meet the water quality goals of the Act (section 304(l)(1)(A)(ii), 33 U.S.C. 1314(l)(1)(A)(ii)).

For each water segment identified in the B list, the state was required, by February 4, 1989, to submit a "C List" specifying point sources discharging toxic pollutants believed to be preventing or impairing water quality. For each point source identified on the state's C List as discharging toxic pollutants into a water segment on the state's B List, the state was further required to submit to EPA an ICS that the state determined would reduce point source dischargers of toxic pollutants to the receiving water to a degree sufficient to attain water quality standards in that water within three years after the date of the establishment of the ICS (33 U.S.C. 1314(l)(1)(D)).

II. History of Amended Submissions Pursuant to CWA Sections 304(l)(1)(A)(i), 304(l)(1)(A)(ii), 304 (l)(1)(B), and 304(l)(1)(C)

The original deadline for submitting lists of waters, point sources, amounts of pollutants and ICSs by each state to EPA was February 4, 1989. The State of New York and the State of New Jersey submitted their original lists and ICSs to EPA on February 4, 1989. On June 5, 1989, EPA approved the original lists and ICSs submitted by New York and New Jersey. EPA subsequently public noticed these original lists and ICSs with a comment period extending from June 5, 1989 through October 4, 1989 (the "first comment period"). An additional sixteen day extension was granted to the Natural Resources Defense Council (NRDC) and the Environmental Defense Fund (EDF) in response to their written request for an extension of the public comment period; these respective parties submitted comments on October 20, 1989.

In response to public comments received following EPA's June 5, 1989 approval, the States made new submissions. On January 17, 1990 and February 3, 1990, respectively, the State of New York and the State of New Jersey submitted to EPA amended original 304(l) submissions, adding waters and point sources to the lists (the "amended lists"). On June 8, 1990 EPA issued its final approvals of those waters and point sources that were on the original lists, and responded to the public comments received during the comment period. On June 8, 1990 EPA public noticed its intent to approve these amended lists and ICSs and requested public comment on its decision. The public comment period extended from June 8, 1990 through August 1, 1990 (the second comment period).

A. Summary of Comments Received by EPA Regarding the State of New York's Submission

During the second comment period, which ended on August 1, 1990, EPA received comments or petitions from seven (7) parties. Four (4) of the responses were from parties associated with a particular point source discharge that appeared on the proposed additions to the "C list." These commenters stated that the listing of their particular point source was inappropriate and that the discharger should be removed from the state's "C list." Two (2) of the responses were from parties requesting that several toxic pollutants and sources (including combined sewer overflows (CSOs)) associated with the waters of the New York/New Jersey Harbor be added to the

"B" and "C" lists, respectively. The remaining response was submitted by the New York State Department of Environmental Conservation (NYSDEC), requesting clarification regarding EPA's position on several actions taken by the Agency. A copy of EPA's final decision and Responsiveness Summary, which provides specific responses to all comments received regarding the State of New York lists may be obtained by contacting Mr. Wayne Jackson at the above-mentioned address.

After review of the available information submitted during the public comment period, it is EPA's decision to approve the amended A(i), (B) and (C) lists as submitted to EPA by the State of New York on January 17, 1990. The New York State's (A)(i) list has been amended to include the waters of the Lower New York Bay and Raritan Bay. As part of its comments to the U.S. EPA during the second public comment period, NYSDEC indicated that the exclusion of these waters from the A(i) list was an oversight by both the State and the U.S. EPA. These waters have subsequently been added by NYSDEC, and approved by the U.S. EPA, based upon the fact that available data show exceedances of state water quality standards for certain heavy metals in these waters.

As outlined above, NYSDEC submitted its original section 304(l) lists and ICSs to EPA on February 4, 1989 for review and approval. On June 5, 1989 EPA approved the original NYSDEC 304(l) submittal, including the ICSs for those dischargers which discharged to the waters listed on the State's original section 304(l)(1)(B) list. The waters of the New York/New Jersey Harbor were not included on NYSDEC's original section 304(l)(1)(B) submittal because it was determined that there was not sufficient information to list these waters.

During the public comment period which followed the U.S. EPA's June 5, 1989 decision, information was submitted by NRDC and EDF which indicated that the waters of the New York/New Jersey Harbor should be included on the State's section 304(l)(1)(B) list. A subsequent analysis by the U.S. EPA and NYSDEC led to a joint decision to list the waters of and dischargers to the Harbor.

On January 17, 1990 NYSDEC added the waters of the New York/New Jersey Harbor to its section 304(l)(1)(B) list, and the appropriate point source dischargers, needing ICSs, to these waters to its 304(l)(1)(C) list. The actual ICSs were not submitted by the State of New York at that time, as it was agreed that the States of New York and New Jersey, and the U.S. EPA would need to work together in order to develop technically defensible water quality-based effluent limitations for incorporation into the Harbor ICSs.

On June 8, 1990 EPA issued and public noticed its intent to approve the (B) listing of waters of the New York/New Jersey Harbor and the (C) listing of the appropriate dischargers to these waters. ICSs for those dischargers included on the State's above-referenced section 304(l)(1)(C) list are currently being developed as outlined in Section III of this notice. Based upon the results of the current effort to develop TMDLs/WLAs for the waters of the New York/New Jersey Harbor Complex, water quality based-effluent limits for the four metals of concern (copper, mercury, lead, and nickel) will be developed and ICSs will be established by September 15, 1994.

B. Summary of Comments Received by EPA Regarding the State of New Jersey's Submission

During the second comment period, which ended on August 1, 1990, EPA received comments or petitions from nine (9) parties. Seven (7) of the responses received were from parties associated with a particular point source discharge that appeared on the "C list." These commenters stated that the listing of their particular point source was inappropriate and that the discharger should be removed from the State's "C list." Two (2) comments were from parties requesting the addition of several toxic pollutants and sources (including CSOs) associated with the "B" listing of the waters of the New York/New Jersey Harbor. A copy of EPA's final decision and Responsiveness Summary, which provides specific responses to all comments received regarding the State of New Jersey lists, may be obtained by contacting Mr. Wayne Jackson at the above-mentioned address.

After review of the available information submitted during the public comment period, it is EPA's decision to approve the (b) and (c) lists and the associated ICSs, with the exception of those dischargers to the New York/New Jersey Harbor Complex, as submitted to EPA by the State of New Jersey on February 4, 1990.

As outlined above, NJDEPE submitted its original section 304(l) lists and ICSs to EPA on February 4, 1989 for review and approval. On June 5, 1989 EPA approved the original NJDEPE 304(l) submittal, including the ICSs for those dischargers which discharged to the waters listed on the State's original section 304(l)(1)(B) list. However, a portion of New Jersey's (C) list, and the associated ICSs, were disapproved on June 5, 1989 because the State was unable to submit a list of those point sources impacting several waters (Kings Creek, Raccoon Creek, Passaic River, and Newark Bay/Arthur Kill/Kill Van Kull) which were added to the State's original section 304(l)(1)(B) list at the deadline.

On February 3, 1990 NJDEPE submitted its revised section 304(l) lists. In this submittal, the State identified the point sources impacting the above waterbodies, and included ICSs for these dischargers. NJDEPE also added the Lower Hudson River to its (B) list, and five dischargers to the Hudson to the (C) list.

On June 8, 1990 EPA issued its intent to approve the (C) listing of the above-referenced dischargers, as well as the addition of the Lower Hudson River to the State's (B) list, and the associated dischargers to the (C) list.

On June 8, 1990 EPA public noticed its intent to approve the above-referenced lists. ICSs for those dischargers to the New York/New Jersey Harbor Complex are currently being developed as outlined in Section III of this notice. Based upon the results of the current effort to develop TMDLs/WLAs for the waters of the New York/New Jersey Harbor Complex, water quality based-effluent limits for the four metals of concern (copper, mercury, lead, and nickel) will be developed and ICSs will be established by September 15, 1994.

III. Schedule for Completion of TMDLs/WLAs for Metals of Concern in the New York/New Jersey Harbor Pursuant to CWA Section 304(l)

The waters of the New York/New Jersey Harbor were included on both the State of New York and State of New Jersey respective January 17, 1990 and February 3, 1990 304(l)(1)(B) lists and the associated point source dischargers were included on the states' (C) lists.

In order to develop technically defensible water quality-based effluent limitations for incorporation into the ICSs, an effort to develop TMDLs and WLAs for the New York/New Jersey Harbor was undertaken through the New York/New Jersey Harbor Estuary Program. A TMDL/WLA Workgroup was formed in May 1990, for the purpose of developing and implementing TMDL/WLA for all metals of concern.

The TMDL/WLA process required the Workgroup to assess all historic ambient and loading data and compare it with present ambient and loading data (collected using clean sampling and analytical techniques); identify the

metals of concern, agree upon a uniform set of criteria for those metals of concern (copper, mercury, lead, and nickel), which resulted in the agreement to develop a site-specific copper criterion for the waters of NY/NJ Harbor; develop a toxic model capable of simulating conditions observed in the Harbor Complex; and develop and implement TMDL/WLAs for copper, mercury, lead, and nickel for the waters of the NY/NJ Harbor complex.

However, as the efforts of the workgroup progressed, it became apparent to EPA and the states that because of the unique technical issues associated with an estuarine system as complex as the Harbor, the development of meaningful TMDLs/WLAs would require a more resource intensive effort than had originally been expected. As a result, the original target date for establishing water quality-based effluent limits for the four metals of concern was not met.

The following is the schedule agreed to by all parties involved, of remaining activities necessary to complete the New York/New Jersey Harbor TMDL/WLA effort. Note that this schedule establishes final ICSs by October 15, 1994. It is the intent of all parties involved, including the states of New York and New Jersey, to develop the necessary water quality-based effluent limits for the four metals of concern in the New York/New Jersey Harbor, in accordance with the following schedule. In addition, EPA is prepared to take action consistent with its legal authority to ensure that appropriate TMDL/WLA and ICSs are developed, established, and enforced for these four metals of concern pursuant to this schedule.

SCHEDULE OF REMAINING ACTIVITIES NECESSARY TO DEVELOP TMDL/WLAS FOR THE WATERS OF NY/NJ HARBOR

Site-specific water quality standard	TMDLs/WLAs	ICSs
	6/93: Begin TMDL/WLA development based on existing standards.	
8/31/93: Final results available for all site-specific copper criteria sampling events.		
9/30/93: Technical Agreement on site-specific criteria	9/30/93: Technical Agreement on TMDL/WLA ..	9/30/93: States begin permit modification process.
	10/31/93: New Copper TMDL based on site-specific criteria.	
11/30/03: New Jersey begins adoption process for site-specific criteria.	11/30/93: Joint Public Notice of TMDLs/WLAs ..	
5/31/94: New Jersey adopts the site-specific criteria.[1]	5/31/94: Public comment period on TMDLs/WLAs is closed.	5/31/94: States issue draft permits.
8/31/94: EPA approves the site-specific criteria for New Jersey.[2]	8/31/94: EPA approves TMDLs/WLAs.[3]	10/15/94: Final permits issued.[4]

[1] Assumes technical support information is available and NJDEPE's adoption process takes only 6 months.
[2] Requires EPA Headquarters depromulgation action which is estimated to take a minimum of 3 months.
[3] Approval may be delayed if unresolved issues are identified during the TMDL/WLA public comment period.
[4] If draft permits are contested, final permit issuance may be delayed.

A more detailed schedule and summary of the TMDL/WLA process may be obtained by contacting Mr. Wayne Jackson at the above-mentioned address.

IV. History of Submissions Pursuant to CWA Section 304(l)(1)(C)

EPA initially interpreted the statute to require states to identify on the "C List" only those facilities that discharge toxic pollutants at levels believed to contribute entirely or substantially to the waters listed as being impaired on the "B List." In *Natural Resources Defense Council* v. *EPA.*, 915 F.2d 1313, 1323–1324 (9th Cir. 1990), the Ninth Circuit Court of Appeals remanded that portion of the regulation and directed EPA to amend the regulation to require the states to identify all point sources, discharging any toxic pollutant regardless of the amount being discharged, that are believed to be preventing or impairing water quality of any stream segment listed on any of the three lists of waters, and to indicate the amount of the toxic pollutant discharged by each source. EPA amended 40 CFR 130.10(d)(3) accordingly. See 57 FR 33040 (July 24, 1992). EPA also amended 40 CFR 123.46 to clarify that ICSs are required only for point sources that discharge to waters identified on the "B list" or "Short List." The effect of this amendment is to clarify that no new ICSs may be required for facilities listed pursuant to the Ninth Circuit court remand, although, as directed by the Ninth Circuit, EPA is reconsidering that decision and is in the midst of rulemaking to determine whether and, if so, to what extent to require ICSs for newly listed point sources. See 57 FR 33051 (July 24, 1992).

Consistent with EPA's amended regulation, New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands have submitted to EPA for approval their listing decisions under section 304(l)(1)(C). EPA has determined that New York, New Jersey, Puerto Rico, and the Virgin Islands have adequately explained the bases for their decisions. Based on the information submitted by the states, EPA has determined that the lists satisfy the requirements of section 304(l)(1)(C) and is public noticing its intent to approve these lists.

EPA bases its proposed decision on the following information: Puerto Rico and New Jersey chose to use the *de minimis* approach to develop their 304(l) "C lists"; New York's listing is based upon the State's updated (A)(ii) list (also known as the 1991 Priority Water Problem Lists) in conjunction with an evaluation of dischargers of toxic pollutants causing water quality impairment and still requiring development of ICSs; the Virgin Islands' "C List" was based on Discharge Monitoring Report (DMR) data correlated with impairment of waterbodies.

EPA solicits public comment on its intent to approve the 304(l)(1)(C) lists, revised as a result of the remand and submitted to EPA by the State of New York, on February 25, 1993, the State of New Jersey on January 15, 1993, the Commonwealth of Puerto Rico on September 13, 1993, and the U.S. Virgin Islands on August 6, 1992.

Dated: September 28, 1993.
William J. Muszynski,
Acting Regional Administrator.
[FR Doc. 93–26897 Filed 11–1–93; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 22, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0106.

Title: Section 43.61, Reports of Overseas Telecommunications Traffic.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Annual reporting requirement and Other: Corrections are reported three months after annual filing.

Estimated Annual Burden: 128 responses; 18.28 hours average burden per response; 2,340 hours total annual burden.

Needs and Uses: The collection of Section 43.61 overseas telecommunications traffic data is necessary for the Commission to fulfill its regulatory responsibilities under the Communications Act of 1934, as amended. The collected data are essential to both the Commission and carriers for international facilities planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. Subject carriers are required to submit their reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent of the reported figure by October 31 pursuant to Section 43.61(d). The data contained in Section 43.61 traffic reports are used by the FCC to determine whether to grant applicants authority under Section 214 of the Communications Act of 1934, as amended. As part of our evaluation under Section 214, we must determine whether competition is feasible in the market(s) sought to be served and whether the competition is in the public interest. We rely on the traffic data submitted to determine the feasibility of competition, i.e., whether there is sufficient traffic to support the applicant common carrier. We also use the data in our facilities planning processes to estimate traffic and market trends in various regions of the world. We further use the collected data to monitor the development and competitiveness of each international market and to gauge the competitive impact of our decisions on the market. Moreover, the data are used to track the growth in net settlement payments and identify instances of particularly rapid growth.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93–26837 Filed 11–1–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Cullman Bancshares Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Cullman Bancshares Employee Stock Ownership Plan, Cullman, Alabama; to acquire an additional 1.6 percent of the voting shares of Cullman Bancshares, Inc., Cullman, Alabama, for a total of 11.19 percent, and thereby indirectly acquire Peoples Bank of Cullman County, Cullman, Alabama.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Carl Dudrey, St. John, Kansas, to acquire 51.1 percent; Pat Laudermilk, Sterling, Kansas, to acquire 16.7 percent; and Jeff and Sheri Laudermilk, Sterling, Kansas; to acquire 2.9 percent of the voting shares of Coronado, Inc., Sterling, Colorado, and thereby indirectly acquire Farmers State Bank in Sterling, Sterling, Colorado.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Carl O. Schatz, Encino, California; to acquire an additional 5.17 percent of the voting shares of Bank of Encino, Encino, California, for a total of 15.09 percent.

Board of Governors of the Federal Reserve System, October 27, 1993.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 93–26870 Filed 11–1–93; 8:45 am]
BILLING CODE 6210–01–F

Gore-Bronson Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice

in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 26, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Gore-Bronson Bancorp, Inc., Prospect Heights, Illinois; to acquire 80 percent of the voting shares of Water Tower Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire Water Tower Bank, Chicago, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Island Financial Corporation, Bird Island, Minnesota; to become a bank holding company by acquiring 93.1 percent of the voting shares of State Bank of Bird Island, Bird Island, Minnesota.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Coastal Bancshares, Inc., Pearland, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Gulf Coast Bancshares, Inc., Alvin, Texas, and thereby indirectly acquire The First National Bank, Alvin, Texas, and Pearland State Bank, Pearland, Texas.

Board of Governors of the Federal Reserve System, October 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-26869 Filed 11-1-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on the Prevention of HIV Infection; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on the Prevention of HIV Infection.

Time and Dates: 8:30 a.m.-5 p.m., November 17-18, 1993

Place: Holiday Inn Peachtree Corners, 6050 Peachtree Industrial Boulevard, NW., Norcross, Georgia 30071.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV prevention efforts including maintaining surveillance of HIV infection and AIDS, the epidemiologic and laboratory study of HIV and AIDS, information/education and risk reduction activities designed to prevent the spread of HIV infection, and other preventive measures that become available.

Matters to be discussed: The committee will review reports of the five subcommittees which conducted an external review of CDC's HIV prevention programs. In-depth discussions will lead to the development of a list of recommendations regarding CDC methods and approaches. In addition, the committee will be updated on actions taken by CDC on recommendations made by the committee during the November 4-5, 1992, meeting. Agenda items are subject to change as priorities dictate.

Contact person for more information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E-40, Atlanta, Georgia 30333, telephone (404) 639-2918.

Dated: October 25, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-26651 Filed 11-1-93; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 93N-0399]

Forest Pharmaceuticals, Inc.; Withdrawal of Approval of Abbreviated New Drug Application for Esgic Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of abbreviated new drug application (ANDA) 89-660 for Esgic Tablets held by Forest Pharmaceuticals, Inc., 3941 Brotherton Rd., Cincinnati, OH 45209 (Forest). After FDA raised questions about the reliability of data and information submitted to FDA in support of this application, Forest requested that FDA withdraw approval of the application.

EFFECTIVE DATE: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-2041.

SUPPLEMENTARY INFORMATION: ANDA 89-660 for Esgic Tablets (acetaminophen 325 milligrams (mg), butalbital 50 mg, and caffeine 40 mg) was submitted on February 24, 1987. The ANDA was approved on December 23, 1988. Recently, FDA raised questions about the reliability of certain data and information submitted to the ANDA. Forest conducted its own review of the data and information and concluded that, although it believes the data and information to be reliable, it could not confirm reliability to FDA's satisfaction. Therefore, without conceding the existence of deficiencies, because the product has not been manufactured under ANDA 89-660 for sale since November 1991 and because Forest has an alternative source of the product under a separate ANDA, Forest has requested that FDA withdraw approval of ANDA 89-660 for Esgic Tablets.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of ANDA 89-660 for Esgic Tablets, and all amendments and supplements thereto, is hereby withdrawn, effective November 2, 1993. Distribution of drug products in interstate commerce without an approved application is unlawful.

Dated: October 17, 1993.

Roger L. Williams,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 93-26836 Filed 11-1-93; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

[OACT-045-N]

RIN 0938-AG41

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1994

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 1994 under Medicare's hospital insurance program (Medicare Part A). The Medicare statute specifies the formulae to be used to determine these amounts.

The inpatient hospital deductible will be $696. The daily coinsurance amounts will be: (a) $174 for the 61st through 90th days of hospitalization in a benefit period; (b) $348 for lifetime reserve days; and (c) $87 for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period.

EFFECTIVE DATE: This notice is effective on January 1, 1994.

FOR FURTHER INFORMATION CONTACT: John Wandishin, (410) 966–6389.

For case mix analysis only: Gregory J. Savord, (410) 966–6384.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires the Secretary to determine and publish between September 1 and September 15 of each year the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year.

II. Computing the Inpatient Hospital Deductible for 1994

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the Secretary's best estimate of the payment weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act). This estimate is used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding calendar year and adjusted to reflect real case mix. The adjustment to reflect real case mix is determined on the basis of the most recent case mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

For FY 1994, section 1886(b)(3)(B)(i)(IX) of the Act, as amended by section 13501 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66, enacted on August 10, 1993), provides that the applicable percentage increase for urban prospective payment system hospitals is the market basket percentage increase minus 2.5 percent, and the applicable percentage increase for rural prospective payment system hospitals is the market basket percentage increase minus 1.0 percent. Section 1886(b)(3)(B)(ii)(V) of the Act, as added by section 13502 of Public Law 103–66, provides that, for FY 1994, the otherwise applicable rate-of-increase percentages (the market basket percentage increase) for hospitals that are excluded from the prospective payment system are reduced by the lesser of 1 percentage point or the percentage point difference between 10 percent and the percentage by which the hospital's allowable operating costs of inpatient hospital services for cost reporting periods beginning in FY 1990 exceeds the hospital's target amount. Hospitals or distinct part hospital units with FY 1990 operating costs exceeding target amounts by 10 percent or more receive the market basket index percentage. The market basket percentage increases for FY 1994 are 4.3 percent for prospective payment system hospitals and 4.3 percent for hospitals excluded from the prospective payment system, as announced in the **Federal Register** on September 1, 1993 (58 FR 46270). Therefore, the percentage increases for Medicare prospective payment rates are 1.8 percent for urban hospitals and 3.3 percent for rural hospitals. The average payment percentage increase for hospitals excluded from the prospective payment system is 3.71 percent, computed as required by section 13502 of Public Law 103–66. Thus, weighting these percentages in accordance with payment volume, the Secretary's best estimate of the payment weighted average of the increases in the payment rates for FY 1994 is 2.04 percent.

To develop the adjustment for real case mix, an average case mix was first calculated for each hospital that reflects the relative costliness of that hospital's mix of cases compared to that of other hospitals. We then computed the increase in average case mix for hospitals paid under the Medicare prospective payment system in FY 1993 compared to FY 1992. (Hospitals excluded from the prospective payment system were excluded from this calculation since their payments are based on reasonable costs and are affected only by real increases in case mix.) We used bills from prospective payment hospitals received in HCFA as of the end of July 1993. These bills represent a total of about 8 million discharges for FY 1993 and provide the most recent case mix data available at this time. Based on these bills, the increase in average case mix in FY 1993 is 0.46 percent. Based on past experience, we expect overall case mix to increase beyond 1 percent as the year progresses and more FY 1993 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be increased only by that portion of the case mix increase that is determined to be real. We estimate that the increase in real case mix is about 1 percent. Since real case mix has been increasing at about 1 percent per year over the last few years, we expect that this trend will continue. Consequently, we will continue to use our estimate of 1 percent for the real case mix increase.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 2.04 percent, and the real case mix adjustment factor for the deductible is 1 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in calendar year 1994 is $696. This deductible amount is determined by multiplying $676 (the inpatient hospital deductible for 1993) by the payment rate increase of 1.0204 multiplied by the increase in real case mix of 1.01 which equals $696.69 and is rounded to $696.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for 1994

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year. Thus, the increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in 1994, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th days of hospitalization in a benefit period will be $174 (¼ of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $348 (½ of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period will be $87 (⅛ of the inpatient hospital deductible).

IV. Cost to Beneficiaries

We estimate that in 1994 there will be about 8.8 million deductibles paid at $696 each, about 3.3 million days

subject to coinsurance at $174 per day (for hospital days 61 through 90), about 1.4 million lifetime reserve days subject to coinsurance at $348 per day, and about 18 million extended care days subject to coinsurance at $87 per day. Similarly, we estimate that in 1993 there will be about 8.5 million deductibles paid at $676 each, about 3.2 million days subject to coinsurance at $169 per day (for hospital days 61 through 90), about 1.3 million lifetime reserve days subject to coinsurance at $338 per day, and about 17 million extended care days subject to coinsurance at $84.50 per day. Therefore, the estimated total increase in cost to beneficiaries is about $590 million (rounded to the nearest $10 million), due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid.

V. Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

Authority: Section 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e(b)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 2, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 26, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–26875 Filed 11–1–93; 8:45 am]

BILLING CODE 4120–01–P

[OACT–043–N]

RIN 0938–AG39

Medicare Program; Part A Premium for 1994 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the hospital insurance premium for calendar year 1994 under Medicare's hospital insurance program (Part A) for the uninsured aged and for certain disabled individuals who have exhausted other entitlement. The monthly Medicare Part A premium for the 12 months beginning January 1, 1994 for these individuals is $245. The reduced premium for certain other individuals as described in this notice is $184. Section 1818(d) of the Social Security Act specifies the method to be used to determine these amounts.

EFFECTIVE DATE: This notice is effective on January 1, 1994.

FOR FURTHER INFORMATION CONTACT: John Wandishin, (410) 966–6389.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare hospital insurance program (Medicare Part A), subject to payment of a monthly premium, of certain persons who are age 65 and older, uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to Medicare Part A. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d) of the Act requires the Secretary to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services performed and for related administrative costs incurred in the following year with respect to individuals age 65 and over who will be entitled to benefits under Medicare Part A. The Secretary must then, during September of each year, determine the monthly actuarial rate (the per capita amount estimated above divided by 12) and publish the dollar amount to be applicable for the monthly premium in the succeeding year. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1). The 1993 premium under this method was $221 and was effective January 1993. (See 57 FR 56918; December 1, 1992.)

Section 1818(d)(2) of the Act requires the Secretary to determine and publish, during September of each calendar year, the amount of the monthly premium for the following calendar year for persons who voluntarily enroll in Medicare Part A.

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium, of certain disabled individuals who have exhausted other entitlement. These individuals are those not now entitled but who have been entitled under section 226(b) of the Act, continue to have the disabling impairment upon which their entitlement was based, and whose entitlement ended solely because they had earnings that exceeded the substantial gainful activity amount (as defined in section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the premium determined under section 1818(d)(2) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Public Law 103–66, enacted on August 10, 1993) amended section 1818(d) of the Act to provide, beginning in calendar year 1994, for a reduction in the monthly premium amount for certain voluntary enrollees. The reduction applies for individuals who are not eligible for social security or railroad retirement benefits but who:

- Had at least 30 quarters of coverage under title II of the Act;
- Were married and had been married for the previous 1- year period to an individual who had at least 30 quarters of coverage;
- Had been married to an individual for at least 1 year at the time of the individual's death and the individual had at least 30 quarters of coverage; or
- Are divorced from an individual who at the time of divorce had at least 30 quarters of coverage and the marriage lasted at least 10 years.

For calendar year 1994, section 1818 (d)(4)(A), as added by section 13508 of OBRA 1993 specifies that the monthly premium that these individuals will pay for calendar year 1994 will be equal to the monthly premium for aged voluntary enrollees reduced by 25 percent.

II. Premium Amount for 1994

Under the authority of sections 1818(d)(2) and 1818A(d)(2) of the Act (42 U.S.C. 1395i-2(d)(2) and 1395i2a(d)(2)), the Secretary has determined that the monthly Medicare Part A hospital insurance premium for the uninsured aged and for certain disabled individuals who have exhausted other entitlement for the 12 months beginning January 1, 1994 is $245.

The monthly premium for those individuals entitled to a 25 percent reduction in the monthly premium for the 12-month period beginning January 1, 1994 is $184.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Premium Rate

As discussed in section I of this notice, the monthly Medicare Part A premium for 1994 is equal to the estimated monthly actuarial rate for 1994 rounded to the nearest multiple of $1. The monthly actuarial rate is defined to be one-twelfth of the average per capita amount that the Secretary estimates will be paid from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in 1994 for individuals age 65 and over who will be entitled to benefits under the hospital insurance program. Thus, the number of individuals age 65 and over who will be entitled to hospital insurance benefits and the costs incurred on behalf of these beneficiaries must be projected to determine the premium rate.

The principal steps involved in projecting the future costs of the hospital insurance program are: (a) Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base; (b) projecting increases in payment amounts for each of the various service types; and (c) projecting increases in administrative costs. Establishing historical Medicare Part A enrollment and projecting future enrollment, by type of beneficiary, is part of this process.

We have completed all of the above steps, basing our projections for 1994 on (a) current historical data and (b) projection assumptions under current law from the Midsession Review of the President's Fiscal Year 1994 Budget, incorporating the provisions of OBRA 1993. It is estimated that in calendar year 1994, 31.557 million people age 65 and over will be entitled to Medicare Part A benefits (without premium payment), and that these individuals will, in 1994, incur $92.843 billion of benefits for services performed and related administrative costs. Thus, the estimated monthly average per capita amount is $245.17 and the monthly premium is $245. The monthly premium for those individuals eligible to pay this premium reduced by 25 percent is $184.

IV. Costs to Beneficiaries

The 1994 Medicare Part A premium is about 11 percent higher than the $221 monthly premium amount for the 12-month period beginning January 1, 1993.

We estimate that there will be, in calendar year 1994, approximately 225,000 enrollees who will voluntarily enroll in Medicare Part A by paying the full premium and who do not otherwise meet the requirements for entitlement. An additional 5,000 enrollees will be paying the reduced premium. The estimated overall effect of the changes in the premium will be a cost to these voluntary enrollees of about $60 million.

V. Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and it does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C 601 through 612) or section 1102(b) of the Act.

Authority: Sections 1818(d)(2) and 1818A(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2) and 1395i-2a(d)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 17, 1993.

Bruce Vladeck,

Administrator, Health Care Financing Administration.

Dated: October 17, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–26876 Filed 11–1–93; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated Licensing Specialist at the Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidentiality Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Genetic Detection of Niemann-Pick Disease Type C

Carstea, E.D., Polymeropoulos, M.H., Parker, C.C., Pentchev, P.G. (NINDS)

Filed 1 Mar 93
Serial No. 08/027,318
Licensing Specialist: Carol Lavrich

The present invention provides DNA diagnostic methods, kits, and primers that are rapid and reliable in detecting a polymorphic nucleic acid sequence linked to the Niemann-Pick Disease Type C gene. Methods for detecting the presence or absence of Niemann-Pick Disease Type C genes in a human patient having a sibling affected by Niemann-Pick Disease Type C are also claimed in this invention. Detection of a polymorphism can confirm with high probability the diagnosis of the disease, identify carriers and affected individuals and allow pre-natal diagnosis. Previous methods are very time consuming and cumbersome such that delays of several months severely limit the utility of them for pre-natal diagnostic procedures.

Cloning and Functional Expression of Cholecystokinin Receptor-Encoding DNA

Wank, S.A. (NIDDK)

Serial No. 08/029,170
Filed 10 Mar 93
Licensing Specialist: Arthur J. Cohn

The present invention provides DNA molecules, isolated from human, rat and guinea pig gastrointestinal and central nervous systems, the encode Cholecystokinin (CCK) receptors proteins. This invention further provides a method for obtaining CCK receptors proteins in a homogeneous form suitable for amino acid sequencing. CCK receptors are distributed throughout the gastrointestinal and central nervous system where they regulate pancreatic and gastric secretion, smooth muscle motility, anxiety and satiety, analgesia and neuroleptic activity. Such CCK receptors proteins may be used to prepare oligonucleotides suitable for cloning CCK receptor genes and also for the transfection of cells to be used for studying receptors' properties. Examples of CCK receptors proteins obtained and sequenced include, but are not limited to, CCK_A and CCK_B/gastrin receptors.

Method for Diagnosis and Therapy of XSCID

Leonard, W.J., Noguchi, M., McBride, W. (NHLBI)

Serial No. 08/031,143
Filed 12 Mar 93
Licensing Specialist: Carol Lavrich

The present invention provides diagnostic kits and methods for detecting X linked severe combined immunodeficiency (XSCID) either in a male patient or diagnosing the carrier status of a female patient. This method consists of amplifying genomic DNA or cDNA synthesized by reverse transcription of mRNA from the patient with Interleukin-2 Receptor Gamma (IL–2Rγ) primers from a normal IL–2Rγ gene and determining whether the patient possesses a mutated IL–2Rγ protein. This invention also claims a method for treating XSCID, a method for monitoring therapy, a promoter which regulates expression of IL–2Rγ, a vector with the IL–2Rγ gene linked to a promotor, a prokaryotic or eukaryotic cell host stably transformed or transfected with the vector, and a transgenic animal with a gene regulated by the promotor or a transgenic animal with a mutuant IL–2Rγ gene.

Method of Forming Three-Stranded DNA

Camerini-Otero, R.D., McIntosh, M., Camerini-Otero, C.S. (NIDDK)

Serial No. 08/041,341
Filed 1 Apr 93
Licensing Specialist: Arthur J. Cohn

Improved methods of cleaving double-stranded DNA at specific sites, identifying specific DNA sites, identifying specific DNA sequences, protecting double-stranded DNA from cleavage, or inhibiting transcription of a specific gene sequence present on one strand of a double-stranded DNA molecule offer a new means for constructing a three-stranded DNA molecule. Previous attempts to construct molecules that can accomplish all of these tasks have been confounded by substantial DNA or protein sequence interaction. It is believed that the claimed methods, along with composition claims of a related patient application, have potential application in antisense drug therapy for treatment of certain types of cancer, inflammatory and cardiovascular diseases, immunological diseases, as well as, viral, fungal, and bacterial infections.

Gibbon APE Leukemia Virus-Based Retroviral Vectors

Eiden, M.V., Wilson, C.A., Deacon, N.J., Hooker, D.J. (NIMH)

Serial No. 08/043,311
Filed 25 May 93
Licensing Specialist: Carol Lavrich

New replication-defective retroviral vectors have been discovered to provide the minimal DNA sequences required for efficient packaging of a Gibbon Ape Leukemia Virus-based defective genome. These retroviral vectors consist of an improved envelope, core, and defective genome, where at least one of which is derived from GaLV, to utilize the minimal cis acting sequences from GaLV that allow packaging of the defective genome in a hybrid virion. These retroviral vectors are suitable for delivering a variety of polynucleotides to cells, including transgenes for augmenting, or replacing endogenous genes in gene therapy or for the production of transgenic animals. These GaLV-based replication-defective hybrid virions are as safe as murine retroviral vectors and provide a safe vehicle for delivery of genes for human gene therapy. The vectors may be used for gene therapy to treat congenital genetic diseases, acquired genetic diseases (e.g., cancer), viral diseases (e.g., AIDS, mononucleosis, herpesvirus infection) or to modify the genome of selected types of cells of a patient for any therapeutic benefit.

Semi-Automated Cell Bioassay for Detection of Saxitoxins, Brevetoxins, and Ciguatoxins

Manager, R.L., Leja, L.S., Lee, S.Y., Hungerford, J.M., Wekell, M.M. (FDA)

Serial No. 08/045,067
Filed 12 Apr 93
Licensing Specialist: Arthur J. Cohn

This invention details a rapid and simplified tissue culture test method for the detection of hazardous marine toxins, such as saxitoxins, brevetoxins, and ciguatoxins, occasionally present in consumable finfish and shellfish. The present invention, which will be very useful in the seafood industry, is a cell bioassay wherein a colorimetric method, which requires only minimal processing, provides results that can be read either visually or on a standard multiwell scanning spectrophotometer. This technology is parallel to and a replacement for the mouse bioassay currently used in the detection of neurotoxins with significantly improved sensitivity in the order of 10,000 times. In addition, this bioassay can be effected within four to six hours of exposure to the toxin, as compared to the 24–48 hour response period required in the mouse bioassay.

Use of Neuro-Derived Fetal Cell Lines for Transplantation Therapy

Major, E.O., Tornatore, C.S., Bankiewicz, K. (NINDS)

Serial No. 08/046,527
Filed 13 Apr 93
Licensing Specialist: Arthur J. Cohn

This invention provides a method for treating a variety of neurological disorders, such as, Parkinsonism, Alzheimer's disease, Huntington's chorea, multiple sclerosis, and brain tumors, wherein a patented immortalized human neuro-derived fetal cell line is implanted into the affected host. This cell line is derived from human fetal astrocytes (ex: SVG). These cells may be transfected with DNA sequences encoding physicologically active peptides and may be implanted in the central nervous system. This method of cell transplant therapy overcomes difficulties of infectious contamination, the potential rise of tumor growth, and the continuous need for primary tissue which accompany other forms of therapeutic transplantations. Studies have been conducted on rhesus monkeys wherein cells were successfully transplanted without signs of inflammation.

Method for Treating Acne

Peck, G.L. (NCI)

Serial No. 08/047,007 (FWC of 07/735,113 [ABAN])
Filed 15 Apr 92
Licensing Specialist: Carol Lavrich

This method offers an improved treatment schedule for treating acne with 13-cis-retinoic acid and its derivatives. Currently available drugs for the treatment of acne are ineffective in many cases an have severe side effects such as nose bleeds, weight loss, hair loss, and liver toxicity that restrict their usefulness. Even the most severe cases of acne have responded to 13-cis-retinoic acid and its derivatives. 13-cis-retinoic acid, tradename Acutane, is a teratogen and does have some severe side effects. This method reduces these side effects by decreasing the total dose administered to patients.

Cell Test for Alzheimer's Disease

Alkon, D.L., Etcheberrigaray, R., Ito, E., Gibson, G.E. (NINDS)

Serial No. 08/056,456
Filed 3 May 93
Licensing Specialist: Arthur J. Cohn

The present invention offers a method for the diagnosis of Alzheimer's disease (AD) using patient cells, particularly fibroblasts, but also including a variety of other cell types including blood cells, mucosal cells, and smooth muscle cells. Using a fluorescent calcium ion indicator and a fluorimeter, this method detects differences between potassium channels in cells from an Alzheimer's patient and normal donors, as well as detecting differences between Alzheimer's and normal cells in response to chemicals known to

increase intracellular calcium levels. As there is no definitive test for AD to date, this invention fulfills the present need for a laboratory diagnostic test which rapidly and clearly distinguishes between Alzheimer's patients and patients suffering from other neurodegenerative diseases.

Highly Potent and Selective A_2 Adenosine Receptor Antagonists

Jacobson, K.A., Karton, Y., Gallo-Rodriguez, C., Fischer, B., van Galen, P.J.M., Maillard, M. (NIDDK)

Serial No. 08/057,086
Filed 3 May 93
Licensing Specialist: Arthur J. Cohn

The present invention provides 8-substituted 1,3,7-trialkyl xanthines and methods for using the same as highly potent antagonists specific for A_2 adenosine receptors. These novel A_2 receptor antagonists offer a method for studying these receptors as well as for treating Parkinson's disease and other diseases of the central nervous system (CNS). These new compounds offer an improvement over other A_2 receptor antagonists by providing increased potency and specificity.

An Improved Simple Method of Detecting Isocyanate

Streicher, R.P. (NIOSH)

Serial No. 08/059,810
Filed 10 May 93
Licensing Specialist: John Fahner-Vihtelic

This invention provides a rapid and simple method for detecting the presence of total isocyanates in a sample (i.e., air). Isocyanate is detected by contacting an isocyanate derivatizing reagent having the formula R-R' wherein R is 9-anthracenylemthyl or a derivative thereof and R' is 1,4-piperazinyl or a derivative thereof with the sample. Detection of the reaction produce is made by HPLC combined with absorbance and/or fluorescence measurements.

Alpha-1-Antitrypsin Expression Vectors Useful in Genetic Therapy

Brantly, M., Laubach, V. (NICHD)

Serial No. 08/060,925
Filed 6 May 93
Licensing Specialist: Arthur J. Cohn

The present invention provides an isolated DNA molecule encording human alpha-1-antitrypsin (AAT), as well as a method of treating a mammal having a disease associated with AAT deficiency, such as emphysema and cystic fibrosis. The present invention offers marked advantages over previous means in having a synthesized gene that is capable of expressing high levels of the alpha-1-antitrypsin protein on the order of 3-10 fold greater than cDNA, while remaining small enough to fit in a retrovial or adenoviral shuttle vector. Genomic DNA is too large to fit within these viral vectors. It is expected that this invention will be useful in *in vivo* or *ex vivo* treatment of AAT deficiencies, such as the liver and respiratory diseases which accompany the disorder.

Methods of Treating Autoimmune Disease and Transplantation Rejection

Singer, D.S., Kohn, L.D. Mozes, E., Saji, M. (NCI)

Serial No. 08/073,830
Filed 7 Jun 93
Licensing Specialist; Carol Lavrich

Methods for supperssing the expression of the major histocompatibility complex (MHC) Class I molecules by administering either methimazole, methimazole derivatives, carbimazole, propylthiouacil, thionamides, thiourelylenes, thioureas and thiourea derivatives offer a new tool for treating and preventing autoimmune diseases. These compounds can be used to treat diseases such as rheumatoid arthritis, psoriasis, juvenile diabetes, primary idiopathic myxedema, myasthenia gravis, scleroderma, De Quervains thyroiditis, systemic lupus erythematous dermatomyositis, polyarterities nodosa, and polymyositis. This invention also provides the means for inhibiting transplantation rejection in humans. Also provided are *in vivo* and *in vitro* means for assessing and developing drugs capable of suppressing the MHC Class I molecules.

Methods and Use of Camp Inducible Promoters

Kimmel, A.R., Louis, J.M. (NIDDK)

Serial No. 08/086,597
Filed 1 Jul 93
Licensing Specialist: Carol Lavrich

This invention presents an eukaryotic expression system which is efficient, inducible, and shows enhance resistance to the cytotoxic effects of recombinant produced foreign proteins in the host cells. This invention provides *Dictyostelium discoideum* derived inducible promoters regulated by cyclic adenosine monophosphate (cAMP). These eukaryotic promoters may be linked to a wide variety of nucleic acid sequences. Recombinant protein production may be induced up to 5% or more of the cell's total protein. This expression system and promoter overcome the cost and efficiency limitations associated with other expression systems. Methods, compositions, and kits for inducible recombinant protein synthesis are claimed in this invention.

A_3-Adenosine Receptor Agonists and Antagonists

van Galen, R.J.M., Jacobson, K.A., Gallo-Rodriguez, C. (NIDDK)

Serial No. 08/091,109
Filed 13 Jul 93
Licensing Specialist: Arthur J. Cohn

The present invention provides for compounds and pharmaceutical compositions which have been found to be selective A_3-adenosine receptor agonists and antagonists, pharmaceutical compositions containing such compounds, and related treatment methods and assay methods. The limited distribution of the A_3-receptor provides a basis for predicting that A_3-selective compounds may be more useful than compounds selective for other, ubiquitous, adenosine receptors. It is believed that A_3-selective compounds may have utility in *in vivo* therapeutic and prophylactic treatment of cardiac disease, infertility, kidney disease, and central nervous systems disorders. In addition, the compounds of the present invention can be utilized *in vitro* in the study of A_3 adenosine receptors.

Dated: October 21, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93-26922 Filed 11-1-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on November 22, 1993, Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, Maryland.

The meeting will be open to the public on November 22, from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available.

The meeting will be closed to the public on November 22, from 9 a.m. to adjournment in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Theresa Lo, Scientific Review Administrator, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, Room 406, Bethesda, Maryland 20892, (301) 594–9979.

Ms. Suzanne Anthony, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, Room 4C32, Bethesda, Maryland 20892, 301–496–0803, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.846, project grants in arthritis, muscloskeletal and skin diseases research, National Institutes of Health)

Dated: October 27, 1993.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 93–26919 Filed 11–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting: the National Kidney and Urologic Diseases Advisory Board and the Research Subcommittee and the Health Care Issues Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on November 21–22, 1993. The Research Subcommittee and the Health Care Issues Subcommittee will be held on Sunday, November 21 from 7 p.m. to recess and November 22, from 8 a.m. to approximately 12 noon, to discuss future kidney related activities. The full Board meeting will be held November 22 from 1:30 p.m. to approximately 5 p.m., to discuss future activities, report on the FY 1994 NIH/NIDDK budget and the 1994 Annual Report. All meetings will be held at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814. The meeting will be open to the public, but limited to space available.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, at least two weeks prior to the meeting date. In addition, his office will provide a membership roster of the Board and an agenda and summaries of the meetings.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: October 26, 1993.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 93–26920 Filed 11–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meeting of the Calcium Hypothesis of Aging and Dementia Conference

Notice is hereby given of the Conference on Calcium Hypothesis of Aging and Dementia, December 15–17, 1993, to be held at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland. This meeting will be open to the public on Wednesday, December 15, 1993, from 8 a.m. to 5 p.m. for the morning session, Theoretical Perspectives, and the afternoon session, Molecular Studies of the Calcium Channel.

The meeting will be open again on Thursday, December 16, 1993 from 8 a.m. to 5 p.m. with the morning session focusing on Calcium Currents and Intracellular Processes and the afternoon session, Calcium in Learning, Plasticity and Aging.

The meeting will be open Friday, December 17, 1993 from 8 a.m. to 2 p.m. for the session, Calcium-Mediated Processes in Neuronal Degeneration. Attendance by the public will be limited to space available.

Mrs. Nancy Rosztoczy, Neuroscience and Neuropsychology of Aging Program, Natural Institutes of Health, National Institute on Aging, Gateway Building, Suite 3C307, 7201 Wisconsin Avenue, Bethesda, Maryland 20892, (301) 496–9350, will provide a list of speakers and their topics upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Rosztoczy at (301) 496–9350 in advance of the meeting.

Dated: October 25, 1993.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 93–26921 Filed 11–1–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–3677; FR–3582–N–01]

Modification of Environmental Comment Period for Presidentially Declared-Disaster Areas

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The U. S. Department of Housing and Urban Development has determined that the comment periods prescribed for environmental assessments and reviews in 24 CFR part 58 are inappropriate for projects in Presidentially-declared Disaster Areas when funds are needed on an immediate emergency basis. Under the authority of section 301 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Department is modifying the timing of the release of funds by combining the comment periods allowed for local comment and objections to HUD. The Department intends to amend part 58 to reflect this modification at the earliest feasible opportunity.

EFFECTIVE DATE: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Leroy P. Gonnella, Director, Environmental Review Division, Department of Housing and Urban Development, room 7250, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1201; the telecommunications device for the deaf (TDD) telephone number is (202) 708–2565. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Modification

Under the authority of section 301 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5141; hereafter referred to as "Stafford Act"), this Notice modifies the environmental comment periods required by 24 CFR part 58 in

Presidentially-declared Disaster Areas when the funds are needed on an emergency basis. This modification will reduce the waiting periods required by §§ 58.45 and 58.73 by 15 days, and allow activities to commence in a more timely fashion.

HUD's environmental regulations in 24 CFR part 58 implement HUD's statutory authority to provide that grant recipients under certain assistance programs —the Community Development Block Grant program, HOME program, Rental Rehabilitation program, Housing Development Grant program, and certain programs under the Stewart B. McKinney Homeless Assistance Act—assume the responsibility for environmental review, decisionmaking and action that otherwise would be HUD's responsibility under the National Environmental Policy Act and related laws and authorities. The statutes in question require that HUD (or, for certain State-administered programs, the State) release project funds only if the recipient submits a request for release of funds (RROF) accompanied by a certification that the recipient has fully carried out its environmental responsibilities.

Part 58 sets forth a recipient's environmental responsibilities, and requires the publication of notices and the opportunity for public comment in connection with the environmental review and the RROF. Section 58.45 requires that the recipient provide the public with a minimum 15 day comment period from the time it publishes a notice of finding of no significant impact (FONSI); 7 day comment period from publication of a notice of intent to request release of funds; or 15 day comment period where these notices are combined or published concurrently. Under part 58, these time periods must close before the recipient may submit a RROF. In addition, a separate, subsequent 15 day period for receipt of objections is required between the time a recipient submits its RROF and the time that HUD (or the State) may approve the release of funds.

In accordance with section 301 of the Stafford Act, HUD has determined that it is necessary to modify the above comment periods to run concurrently, upon receipt of a request by a State or unit of general local government, when adherence to consecutive comment periods would prevent the giving of assistance needed on an immediate emergency basis as the result of a Presidentially-declared disaster with respect to funds to be used in the disaster area. Where such a request is made, the notice of FONSI and notice of intent to request release of funds may be published simultaneously with the submission of the RROF, and the HUD/State 15 day waiting period will run simultaneously with the comment periods on the notice of FONSI and notice of intent to request release of funds. The notice of intent to request release of funds shall state that the RROF is being made simultaneously with the publication of the notice of intent to request release of funds under the authority of section 301 of the Stafford Act for the use of funds in a Presidentially-declared Disaster Area that are needed on an immediate emergency basis. In addition, the notice of intent to request release of funds shall also invite commenters to submit their comments to both HUD and the government publishing the notice to assure that these comments receive full consideration.

The RROF shall state that: (1) The recipient is requesting application of the consolidated comment periods, pursuant to this notice and section 301 of the Stafford Act, and (2) the RROF is being made simultaneously with the publication of notices required under 24 CFR part 58. In addition, in the RROF, the recipient shall certify that the funds are needed on an immediate emergency basis for use in a Presidentially-declared Disaster Area, and that the recipient has documentation supporting this certification.

Finally, in accordance with the Council on Environmental Quality (CEQ) regulations (40 CFR 1507.3), the Department has consulted with the CEQ concerning the modifications contained in this notice. The Department did not receive any objections regarding this notice from the CEQ.

II. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this notice modifies environmental requirements for recipients of HUD assistance for activities and projects in Presidentially-declared Disaster areas.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule has potential for significant impact on family formation, maintenance, and general well-being. Under this notice, families in Presidentially-declared disaster areas may receive the benefit of disaster funds used in a Presidentially-declared Disaster Area 15 days earlier then under usual HUD requirements. However, since any impact on the family will be beneficial, no further review is considered necessary.

Dated: October 20, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 93–26916 Filed 11–1–93; 8:45 am]

BILLING CODE 4210–29–P

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. D–93–1039; FR–3597–D–01]

Redelegation of Authority for the Issuance of Waivers of Office of Housing Directives

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Housing-Federal Housing Commissioner is redelegating to all HUD Field Office Managers, and in Category D field offices or co-located offices, where the HUD Regional Office and HUD Field Office are located together, and there is no Field Office Manager, to the Director of the Office of Housing for that Region, the authority to issue waivers of Office of Housing directives.

EFFECTIVE DATE: October 26, 1993.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Office of Management Services, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202)

708–1694. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. Law 101–235, approved December 15, 1989) (HUD Reform Act), amended section 7 of the Department of Housing and Urban Development Act (42 U.S.C. 3535) (HUD Act) by adding section 7(q), governing circumstances upon which the Department may issue waivers of regulations and handbooks. With respect to handbooks, section 7(q)(4) stated that a waiver of a provision of a handbook must:

(A) Be in writing;

(B) Specify the grounds for approving the waivers; and

(C) Be maintained in indexed form and made available for public inspection for not less than the 3-year period beginning on the date of the waiver.

On April 22, 1991, at 56 FR 16337, HUD published a Statement of Policy implementing Section 106 of the HUD Reform Act. The notice stated that although new section 7(q)(4) of the HUD Act only addressed "handbooks", HUD would apply this term to all of the Department's directives in order to give section 7(q)(4) "the widest possible coverage." Therefore, the term "directive" was defined in the notice as follows:

> Directive means a Handbook (including a change or supplement), notice, interim notice, special directive, and any other issuance that the Department may classify as a directive.

HUD's Statement of Policy also indicated that the authority to waive directives may be delegated to any officer or employee in the issuing official's organization, as well as to any officer or employee in a Field or Regional Office. This Statement of Policy, therefore, effectively delegated to each Assistant Secretary, the official responsible for issuing directives, the authority to waive directives.

The current process of reviewing waiver requests in headquarters frequently adds an unnecessary layer to a procedure that can be adequately carried out at the field level. Officials in the field are often best situated to assess, and react promptly to, requests for relief from administrative requirements of general application, where specific circumstances, unanticipated under the directive, warrant a departure from the ordinary standard.

Therefore, in keeping with the stated objectives of the Secretary of Housing and Urban Development to improve the efficiency and enhance the productivity of the Department, the Assistant Secretary for Housing-Federal Housing Commissioner is redelegating the authority to waive Office of Housing directives to all Field Office Managers, and in Category D field offices or co-located offices, where the HUD Regional Office and HUD Field Office are located together, and there is no Field Office Manager, to the Director of the Office of Housing for that Region, effective immediately. These Field Office Managers or Regional Housing Directors must comply with the policies and procedures for waiving directives set out in the Statement of Policy.

This redelegation of the authority does not except any housing program or program components. If, however, the Assistant Secretary elects at a later time to except a new program, the redelegation accompanying the new program will state that the authority to waive directives concerning this program is not redelegated. Also, the Assistant Secretary may at a later time elect to modify or withdraw in its entirety the authority to waive directives redelegated herein.

Before the Field Office Manager or Regional Housing Director reviews a request for a waiver of a directive, the Field Office Manager or Regional Housing Director will consult with HUD counsel in the field office or regional office and request written approval that the directive at issue is one that can be lawfully waived. For example, a directive which restates provisions of a regulation cannot be waived by a Field Office Manager or Regional Housing Director. Finally, Field Office Managers or Regional Housing Directors must observe internal control procedures designed to prevent fraud, waste and mismanagement.

Field Office Managers or Regional Housing Directors will be required to submit a copy of each waiver justification to headquarters. This is so because HUD is required by statute to maintain a record of all such waivers and make them available for public inspection. (Records will continue to be maintained by the Departmental Directives Management Officer). The Office of Housing will periodically review all waivers (at least quarterly) to assess such matters as (a) whether a particular directive (or provision thereof) warrants revision (because, for example, the exception should become the rule), and (b) whether there is consistency.

Accordingly, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates as follows:

Section A. Authority Redelegated.

The Assistant Secretary for Housing-Federal Housing Commissioner delegates to all HUD Field Office Managers, and in Category D field offices or co-located offices, where the HUD Regional Office and HUD Field Office are located together, and there is no Field Office Manager, to the Director of the Office of Housing for that Region, the authority to issue waivers of Office of Housing directives.

Section B. No Further Redelegation.

The authority granted to Field Office Managers or Regional Housing Directors under this redelegation may not be further redelegated pursuant to this redelegation.

Authority: Sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), and sec. 7(q), Department of Housing and Urban Development Act (42 U.S.C. 3535(q)).

Dated: October 26, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–26915 Filed 11–1–93; 8:45 am]

BILLING CODE 4210–27–PIN

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–57698]

Realty Action: Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/Purchase.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Our Lady of Victory Catholic Church purposes to use the land for a church facility.

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E., M.D.M.
Sec. 14: W½NE¼NW¼NE¼NW¼,
E½NW¼NW¼NE¼NW¼,
E½SW¼NW¼NE¼NW¼,
W½SE¼NW¼NE¼NW¼.

Containing 5.00 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the

Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 954).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. An easement 50.00 feet in width along the northern boundary in favor of Clark County for roads, public utilities and flood control purposes.

2. Those rights for underground cable purposes which have been granted to Sprint Central Telephone Company by Permit No. N–5238 the under the Act of February 15, 1901.

3. Those rights for public access road purposes which have been granted to Clark County by Permit No. N–42999 the under the Act of October 21, 1976.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: October 21, 1993.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 93–26838 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–HC–M

[WY–920–41–5700; WYW126680]

Proposed Reinstatement of Terminated Oil and Gas Lease

October 25, 1993.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW126680 for lands in Lincoln 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 rental and royalties at rates of $10.00 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 WYW126680 effective May 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 93–26884 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW116226]

Proposed Reinstatement of Terminated Oil and Gas Lease

October 25, 1993.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW116226 for lands in Park 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 $5.00 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 WYW116226 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Theresa M. Stevens,

Acting Supervisory Land Law Examiner.

[FR Doc. 93–26885 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW116292]

Proposed Reinstatement of Terminated Oil and Gas Lease

October 25, 1993.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW116292 for lands in Park 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 $5.00 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 WYW116292 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Theresa M. Stevens,

Acting Supervisory Land Law Examiner.

[FR Doc. 93–26887 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

Availability of the Damage Assessment Plan, Injury Determination Phase for the Coeur d'Alene Basin Natural Resource Damage Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 60 day comment period.

SUMMARY: Notice is given that the document entitled, "Coeur D'Alene Basin Natural Resource Damage Assessment Plan, Injury Determination Phase" (The Plan) will be available for public review and comment on or about November 1, 1993. The U.S. Department of the Interior, Coeur d'Alene Tribe, and

the USDA Forest Service are trustees for natural resources considered in this assessment, as per sub-part G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600 and Executive Order 12580.

The trustees are undertaking the injury determination phase on an assessment of suspected damages to the natural resources of the Coeur d'Alene Basin which have been exposed to hazardous substances associated with mining activities. It is suspected that this exposure has caused injury and resultant damages to trustee resources which will be assessed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended.

The trustees are following the guidance of the Natural Resource Damage Assessment Regulations (the regulations) found in 43 CFR part 11 (1988), as modified by *Ohio* v. *Department of the Interior* 880 F2d. 432 (DC Cir. 1989). The public review of The Plan announced by this notice is provided for in 43 CFR 11.32(c) of the regulations.

Interested members of the public are invited to review and comment on The Plan. Copies are available for review at many community libraries in the Coeur d'Alene Basin, or one may obtain a copy from trustee offices in the Coeur d'Alene area. All written comments will be considered by the trustees, and included in the Report of Assessment, at the conclusion of this damage assessment process.

DATES: Comments must be submitted by January 3, 1994.

ADDRESSES: Requests for copies of The Plan may be made to:

U.S. Fish and Wildlife Service, 1201 Ironwood Drive, Coeur d'Alene, ID 83814

Coeur d'Alene Tribe, 424 Old Sherman Avenue, suite 306, Old City Hall, Couer d'Alene, ID 83814

Bureau of Land Management, 1808 N. 3rd Street, Coeur d'Alene, ID 83814

USDA Forest Service, 200 East Broadway, P.O. Box 7669, Missoula MT, 59807

Comments on the plan should be sent to the Coeur d'Alene Tribe at the address listed above. The tribe will then be providing copies of all comments to the other trustees.

SUPPLEMENTARY INFORMATION: Plans for the Injury Quantification and Damage Determination phases will be offered separately for public review and comment at a later date. Separating the phases of the damage assessment plan for individual treatment allows the trustees to work on the assessment in a logical progression, consistent with the regulations.

Dated: October 21, 1993.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 93-26534 Filed 11-1-93; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), U.S. Department of the Interior.

ACTION: Notice of the availability of environmental documents prepared for Outer Continental Shelf (OCS) minerals exploration proposals on the Alaska OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's) prepared by the MMS for oil and gas exploration activities proposed on the Alaska OCS. This listing including all proposals for which FONSI's were prepared by the Alaska OCS in the 6-month period preceding this Notice.

Proposal

During 1992, ARCO conducted an exploratory oil and gas drilling program at the Kuvlum Prospect; tests on the well revealed the presence of hydrocarbons. ARCO proposes to drill two additional wells to determine the development potential of the prospect. The operations that have already been approved through 1993 include the use of the Beaudril Kulluk floating drilling platform and four ice-management vessels to drill up to two holes per year. ARCO's revised exploration plan (EP) is for the same or similar vessels, but includes six additional lease blocks and would locate one of the 1993 wells on an additional block.

LOCATION

Lease	Blocks
OCS-Y-0866	NR 6-4 673
-0867	674
-1102	717
-0877	718
Additional leases	
-0851	628
-1588	671
-0865	672
-1594	716
-0878	719
-1105	762
EA Number: EA No. AK 93-01.	
FONSI Date: April 26, 1993	

Proposal

This EA concerns a request by ARCO Alaska, Inc. to drill a glory hole and modify an oil exploration program at the Kuvlum Prospect on the OCS of the Beaufort Sea. The original EP proposed the drilling of up to three wells. One well was drilled during 1992; tests on the well revealed the presence of hydrocarbons. In 1993, ARCO proposed to expand the drilling area and to conduct additional geophysical (seismic) exploration in the surrounding area. ARCO conducted seismic exploration until early September, drilled well No. 2 by mid-September, and is presently drilling well No. 3. ARCO now proposes further expansion of the exploration area and the drilling of a fourth well.

LOCATION

Lease	Block(s)
OCS-Y-0851	NR 6-4 628
-1588	671
-0865	672
-0866	673
-0867	674
-1594	716
-1102	717
-0877	718
-0878	719
-1105	762
Additional lease	
-1597	760
EA Number: EA No. AK 93-02.	
FONIS Date: October 5, 1993.	

FOR FURTHER INFORMATION CONTACT: Person interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the Alaska OCS regional office of MMS.

The FONSI's and associated EA's are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, room 502, Anchorage, Alaska 99508-4302, phone: (907) 271-6435.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for

proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is use as a basis for determining whether or not approval of the proposals constitute major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for the finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents, required under the NEPA regulations.

Dated: October 21, 1993.

Roger W. Klepinger,

Acting Regional Director, Alaska OCS Region.

[FR Doc. 93–26928 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 23, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by November 17, 1993.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Baxter County

Big Flat School Gymnasium, Co. Rd. 121 S of jct. with AR 14, Big Flat, 93001255

Cleburne County

Crosby, Dr. Cyrus F., House, 202 N. Broadway St., Heber Springs, 93001258

Frauenthal, Clarence, House, 210 N. Broadway St., Heber Springs, 93001256

Hempstead County

Ethridge House, 511 N. Main St., Hope, 93001259

Logan County

Farmers and Merchants Bank—Masonic Lodge, 288 N. Broadway, Booneville, 93001257

Logan County Jail, Old, 204 N. Vine St., Paris, 93001254

Madison County

Madison County Courthouse, 1 Main St., Huntsville, 93001253

Pulaski County

Cook House, 116 W. 7th St., North Little Rock, 93001250

First Presbyterian Church Manse, 415 N. Maple St., North Little Rock, 93001251

Hodge—Cook House, 620 N. Maple St., North Little Rock, 93001252

Park Hill Fire Station and Water Company Complex, 3417–3421 Magnolia St., North Little Rock, 93001248

Rapillard House, 123 W. 7th St., North Little Rock, 93001249

CONNECTICUT

Hartford County

Simpson, Dr. Frank T., House, 27 Keney Terr., Hartford, 93001246

Litchfield County

Haystack Mountain Tower, 43 North St., Norfolk, 93001244

Mount Tom Tower, Off US 202 SE of Woodville, Mount Tom State Park, Towns of Morris, Litchfield and Washington, Woodville vicinity, 93001247

Topsmead, 25 and 46 Chase Rd., Litchfield, 93001243

New Haven County

Wallingford Center Historic District, Roughly, Main St. from Ward St. to Church St., Wallingford, 93001242

Wallingford Railroad Station, 51 Quinnipiac St. (37 Hall Ave.), Wallingford, 93001245

[FR Doc. 93–26835 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act; Correction

On August 31, 1993, the Office of Surface Mining Reclamation and Enforcement published in the **Federal Register** (58 FR 45917) a proposal for the collection of information for 30 CFR part 784 relating to the minimum requirements for reclamation and operation plans in underground mining permit applications. Some of the data in the notice was incorrect.

The following are the corrected figures for 30 CFR part 784.

OMB Number: 1029–0039

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Underground Coal Mining Operators

Estimated Completion Time: 33 hours

Annual Responses: 3,079

Annual Burden Hours: 81,840

Bureau clearance officer: John A. Trelease, (202) 343–1475

Dated: October 28, 1993.

Gene E. Krueger,

Chief, Division of Abandoned Mine Land Reclamation.

[FR Doc. 93–26941 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 399]

Cost Recovery Percentage

AGENCY: Interstate Commerce Commission.

ACTION: Publication of the Cost Recovery Percentage.

SUMMARY: Section 202 of the Staggers Rail Act of 1980 requires the Commission to calculate an annual cost recovery percentage (CRP) for all railroad traffic. The CRP is a revenue to variable cost percentage calculated using Uniform Railroad Costing System (URCS) railroad unit costs and a statistical sample (the I.C.C. Waybill Sample) of railroad traffic. If the CRP falls between 170% and 180% it becomes the jurisdictional threshold for rate regulation of market dominant traffic. The Commission finds that it is not possible to calculate a CRP for 1994 because 1992 railroad revenues, upon which the calculation was based, did not exceed total 1992 costs. Therefore, the jurisdictional threshold applicable to calendar year 1994 remains at 180%.

EFFECTIVE DATE: This decision is effective December 2, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas A. Schmitz, (202) 927–5720; or H. Jeff Warren, (202) 927–6242. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10709, 5 U.S.C. 553.

Decided: October 25, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 93–26882 Filed 11–1–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registraton—Penick Corporation

Correction

In notice document 93–22843 appearing on page 48898 in the issue of Monday, September 20, 1993, the last sentence should read "the Director hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted with the exception of Methylphenidate".

Dated: October 26, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–26881 Filed 11–1–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last publication. These entries may include new collections, revisions, extensions, or reinstatements, if applicable. 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/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

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 included in each notice may be obtained by calling the Department Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items included in each notice should be directed to Mr. Mills, Office of Information Resources Management Policy, 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 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Assistant Secretary for Administration and Management

Directorate of Personnel Management

DOL Exit Survey

1225–0052

400 respondents; 15 minutes per response; 100 total hours; 1 form

Individuals or households

Voluntary

This survey is designed to collect data on reasons why employees leave the Department of Labor (DOL) which can be analyzed by target groups; and to identify the most effective recruitment efforts. About 400 former DOL employees annually will be requested to participate in this voluntary survey.

Extension

Employment and Training Administration

Claims and Payments Activities

1205–0010; ETA 5159

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 5159	States (Reg)	53	Monthly	2 hours 45 minutes.
ETA 5159	States (EB)	2	6 times	1 hour 45 minutes.
ETA 5159	States (STC)	11	6 times	1 hour.

1,836 total hours

This information collection provides the basic workload information on claims-taking and payment activities under State/Federal unemployment insurance laws, and the promptness of first payments for total unemployment. Counts of claims-taking and benefit payment activities are used in budget preparation, personnel assignment, actuarial and program research, and for accounting to Congress and the public.

Signed at Washington, DC this 28th day of October, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–26926 Filed 11–1–93; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Mountain Coal Company

[Docket No. M–93–273–C]

Mountain Coal Company, 555 Seventeenth Street, Denver, Colorado 80202 has filed a petition to modify the application of 30 CFR 75.360(b)(5) (preshift examination) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to install a

monitoring system inby the seals to continuously monitor for methane, carbon monoxide, oxygen and the direction of air movement instead of conducting preshift examinations at the seals. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Consolidation Coal Company

[Docket No. M–93–274–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Marion County, West Virginia. Due to hazardous roof conditions in the return air course from the No. 10 Seal in 6 Left 6 South to the No. 1 Seal in 7 Left 6 South, the area cannot be traveled safely. The petitioner proposes to establish airway check points to monitor for methane and the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Consolidation Coal Company

[Docket No. M–93–275–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Marion County, West Virginia. Due to hazardous roof conditions in the return air course from the 3 North seals to 2½ North seals and returning to Sugar Run return air shaft, the area cannot be traveled safely. The petitioner proposes to establish airway check points to monitor for methane and the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Double "B" Mining, Inc.

[Docket No. M–93–276–C]

Double "B" Mining, Inc., P.O. Box 280, Tracy City, Tennessee 37387 has filed a petition to modify the application of 30 CFR 75.333(g) (ventilation controls) to its Mine No. 24 (I.D. No. 40–00577) located in Sequatchie County, Tennessee. Due to roof falls and gob, certain areas of the mine are inaccessible and cleanup of the areas would be unsafe. The petitioner proposes to designate specific locations, strategically positioned and, to evaluate the quantity and quality of air entering and leaving the affected areas instead of ventilating and evaluating each individual area. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Double "B" Mining, Inc.

[Docket No. M–93–277–C]

Double "B" Mining, Inc., P.O. Box 280, Tracy City, Tennessee 37387 has filed a petition to modify the application of 30 CFR 75.360(b)(6) (preshift examination) to its Mine No. 24 (I.D. No. 40–00577) located in Sequatchie County, Tennessee. Due to roof falls and gob, certain areas of the mine are inaccessible and cleanup of the areas would be unsafe. The petitioner proposes to designate specific locations, strategically positioned and to evaluate daily the methane and oxygen and the quantity and quality of air entering and leaving the affected areas instead of ventilating and evaluating each individual area. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Baylor Mining, Inc.

[Docket No. M–93–278–C]

Baylor Mining, Inc., P.O. Box 1435, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.352 (return air course) to its Baylor Mine (I.D. No. 46–05592) located in Raleigh County, West Virginia. The petitioner proposes to install a low-level carbon monoxide detection and methane monitoring system in all belt entries used as return air courses and to maintain ventilation at 50 fpm or greater in the belt conveyor entry. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Windsor Coal Company

[Docket No. M–93–279–C]

Windsor Coal Company, P.O. Box 39, West Liberty, West Virginia 26074 has filed a petition to modify the application of 30 CFR 75.364(b) (1) & (2) (weekly examination) to its Windsor Mine (I.D. No. 46–01286) located in Brooke County, West Virginia. Due to hazardous roof and rib conditions in the return from South No. 1 seal to the 5 West return overcasts, the area cannot be traveled safely. The petitioner proposes to establish check points and to monitor on a weekly basis for methane and the quantity and quality of air at these check points. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Andalex Resources, Inc.

[Docket No. M–93–280–C]

Andalex Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage) to its Pinnacle Mine (I.D. No. 42–01474) and its Aberdeen Mine (I.D. No. 42–02028) both located in Carbon County, Utah. The petitioner proposes to use a two-entry development system and use the belt entry as a return air course during longwall development and as an intake air course during longwall extraction to ensure adequate ventilation quantity to dilute and render harmless any methane or other noxious gases that otherwise may accumulate. The petitioner states that application of the standard would result in diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Old Ben Coal Company

[Docket No. M–93–281–C]

Old Ben Coal Company, 500 N. DuQuoin Street, Benton, Illinois 62812 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Mine No. 26 (I.D. No. 11–00590) located in Franklin County, Illinois. Due to hazardous roof conditions in the No. 1A, No. 1B, No. 1, No. 2, and No. 3 Main South entries from Crosscuts 101 to 107, and in the No. 1, No. 2, and No. 3 Main South entries from Crosscuts 67 to 89, the area cannot be traveled safely. The petitioner proposes to establish four evaluation points, one at each end of the affected areas, to monitor for methane and the quantity and quality of air entering and leaving the affected areas. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. Commercial Mining, Inc.

[Docket No. M–93–282–C]

Commercial Mining, Inc., Box 4091, Hidden Valley, Pennsylvania 15502 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (2), and (3), and (c)(3) (weekly examination) to its No. 1 Mine (I.D. No. 36–00844) located in Cambria County, Pennsylvania. Due to hazardous roof conditions, the petitioner proposes to establish safe monitoring stations in the Old Mains and the Slant Headings areas of the mine to monitor for methane and the quantity and quality of air entering and leaving the affected areas. The petitioner also proposes to establish monitoring stations and bleeder evaluation points to examine and evaluate seals, and the air course that provides access to them, on a weekly basis instead of traveling the air course in its entirety. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard and that application of the existing standard would result in a diminution of safety.

11. Red Bone Mining Company

[Docket No. M–93–283–C]

Red Bone Mining Company, Route 7, Box 483, Morgantown, West Virginia 26505 has filed a petition to modify the application of 30 CFR 75.364 (weekly examination) to its Pokey No. 1 Mine (I.D. No. 46–05054 located in Monongalia County, West Virginia. Due to deteriorating roof conditions, certain areas of the return air course cannot be traveled safely. The petitioner proposes to establish evaluation check points to monitor for methane and the quantity and quality of air entering and leaving the affected areas. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard and that application of the existing standard would result in a diminution of safety to the miners.

12. International Anthracite (R & R Coal Company)

[Docket No. M–93–284–C]

International Anthracite (R & R Coal Company), Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its B & M Tunnel (I.D. No. 36–01781) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

13. International Anthracite (R & R Coal Company)

[Docket No. M–93–285–C]

International Anthracite (R & R Coal Company), Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its B & M Tunnel (I.D. No. 36–01781) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

14. R S & W Coal Company, Inc.

[Docket No. M–93–286–C]

R S & W Coal Company, Inc., RD 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.332(b)(1) & (b)(2) (working sections and working places) to its R S & W Drift (I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

15. R S & W Coal Company, Inc.

[Docket No. M–92–287–C]

R S & W Coal Company, Inc., RD 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its R S & W Drift (I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

16. R S & W Coal Company, Inc.

[Docket No. M–93–288–C]

R S & W Coal Company, Inc., RD 1, Box 36, Klingerstown, Pennsylvania has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its R S & W Drift (I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

17. R S & W Coal Company, Inc.

[Docket No. M–93–289–C]

R S & W Coal Company, Inc., RD 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its R S & W Drift (I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

18. R S & W Coal Company, Inc.

[Docket No. M–93–290–C]

R S & W Coal Company, Inc., RD 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4),

and (5) to its R S & W Drift (I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

19. R S & W Coal Company, Inc.

[Docket No. M–93–291–C]

R S & W Coal Company, Inc., RD 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its R S & W Drift (I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

20. R S & W Coal Company, Inc.

[Docket No. M–93–292–C]

R S & W Coal Company, Inc., RD 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its R S & W Drift (I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

21. R S & W Coal Company, Inc.

[Docket No. M–93–293–C]

R S & W Coal Company, Inc., RD 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its R S & W Drift (I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner proposes to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

22. R S & W Coal Company, Inc.

[Docket No. M–93–294–C]

R S & W Coal Company, Inc., RD 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its R S & W Drift (I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions 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 December 2, 1993. Copies of these petitions are available for inspection at that address.

Dated: October 26, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–26924 Filed 11–1–93; 8:45 am]

BILLING CODE 4510–43–P

Occupational Safety and Health Administration

Vermont State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with Section 18(c) of the Act and 29 CFR part 1902. On October 16, 1973, notice was published in the **Federal Register** (38 FR 28658) of the approval of the Vermont State Plan and the adoption of subpart U to part 1952 containing the decision.

The Vermont State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing for two (2) successive weeks, in three (3) newspapers having general circulation in the center, northern and southern parts of the State, an intent to amend the State Plan by adopting the standard(s).

b. Review of standards by the Interagency Committee on Administrative Rules, State of Vermont.

c. Approval by the Legislative Committee on Administrative Rules, State of Vermont.

d. Filing in the Office of the Secretary of State, State of Vermont.

e. The Secretary of State publishing, not less than quarterly, a bulletin of all standard(s) adopted by the State.

The Vermont State plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6, of the Act. By letters dated January 19, 1993; April 15, 1993; and June 8, 1993, from Barbara P. Ripley, Commissioner, Vermont Department of Labor and Industry, to John B. Miles, Jr., Regional Administrator; and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR part 1910 and 1926; and subsequent amendments thereto, as described below: (1) Addition to 29 CFR parts 1910 and 1926, Occupational Exposure to Formaldehyde; Final Rule (52 FR 46168, dated 12/4/87); (2) Amendments to 29 CFR parts 1910 and 1926, Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite (57 FR 7877, dated 3/5/92; and 57 FR 24330, dated 6/18/92); (3) Amendments and Corrections to 29 CFR part 1910, Occupational Exposure to Formaldehyde; Final Rule (57 FR 7877, dated 3/5/92, 57 FR 22307, dated 5/27/92; 57 FR 24701, dated 6/10/92; and 57 FR 27160, dated 6/18/92); (4) Correction to 29 CFR part 1926, Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite (57 FR 29119, dated 6/30/92); (5) Additions to 29 CFR parts 1910 and 1926, Cadmium (57 FR 42388, dated 9/

14/92); (6) Additions to 29 CFR parts 1910 and 1926, Methylenedianiline (57 FR 35666, dated 8/10/92); (7) Addition to 29 CFR 1910.146, Permit-Required Confined Spaces (58 FR 4849, dated 1/14/93).

These standards became effective on December 31, 1992; March 26, 1993; and June 7, 1993, pursuant to Section 224 of State Law.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts, 02114; Office of the Commissioner, State of Vermont, Department of Labor and Industry, 120 State Street, Montpelier, Vermont 05602, and the Office of State Programs, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Vermont State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. These standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. These standards were adopted in accordance with the procedural requirements of the State law which included public comment, and further public participation would be repetitious.

This decision is effective November 2, 1993.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Boston, Massachusetts, this 14th day of June, 1993.

Cindy A. Coe,

Deputy Regional Administrator.

[FR Doc. 93–26925 Filed 11–1–93; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public law 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Project Grants to Individuals/Individual Grants for Design Innovation/USA Fellowships Section) to the National Council on the Arts will be held on November 16–19, 1993 from 9 a.m. to 5 p.m. on November 16–18, 1993, and from 9 a.m. to 3 p.m. on November 19, 1993. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

Portions of this meeting will be open to the public from 9 a.m. to 10 a.m. on November 16, 1993 for welcome and introductions, and from 1 p.m. to 3 p.m. on November 19, 1993 for policy discussion.

The remaining portions of this meeting from 10 a.m. to 5 p.m. on November 16, 1993, from 9 a.m. to 5 p.m. on November 17–18, 1993, and from 9 a.m. to 1 p.m. on November 19, 1993, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the descretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: October 27, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–26852 Filed 11–1–93; 8:45 am]

BILLING CODE 7537–01–M

International Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the International Advisory Panel (United States/Mexico Artist Residencies Section) to the National Council on the Arts will be held on November 17–18, 1993 from 9:30 a.m. to 8 p.m. on November 17, 1993, and from 8 a.m. to 8 p.m. on November 18, 1993. This meeting will be held at the Tijuana Cultural Center-Sala de Videos Paseo de los Heroes y Mina Zona Tio Tijuana, B.C.

A portion of this meeting will be open to the public from 10 a.m. to 10:30 a.m. on November 17, 1993 for welcome and introductions.

The remaining portions of this meeting from 10:30 a.m. to 8 p.m. on November 17, 1993 and from 8 a.m. to 8 p.m. on November 18, 1993, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the descretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532,

TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: October 27, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–26850 Filed 11–1–93; 8:45 am]

BILLING CODE 7537–01–M

Presenting and Commissioning Advisory and; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Presenting Development for Community—Based Organization Section) to the National Council on the Arts will be held on November 15–17, 1993 from 9 a.m. to 6:30 p.m. on November 15, 1993, from 8:30 a.m. to 6:30 p.m., on November 16, 1993, and from 8:30 a.m. to 5:30 p.m. on November 17, 1993. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington DC, 20506.

Portions of this meeting will be open to the public from 9 a.m. to 10 a.m. on November 15, 1993 for welcome and introductions, and from 3 p.m. to 5:30 p.m. on November 17, 1993 for policy discussion.

The remaining portions of this meeting from 10 a.m. to 6:30 p.m. on November 15, 1993; from 8:30 a.m. to 6:30 p.m. on November 16, 1983; and from 8:30 a.m. to 3 p.m. on November 17, 1993, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the descretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: October 27, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–26851 Filed 11–1–93; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–08724, License No. SUB–1357, EA 93–068]

Chemetron Corp., Providence, RI 02903, (Bert Avenue and Harvard Avenue Remediation); Confirmatory Order Modifying License

I

Chemetron Corporation (Licensee) is the holder of Source Material License No. SUB–1357 (License) originally issued on June 12, 1979, by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30, 31, 32, 33, 34, 35, 40, and 70, for possession only of depleted uranium contamination in a facility located at 2910 Harvard Avenue, Newburgh Heights, Ohio (the Harvard Avenue site). The License was modified on October 1, 1987, to authorize the Licensee to possess the radioactive material at the McGean-Rohco site located between 28th and 29th Streets at Bert Avenue, Newburgh Heights, Ohio (the Bert Avenue site). The License was last renewed on January 10, 1990, and was due to expire on October 31, 1990. On October 1, 1990, Chemetron filed a timely license renewal application with NRC. Pursuant to 10 CFR 40.43(b), the License is continuing in effect.

II

License Condition 12, which became effective May 25, 1993, required the final remediation plan for the Licensee's Harvard Avenue and Bert Avenue sites to be submitted by October 1, 1993.

On October 1, 1993, Chemetron submitted its Site Remediation Plan for the Harvard Avenue and Bert Avenue sites, indicating in its cover letter that the submittal was "[i]n fulfillment of condition 12 of the referenced license * * *." Chemetron, however, did not include in the Site Remediation Plan three sections critical to the NRC's health and safety review of the plan; rather, the Site Remediation Plan stated that Chemetron would submit these three sections at a later date. The sections of the Site Remediation Plan that Chemetron failed to submit were the Planned Final Radiation Survey, the Safety Analysis, and the Radiological Assessment. Chemetron representatives gave no prior notice to the NRC staff, or indication in their remediation plan transmittal letter, that these sections would not be submitted or that these sections would be submitted at a later time, nor did they seek an extension of this date.

The Commission's regulation in 10 CFR 40.42(c)(2)(iii) specifies the contents required in a decommissioning plan. The Planned Final Radiation Survey section is one of the components of the decommissioning plan required under 10 CFR 40.42(c)(2)(iii)(C). This section of the Site Remediation Plan would provide the Licensee's planned final survey procedures to demonstrate that the Site Remediation Plan accomplished its planned objectives in compliance with the decontamination criteria approved by the NRC for the site. The Safety Analysis is required under 10 CFR 40.42(c)(2)(iii)(B), which requires the description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning. The Safety Analysis evaluates the doses from routine operations and accidents during the remediation activities as discussed in Section 2.1.2 in Regulatory Guide 3.65, "Standard Format and Content of Decommissioning Plans for Licensees Under 10 CFR parts 30, 40, and 70."

In the Chemetron Site Remediation Plan, Chemetron is proposing to use onsite disposal in accordance with 10 CFR 20.302. An application for Commission approval of proposed procedures to dispose of licensed material pursuant to 10 CFR 20.302, as required by that section, should include "an analysis and evaluation of pertinent information as to the nature of the environment, including topographical, geological, meteorological, and hydrological characteristics; usage of ground and surface waters in the general area; the nature and location of other potentially affected facilities; and procedures to be observed to minimize the risk of unexpected or hazardous exposures." The required analysis and

evaluation would include a radiological assessment that discusses the doses to the public from various exposure pathways.

In summary, the Licensee's October 1, 1993, Site Remediation Plan is incomplete in that it lacks a Planned Final Radiation Survey and a Safety Analysis (required by 10 CFR 40.42(c)(2)(iii)) and a Radiological Assessment (required by 10 CFR 20.302(a)). Without the Planned Final Radiation Survey, the Safety Analysis, and the Radiological Assessment, the NRC staff cannot evaluate the health and safety aspects of the Site Remedation Plan as required under the regulations for the proposed decommissioning actions. Specifically, the NRC staff is unable to determine whether the health and safety of the public and workers and the environment will be protected during decommissioning and whether Chemetron's Site Remediation Plan will ultimately provide adequate protection of the public health and safety if properly implemented. Consequently, the Licensee is in violation of License Condition 12. Having violated the previous required schedule, it is now necessary to establish a date to bring the Licensee into compliance and to preclude recurrence of the violation described above.

III

During a telephone call on October 19, 1993 between Dr. Barry Koh, Chemetron, and Mr. T. Johnson, NRC, it was agreed that Chemetron would submit:

1. A technically complete Planned Final Radiation Survey section for the Site Remediation Plan for the Harvard Avenue and Bert Avenue sites by November 1, 1993;
2. A technically complete Safety Analysis section for the Site Remediation Plan for the Harvard Avenue and Bert Avenue sites by November 15, 1993; and
3. A technically complete Radiological Assessment section for the Site Remediation Plan for the Harvard Avenue and Bert Avenue sites by November 15, 1993.

I find that the Licensee's current commitments, as set forth above, are necessary and desirable to protect the public health, safety and interest. In view of the foregoing, I have determined that the commitment made by the Licensee in the October 19, 1993 telephone conversation, should be confirmed by this Order. In a telephone conversation held on October 25, 1993 between Mr. John Greeves, NRC, and Mr. David R. Sargent, Chemetron, the Licensee agreed to the imposition of the requirements set forth in Section IV of this Order. The issuance of this Order does not relieve the Licensee from additional enforcement action for the violation of License Condition 12.

IV

Accordingly, pursuant to Sections 62, 63, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 40, it is hereby ordered that license no. sub–1357 is modified by adding a new License condition no. 14 as follows:

14. The Licensee shall submit final versions of (1) a technically complete Planned Final Radiation Survey section for the Site Remediation Plan for the Harard Avenue and Bert Avenue sites by November 1, 1993; (2) a technically complete Safety Analysis section for the Site Remediation Plan for the Harvard Avenue and Bert Avenue sites by November 15, 1993; and (3) a technically complete Radiological Assessment section for the Site Remediation Plan for the Harvard Avenue and Bert Avenue sites by November 15, 1993. The obligations established by this License Condition are continuing in nature and remain in effect until the required submittals have been met and any failure by Chemetron to submit technically complete and final versions of the three items required to be submitted by this License Condition shall give rise to a new deadline for Chemetron to submit technically complete and final versions of those items on the day following the prior deadline.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon the Licensee's showing, in writing, of good cause.

V

In accordance with 10 CFR 2.202, any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement and the Director, Office of Nuclear Material Safety and Safeguards, at the same address, and to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interests is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

On the basis of the Licensee's consent to Section IV of this Order, this Order is effective upon issuance.

Dated at Rockville, Maryland this 26th day of October 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 93–26872 Filed 11–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–304]

Commonwealth Edison Co., (Zion Station, Unit No. 2); Exemption

I

The Commonwealth Edison Company (the licensee), is the holder of Facility Operating License No. DPR–48 which authorizes operation of Zion Station, Unit No. 2, at a steady-state power level not in excess of 3250 megawatts thermal. The facility consists of a pressurized water reactor located at the licensee's site in Lake County, Illinois. The license provides, among other things, that it is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

In its letter dated August 23, 1993, Commonwealth Edison Company (the licensee) applied for an exemption from the Commission's regulations. The subject exemption is from the requirements in appendix J to 10 CFR part 50 that a set of three Type A tests (Containment Integrated Leak Rate Tests or CILRT) be conducted, at approximately equal intervals during each 10-year service period and that the third of these tests be performed when the plant is shut down for the 10-year plant inserve inspections required by 10 CFR 50.55a.

III

The staff notes that the first Type A test of the second 10-year service period was conducted in October 1988. The second Type A test was conducted in November 1992, 49 months after the first, due to the extended lengths of the controlling refueling outage and fuel cycle. The next refueling outage, which is also the 10-year plant inserve inspection outage, is scheduled for January 1995. Since the interval between the last Type A test and the scheduled refueling outage date is only 26 months, the licensee proposes to move the next scheduled Type A test to the Cycle 14 refueling outage currently scheduled to start in September 1996. The interval between the two successive Type A tests on Unit 2 would then be 46 months.

The time interval between Type A tests should be about 40 months based on performing three such tests at approximately equal intervals during each 10-year service period. Since refueling outages do not necessarily occur coincident with a 40-month interval, a permissible variation of 10 months (25 percent variation) is typically authorized to permit flexibility in scheduling the Type A tests. For the purpose of performing Type A tests, this one-time exemption extends the current service period by approximately 21 months beyond the normal 10-year service period. The staff concludes that the deviation from the scheduling requirements of Section III.D.1.(a) to conduct three Type A tests during each 10-year service period is not significant since the interval between the second and third successive tests will be 46 months. Accordingly, the staff finds, for the reasons set forth above, that the subject exemption request meets the underlying purpose of the rule [(10 CFR 50.12(a)(2)(ii)] to ensure containment integrity, which requires three Type A tests be conducted in a 10-year period, at approximately equal intervals.

The licensee also requested an exemption from the requirement of 10 CFR part 50, Appendix J, Section III.D.1.(a) that the third Type A test of the second 10-year service period be conducted during the shutdown for the 10-year plant inservice inspections. The requested exemption would permit performance of Type A testing at a 40± 10-month interval. This one-time exemption allows the facility to conduct the third Type A test of the second 10-year service period during the outage after the one for the 10-year plant inservice inspections. The staff concludes that the deviation from the scheduling requirement of Section III.D.1.(a) to conduct the third Type A test during the shutdown for the 10-year plant inservice inspections is not significant since it will be conducted during the succeeding refueling outage.

The Commission's regulations in 10 CFR 50.12 require special circumstances to be present to grant exemptions from the requirements of the regulations. According to 10 CFR 50.12(a)(2)(ii), special circumstances are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule. In the subject exemption request, the underlying purpose of the rule is to ensure containment integrity by performing the tests at approximately equal intervals of about a third of a ten-year service period. The staff finds that the current schedule would allow only 26 months between the last Type A test and the next test. Therefore, the underlying purpose of the rule would not be served without the granting of an exemption to extend the testing interval. Special circumstances, are, therefore, present with respect to the subject exemption request.

Further, the staff finds that extending the service period and conducting the third Type A test during the refueling outage after the one for the 10-year plant inservice inspections will not present an undue risk to the public health and safety. Since the licensee has justified the leaktight integrity of the containment based on previous leakage test results, the staff concludes that a one-time extension of approximately 21 months beyond the 10-year service period will not have a significant safety impact.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Accordingly, the Commission hereby grants the exemption with respect to the requirements of 10 CFR part 50, appendix J, Section III.D.1(a):

For Zion Nuclear Power Station, Unit 2, the current service period ending September 18, 1994, may be extended by approximately 24 months so that the third periodic Type A test may be performed during the Cycle 14 refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the subject exemption will not have a significant effect on the quality of the human environment (58 FR 57635).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 27th day of October, 1993.

Jack W. Roe,

Director, Director of Reactor Projects III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 93–26873 Filed 11–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–424]

Georgia Power Co., Oglethorpe Power Corp., Municipal Electric Authority of Georgia, City of Dalton, Georgia, (Vogtle Electric Generating Plant, Unit No. 1); Exemption

I

The Georgia Power Company, et al. (GPC, the licensee), is the holder of Operating License No. NPF–68, which authorizes operation of the Vogtle Electric Generating Plant, Unit 1, at steady state reactor core power levels not in excess of 3411 megawatts thermal. The license provides, among other things, that the licensee is subject to the rules, regulations and orders of the Commission now or hereafter in effect.

The plant is a pressurized water reactor located at the licensee's site in Burke County, Georgia.

II

Section 50.54(o) of 10 CFR part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of appendix J to 10 CFR part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment.

Section III.D.3 of appendix J to 10 CFR part 50 requires that Type C leak rate tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are intended to measure containment isolation valve leakage rates for certain containment isolation valves.

III

By letter dated September 9, 1993, the licensee requested a one-time exemption from the requirements of Appendix J, Section III.D.3, from 24 months to prior to entry into Mode 4 following the next scheduled refueling outage (or the next forced outage requiring entry into Mode 5), but no later than November 1, 1994, for the Unit 1 auxiliary component cooling

water (ACCW) supply and return containment isolation valves 1HV–1974 (and associated check valve 1–1217–U4–113), 1HV–1975, 1HV–1978, and 1HV–1979. In their request, the licensee provided the date when the leak tests had last been performed and the date when the current leak test will expire.

The leak tests for which the licensee has requested schedular exemption were last conducted during the fall 1991 refueling outage, based on the information provided in the licensee's application. The licensee has stated that, in the absence of the proposed relief, Unit I would have to be placed in Mode 5 sufficiently prior to October 28, 1993, so that the required testing could be performed.

IV

The licensee presented information in support of their request for an extension of the Type C test intervals. The appendix J leakage limit for all penetrations subject to Type B and C testing ($0.6L_a$) at Vogtle is 228,273 sccm. The current total for Type B and C test leakage at Vogtle as of September 10, 1993, is 14,398.8 sccm. As of the last Type C local leak rate test (LLRT), the leakage for each of these four valves was as follows: 1HV–1974—152 sccm (this includes leakage past check valve 1–1217–U4–113 in parallel with 1HV–1974); 1HV–1975—11.6 sccm; 1HV–1978—9.3 sccm; and 1HV–1979—11.4 sccm.

The licensee stated that, based on the past leakage test history of these valves, there is reasonable assurance that extending the test interval to no later than November 1, 1994 (or the next forced outage that requires entry into Mode 5), will not adversely affect the ability of these valves to perform their isolation function.

V

Based on the above, the staff finds there is reasonable assurance that the containment leakage-limiting function will be maintained and that a forced outage to perform Type C test is not necessary. Therefore, the staff finds the requested temporary exemption, to allow the Type C test interval for the ACCW supply and return containment isolation valves to be extended to prior to entry into Mode 4 following the next scheduled refueling outage (or the next forced outage requiring entry into Mode 5), but no later than November 1, 1994, to be acceptable. The exemption request has been evaluated in a safety evaluation dated October 26, 1993.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. The Commission finds that the special circumstances as required by 10 CFR 50.12(a)(2) are present. As specified in 10 CFR 50.12(a)(2)(ii), special circumstances are present whenever the application of the regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to ensure that the components comprising the primary containment boundary are maintained and leak tested at periodic and appropriate intervals. The 24-month maximum interval was originally expected to bound the typical operating cycle, including a limited amount of mid-cycle outage time. Strict adherence to the 24-month maximum interval is not necessary to meet the underlying purpose of the rule in that, taking into consideration the requested extension, the components that comprise the primary containment boundary will still be tested at a frequency that is appropriate to those components and their application.

Therefore, the staff finds the requested temporary exemption, to allow the Type C test interval for the ACCW supply and return containment isolation valves, as described in the licensee's September 30, 1993, to be extended to prior to entry into Mode 4 following the next scheduled refueling outage (or the next forced outage requiring entry into Mode 5), but no later than November 1, 1994, to be acceptable.

An exemption is hereby granted from the requirements of Section III.D.3 of appendix J to 10 CFR part 50, which requires that Type C tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years, to prior to entry into Mode 4 following the next scheduled refueling outage (or the next forced outage requiring entry into Mode 5), but no later than November 1, 1994, for the subject valves.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (58 FR 54606 dated October 18, 1993).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 26th day of October 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–26871 Filed 11–1–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Review of OPM Form 1417 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed information collection, Combined Federal Campaign Results Code Sheet, OPM Form 1417. This form is completed annually by the Principal Combined Fund Organizations (PCFO's) of each local campaign, and is used by the Office of Personnel Management to compute the total campaign contributions.

Approximately 500 forms are completed annually, each requiring an estimated one hour to complete, for a total public burden of 500 hours. For copies of this proposal call C. Ronald Trueworthy, (703) 908–8550.

DATES: Comments on this proposal should be received on or before December 2, 1993.

ADDRESSES: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, OIRA, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dennis A. Matteotti (202) 606–2564.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93–26770 Filed 11–1–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33108; File No. SR–NASD–93–51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Eligibility of Disputes for Arbitration

October 26, 1993.

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 September 21, 1993, 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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Part I, Section 3, and Part III, Section 15 of the Code of Arbitration Procedure ("Code") to permit the Director of Arbitration to make determinations regarding the eligibility of claims for arbitration under the Code and to permit the Director to delegate the duties and responsibilities of the Director. Below is the test of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Code of Arbitration Procedure

Director of Arbitration

Sec. 3. The Board of Governors of the Association shall appoint a Director of Arbitration who shall be charged with the performance of all administrative duties and functions in connection with matters submitted for arbitration pursuant to this Code. *The Director of Arbitration* [He] shall be directly responsible to the National Arbitration Committee and shall report to it at periodic intervals established by the Committee and at such other times as called upon by the Committee to do so. *The duties and responsibilities of the Director may be delegated as appropriate by the Director of Arbitration. In the event of the incapacitation, resignation, removal, or other permanent or indefinite inability of the Director to perform the duties and functions of the Director, the President or an Executive Vice President of the Association may appoint an interim Director.*

* * * * *

[Time Limitation on Submission]
Eligibility

Sec. 15(*a*) No dispute, claim or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the [act or] dispute, claim or controversy. This section shall not extend *or limit* applicable statutes of limitations [nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction].

(b) Where eligibility is disputed by a responding party after service of the Statement of Claim, the Director of Arbitration shall promptly make a final determination as to whether a claim is eligible for arbitration. Any such determination regarding eligibility shall set forth the occurrence or event which was the basis for the determination of eligibility of the dispute, claim or controversy. The identification of the occurrence or event which formed the basis for a determination that a claim is eligible shall not limit any parties' right to offer evidence to the arbitrators which related to their substantive claims or defenses.

(c) A determination by the Director of Arbitration pursuant to subparagraph (b) that a claim is ineligible shall not constitute a bar to asserting the underlying claim in a judicial forum. With respect to any such ineligible claims the parties will have available to them the rights and remedies provided by applicable law, notwithstanding, any (i) existing predispute arbitration agreement or (ii) decisions on eligibility. No party shall seek to enforce any agreement to arbitrate where the claim has been determined to be ineligible under this section.

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

Amendment to Section 3 of the Code

The current provisions of Section 3 of the Code provide for the appointment of a Director of Arbitration by the NASD Board of Governors to perform all administrative duties and functions in connection with matters submitted to the NASD for arbitration. The Director has, on occasion, found it necessary to delegate certain functions of the Director to other senior management employees of the NASD's Arbitration Department, especially as a result of the significant growth in the Department's staff and workload. The NASD believes this delegation power is inherent in the authority of the Director to manage the functions of the NASD's Arbitration Department. Nevertheless, the NASD is proposing to amend Section 3 of the Code to expressly provide for such delegation.

The proposed rule change to Section 3 provides that the duties and functions of the Director may be delegated as appropriate by the Director. Further, in the event that the Director has been incapacitated, resigned, removed or has been permanently or indefinitely disabled from the performance of the duties and functions of the Director, the proposed rule change provides that the President of the Association or an Executive Vice President shall appoint an interim Director to perform the functions and responsibilities of the Director. The purpose of this rule change is to clarify the lines of authority and delegation powers of the Director under the Code. The amendment also specifies that the power to delegate functions resides with the Director unless circumstances occur which render the Director permanently or indefinitely unable to perform the duties and functions of the Director.

Amendment to Section 15 of the Code

The current provisions of Section 15 of the Code specify that claims or controversies are not eligible for submission to arbitration where 6 years have elapsed from the occurrence or event giving rise to the matter. Section 15 does not specify the party responsible for determining whether 6 years have elapsed from the occurrence or event giving rise to the matter. As a result, there have been conflicting decisions over who possesses such authority; the Director, the courts or arbitrators. Also, the current provisions of Section 15 do not provide a procedure for a respondent to challenge the eligibility of a claim, and there is no requirement that the event or occurrence establishing the eligibility of a claim be identified.

The NASD is proposing to amend Section 15 to add two new subsections providing that the Director will determine whether the claim alleges events or occurrences within 6 years of submission that are alleged to have given rise to the claim or controversy. The eligibility determination of the Director is final and will not be subject to review by the arbitrators under Section 35 of the Code. Further, by placing the authority to make final

eligibility determinations, as a matter of the contract to arbitrate, in the hands of the Director, the proposed rule change is intended to foreclose successful attempts by parties to an arbitration to seek different eligibility rules from the courts or arbitrators. Notwithstanding the foregoing, the proposed rule change does not preclude a party from raising the issue of eligibility in any court proceeding.

In addition, current Section 15, entitled "Time Limitation on Submission," is proposed to be retitled "Eligibility" and renumbered Subsection 15(a). The language of proposed new Subsection 15(a) is also being amended to eliminate the provision that states that the six year eligibility limitation does not apply to cases directed to arbitration by a court. Therefore, a court order directing the parties to arbitration is not a determination that the matter is eligible for arbitration under the rules of the NASD.

New Subsection 15(b) provides that where eligibility is disputed by a responding party after service of the Statement of Claim, the Director shall promptly determine whether the claim is eligible. The term "promptly" shall mean as soon as practicable after all parties have had an opportunity to respond. The Director is also required to set forth the occurrence or event that is the basis for the eligibility determination. Finally, new Subsection 15(b) provides that the Director's eligibility determination does not prevent or limit a party from introducing events or occurrences that are deemed ineligible for arbitration evidence in arbitration relating to any substantive claim or defense.

Determination of Eligibility

Under Subsection 15(a), the current practice of the Arbitration Department is that, prior to service of any claim upon the respondent, the Arbitration Department staff reviews the statement of claim to ensure the eligibility of the case for arbitration. Upon a motion to dismiss a claim on the basis of ineligibility under proposed Subsection 15(b), the Arbitration Department will solicit submissions on the issue from all parties.

Under both Subsections 15(a) and 15(b), if the events or occurrences which form the basis for the claim or controversy are clearly outside the 6 year period, the claim is determined not to be eligible. If the timing of the events or occurrences is unclear or ambiguous, under Subsection 15(a) the claimant is asked to clarify the claim sufficiently to make an unambiguous eligibility determination possible. Whether on a requested submission under Subsection 15(a) or a responsive submission under Subsection 15(b), on the basis of these submissions and the age of the occurrence or event giving rise to the matter, the Director will determine the eligibility of the matter as soon as practicable.

Among the factors which will be considered in any eligibility determination are: (1) The date(s) of the transaction(s) in question; (2) the date(s) of the act(s) or occurrence(s), if not concurrent with the transaction(s), which gave rise to the claim or which constituted the conduct complained of; and (3) the existence of fraudulent concealment or misrepresentations which cause the claimant to delay submission of a claim. Discovery of the existence of a claim within the 6 year period is not alone sufficient to make the claim eligible for submission if the transaction, act or occurrence which forms the basis for the claim occurred outside the 6 year period. Moreover, if a group of transactions or acts form the basis of the claim, any act or transaction which occurred outside the 6 year period may be deemed ineligible for submission unless it is an integral part of a claim or pattern of conduct forming the basis for the claim whose essential elements or misconduct occurred within the 6 year period. Separable transactions or occurrences which occur outside the 6 year period will generally be ineligible for submission; however, such ineligible transactions or occurrences may be introduced as evidence in support of the eligible claim or claims, for instance, as evidence of a pattern of misconduct or conduct consistent with the conduct underlying the eligible claim.

Prohibition Against Arbitration of Ineligible Claims

New Subsection 15(c) provides that an ineligibility determination will not bar a claimant from pursuing the claim in a judicial forum and the parties will retain all rights and remedies available under applicable law; however, the new subsection prohibits a party from seeking to enforce any arbitration agreement where the claim has been declared ineligible under Section 15. Thus, members would be prohibited from moving to enforce the arbitration agreement to force the customer to American Arbitration Association ("AAA") arbitration, for instance, if AAA is an alternative forum choice in arbitration agreements, or to avoid resolving the dispute in court. Members may be subject to disciplinary action for violations of the prohibition in Subsection 15(c).

The NASD intends to make the amendments to Section 3 effective immediately on Commission approval; however, the NASD intends to make the amendments to Section 15 effective within 30 days following the publication of a Notice to Members announcing approval. Finally, the NASD intends to make the proposed amendments to Section 15 applicable to all claims filed after the effective date of the amendments.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed rule change will protect investors and the public interest by facilitating the arbitration process through expeditious resolution of eligibility issues arising under Section 15 of the Code by authorizing the Director to determine whether a claim or controversy occurred within 6 years prior to submission in the event eligibility is disputed by a responding party. Moreover, in order to protect investors and the public interest by avoiding disruptions and uncertainty in the authority to act under the Code, the NASD is proposing to amend Section 3 of the Code to permit the duties and functions of the Director to be delegated by the Director or the Executive Vice President, Member Services.

(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, as amended.

(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 November 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26842 Filed 11–1–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33107; File No. SR–NASD–93–41]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change to Section 65(f)(1) of the Uniform Practice Code Relating of Fails Resulting From Account Transfers

October 26, 1993.

On July 30, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The rule change amends the Uniform Practice Code ("UPC") to clarify the time frame within which members are required to initiate the resolution of fails resulting from customer account transfers from one NASD member to another.

Notice of the proposed rule change together with its terms of substance was provided by issuance of a Commission release and by publication in the **Federal Register**.[3] No comments were received in response to the Commission release. This order approves the proposed rule change.

The NASD seeks to amend section 65(f)(1) of the UPC[4] to clarify the time frame within which members are required to initiate the resolution of fails resulting from customer account transfers. This rule change clarifies that the appropriate time frame for initiating the resolution of such fails is ten business days after the date delivery was due, with exceptions for certain types of securities for which 30 business days after the date delivery was due is more appropriate.

This rule filing arises out of concerns raised by the Commission in connection with an earlier NASD amendment to Section 65 of the UPC.[5] In approving the earlier changes to Section 65, the Commission expressed regulatory and commercial concerns that the current rule only requires "prompt" resolution of fails. The Commission was concerned about the lack of specific guidance to members to initiate the resolution of fails resulting from account transfers and, therefore, the lack of certainty to customers that their assets and funds will be available for their use at the receiving firm on a timely basis.

Following an internal review of Section 65, the NASD has determined that requiring members to initiate a close-out within certain time limits is reasonable and that the appropriate time limit should be ten business days from the date delivery was due. In recognition of the fact that certain securities present unique and often complicated delivery and transfer issues, the NASD's rule change includes an exception providing a 30 business day close-out period of securities for which a ten business day close-out period is unreasonable. In drafting the current changes to Section 65(f)(1), the NASD stated that it patterned the changes on both NYSE Rule 412 and Rule 15c3–3–3(d)(2) under the Act.[6]

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements to section 15A(b)(6) of the Act.[7] Section 15A(b)(6) requires, in part, that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. By establishing specific time limits for members to initiate the resolution of fails resulting from account transfers, this rule change assures that customer account transfers will occur in a timely manner. This rule change establishes specific time frames for transferring customer assets and provides customers assurance that their assets and funds will be available for their use in a timely manner. Indeed, by requiring firms to establish fail positions on their books relative to customer securities that have not been transferred within the prescribed time frames, the rule transfers the risks associated with transfer delays from customers to broker-dealers. The rule thus creates significant incentives to transfer accounts on time, while extending traditional close-out remedies to the customer account transfer process. In that way, the rule responds appropriately to the Commission's regulatory and commercial concerns.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change SR—NASD—93–41 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26843 Filed 11–1–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19814; 812–8298]

First Boston Investment Funds, Inc., et al.; Notice of Application

October 26, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First Boston Investment Funds, Inc. (the "Company"), First Boston Investment Management

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Securities Exchange Act Release No. 32941 (September 22, 1993), 58 FR 50608 (September 28, 1993).

[4] *NASD Manual*, Uniform Practice Code, Sec. 65(f)(1), (CCH) ¶ 3565.

[5] Securities Exchange Act Release No. 31730 (January 14, 1993); 58 FR 5788 (January 22, 1993), n.11.

[6] 17 CFR 240.15c3–3. The Commission notes, however, that the NASD has elected to use business days rather than calendar days as used in Rule 15c3–3. The Commission further notes, however, that the NASD's use of business days is consistent with NYSE Rules 412 and Interpretations thereunder.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

Corporation (the "Adviser"), and the First Boston Corporation (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Conditional order requested under section 6(c) granting an exemption from sections 18(f)(1), 18(g), and 18(i) of the Act.

SUMMARY OF APPLICATION: Applicants seek a conditional order on behalf of themselves and any future registered open-end investment company for which the Adviser, the Distributor or any person directly or indirectly controlling, controlled by or under common control with the Adviser or the Distributor acts as investment adviser or distributor (a "Future Company"), to permit them to issue and sell unlimited classes of shares representing interests in the same portfolio of securities.

FILING DATES: The application was filed on March 5, 1993, and amended on June 25, 1993. By letter dated October 26, 1993, applicants' counsel stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

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. on November 22, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: c/o First Boston Investment Management Corporation, Tower Forty-Nine, 12 East 49th Street, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (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 Company, a Maryland corporation, is registered under the Act as an open-end management investment company. The Adviser serves as the Company's investment adviser. The Distributor provides distribution services to the Company. United States Trust Company of New York (the "Administrator") provides administration services to the Company and acts as the Company's custodian (the "Custodian").

2. The Company currently offers five series of shares representing interests in three money market portfolios, the Institutional Money Market Fund, the Institutional Tax-Exempt Money Market Fund, and the Institutional U.S. Treasury Money Market Fund (the "Money Market Portfolios"), and two portfolios having a fluctuating net asset value, the Institutional Government Fund [1] and the Institutional Short Term Government Income Fund (the "Non-Dollar Portfolio") (the Money Market Portfolios and the Non-Dollar Portfolio are collectively referred to as the "Portfolios").

3. Shares of the Portfolios presently are sold and redeemed daily at net asset value without a sales or redemption charge. The Company has not adopted any plan pursuant to rule 12b–1 under the Act or any non-rule 12b–1 service plan with respect to any Portfolio.

4. The Company proposes to create new classes of shares ("New Shares") to be marketed pursuant to an alternative distribution system (the "Alternative Distribution System"). Except for class designations and the allocation of certain expenses and voting rights, each class of New Shares would be identical to the currently issued and outstanding shares of each Portfolio ("Class A Shares"). Existing Class A Shares will continue to be distributed by the Distributor. Classes of New Shares may be offered (a) in connection with a plan adopted pursuant to rule 12b–1 under the Act (the "12b–1 Plan") with a fee of up to .75% of the net assets of the class ("Class B Shares"); (b) in connection with a non-rule 12b–1 administration plan (the "Non-12b–1 Plan") with a fee of up to .75% of the net assets of the class or such other amounts as may be permitted under applicable regulations of the NASD ("Class C Shares"); and/or (c) in connection with a plan adopted pursuant to rule 12b–1 that combines the services contemplated in the 12b–1 Plan and the Non-12b–1 Plan (the "Combined Plan") with a fee of up to 1.00% of the net assets of the class ("Class D Shares").[2] The Company also may offer classes of New Shares in the Non-Dollar Portfolio, for purchase by investors generally, that are subject to a front-end sales load and may also be subject to a 12b–1 Plan, Non-12b–1 Plan, or Combined Plan (collectively, "Plan" or "Plans") ("Class E Shares"). In addition, the Company or a Future Company may from time to time create one or more additional classes of shares, the terms of which may differ from the classes of shares specifically described.

5. Under each type of Plan, the Company on behalf of a Portfolio would enter into servicing agreements ("Service Agreements") with banks, broker-dealers, or other institutions ("Service Organizations") concerning the provision of certain services to the customers ("Customers") of the Service Organizations who from time to time beneficially own Shares which are offered in connection with the particular Plan. Applicants in all cases will comply with article III, section 26 of the NASD's Rules of Fair Practice as it relates to the maximum amount of asset-based sales charges and service fees that may be imposed.

6. The services to be provided by Service Organizations to their Customers under the Non-12b-1 Plan will include acting as the sole shareholder of record and nominee for all Customers; maintaining account records; answering questions and handling correspondence; processing Customer orders; handling the transmission of funds representing the purchase price or redemption proceeds; issuing confirmations for transactions by Customers; and similar account administration functions (collectively, the "Account Administration Services").

7. The services to be provided by Service Organizations under a 12b–1 Plan will include providing facilities to answer questions from prospective and existing investors; receiving and answering investor correspondence; displaying and making prospectuses available on the Service Organizations' premises; assisting Customers in completing application forms, selecting dividend and other account options, and opening custody accounts with the Service Organization; and acting as liaison between Customers and the Company. In addition, the 12b–1 Plan of a Portfolio may provide that payments may be made to the Adviser or Distributor to pay for any activities or

[1] The Company currently does not anticipate creating new classes with respect to the Institutional Government Fund.

[2] The 1.00% fee is subject to any applicable restrictions of the NASD's Rules of Fair Practice as to the 12b–1 and non-12b–1 portions of such fee.

expenses primarily intended to result in the sale of shares. (All such services are collectively referred to as the "12b–Plan Services.")

8. The services provided by Service Organizations to their Customers under the Combined Plan of a Portfolio will include Account Administration Services and 12b–1 Plan Services.

9. Under each type of Plan, the Company would pay a Service Organization for its services and assistance in accordance with the terms of the Plan and its particular Service Agreement ("Service Payment") and the expense of such payments would be borne entirely by the beneficial owners of the class of New Shares. In the event that a Portfolio adopts more than one Plan for a particular class, services to be provided under one Plan will augment (and not be duplicative of) the services to be provided under the other Plan.

10. All shares of a Portfolio, regardless of class, would have identical voting, dividend, liquidation, and other rights, preferences, powers, restrictions, limitations, qualifications, designations, and terms and conditions, except as provided in condition 1 below.

11. The gross income of a Portfolio will be allocated to each class in the Portfolio on the basis of the relative net asset values of the classes of each Portfolio. Expenses of the Company that cannot be attributed directly to any one Portfolio ("Company Expenses") will be allocated to each Portfolio based on the relative net assets of such Portfolio or as otherwise deemed fair and equitable by the Directors. Certain expenses may be attributable to a particular Portfolio, but not to a particular class ("Portfolio Expenses"). All such Portfolio Expenses will be allocated to each class of shares on the basis of the relative net asset values of the classes of each Portfolio, except for Service Payments and certain expenses specified in condition 1(a) below ("Class Expenses") which will be directly attributed to the class to which they relate and borne *pro rata* by the shareholders of the applicable class.

12. Because of the differing Service Payments and Class Expenses that may be borne by each class of shares, the net income per share of (and dividends payable per share to) each class may be different than the net income per share of the other classes of shares.

13. Each class of shares may be exchanged only for shares of the same class in another Portfolio. Shares of a Portfolio having only one class of shares may be exchanged, to the extent permitted by the Company, for any class of shares of another Portfolio having more than one class of shares. Class E Shares, or any additional classes of shares sold subject to a front-end sales load, may be exchanged for a class or classes of shares of Money Market Portfolios which bear the same or lower fees under a 12b–1 Plan, a Non–12b–1 Plan, or a Combined Plan, but which are not subject to a sales load. All exchanges will be conducted in compliance with rule 11a–3 under the Act.

Applicants' Legal Analysis

1. Applicants are requesting an exemptive order to the extent that the proposed issuance and sale of New Shares might be deemed: (a) To result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act. Applicants believe that the proposed allocation of expenses and voting rights relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. They contend that investors will not be given misleading impressions as to the safety of risk of the shares and the nature of the shares will not be rendered speculative because all shares will be redeemable at all times, no class of shares will have any distribution or liquidation preference with respect to particular assets, and no class will be protected by any special reserve or other account.

2. Applicants assert that the issuance and sale of New Shares will facilitate meeting the competitive demands of today's financial services industry. Applicants believe that by offering New Shares in connection with Plans and by also creating and offering shares independently of Plans, the Company may be able to achieve added flexibility in meeting the service and investment needs of shareholders and future investors.

3. Applicants state that the Alternative Distribution System does not involve borrowings and does not affect the Company's existing assets or reserves. Applicants also contend that the proposed arrangement will not increase the speculative character of the shares in a Portfolio, because all of the Portfolio's income and expenses (with the exception of the proposed Service Payments and Class Expenses) will be allocated to each class of a Portfolio on the basis of the relative net asset values of the respective classes.

4. Applicants assert that the Company's capital structure under the proposed arrangements will not enable insiders to manipulate the expenses and profits among the shares because it is not organized in a pyramid fashion. Applicants contend that the issues present in capital structures that prompted the SEC to recommend the adoption of section 18 (*i.e.*, funded debt, preference stocks, and convertible securities) are not present in the Alternative Distribution System. Applicants state that no class of shares would have a claim of priority of earnings, a preferential lien on the Company's assets in the case of liquidation or dissolution, or any right to require that lapsed dividends be paid before dividends are declared on the other classes of shares in a Portfolio.

Applicant's Conditions

Applicants[3] agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares of a Portfolio will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences among the classes of shares will relate solely to: (a) The impact of the disproportionate Service Payments made under the Non-12b-1 Plan, the 12b-1 Plan, and the Combined Plan and any Class Expenses that may be imposed upon a particular class of shares and which are limited to (i) transfer agency fees attributable to a specific class of shares, (ii) expenses related to preparing, printing, and distributing materials such as shareholders reports, prospectuses, and proxy statements to current shareholders of a specific class, (iii) blue sky registration fees incurred by a class of shares, (iv) SEC registration fees incurred by a class of shares, (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class, (vi) litigation or other legal expenses relating solely to one class of shares, (vii) Directors' fees incurred as a result of issues relating to one class of shares, and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to the Company's Non-12b-1 Plan, 12b-1 Plan, and Combined Plan; (c) the different exchange privileges of the class of shares; and (d) the designation of each class of shares of the Company.

2. The directors of the Company, including a majority of the independent directors, will approve the offering of

[3] For purposes of the following conditions, the term "Company" also includes each Future Company and the term "Portfolio" includes each portfolio of a Future Company.

the Alternative Distribution System. The minutes of the meetings of the directors of the Company regarding the deliberations of the directors with respect to the approvals necessary to implement the Alternative Distribution System will reflect in detail the reasons for the directors' determination that the proposed Alternative Distribution System is in the best interests of both the Company and its shareholders.

3. On an ongoing basis, the directors of the Company, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Company for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The Non-12b-1 Plans will be adopted and operated in accordance with the procedures set forth in rule 12b-1(b) through (f) as if the expenditures made thereunder were subject to rule 12b-1, except that shareholders need not enjoy the voting rights specified in rule 12b-1.

5. The directors will receive quarterly and annual statements concerning the amounts expended under the Non-12b-1 Plans, 12b-1 Plans, and the Combined Plans and the related Service Agreements complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

6. Dividends paid by the Company with respect to a class of shares of a Portfolio will be calculated in the same manner, at the same time, on the same day, and will be in the same per share amount as dividends paid by the Company with respect to each other class of shares in the same Portfolio, except that Service Payments made by a class under its Plan and any Class Expenses will be borne exclusively by the affected class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Company that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Company (which the Company agrees to provide), will be available for inspection by the SEC staff upon the written request to the Company for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time, or such other applicable auditing standards as may be approved by the SEC.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (7) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in that condition. Applicants will take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

9. The prospectus of the Company will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Company shares may receive different compensation with respect to one particular class of shares over another in the Company.

10. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Portfolios to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors with respect to the Alternative Distribution System will be set forth in guidelines to be furnished to the directors.

12. The Company will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Company will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Company as a whole generally and not on a per class basis. Each Company's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Company. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Company's net asset value or public offering price will present each class of shares separately.

13. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent change thereto will be reviewed and approved by a vote of the board of directors of the Company including a majority of the directors who are not interested persons of the Company. Any person authorized to direct the allocation and disposition of monies

paid or payable by the Company to meet Class Expenses shall provide to the board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

14. Applicants acknowledge that the grant of the requested exemptive order does not imply SEC approval, authorization of, or acquiescence in any particular level of payments that the Company may make pursuant to Service Organizations pursuant to any Plan in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26841 Filed 11–1–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19817; File No. 812–8446]

Application for Exemptions Under the Investment Company Act of 1940 (the "1940 Act")

October 27, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

APPLICANTS: John Hancock Variable Life Insurance Company ("JHVLICO"), John Hancock Variable Life Account U ("Account U"), John Hancock Variable Life Account S ("Account S"), John Hancock Mutual Life Insurance Company ("John Hancock"), and John Hancock Mutual Variable Life Insurance Account UV ("Account UV").

RELEVANT 1940 ACT SECTIONS AND RULES: Exemptions requested under Section 6(c) from Sections 27(a)(3) and 27(c)(2) of the 1940 Act and Rules 6e–2(a)(2), 6e–2(b)(15), 6e–2(c)(4)(v), 6e–3(T)(b)(13)(ii) and 6e–3(T)(c)(4)(v) under the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit (a) each of the Applicant separate accounts to issue both flexible premium variable life insurance policies and scheduled premium variable life insurance policies; (b) a sales charge structure in which sales charges on premiums in excess of the policy's target premium may be lower than sales charges on subsequent target premium payments; and (c) the deduction from premium payments of an amount that is reasonably related to JHVLICO's or John Hancock's increased federal tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended.

FILING DATES: The application was filed on June 11, 1993 and amended on September 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC 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. on November 22, 1993, and should be accompanied by proof of service on the Applicants in the form of an affidavit 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 Fifth Street NW., Washington, DC 20549. Applicants, c/o Francis C. Cleary, Esquire, John Hancock Mutual Life Insurance Company, John Hancock Place, P.O. Box 111, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Counsel, at (202) 504–2802, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. JHVLICO, a wholly-owned subsidiary of John Hancock, is a stock life insurance company that was chartered under the laws of Massachusetts in 1979. JHVLICO is authorized to transact a life insurance and annuity business in all fifty states.

2. Account U, Account V and Account S each was established by JHVLICO under Massachusetts law as a separate account. Each of those separate accounts is registered under the 1940 Act as a unit investment trust, and invests exclusively in shares of John Hancock Variable Series Trust I, an open-end diversified management investment company. In accordance with the laws of Massachusetts, the assets of each of those separate accounts not exceeding reserves and other policy liabilities are not chargeable with liabilities arising out of any other business JHVLICO conducts, and income, gains, and losses from the assets of each of those separate accounts are credited to, or charged against, the separate account without regard to other income, gains, or losses of JHVLICO. Account U funds scheduled premium variable life insurance policies and single premium variable life insurance policies in reliance on Rule 6e–2 of the 1940 Act. Account V funds hybrid variable life insurance policies under Rule 6e–2 of the 1940 Act. Account S, which was created on May 27, 1993, intends to fund flexible premium variable life insurance policies based on the lives of two insureds ("Survivorship Policies") under Rule 6e–3(T) of the 1940 Act.

3. John Hancock is a mutual life insurance company that was chartered under the laws of Massachusetts in 1862. John Hancock is authorized to transact a life insurance and annuity business in all fifty states, and it is the principal underwriter for Account U, Account V, Account S, and Account UV.

4. Account UV was established by John Hancock as a separate account under Massachusetts law. Account UV is registered under the 1940 Act as a unit investment trust, and will invest exclusively in shares of John Hancock Variable Series Trust I. In accordance with the insurance laws of Massachusetts, the assets of Account UV not exceeding reserves and other policy liabilities are not chargeable with liabilities arising out of any other business John Hancock conducts. Income, gains, and losses from assets allocated to Account UV are credited to, or charged against, the account without regard to other income, gains, or losses of John Hancock. Account UV, which was established on May 10, 1993, intends to issue Survivorship Policies that are substantially identical to the policies issued by Account S. John Hancock and Account UV also intend to issue, in reliance on Rule 6e–2 under the 1940 Act, certain scheduled premium variable life insurance policies, single premium variable life insurance policies, and hybrid variable life insurance policies that are substantially identical to the variable life insurance policies currently issued by JHVLICO's Account U and Account V.

5. The requested order also would apply to any other separate account established in the future by JHVLICO or John Hancock to support scheduled premium, single premium, or flexible premium variable life insurance contracts (the "Future Accounts"). The assets of each of the Future Accounts not exceeding reserves and other policy liabilities will not be chargeable with liabilities arising out of any other business that JHVLICO or John Hancock, as the case may be, conducts. Income, gains, and losses from assets allocated to

each of the Future Accounts will be credited to, or charged against, the account without regard to other income, gains, or losses of JHVLICO or John Hancock, as the case may be. In the future, Account U, Account V, Account S, Account UV or any of the Future Accounts may issue other types of variable life insurance policies in reliance on Rules 6e–2 or 6e–3(T) under the 1940 Act.

6. The Survivorship Policies provide for flexible premium payments, together with a death benefit and surrender value that may increase or decrease daily depending in part on the investment performance of an underlying mutual fund. In addition, the Survivorship Policies provide life insurance coverage on two insureds, with a death benefit payable when the last surviving insured dies.

7. A charge to cover sales expenses will be deducted from each premium payment under a Survivorship Policy. A maximum charge of 30% of premiums paid in the first year up to one "target premium" and 3.5% of premiums paid during the first year in excess of that target may be deducted. In subsequent years, the maximum sales charge for premiums paid up to one target premium is 15% in years 2 through 5, 10% in years 6 through 10, 4% (currently 3%) in years 11 through 20, and 3% (currently 0%) thereafter. The sales charge for premiums paid in excess of the target premium is 3.5% in years 2 through 10, 3% in years 11 through 20 and 0% thereafter. Notwithstanding the foregoing, if the younger insured was age 71 or older at issue, the current and guaranteed sales charge is 0% commencing in policy year 12 and thereafter.

8. Certain other charges and deductions are made against the Survivorship Policies, including a premium expense and processing charge, a state premium tax charge, issue charges, an administrative charge, an insurance charge, guaranteed minimum death benefit charges, a charge for mortality and expense risks, charges for extra mortality risks, charges for optional rider benefits, and a charge for partial withdrawals.

9. Applicants propose to deduct a charge equal to 1.25% of each premium payment to cover the estimated cost of the federal income tax treatment of the Survivorship Policies' deferred acquisition costs—commonly referred to as the "DAC tax." This charge may be increased, for Survivorship Policies not yet issued, in order to correspond with changes in the federal income tax treatment of the Survivorship Policies' deferred acquisition costs. This charge also may be made in connection with future Policies issued by JHVLICO or John Hancock, under Rule 6e–2 or Rule 6e–3(T) of the Act, in an amount that is reasonable in relation to each company's increased federal tax burden related to the receipt of such premiums.

10. The increased federal tax burden of JHVLICO and John Hancock results from Section 848 of the Internal Revenue Code of 1986 (the "Code"), which was enacted in 1990 to modify the federal income taxation of life insurance companies. Section 848 requires life insurance companies to capitalize and amortize, over a period of ten years, part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income.

11. The amount of deductions that would have to be amortized over ten years rather than deducted in the year incurred is a percentage of the current year's net premiums received in connection with certain types of insurance contracts. The percentage varies, depending on the type of insurance contract involved, according to a schedule set forth in Section 848(c)(1).

12. In effect, Section 848 accelerates the realization of income from insurance contracts covered by that Section, and accordingly accelerates the payment of taxes on the income generated by those contracts. Applicants argue that in economic effect, taking into account the time value of money, the tax burden of the insurance company related to those contracts is increased. Because the amount of general deductions that must be capitalized and amortized is measured by premiums paid, an increased federal tax burden results from the receipt of those premiums. Applicants state that in this respect, the impact of Section 848 can be compared to that of a state premium tax.

13. The Policies fall under the category of "specific contracts" under Section 848, so that 7.7 percent of the net premiums received under the Policies must be capitalized and amortized. The increased tax burden on JHVLICO and John Hancock resulting from this requirement can be quantified as follows. For every $10,000 of net premiums received by either company under the Policies in a given year, the general deductions of that company are reduced by $731.50, or (a) $770 (7.7 percent of $10,000) minus (b) $38.50 (one-half year's portion of the ten-year amortization). Using a 34 percent corporate tax rate, this results in an increase in tax for the current year of $248.71. This increase in tax will be partially offset by increased deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in the tenth).

14. In calculating the present value of these increased future deductions, JHVLICO and John Hancock determined, in their business judgment, to apply a 10 percent discount rate. The targeted rates of return for JHVLICO and John Hancock (*i.e.*, the return each company seeks on invested capital) is in excess of 10 percent. To the extent that capital must be used by JHVLICO or John Hancock to satisfy its increased federal tax burden under Section 848 resulting from the receipt of premiums, such capital is not available for investment. Thus, the cost of capital used to satisfy the increased federal tax burden under Section 848 is, in essence, each company's targeted rate of return. Accordingly, Applicants represent that the targeted rate of return is appropriate for use in this present value calculation. To the extent that the 10 percent discount rate is lower than each company's actual targeted rate of return, a measure of comfort is provided that the calculation of each company's increased tax burden attributable to the receipt of premiums will continue to be reasonable over time, even if the corporate tax rate applicable to JHVLICO or John Hancock is reduced, or their targeted rate of return is lowered.

15. To determine the targeted rate of return used to set this discount rate, JHVLICO and John Hancock first identified a reasonable risk-free rate of return that can be expected to be earned over the long term, based on current market rates, inflation, and expected future interest rate trends. Each company then determined the premium it needs to earn over that risk-free rate of return in order to compensate for the risk profile of the insurance business. John Hancock also takes into consideration any information available about the rates of return earned by other mutual life insurance companies. As a mutual insurance company, John Hancock must make sure that its projected rates of return are adequate to support its anticipated growth. If the rate of return is too low, surplus will decrease or will not increase sufficiently to support anticipated growth. John Hancock seeks to maintain a ratio of surplus to assets that it establishes based on its judgment of the risks represented by various components of its assets and liabilities. Applicants state that maintaining the ratio of surplus to assets is critical to maintain both competitive ratings from various rating agencies and competitive pricing on

new and in-force business. Consequently, Applicants state, John Hancock's surplus must grow at least as fast as its assets. John Hancock represents that these factors are appropriate considerations in determining its cost of capital.

16. Applying this 10 percent discount rate, and assuming a 34 percent corporate tax rate, the present value of the increased deductions amounts to a tax savings of $155.82. Thus, the present value of the increased tax burden resulting from the effect of Section 848 on each $10,000 of net premiums received under the Policies is $92.89 ($248.71 minus $155.82). JHVLICO and John Hancock each believes that it is reasonable to expect that virtually all future federal income tax deductions will be fully taken.

17. State premium taxes are deductible in computing each company's federal income taxes. Thus, the companies do not incur incremental income tax when they pass on state premium taxes to owners. In contrast, federal income taxes are not deductible in computing JHVLICO's or John Hancock's federal income taxes. In order to compensate each company fully for the impact of Section 848, it therefore would be necessary to allow the company to impose an additional charge that would make it whole not only for the $92.89 additional tax burden attributable to Section 848, but also for the tax on the additional $92.89 itself. This tax can be determined by dividing $92.89 by the complement of the 34 percent federal corporate income tax rate, *i.e.*, 66 percent, resulting in an additional charge of § 140.74 for each $10,000 of net premiums, or 1.41 percent.

18. It is the judgment of JHVLICO and John Hancock that a charge of 1.25 percent would reimburse it for the impact of Section 848 on its federal tax liabilities. Applicants represent that the proposed "DAC tax" charge is reasonably related to JHVLICO's and John Hancock's increased federal tax burden under Section 848, taking into account the benefit to each company of the amortization permitted by Section 848 and the use by each company of a 10 percent discount rate in computing the cost of the increased tax burden and the future deductions resulting from such amortization,such rate being no greater than each company's targeted rate of return.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Rule 6e–2 provides that a separate account relying thereon must derive its assets (other than advances by the life insurance company) "solely from the sale of variable life insurance contracts as defined in paragraph (c)(1) of this Rule 6e–2." Paragraph (c)(1) defines a variable life insurance contract somewhat differently from the definition of a flexible premium variable life insurance contract under Rule 6e–3(T). Thus, a separate account issuing policies in reliance on Rule 6e–3(T) may be regarded as not deriving its assets "solely" from the sale of "variable life insurance contracts," as defined in Rule 6e–2(c)(1). As a result, Account U, Account V, Account UV, and any of the Future Accounts may not rely on the exemptions provided by Rule 6e–2 as to the existing policies (and any other policies they may issue in the future in reliance on Rule 6e–2) if they also fund flexible premium variable life insurance policies in reliance on Rule 6e–3(T).

3. Similarly, the exemptions provided by Rule 6e–2(b)(15) are available only to separate accounts "all the assets of which consist of the shares of * * * management investment companies which offer their shares exclusively to variable life insurance separate accounts." Account U, Account V, Account UV and any of the Future Accounts may not technically qualify as "variable life insurance separate accounts" for the reasons stated above and, absent relief from Rule 6e–2(a)(2), may not be able to rely on Rule 6e–2(b)(15).

4. Applicants request an order of the Commission under Section 6(c) of the 1940 Act exempting Account U, Account V, Account S, Account UV, and the Future Accounts from the provisions of Rule 6e–2(a)(2) and Rule 6e–2(b)(15) to the extent necessary to permit them to issue one or more flexible premium variable life insurance policies in reliance on Rule 6e–3(T) under the 1940 Act, without losing their ability to rely on Rule 6e–2 with regard to existing or future scheduled premium variable life insurance policies issued by those separate accounts. Applicants submit that no policy reason would justify prohibiting use of the same separate account as a funding vehicle for policies relying on Rule 6e–2 and policies relying on Rule 6e–3(T). Applicants represent that the interests of flexible life policyholders and scheduled life policyholders, and the regulatory frameworks of Rules 6e–2 and Rule 6e–3(T) are sufficiently parallel that use of the same separate account to fund both types of policies should not prejudice the owners of any of the policies. Furthermore, the increased pooling, diversification, and economies of scale realized from the use of the same separate account should benefit owners of the policies, according to Applicants.

5. An owner of a Survivorship Policy would be permitted to pay premiums in excess of one year's target premium in any given year. The sales charge on such excess premiums would be 3.5% during the first 10 policy years, and 3% during policy years 11 through 20. Thus, the sales charge on such excess premiums would be less than the sales charge imposed on a subsequent year's target premium.

6. Section 27(a)(3) of the 1940 Act provides, in effect, that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment, and that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment. Rule 6e–3(T)(b)(13)(ii), in pertinent part, provides an exemption from Section 27(a)(3), provided that the proportionate amount of sales charge deducted from any payment during the contract period does not exceed the proportionate amount deducted from any prior payment, unless an increase is caused by reductions in the annual cost of insurance or a reduction in the sales load deducted from amounts transferred to a flexible life contract from another plan of insurance.

7. The sales load structure of the Survivorship Policies has been designed to more closely reflect JHVLICO's (or John Hancock's) expenses in connection with policy sales. Applicants state that instead of reducing the sales charges on premiums in excess of the target premium in any year, JHVLICO and John Hancock as easily could have structured the sales load to provide for 30% of one target premium, whenever paid, plus 15% of four target premiums, whenever paid, and so on, subject to the maximum charge permitted under Rule 6e–3(T) (b)(13)(i). Applicants state that such a sales charge structure clearly would qualify for the exemption from Section 27(a)(3) afforded by Rule 6e–3(T)(b)(13)(ii).

8. Applicants state that the sales loads structure of the Survivorship Policies

provides a significant benefit to owners, by passing through to them a portion of the lower distribution costs with respect to excess premiums. Applicants submit that it would not be in the interest of owners to impose a sales charge on excess premiums that is higher than is necessary.

9. Applicant submit that the sales charge structure under the Survivorship Policies is straighforward and easily understood. Applicants also represent that owners of Survivorship Policies will benefit from the proposed sales charge structure, and that the prospectus for the Survivorship Policies will contain disclosure informing owners how to minimize sales charge deductions from premiums paid. Accordingly, JHVLICO, Account S, John Hancock, and Account UV request an order under Section 6(c) of the 1940 Act exempting them from Section 27(a)(3) and Rule 6e–3(T)(13)(ii) to the extent necessary to permit the sales charge payable on a given year's target premium to exceed the sales charge payable on any excess premium payments made in any prior year, as described above.

10. Applicants propose to make deductions from premiums in an amount that is reasonable in relation to the increased federal tax burden of JHVLICO or John Hancock, as the case may be, related to the receipt of premiums in connection with the Survivorship Policies and future scheduled premium or flexible premium variable life insurance policies issued by any of the Accounts. Applicants assert that it is proper for an insurer to deduct a charge for the tax burden attributable to premiums received from variable life insurance policies, and to exclude such a deduction from sales load, because the deduction for the insurer's increased federal tax burden is a legitimate expense of the company, and is not for sales and distribution expenses. Applicants note that the Commission has previously considered similar deductions for premium taxes in connection with its adoption of Rule 6e–2 and Rule 6e–3(T). In each case, the Commission permitted deductions for such taxes to be made and to be treated as other than sales load. Applicants assert that the propriety of a charge for an insurer's tax burden attributable to premiums received is the same whether such burden arises under state or federal law.

11. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a) (2) and (3) of the 1940 Act. Applicants state that Rule 6e–2(b)(13)(iii) and Rule 6e–3(T)(b)(13)(iii) each provides exemptive relief from Section 27(c)(2) to permit an insurer to make certain deductions, and that under each of those rules, such deductions are not regarded as sales load. One of such deductions under Rule 6e–3(T) is for "premium or other taxes imposed by any State or other governmental entity." Applicants state that arguably, the proposed "DAC tax" deduction is properly covered by Rule 6e–2(b)(13)(iii) or rule 6e–3(T)(b)(13)(iii), as the case may be. However, to remove any doubt on the subject, Applicants seek relief from Section 27(c)(2) only to preclude the possibility that the proposed deductions might not be entitled to the exemptive relief provided by Rule 6e–2(b)(13)(iii) and Rule 6e–3(T)(b)(13)(iii). Applicants also request exemptions from Rule 6e–2(c)(4)(v) and Rule 6e–3(T)(c)(4)(v) so that the proposed "DAC tax" charge is treated as other than sales load under those rules.

12. Rule 6e–2(c)(4) and Rule 6e–3(T)(c)(4) each define "sales load" as the excess of premium payments over certain itemized charges and adjustments. A deduction for an insurer's increased federal tax burden as described above does not fall squarely into any of those itemized charges or deductions, arguably causing such a deduction to be treated as part of "sales load" under a literal reading of paragraph (c)(4) of each Rule.

13. Applicants submit that there is no public policy reason that deductions made to pay federal taxes should be treated as part of sales load, nor is there any language in the releases in which the Commission adopted Rule 6e–2 or adopted and amended Rule 6e–3(T) suggesting that such a result as intended, despite the literal working of paragraph (c)(4) of each Rule.

14. The exemption requested by Applicants is necessary in order for them to rely on certain provisions of paragraph (b)(13)(i) of Rule 6e–2 or subparagraph (b)(13)(i) of Rule 6e–3(T), as applicable, each of which provides exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates may only rely on subparagraph (b)(13)(i) of Rule 6e–2 or Rule 6e–3(T) if they meet the alternative limitations on sales load, as defined in paragraph (c)(4) of each Rule. Applicants state that, depending upon the load structure of a particular Policy, these alternative limitations may not be met if the deduction for the increase in the issuer's federal tax burden is included in sales load.

15. The public policy that underlies subparagraph (b)(13)(i) of each Rule, like that which underlies Section 27(a)(1) and 27(h)(1) of the 1940 Act, is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a tax burden charge attributable to premium payments as sales load would not in any way further this legislative purpose, because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of "sales load" in paragraph (c)(4) of each Rule.

16. Applicants assert that the genesis of the definition in paragraph (c)(4) of each Rule support this analysis. Section 2(a)(35) of the 1940 Act provides a scale against which the percentage limits of Sections 27(a)(1) and 27(h)(1) of the 1940 Act any be measured. Applicants state that paragraph (c)(4) is simply a more specific articulation of the requirements of Section 2(a)(35) of the 1940 Act as applied to variable life insurance contracts. Section 2(a)(35) of the 1940 Act, like the definition specified in paragraph (c)(4) of each Rule, defines sales load derivatively. Applicants assert that the Commission's intent in adopting paragraph (c)(4) of Rule 6e–2 and of Rule 6e–3(T) was to tailor the general terms of Section 2(a)(35) to scheduled premium, single premium, and flexible premium variable life insurance contracts.

17. Section 2(a)(35) of the 1940 Act excludes from sales load deductions from premiums for "issue taxes." Applicants submit that this suggests that it is consistent with the 1940 Act's policies to exclude from the definition of "sales load" in Rule 6e–2 and Rule 6e–3(T) deduction made to pay an insurer's costs attributable to its tax obligations. Further, Applicants submit that the reference in Section 2(a)(35) to administrative expenses or fees that are "not properly chargeable to sales or promotional activities" suggests that the only deductions intended to fall within the definition of sales load are those that are properly chargeable to such activities. Because the proposed deductions will be used to compensate each company for its increased federal tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, Applicants assert that the language in Section 2(a)(35) is another

indication that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

18. Applicants assert that the terms of the relief requested with respect to Policies to be issued through the Accounts or through Future Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief applicable to the Future Accounts, JHVLICO and John Hancock would have to request and obtain a separate exemptive order for any Policy issued in the future. Applicants state that such additional requests for exemptive relief would present no issues under the 1940 Act that have not already been addressed in this request for an order.

19. Applicants assert that the requested order with respect to Future Accounts is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for each company to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek exemptive order would impair each company's ability to effectively take advantage of business opportunities as they arise. Applicants also state that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If each company were required to repeatedly seek an exemptive order with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby, and might be disadvantaged as a result of such company's increased overhead expenses.

Applicants' Conditions

1. Applicants represent that JHVLICO and John Hancock each will monitor the reasonableness of the "DAC tax" charge to be deducted.

2. Applicants represent that the registration statement for each of the Policies under which the "DAC tax" charge is deducted will (a) disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to the applicable company's increased federal tax burden under Section 848 resulting from the receipt of premiums.

3. Applicants represent that the registration statement for each of the Policies under which the "DAC tax" charge is deducted will contain as an exhibit an actuarial opinion as to (a) the reasonableness of the charge in relation to the applicable company's increased federal tax burden under Section 848 resulting from the receipt of premiums; (b) the reasonableness of the targeted rate of return that is used in calculating such charge; and (c) the appropriateness of the factors taken into account by such company in determining such targeted rate of return.

Applicants' Conclusion

Section 6(c) of the 1940 Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the 1940 Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For the reasons discussed above, Applicants respectfully submit that the requested exemptions will be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–26908 Filed 11–1 –93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33115; International Series Release No. 603; File No. SR–Phlx–93–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Proposing To Amend Its Foreign Currency Options Trading Hours

October 29, 1993.

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 October 22, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. 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 Phlx, pursuant to Rule 19b–4 of the Act, proposes to adjust its foreign currently options ("FCO") trading hours in order to begin trading all FCOs, except the Canadian dollar FCO, at 1:30 a.m. Eastern Standard Time ("EST") and terminate trading at 2:30 p.m. EST each business day. This would be accomplished by: (1) Suspending FCO trading hours from 6 p.m. EST through 1:30 a.m. EST for options on the Australian dollar, Japanese yen, Swiss franc, Deutsche mark, and Deutsche mark/Japanese yen crossrate; and (2) revising the trading hours for the FCOs on the British pound, French franc, European currency unit, and British pound/Deutsche mark cross-rate which now begin trading at 3:30 a.m. EST each business day. The Canadian dollar FCO contracts will commence trading at 7 a.m. EST each business day and terminate trading at 2:30 p.m. EST each business day. Additionally, the Phlx proposes to delete Commentary .16 of Phlx Rule 1014 and renumber Commentary .17 to .16. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, 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 Exchange 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 Phlx 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 Phlx's FCO trading hours have generally commenced at 6 p.m. EST each Sunday through Thursday and terminated at 2:30 p.m. EST each respective Monday through Friday since the commencement of the 6 p.m. EST to 10 p.m. EST evening trading session on September 16, 1987. Earlier this year the Exchange suspended trading from 6 p.m. EST to 3:30 a.m. EST respecting the British pound and the British pound/Deutsche mark FCOs due to lack of trading interest and volume in that

session.[1] The hours of 6 p.m. EST to 1:30 a.m. EST generally correspond to primary business hours of the Far East and have over the past several years, received limited trading volume, even in the Far Eastern time zone oriented FCO contracts (*i.e.*, the Australian dollar, Japanese yen, and Deutsche mark/Japanese yen contracts). The Phlx notes that over the past year, the FCO contract volume executed during the trading hours proposed to be suspended, amounted to less than 5% of the total FCO daily trading volume. In this regard, the Phlx believes that the current limited trading interest in FCO contracts reflected in the 6 p.m. EST to 1:30 a.m. EST trading session can be adequately handled and executed during a revised trading day for FCOs, other than on the Canadian dollar, from 1:30 a.m. to 2:30 p.m. EST, and for the Canadian dollar FCO from 7 a.m. to 2:30 p.m. EST.

The Exchange believes the proposed adjustments to FCO trading hours in these particular contracts will ease the staffing burden on the current registered FCO specialist units as well as floor brokerage units and registered option trader firms. Additionally, the Phlx believes the suspension of these FCO trading hours will reduce the extraordinary expenses associated with operating the Phlx FCO trading floor and support systems during that time segment. The proposed revision of FCO trading hours will result in all Phlx listed FCO contracts, except the Canadian dollar contract, commencing trading at 1:30 a.m. EST and terminating trading at 2:30 p.m. EST daily, Monday through Friday. Under the proposal, FCOs on the Canadian dollar would commence trading at 7 a.m. EST and terminate trading at 2:30 p.m. EST daily, Monday through Friday.[2] In this regard, the Phlx proposes to delete Commentary .16 of Phlx Rule 1014 and renumber Commentary .17 to .16, thereby deleting unnecessary references to the "evening trading session" as it relates to the application of the "dual trading" prohibition on participants in Phlx foreign currency options. The Phlx notes that Canadian dollar currency options trading activity is primarily limited to North American business hours.

The Phlx will consider responding to any change in marketplace demand for reinstating evening trading hours for these and other FCO contracts should the need so arise.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and with section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, promote just and equitable principles of trade, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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 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 Phlx. All submissions should refer to File No. SR–Phlx–93–42 and should be submitted by November 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27009 Filed 11–1–93; 8:45 am]

BILLING CODE 8010–01–M

[1] See Securities Exchange Act Release No. 32545 (June 29, 1993), 58 FR 36239.

[2] Telephone conversation between Edith Hallahan, Attorney, Market Surveillance, Phlx, and Brad Ritter, Attorney, Office of Options Regulation, Division of Market Regulation, Commission, October 28, 1993.

[3] 17 CFR 200.30-3(a)(12) (1992).

SMALL BUSINESS ADMINISTRATION

Indianapolis District Advisory Council, Public Meeting

The U.S. Small Business Administration Indianapolis District Advisory Council will hold a public meeting at 9:30 a.m. EST, on Tuesday, November 30, 1993, at the North Meridian Inn, 1530 North Meridian Street, Indianapolis, Indiana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Robert D. General, District Director, U.S. Small Business Administration, 429 North Pennsylvania Street, Suite 100, Indianapolis, Indiana 46204–1873, (317) 226–7275.

Dated: October 27, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–26903 Filed 11–1–93; 8:45 am]

BILLING CODE 8025–01–M

Amendment of Privacy Act System of Records 060, Grievances and Appeals

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: In the notice of Revision of Agency's System of Records 060, Grievances and Appeals, published in the **Federal Register** on Tuesday, February 26, 1991, Volume 56, #38 beginning on page 8007, the retention schedule for this system is being changed from "indefinitely;' to seven years.

DATES: This rule shall be effective November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Beverly K. Linden, Chief, Freedom of Information/Privacy Acts Office; Office of Hearings and Appeals; U.S. Small

Business Administration; Washington, DC. 20416; (202) 653–6460.

SUPPLEMENTARY INFORMATION: This change is mandated by the General Records Schedule 1, which changes items 30A and 30B because the Office of Personnel Management has determined that agencies may decide how long, between four to seven years, a retention period they will maintain for their grievance and adverse action files. SBA is publishing this notice in accordance with the Privacy Act stipulation that all agencies publish their Systems in the **Federal Register** when there is a revision, change or addition.

For the reason set forth above, SBA is amending its System of Records 060, Grievances and Appeals, by changing the "Retention and Disposal" section to read as follows:

SBA 060

* * * * *

Retention and disposal:

Records are retained for seven years.

* * * * *

Erskine B. Bowles,

Administrator.

[FR Doc. 93–26902 Filed 11–1–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1895]

Office of Defense Trade Controls; Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of which persons have been statutorily debarred pursuant to § 127.7(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

EFFECTIVE DATE: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Section 38(g)(4)(A) of the Arms Export Control Act (AECA), 22 U.S.C. 2778, prohibits export licenses to be issued to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term "person," as defined in 22 CFR 120.14 of the International Traffic in Arms Regulations (ITAR), means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. The ITAR, specifically § 126.7(e), defines the term "party to the export" to include the president, the chief executive officer, and other senior officers and officials of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end-user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis. 22 U.S.C. 2278(g)(4).

The ITAR, § 127.7, authorizes the Assistant Secretary of State for Political-Military Affairs to prohibit certain persons convicted of violating, or conspiring to violate, the AECA, from participating directly or indirectly in the export of defense articles or in the furnishing of defense services. Such a prohibition is referred to as a "statutory debarment," which may be imposed on the basis of judicial proceedings that resulted in a conviction for violating, or of conspiring to violate, the AECA. See 22 CFR 127.7(c). The period for debarment will normally be three years from the date of conviction. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by the AECA, 22 U.S.C. 2778(g)(4).

Statutory debarment is based solely upon a conviction in a criminal proceeding, conducted by a United States court. Thus, the administrative debarment procedures, as outlined in the ITAR, 22 CFR part 128, are not applicable in such cases.

The Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating, or of conspiring to violate, the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision. 22 CFR § 127.7(d).

The Department of State policy permits debarred persons to apply for an exception one year after the date of the debarment, in accordance with the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, § 127.7. This request is made to the Director of the Office of Defense Trade Controls. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied. If the exception is granted, the debarment will be suspended.

Pursuant to the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, 22 CFR 127.7, the Assistant Secretary for Political-Military Affairs has statutorily debarred four persons who have been convicted of conspiring to violate or violating the AECA.

These persons have been debarred for a three-year period following the date of their conviction, and have been so notified by a letter from the Office of Defense Trade Controls. Pursuant to ITAR, § 127.7(c), the names of these persons, their offense, date of conviction(s) and court of conviction(s) are hereby being published in the **Federal Register**. Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Defense Trade Controls.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercising of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

In accordance with these authorities the following persons are debarred for a period of three years following their conviction for conspiring to violate or violating the AECA (name/address/offense/conviction date/court citation):

1. Tsotomu Ida, 333 8th Maloka-Cho Totsuka-Ku, Kokohama, Japan, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), December 17, 1992, *United States* v. *Japan Aviation Electronics Industry, Ltd., et al.*, U.S. District Court, District of Columbia, Criminal Docket No. 91–516–10.

2. Toshiyuki Murakoshi, 1–1–26–501 Takaido-Nishi-Suginami-Ku, Toyoko, Japan, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), December 17, 1992, *United States* v. *Japan Aviation Elections Industry, Ltd., et al.*, U.S. District Court, District of Columbia, Criminal Docket No. 91–516–09.

3. Hironobu Takahashi, 72–1 Suwacho, Hachiohi City, Toyoko, Japan, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), December 17, 1992,

United States v. *Japan Aviation Electronics Industry, Ltd., et al.*, U.S. District Court, District of Columbia, Criminal Docket No. 91–516–08.

4. Ronald J. Hoffman, 10195 Baywood Court, Los Angeles, CA 90077, 22 U.S.C. 2778 (violating the AECA), April 20, 1992, *United States* v. *Ronald J. Hoffman*, U.S. District Court, Central District of California, Criminal Docket No. 90–870(B)–AWT.

Dated: October 21, 1993.

William B. Robinson,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 93–26888 Filed 11–1–93; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended October 22, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49201
Date filed: October 18, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1533 dated October 12, 1993, North Atlantic-Africa Expedited Resos r–1–070dd, r–2–073rr, r–3–074v, r–4–075e, r–5–076a
Proposed Effective Date: Expedited January 1, 1994

Docket Number: 49205
Date filed: October 18, 1993
Parties: Members of the International Air Transport Association
Subject: COMP Telex 024f—Hungary Currency Changes
Proposed Effective Date: November 1, 1993

Docket Number: 49215
Date filed: October 22, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1492 dated October 19, 1993, Middle East-Africa Expedited r–1–070gg, r–2–085nn, r–3–024j
Proposed Effective Date: December 1, 1993

Docket Number: 49216
Date filed: October 22, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1532 dated October 12, 1993, North Atlantic-Middle East Expedited Reso r–1–024j
Proposed Effective Date: December 1, 1993

Docket Number: 49217
Date filed: October 22, 1993
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0616 dated October 19, 1993, Africa-TC3 Expedited Resos, r–1–055n, r–3–065n, r–5–048L, r–7–085x, r–2–045n, r–4–058L, r–6–068L, r–8–071pp, r–9–071t
Proposed Effective Date: December 1, 1993

Docket Number: 49218
Date filed: October 22, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1481 dated September 24, 1993, Within Middle East Resos r–1 to r–11
Proposed Effective Date: April 1, 1994

Docket Number: 49219
Date filed: October 22, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1529 dated September 24, 1993, US-Europe Resos r–1 to r–5
Proposed Effective Date: January 1, 1994

Docket Number: 49220
Date filed: October 22, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1528 dated September 24, 1993, South Atlantic-Africa Resos r–1 to r–13
Proposed Effective Date: April 1, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–26858 Filed 11–1–93; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 22, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49187
Date filed: October 13, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 10, 1993
Description: Application of Aerovias De Poniente, S.A. De C.V. pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit to engage in foreign scheduled air transportation for passengers, cargo and/or mail between the following city pairs: Hermosillo, Sonora-Tucson, Arizona; and Ciudad Juarez, Chihuahua-Albuquerque, New Mexico.

Docket Number: 49209
Date filed: October 20, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 17, 1993
Description: Application of Bay Air Cargo, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in charter foreign air transportation of property and mail between a point or points in the Federative Republic of Brazil and a point or points in the United States.

Docket Number: 49213
Date filed: October 21, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 18, 1993
Description: Application of Florida West Airlines pursuant to section 401 of the Act, requests that its application be granted and that Florida West Gateway, Inc.'s certificate and exemption authority and all rights and privileges associated therewith be transferred as promptly as possible to Florida West Airlines.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–26857 Filed 11–1–93; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–93–47]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions

previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 23, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____,800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 25, 1993.

Michael Chase,

Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 12638
Petitioner: Mr. Albert H. Prest
Sections of the FAR Affected: 14 CFR 121.99 and 121.351(a)
Description of Relief Sought/ Disposition: To amend and extend Exemption No. 2081 to permit ATA member airlines and other similarly situated part 121 operators to dispatch aircraft over certain oceanic areas with a single functional high frequency (HF) communication system installed on the aircraft.

Grant, October 20, 1993, Exemption No. 2081O

Docket No.: 25608
Petitioner: Mr. Charles S. McLeran
Sections of the FAR Affected: 14 CFR 91.511 and 135.165
Description of Relief Sought/ Disposition: To extend Exemption No. 5347 to continue to permit Aviation Methods, Inc (AMI) to operate its aircraft equipped with one high frequency (HF) communication system and one long range navigation system (LRNS) is extended overwater operations.

Grant, October 29, 1993, Exemption No. 5347A

Docket No.: 26552
Petitioner: United Parcel Service
Sections of the FAR Affected: 14 CFR 121, Appendix H
Description of Relief Sought: To extend Exemption No. 5366 to continue to allow United Parcel Service (UPS), and any other operator contracting to use UPS simulators, to conduct training and checking in UPS simulators, which are not qualified as Phase III.

Grant, October 20, 1993, Exemption No. 5366A

Docket No.: 26687
Petitioner: Allied-Signal Aerospace Company
Sections of the FAR Affected: 14 CFR 21.327(e)(4)
Description of Relief Sought: To allow the petitioner to export repaired Class II products that do not meet the requirements for the issuance of an FAA Form 8130–3, Airworthiness Approval Tag, without obtaining a written statement of acceptance from the importing country.

Denial, October 19, 1993, Exemption No. 5767

Docket No.: 27173
Petitioner: St Louis Helicopter Airways Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO-C112 (Mode S transponder installed on its aircraft operating under the provisions of Part 135.

Grant, October 20, 1993, Exemption No. 5768

Docket No.: 27243
Petitioner: Chalks International Airlines
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought: To allow the petitioner to operate Grumman turbo Mallard (G–73) aircraft in passenger carrying operations, under day visual flight rules (VFR), without a ground proximity warning system (GPWS).

Grant, October 29, 1993, Exemption No. 5769

[FR Doc. 93–46907 Filed 11–1–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Traffic Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the FAA's Aviation Rulemaking Advisory Committee on air traffic issues.

DATES: The meeting will be held on December 2, 1993, at 9:30 a.m.

ADDRESSES: The meeting will be held at the National Business Aircraft Association, 1200 18th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Boxer, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202–267–8783.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on air traffic issues to be held on 9:30 a.m., Thursday, December 2, 1993, at the National Business Aircraft Association, 1200 18th Street, NW., Washington, DC. The agenda for this meeting will include a:

- Status report on the advisory circular on the operation of unmanned airspace vehicles;
- Status report of the Mode S ground sensor evaluation study; and
- Briefing on national park and noise issues.

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the committee at any time by providing 30 copies to the Assistant Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC, on October 25, 1993.

Aaron Boxer,

Assistant Executive Director, Aviation Rulemaking Advisory Committee on Air Traffic Issues.

[FR Doc. 93–26905 Filed 11–1–93; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 83–05; Notice 6]

Comments on Truck Splash and Spray Reduction for a Report to Congress

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

ACTION: Notice requesting comments.

SUMMARY: The Senate Appropriations Committee has directed NHTSA to provide that Committee with a report on any technological progress that has been made in controlling splash and spray from large trucks since 1988, when NHTSA terminated rulemaking on this subject. This notice invites any interested person to provide NHTSA with any information or data in this area that the person believes NHTSA should consider in preparing its report to Congress.

DATES: All comments received by NHTSA no later than November 23, 1993 will be considered in preparing the report to Congress on progress since 1988 in large truck splash and spray suppression. The Senate Appropriations Committee requested NHTSA's report by March 1, 1994.

ADDRESSES: All comments should refer to Docket No. 83–05, Notice 6 and be submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. The NHTSA Docket Section is open to the public from 9:30 am to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Mr. Medlin can be reached by telephone at (202) 366–5276.

SUPPLEMENTARY INFORMATION: The Surface Transportation Assistance Act of 1982 directed NHTSA to undertake rulemaking to require splash and spray suppression devices to be installed on large trucks and trailers; 49 U.S.C. 2314. In 1988, after a lengthy rulemaking proceeding and a thorough analysis of all available information on large truck splash and spray suppression, NHTSA concluded that none of the technologies then available could significantly reduce splash and spray from large trucks and significantly improve visibility for drivers. Accordingly, NHTSA terminated its rulemaking in this area. See 53 FR 18861; May 25, 1988.

In its report on NHTSA's appropriation for fiscal year 1994, the Senate Committee on Appropriations included the following request:

> Although NHTSA terminated rulemaking on splash and spray devices for large commercial vehicles some years ago, the Committee is aware that numerous citizens continue to voice complaints that they are blinded when traveling near big trucks and buses during wet weather. The Committee requests a report by March 1, 1994, on the status of recent technological progress in the design and testing of splash and spray suppression devices and NHTSA's view of the need for regulation in this safety area.

The agency has begun gathering the information it will need to respond to this request. NHTSA will contact manufacturers, representatives of other countries, and other parties that the agency knows have been involved in this area to learn of their activities since 1988. However, to ensure that the agency is aware of and considers all relevant information in this area when preparing this report to Congress, NHTSA is publishing this notice to invite the public to provide information on splash and spray devices for large trucks.

The agency will consider all the public comments it has received by November 23, 1993 when preparing the report to Congress. While NHTSA is interested in any splash and spray information the public may have to offer, the agency is especially interested in responses to the following questions.

Questions

1. Please discuss any technological improvements that have been made since 1988 in the design and/or testing of splash and spray suppression devices. NHTSA is especially interested in data that are the basis for the commenter's conclusion that something represents such an improvement.

2. At one time, the Society of Automotive Engineers (SAE) was developing a procedure to evaluate splash and spray suppression devices. NHTSA understands that this test procedure would have used video digitizing to evaluate the performance of the splash and spray suppression device. NHTSA also understands that SAE has now halted its work on this project. If these understandings are correct, NHTSA would like to learn what reasons led SAE to halt work on developing a test procedure.

3. NHTSA will examine its data files to quantify how many, if any, crashes are caused by splash and spray from large trucks. The agency would like to learn if there are any additional data bases that should be examined before quantifying the extent to which splash and spray from large trucks contributes to crashes on the public roads.

4. In the rulemaking that was terminated in 1988, NHTSA indicated that aerodynamic devices called "aeroaids" had shown promise as a possible means for reducing splash and spray in some situations. That is, if these devices were attached to a truck tractor pulling a van-type semitrailer and if there were little or no crosswind present, these aerodynamic devices could improve visibility to a degree that would be helpful to other motorists. Truck manufacturers have made efforts since 1988 to improve the aerodynamic characteristics of truck tractors, primarily as a means of improving fuel economy and lowering costs for truck operators. NHTSA is interested in obtaining data showing to what extent, if any, the aerodynamic improvements to truck tractors have lessened the amount of splash and spray generated by tractor/van-semitrailer combinations. In addition, the agency is interested in learning about other solutions that may have become available since 1988 for combinations of truck tractors with tanks, flatbeds, or other types of semitrailers.

5. Are there any aftermarket devices introduced since 1988 that are intended to reduce the amount of splash and spray generated by heavy trucks? If so, NHTSA is interested in a specific description of the devices, a brief explanation of how they reduce splash and spray, and all tests and other data that demonstrate the devices are effective in reducing splash and spray across a range of heavy vehicles under representative weather conditions.

6. If a person believes that some means would be effective at reducing splash and spray from tractor-single trailer combinations, NHTSA would like any information and views about whether that means would also work to reduce spray from tractors combined with double or triple trailers.

7. When NHTSA terminated its rulemaking action on splash and spray in 1988, the agency reviewed all previous studies of which it was aware on this subject. Additionally, a vehicle manufacturer's association prepared an extensive new study for that rulemaking, as did a manufacturer of spray suppression devices, while

NHTSA conducted extensive testing of its own. Since 1988, the agency has not conducted any additional testing of its own in this area. NHTSA would like commenters to indicate whether they are aware of any study or testing that was not considered in the 1988 termination that should be considered in preparing this report to Congress.

The agency invites written comments from all interested parties. It is requested but not required that 10 copies of each written comment be submitted. As always, NHTSA will try to consider comments that it receives after the comment closing date. However, in this case, the deadline imposed by the Senate Appropriations Committee will not allow the agency to give much consideration to comments received after the November 23 comment closing date.

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

Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. Those persons desiring to be notified upon receipt of their written comments in the Docket Section should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receipt, the docket supervisor will return the postcard by mail.

Issued on October 27, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–26862 Filed 10–28–93; 11:19 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 210
Tuesday, November 2, 1993

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).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 18, 1993.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 at Worcester Area Chamber of Commerce for the following reasons:

- Worcester—Northern Gateway
- Legislative update
- Report of the Executive Director
- Report of the Chairman

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to:

James R. Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 730, Uxbridge, MA 01569, Tel.: (508) 278–9400

Further information concerning this meeting may be obtained from James R. Pepper, Executive Director of the Commission at the aforementioned address.

James R. Pepper,

Executive Director.

[FR Doc. 93–26992 Filed 10–29–93; 12:07 pm]

BILLING CODE 4310–70–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, November 3, 1993, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED: Mouthwash Petition PP 93–1.

The staff will brief the Commission on petition PP 93–1 requesting that the Commission require child-resistant packaging for mouthwash containing more than 5% ethanol.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: October 27, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–27032 Filed 10–29–93; 2:53 pm]

BILLING CODE 6355–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on November 8, 1993. The meeting will commence at 9:00 a.m. and continue until all business has been concluded.

PLACE: The Legal Services Corporation, 750 First Street, N.E., The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that a portion of the meeting will be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session.[1] At the closed session, in accordance with the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the executive session held on September 29, 1993. The Board will hear and consider the report of the General Counsel on litigation to which the Corporation is, or may become, a party. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. The Board will also consult with the President on internal personnel and operational matters. Finally, the Board will consider internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), (7), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d), (e), (f), and (h)].[2] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

OPEN SESSION:

1. Swearing In of Board of Directors.
2. Approval of Agenda.
3. Election of Board Chairperson.
4. Election of Board Vice Chairperson.
5. Ratification of Minutes of September 29, 1993 Meeting.
6. Consideration of the Structure and Composition of Board Committees Pursuant to 45 C.F.R. Sections 1601.27 and 1607.28.
   a. Standing Committees:
   —Audit & Appropriations Committee;
   —Operations & Regulations Committee;
   —Provision for the Delivery of Legal Services Committee.
   b. "Temporary" Committees:
   —Office of the Inspector General Oversight Committee;
   —Reauthorization Committee;
   —Other.
7. President's Report.
8. Treasurer/Comptroller's Budget Report.
9. General Counsel's Overview of Board's Bylaws and Other Relevant Provisions of Law.
10. Officers' and Division Directors' Reports.
11. Inspector General's Report.
12. Consideration of Motion to Close Meeting for Executive Session.

CLOSED SESSION:

13. Consultation of Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.
14. Consultation by Board with the President on Internal Personnel and Operational Matters.
15. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is, or May Become, a Party.
16. Consideration of Internal Personnel and Operational Matters.
17. Ratification of Minutes of Executive Session Held on September 29, 1993.

[1] The vote will be taken during the meeting and the results will be posted at Corporation headquarters on the 11th floor the following day.

[2] As to the Board's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Board meeting(s).

OPEN SESSION (Resumed):

18. Consideration of Other Business.
19. Scheduling of Next Board and Committee Meetings.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternative formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: October 29, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93–27003 Filed 10–29–93; 2:37 pm]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 1, 8, 15, and 22, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 1

Wednesday, November 3

11:00 a.m.
Affirmation/Discussion on Vote (Public Meeting)
a. Final Rule, 10 CFR Parts 30, 40, 50, 70, and 72, "Self-Guarantee as an Additional Financial Assurance Mechanism" (Tentative)
(Contact: Clark Prichard, 301–492–3734)

Week of November 8—Tentative

Monday, November 8

9:30 a.m.
Briefing on Site Decommissioning Management Plant (Public Meeting)
(Contact: David Fauver, 301–504–2554)
11:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 & 7)

Wednesday, November 10

10:00 a.m.
Briefing by Office of Technology Assessment on Aging Nuclear Power Plants: Managing Plant Life and Decommissioning (Public Meeting)
2:00 p.m.
Briefing on NRC Research Programs on Human Factors (Public Meeting)
(Contact: Tom King, 301–492–3510)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting (if needed)

Week of November 15—Tentative

There are no Commission meetings scheduled for the Week of November 15.

Week of November 22—Tentative

Wednesday, November 24

9:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292. Contact Person for More Information: William Hill (301) 504–1661.

Dated: October 28, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–27017 Filed 10–29–93; 2:38 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 58, No. 210
Tuesday, November 2, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 31-93]

Foreign-Trade Zone, Cowlitz County WA; Application for Subzone, Sharp Microelectronics Technology, Inc. (Liquid Crystal Displays), Camas, WA; Amendment of Application

Correction

In notice document 93-23634 appearing on page 50331 in the issue of Monday, September 27, 1993, make the following correction:

In the second column, in the last full paragraph, in the second line insert after "until" the words "November 12, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185-3021; I.D. 092293B]

Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 93-23850 appearing on page 50857 in the issue of Wednesday, September 29, 1993, make the following correction:

In the second column, in **EFFECTIVE DATE:**, in the first line, insert "September 29, 1993," after "12 noon,".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

Correction

In rule document 93-24656 beginning on page 52656 in the issue of Tuesday, October 12, 1993, make the following correction:

On page 52659, in the first column, in footnote 15, in the second paragraph, in the ninth line "has" should read "have".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6997

[MT-930-4210-06; MTM 80092]

Withdrawal of Public Mineral Estate Within the Charles M. Russell National Wildlife Refuge; MT

Correction

In rule document 93-23506 beginning on page 50518 in the issue of Tuesday, September 28, 1993, make the following corrections:

1. On page 50519, in the third column, in T. 20 N., R. 31 E., in Sec. 4, in the second line, "S½W¼;" should read "S½SW¼;".

2. On page 50520, in the second column, in T. 21 N., R. 37 E., in Sec. 14, "E½SW¼;" should read "E½SE¼;".

3. On the same page, in the third column, in T. 22 N., R. 42 E., in Sec. 27, in the first line, "NW¼,NW¼," should read "NW¼NW¼,", and in the second line, "NE¼SW¼;" should read "SE¼SW¼;".

4. On page 50521, in the first column, in T. 22 N., R. 43 E., in Secs. 17 to 21, in the first line, "and secs. 17" should read "and secs. 27".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32891; File No. SR-PHLX-93-29]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Proposing to Amend PHLX Rule 1014

Correction

In notice document 93-22887 beginning on page 48921 in the issue of Monday, September 20, 1993, in the second column, below the subject heading insert "September 14, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ANM-14]

Alteration of VOR Federal Airways

Correction

In rule document 93-22159 beginning on page 47631 in the issue of Friday, September 10, 1993, make the following corrections:

1. On page 47632, in the first column, in the 2d paragraph, in the 23d line, "V-238" should read "V-328".

2. On the same page, in the second column, in the fifth line from the top, "to" should read "at".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-AGL-4]

Establishment of Class E Airspace; Moose Lake, MN

Correction

In rule document 93-21673 beginning on page 47042 in the issue of Tuesday, September 7, 1993, on page 47042, in the third column, in the fourth line from the top, "airspace" should read "aircraft".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 930949-3249; I.D. 092393A]

Threatened Fish and Wildlife; Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Stellar Sea Lion Protection Areas

Correction

In rule document 93-24967 beginning on page 53138 in the issue of Thursday, October 14, 1993, make the following correction:

§ 227.12 [Corrected]

1. On page 53139, in § 227.12(a)(3), Table 1 should read as set forth below:

TABLE 1.—LISTED STELLER SEA LION ROOKERY SITES [1]

Island	From		To		NOAA Chart	Notes
	Lat.	Long.	Lat.	Long.		
*	*	*	*	*	*	*
12. Akun I	54°18.0N	165°32.5W	54°18.0N	165°31.5W	16547	Billings Head Bight.
*	*	*	*	*	*	*
20. Kasatochi I	52°10.0N	175°31.5W	52°10.5N	175°29.0W	16480	N half of island.
21. Adak I	51°36.5N	176°59.0W	51°38.0N	176°59.5W	16460	SW Point, Lake Point.
*	*	*	*	*	*	*
26. Amchitka I	51°22.5N	179°28.0E	51°21,5N	179°25.0E	16440	East Cape.
27. Amchitka I	51°32.5N	178°49.5E			16440	Column Rocks.
*	*	*	*	*	*	*
35. Attu I	52°54.5N	172°28.5E	52°57.5N	172°31.5E	16681	S Quadrant.

[1] Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

* * * * *

BILLING CODE 1505-01-D

federal register

Tuesday
November 2, 1993

Part II

International Development Cooperation Agency

Agency for International Development

48 CFR Part 752 et al.
Miscellaneous Amendments to Acquisition Regulations; Final Rule

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Part 752 and Appendices D and J to Chapter 7

[AIDAR Notice 93–3]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development Acquisition Regulation (AIDAR) is being amended to make miscellaneous editorial and administrative changes.

EFFECTIVE DATE: December 2, 1993.

FOR FURTHER INFORMATION CONTACT: FA/PPE, Mrs. Patricia L. Bullock, Room 1600I, SA–14, Agency for International Development, Washington, DC 20523–1435. Telephone (703) 875–1534.

SUPPLEMENTARY INFORMATION: A brief summary of the changes being made to the AIDAR follows:

Sections 752.7029 and 752.7033 which cover post privileges and physical fitness are amended to delete the requirement that medical examination results be reviewed by the Office of Medical Services in the State Department.

Appendix D on Personal Services Contract (PSC) with U.S. citizens and U.S. resident aliens is being amended as follows: (1) Several AIDAR definitions are replaced by FAR definitions; (2) new AID budget policy on forward funding of PSCs under the Operating Expense account is implemented; (3) the restriction on PSC employees negotiating with foreign governments and international organizations is deleted; (4) new publicizing requirements in the class justification for other than full and open competition are implemented; (5) coverage on contingency security is added for use when the Contracting Officer determines that the PSC employee is needed prior to clearance; (6) coverage on annual salary increases is clarified; (7) PSC pouch address is updated; (8) medical examination requirements are amended; (9) a clause on medical evacuation coverage is added; (10) the text of several FAR clauses is deleted and the clauses are listed separately and required to be attached to the PSC in full text; (11) a FAR citation is corrected; (12) the Cover Page is revised.

Appendix J on Personal Services Contracts (PSCs) with Cooperating Country Nationals (CCN) and Third Country Nationals (TCN) is being amended as follows: (1) Several AIDAR definitions are replaced by FAR definitions; (2) new AID budget policy on forward funding of PSCs under the Operating Expense account is implemented; (3) the restriction on PSC employees negotiating with foreign governments and international organizations is deleted; (4) a requirement is added for written justification signed by the Mission Director for an exception to use of the local compensation plan; (5) a requirement is added for Contracting Officer's written certification in each PSC file that competition requirements have been met; (6) an alternate schedule is incorporated which recognizes that the PSC is a means to employ AID's foreign national workforce; (7) the General Provisions and Additional General Provisions for CCNs and TCNs are combined and reformatted; (8) a clause on medical evacuation coverage for TCNs is added; (9) the text of several FAR clauses is deleted and the clauses are listed separately and required to be attached to the PSC in full text; (10) a FAR citation is corrected; (11) the Cover Page is revised.

The changes being made by the Notice are editorial and administrative and should not have a significant impact on our contractors. This Notice is not considered a significant rule under FAR 1.301 or Subpart 1.5 nor a major rule as defined in Executive Order 12291. This Notice will not have an impact on a substantial number of small entities as contemplated by the Regulatory Flexibility Act. Information collection requirements in the Notice have been approved by OMB under the Paperwork Reduction Act. Because of the nature and subject matter of this Notice, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this Notice or any other part of the AIDAR at any time. Comments or questions may be addressed as specified in the **"FOR FURTHER INFORMATION CONTACT"** section of the preamble.

List of Subjects in 48 CFR Chapter 7

Government procurement.

Accordingly, for the reasons set out in the Preamble, 48 CFR Chapter 7 is amended as follows:

1. The authority citation in Part 752 continues to read as follows:

Authority: Sec. 621, Public Law 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

§ 752.7029 [Amended]

2. Section 752.7029 is amended by removing the clause date "(DEC 1990)" and adding in its place "(JULY 1993)", and by adding a comma after the word "policy" and removing the following phrase "* * * and review of medical examination results by the State Department Office of Medical Services in accordance with the clause of this contract entitled "Physical Fitness," * * *" from the first sentence of paragraph (a) of the clause.

3. Section 752.7033 is amended by revising the clause date and paragraph (b)(1) of the clause as follows:

§ 752.7033 Physical fitness.

* * * * *

Physical Fitness (July 1993)

* * * * *

(b) *Assignments of 60 days or more in the Cooperating Country.* (1) The Contracting Officer shall provide the contractor with a reproducible copy of the "AID Contractor Employee Physical Examination Form". This form is for collection of information; it has been reviewed and approved by OMB, and assigned Control No. 0412–0356. Information required by the Paperwork Reduction Act for reporting the burden estimate, the points of contact regarding burden estimate, and the OMB approval expiration date, are printed on the form. The contractor shall reproduce the form as required, and provide a copy to each employee and authorized dependent proposed for assignments of 60 days or more in the Cooperating Country. The contractor shall have the employee and all authorized dependents obtain a physical examination from a licensed physician, who will complete the form for each individual. The employee will deliver the physical examination form(s) to the embassy health unit in the Cooperating Country.

* * * * *

Appendices to Chapter 7

4. Appendix D is revised as follows:

APPENDIX D—DIRECT AID CONTRACTS WITH A U.S. CITIZEN OR A U.S. RESIDENT ALIEN FOR PERSONAL SERVICES ABROAD

1. *General*—(a) *Purpose.* This appendix sets forth the authority, policy, and procedures under which AID contracts with

a U.S. citizen or U.S. resident alien for personal services abroad.

(b) *Definitions.* (1) *Personal services contract* (PSC) means a contract that, by its express terms or as administered, makes the contract or personnel appear, in effect, Government employees (see FAR 37.104).

(2) *Employer-employee relationship* means an employment relationship under a service contract with an individual which occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, the contractor is subject to the relatively continuous supervision and control of a Government officer or employee.

(3) *Non-personal services contract* means a contract under which the personnel rendering the services are not subject either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

(4) *Independent contractor relationship* means a contract relationship in which the contractor is not subject to the supervision and control prevailing in relationships between the Government and its employees. Under this relationship, the Government does not normally supervise the performance of the work, control the days of the week or hours of the day in which it is to be performed, or the location of performance.

(5) *Resident Hire* means a U.S. citizen who, at the time of hire as a PSC, resides in the cooperating country (i) as a spouse or dependent of a U.S. citizen employed by a U.S. government agency or under any U.S. Government-financed contract or agreement, or (ii) for reasons other than for employment with a U.S. government agency or under any U.S. government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes persons who at the time of contracting are lawfully admitted permanent residents of the United States.

(6) *U.S. resident alien* means a non-U.S. citizen lawfully admitted for permanent residence in the United States.

(7) *Abroad* means outside the United States and its territories and possessions.

(8) *AID direct-hire employees* means civilian employees appointed under AID Handbook 25 procedures.

2. *Legal Basis.* (a) Section 635(b) of the Foreign Assistance Act of 1961, as amended (hereinafter referred to as the "FAA") provides the Agency's contracting authority.

(b) Section 636(a)(3) of the FAA (22 U.S.C. 2396(a)(3)) authorizes the Agency to enter into personal services contracts with individuals for personal services abroad and provides further that such individuals "* * * shall not be regarded as employees of the U.S. Government for the purpose of any law administered by the Civil Service Commission."[1]

3. *Applicability.* (a) This appendix applies to all personal services contracts with U.S. citizens or U.S. resident aliens to provide assistance abroad under Section 636(a)(3) of the FAA.

(b) This appendix does not apply to:

(1) Nonpersonal services contracts with U.S. citizens or U.S. resident aliens; such contracts are covered by the basic text of the FAR and the AIDAR.

(2) Personal services contracts with individual Cooperating Country Nationals (CCNs) or Third Country Nationals (TCNs); such contracts are covered by appendix J of this chapter.

(3) Other personal services arrangements covered by AID Handbook 25—Employment and Promotion.

(4) Interagency agreements (e.g., PASAs and RSSAs) covered by AID Handbook 12—Use of Federal Agencies.

4. *Policy. General.* AID may finance, with either program or operating expense (OE) funds, the cost of personal services as part of the Agency's program of foreign assistance by entering into a direct contract with an individual U.S. citizen or U.S. resident alien for personal services abroad.

(1) *Program funds.* Under the authority of Section 635(h) of the FAA, program funds may be obligated for periods up to five years where necessary and appropriate to the accomplishment of the tasks involved.

(2) *Operating Expense Funds.* Pursuant to AID budget policy, OE funded salaries and other recurrent cost items may be forward funded for a period of up to three (3) months beyond the fiscal year in which these funds were obligated. Non-recurring cost items may be forward funded for periods not to exceed twenty-four (24) months where necessary and appropriate to accomplishment of the work.

(b) *Limitations on Personal Services Contracts.*

(1) Personal services contracts may only be used when adequate supervision is available.

(2) Personal services contracts may be used for commercial activities. Commercial activities provide a product or service which could be obtained from a commercial source. See Attachment A of OMB Circular A–76 for a representative list of such activities.

(3) Personal services contracts may be used for Governmental functions (defined by OMB Circular A–76 as functions so intimately related to the public interest as to mandate performance by Government employees) *except:*

(i) Entering into any agreement (e.g., loan, grant, contract) on behalf of the United States.

(ii) Making decisions involving governmental functions such as planning, budget, programming and personnel selection. Services will be limited to making recommendations with final decision-making authority reserved for authorized AID direct-hire employees.

(iii) Supervision of AID direct-hire U.S. Citizen employees.

(c) *Withholdings and Fringe Benefits.*

(1) Personal services contractors (PSCs) are Government employees for purposes of Title 26 of United States Code and are therefore subject to social security (FICA) and Federal income tax (FIT) withholdings. As employees, they are ineligible for the "foreign earned income" exclusion under the IRS regulations (see 26 CFR 1.911(c)(3)).

(2) Personal services contractors are treated on par with other Government employees, *except* for programs based on any law administered by the Federal Office of Personnel Management (e.g., incentive awards, life insurance, health insurance, and retirement programs covered by 5 CFR parts 530, 531, 831, 870, 871, and 890). While PSCs are ineligible to participate in any of these programs, the following fringe benefits are provided as a matter of policy:

(i) The employer's FICA contribution for retirement purposes.

(ii) A contribution against the actual costs of the PSC's annual health and life insurance costs. Proof of health and life insurance coverage and its actual cost to the PSC shall be submitted to the Contracting Officer before any contribution is made. (See also paragraph 4(c)(3) of this appendix.)

(A) The contribution for health insurance shall not exceed 50% of the actual cost to the PSC for his/her annual health insurance, or the maximum U.S. Government contribution for a direct-hire employee, as announced annually by the Office of Personnel Management, whichever is less. If the PSC is covered under a spouse's health insurance plan, where the spouse's employer pays some or all of the health insurance costs, the cost to the PSC for annual health insurance shall be considered to be zero.

(B) The contribution for life insurance shall be up to 50% of the actual annual costs to the PSC for life insurance, not to exceed $500.00 per year.

(iii) PSCs shall receive the same percentage pay comparability adjustment as U.S. Government employees subject to the availability of Mission funds.

(iv) PSCs shall receive a 3% annual salary increase subject to satisfactory performance. Such increase may not exceed 3% without a deviation. This 3% limitation also applies to extensions of the same service or negotiations for a new contract for the same or similar services unless a deviation has been approved.

(v) PSCs shall receive the following allowances and differentials provided in the State Department's Standardized Regulations (Government Civilians Foreign Areas) on the same basis as U.S. Government employees (except for resident hires, see paragraph 4(d) and Section 11, General Provisions, Clause 22, "Resident Hire Personal Services Contractors"):

(A) Temporary lodging allowance (Section 120),[2]

(B) Living quarters allowance (Section 130),[2]

(C) Post allowance (Section 220),[2]

(D) Supplemental post allowance (Section 230),[2]

(E) Separate maintenance allowance (Section 260),[3]

(F) Education allowance (Section 270),[3]

(G) Educational travel (Section 280),[3]

(H) Post differential (Chapter 500),

(I) Payments during evacuation/authorized departure (Section 600), and

(J) Danger pay (Section 650).

Any allowance or differential that is not *expressly stated* in this paragraph is not authorized for any PSC unless a deviation is approved.

[1] The Civil Service Commission is now the Federal Office of Personnel Management.

[2] Mission Directors may authorize per diem in lieu of these allowances.

[3] These allowances are not authorized for short tours (i.e., less than a year).

(vi) Health room services may be provided in accordance with the clause of this contract entitled "Physical Fitness and Health Room Privileges."

(vii) PSCs are eligible to receive benefits for injury, disability, or death under the Federal Employees' Compensation Act since the law is administered by the Department of Labor, not the Office of Personnel Management.

(viii) PSCs are eligible to earn four hours of annual leave and four hours of sick leave for each two week period. However, PSCs with previous PSC service (not previous U.S. Government civilian or military service) earn *either* six hours of annual leave for each two week period if their previous PSC service exceeds 3 years, *or* eight hours of annual leave for each two week period if their previous PSC service exceeds 15 years.

(3) A PSC who is a spouse of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's Government health or life insurance policy is ineligible for the contribution under paragraph 4(c)(2)(ii) of this appendix.

(4) Retired U.S. Government employees shall not be paid additional contributions for health or life insurance under their contract (since the Government will normally have already paid its contribution for the retiree) unless the employee can prove to the satisfaction of the Contracting Officer that his/her health and life insurance does not provide or specifically excludes coverage overseas. If coverage overseas is excluded, then eligibility as cited in this clause applies.

(5) Retired U.S. Government employees may be awarded Personal Services Contracts without any reduction in or offset against their Government annuity.

(d) *Resident Hire Personal Services Contractors.*

Resident hire PSCs are not eligible for any fringe benefits (except contributions for FICA, health insurance, and life insurance), including differentials and allowances, unless such individuals can demonstrate to the satisfaction of the Contracting Officer that they have received similar benefits and allowances from their immediately previous employer in the cooperating country, or the Mission Director may determine that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interests of the U.S. Government.

(e) *Salary Setting.* (1) Salaries for Personal Services Contractors shall be established based on the market value of the position being recruited for. This requires the Contracting Officer in coordination with the Project Officer to determine the correct market value (a salary range) of the position to be filled. The market value of the position then becomes the basis, along with the applicant's certified salary history on the SF 171, "Personal Qualifications Statement," for salary negotiations to be conducted by the Contracting Officer. The SF 171 must be retained in the permanent contract file. Salaries should be consistent with the FS/GS grade level equivalent that the position would normally warrant.

(2) If approved by the Mission Director or the cognizant Assistant Administrator, based on written justification, salary may be negotiated based on the applicant's current earnings adjusted in accordance with the factors set out in paragraphs (e)(2) (i) through (iii) of this clause. Current earnings must be certified by the contractor on the SF 171, (see paragraph 6(b)(3) of this appendix). This is guidance for establishing initial salaries not subsequent increases for the same contractor performing the same function.

(i) As a rule, up to a 3 percent increase above current earnings may be given. However, a 3 percent increase is awarded only to a PSC whose earnings are based on a period of twelve months or more; 2 percent for established earnings of less than twelve months but not less than four months; or 1 percent for established earnings during the past four months.

(ii) Additional percentages may be given for the following factors. If a PSC has worked in a developing country for more than two years, an additional 1 percent may be awarded. Education related to the area of specialization and above the minimum qualification required may warrant an additional 1 percent, and those specialties for which there is keen competition in the employment market or a serious shortage category nationwide may be awarded an additional 2 percent. In addition, related technical experience over 5 years may increase the percentage by 1 and over ten years by 3.

(iii) All requests for an initial rate of pay above 10 percent over current earnings must be approved in writing by the appropriate Regional Assistant Administrator or Mission Director. Current earnings are actual earnings for work reasonably related to the position for which the applicant is being considered.

(3) When an applicant has no current earnings history (e.g., a person returning to the workforce after an absence of a number of years) or when an applicant's current earnings history doesn't accurately reflect the applicant's job market worth (e.g., a Peace Corps volunteer), every effort should be made to establish a market value for the position as a basis for negotiation, notwithstanding the lack of a current earnings history, provided that the applicant has the full qualifications for the job and could command a similar salary in the open job market.

(4) Salaries in excess of the FS–1 level must also be approved by the appropriate Regional Assistant Administrator or Mission Director, as provided for in appendix G of this chapter.

(f) *Incentive Awards.* U.S. PSCs are not eligible to participate in any special awards programs.

(g) *Annual Salary Increase.* PSC's contracts written for more than one year should provide for a 3% annual increase based on satisfactory performance.

(h) *Pay Comparability Adjustment.* PSCs shall receive the same percentage pay comparability adjustment as that received by U.S. Government employees subject to the availability of Mission funds.

5. *Soliciting for Personal Services Contracts.*

(a) *Project Officer's Responsibilities.* The Project Officer will prepare a written detailed statement of duties and a statement of minimum qualifications to cover the position being recruited for. The statement shall be included in the procurement request (e.g., AID Form 1350–1, Project Implementation Order/Technical Services (PIO/T)); the request shall also include the following additional information as a minimum:

(1) The specific foreign location(s) where the work is to be performed, including any travel requirements (with an estimate of frequency);

(2) The length of the contract, with beginning and ending dates, plus any options for renewal or extension;

(3) The basic education, training, experience, and skills required for the position;

(4) An estimate of what a comparable GS/FS equivalent position should cost, including basic salary, allowances, and differentials, if appropriate;

(5) A list of Government or host country furnished items (e.g., housing); and

(6) If the PSC will be providing consulting services, include the justification required by AIDAR 737.270(b).

(b) *Contracting Officer's Responsibilities.*

(1) The Contracting Officer will prepare the solicitation for personal services which shall contain:

(i) Three sets of SF 171s and SF 171As. (Upon receipt, one copy of each SF 171 and SF 171A shall be forwarded to the Project Officer.)

(ii) A detailed statement of duties or a completed position description for the position being recruited for.

(iii) A copy of the prescribed contract Cover Page, Contract Schedule, General Provisions as appropriate, as well as the FAR Clauses to be incorporated in full text and by reference.

(iv) A copy of the AID General Notice entitled "Employee Review of the New Standards of Conduct".

(2) The Contracting Officer shall comply with the requirements of AIDAR 706.302–70(c) as detailed in paragraph 5(c) below.

(c) *Competition.* (1) Under AIDAR 706.302–70(b)(1), Personal Services Contracts are exempt from the requirements for full and open competition with two limitations that must be observed by Contracting Officers:

(i) offers are to be requested from as many potential offerors as is practicable under the circumstances, and

(ii) a justification supporting less than full and open competition must be prepared in accordance with FAR 6.303.

(2) A class justification was approved by the AID Procurement Executive to satisfy the requirements of AIDAR 706.302–70(c)(2) for a justification in accordance with FAR 6.303. Use of this class justification for Personal Services Contracts with U.S. Citizens or U.S. Resident Aliens is subject to the following conditions:

(i) If recruited from the United States, the position was either publicized in a U.S. trade/professional/technical publication, the Commerce Business Daily or a newspaper or similar publication, or the procedure in paragraph (iii) below was followed.

(ii) If recruited locally, the position was publicized in the same way that the Mission announces direct hire U.S. citizen positions,

or the procedure in paragraph (iii) of this clause was followed.

(iii) As an alternative to the procedures in paragraphs (i) and (ii) of this clause, at least 3 individuals were considered by consulting source lists (e.g., applications or resumes on hand) or conducting other informal solicitation.

(iv) Extensions or renewals with the same individual for continuing services do not need to be publicized.

(v) A copy of the class justification (which was distributed to all AID Contracting Officers via Contract Information Bulletin) must be included in the contract file, together with a written statement, signed by the Contracting Officer, that the contract is being awarded pursuant to AIDAR 706.302–70(b)(1); that the conditions for use of this class justification have been met; and that the cost of the contract is fair and reasonable.

(3) Since the award of a Personal Services Contract is based on technical qualifications, not price, and since the SF 171, "Personal Qualifications Statement", and SF 171A, "Continuation Sheet for Standard Form 171", are used to solicit for such contracts, FAR Subparts 15.4 and 15.5 and FAR Parts 52 and 53 are inappropriate and shall not be used. Instead, the solicitation and selection procedures outlined in this appendix shall govern.

(4) If the appropriate competitive procedure in paragraph (2) of this clause is not followed, the Contracting Officer must prepare a separate justification as required under AIDAR 706.302–70(c)(2).

6. *Negotiating a Personal Services Contract.* Negotiating a Personal Services Contract is significantly different from negotiating a nonpersonal services contract because it establishes an employer-employee relationship; therefore, the selection procedures are more akin to the personnel selection procedures.

(a) *Project Officer's Responsibilities.* The Project Officer shall be responsible for reviewing and evaluating the applications (i.e. SF 171s) received in response to the solicitation issued by the Contracting Officer. If deemed appropriate, interviews may be conducted with the applicants before the final selection is submitted to the Contracting Officer.

(b) *Contracting Officer's Responsibilities.*

(1) The Contracting Officer shall forward a copy of each SF 171 received under the solicitation to the Project Officer for evaluation.

(2) On receipt of the Project Officer's recommendation, the Contracting Officer shall conduct negotiations with the recommended applicant. Normally, the Contracting Officer shall negotiate only the salary (see the salary setting coverage in paragraph 4(e) of this appendix). The terms and conditions of the contract, including differentials and allowances, are not negotiable or waivable without a properly approved deviation (see AIDAR 701.470). If the Contracting Officer can negotiate a salary that is fair and reasonable, then the award shall be made.

(3) The Contracting Officer shall use the certified salary history on the SF 171 as the basis for salary negotiations, along with the market value of the position being recruited for, and the Project Officer's cost estimate.

(4) The Contracting Officer will obtain two copies of IRS Form W–4, "Employee's Withholding Allowance Certificate" from the successful applicant. (Upon receipt, the Contracting Officer will forward one copy of the W–4 to the office of the Controller.)

(5) Security clearance is required for all U.S. citizens entering into AID PSCs. The Contracting Officer will obtain four sets of SF 86, "Security Investigation Data for Sensitive Position", from the successful applicant and forward them to the Office of Security. PSCs may receive a preliminary clearance and be placed under contract prior to receipt of clearance provided the appropriate paper work has been completed, reviewed by IG/SEC/PSI and acknowledged as a "no objection" to the appropriate Mission. See General Provision 24.

7. *Executing a Personal Services Contract.* Contracting activities, whether AID/W or Mission, may execute Personal Services Contracts, provided that the amount of the contract does not exceed the contracting authority that has been redelegated to them under Delegation of Authority No. 1103 "To the Assistant to the Administrator for Management, Concerning Acquisition Functions" (50 FR 23842), as amended (see AIDAR 702.170–10).

In executing a Personal Service Contract, the Contracting Officer is responsible for insuring that:

(a) The proposed contract is within his/her delegated authority;

(b) A PIO/T covering the proposed contract has been received;

(c) The proposed scope of work is contractible, contains a statement of minimum qualifications from the technical office requesting the services, and is suitable to the use of a Personal Services Contract in that:

(1) Performance of the proposed work requires or is best suited for an employer-employee relationship, and is thus not suited to the use of a non-personal services contract;

(2) The scope of work does not require performance of any function normally reserved for Federal employees (see paragraph 4(b) of this appendix); and

(3) There is no apparent conflict of interest involved (if the Contracting Officer believes that a conflict of interest may exist, the question should be referred to the cognizant legal counsel).

(d) Selection of the contractor is documented and justified. AIDAR 706.302–70(b)(1) provides and exception to the requirement for full and open competition for Personal Services Contracts abroad (see paragraph 5(c) of this appendix);

(e) The standard contract format prescribed for Personal Services Contracts (Sections 10, 11 and 12 to AIDAR appendix D) is used; or that any necessary deviations are processed as required by AIDAR 701.470. (Note: The prescribed contract format is designed for use with contractors who are residing in the U.S. when hired. If the contract is with a U.S. citizen residing in the cooperating country when hired, contract provisions governing physical fitness and travel/transportation expenses, and home leave, allowances, and orientation should be suitably modified (see paragraph 4(d) of this appendix). These modifications are not considered deviations subject to AIDAR 701.470. Justification and explanation of these modifications is to be included in the contract file);

(f) Orientation is arranged in accordance with General Provision 23;

(g) The contractor has submitted the names, addresses, and telephone numbers of at least two persons who may be notified in the event of an emergency (this information is to be retained in the contract file);

(h) The contract is complete and correct and all information required on the contract Cover Page (AID Form 1420–36A) has been entered;

(i) The contract has been signed by the Contracting Office and the contractor, and fully executed copies are properly distributed;

(j) The following clearances, approvals and forms have been obtained, properly completed, and placed in the contract file before the contract is signed by both parties:

(1) Security clearance, including the completed SF 87, to the extent required by AID Handbook 6, *Security;* (see General Provisions 14 and 24 in Section 11 of this appendix).

(2) Mission, host country, and project office clearance, as appropriate;

(3) Medical examinations and certifications as required by the contract general provision entitled "Physical Fitness and Health Room Privileges";

(4) One original executed IRS Form W–4 entitled "Employee's Withholding Allowance Certificate" and one copy shall be obtained. The original shall be sent to the Controller of the paying office and one shall be placed in the contract file;

(5) The approval for any salary in excess of FS–1, in accordance with appendix G of this chapter;

(6) A copy of the class justification or other appropriate explanation and support required by AIDAR 706.302–70, if applicable;

(7) Any deviation to the policy or procedures of this appendix, processed and approved under AIDAR 701.470;

(8) A fully executed SF 171;

(9) The Memorandum of Negotiation; and

(10) The Contracting Officer's signed certification that competition requirements have been met or satisfied as described in paragraph 5(c) of the policy text of appendix D. The certification shall be a part of the Memorandum of Negotiations.

(k) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 1341 (the Contracting Officer ensures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected contractor);

(l) The contractor receives and understandards the AID General Notice entitled "Employee Review of the New Standards of Conduct" and a copy is attached to each contract as provided for in paragraph (c) of General Provision 2, Section 11;

(m) Agency conflict of interest requirements as set out in the General Notice "Employee Review of the New Standards of

Conduct" are met by the contractor prior to his/her reporting for duty;

(n) A copy of a Checklist for Personal Services contractors which may be in the format set out above or another format convenient for the Contracting Officer, provided that a memorandum containing all of the information described in this paragraph 7 shall be prepared for each PSC and placed in the contract file;

(o) The block entitled, "Project No." on the Cover Page of the contract format is completed by inserting the four-segment project number as prescribed in AID Handbook 18, Information Services;

(p) The contractor understands that he/she is an employee of the United States for purposes of the Foreign Assistance Act of 1961, as amended, and Title 26 United States Code. This subjects the employee to withholding for both FICA and Federal Income Tax and precludes the employee from receiving the Federal Earned Income Tax exclusion of 26 U.S.C. Section 911. See Special Note on the Cover Page.

(q) The contractor also understands that he/she may commence work prior to the completion of the security clearance. However, until such time as clearance is received, the contractor may not have access to classified or administratively controlled materials. Failure to obtain clearances will constitute cause for termination.

8. *Post Audit.* The Inspector General, or his/her designee, audits the Personal Services Contracts of all contracting activities for the purpose of ensuring conformance to applicable policy and regulations.

9. *Contracting Format.* The prescribed Contract Cover Page, Contract Schedule, and General Provisions for Personal Services Contracts covered by this appendix are included as follows:

10. *Form AID 1420–36, "Cover Page" and "Schedule".*

11. *"General Provisions".*

12. *FAR Clauses to be incorporated by reference in Personal Services Contracts.*

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

CONTRACT WITH A U.S. CITIZEN OR U.S. RESIDENT ALIEN FOR PERSONAL SERVICES ABROAD

Negotiated Pursuant to Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, and Executive order 11223	Contract Number
Country of Performance	Amount Obligated This Action / Total Estimated Contract Cost $
Contract For Technical Services	Project Number (if applicable)
For	Contractor (Name, Street, City, State, Postal Zone)
Contracting Office (Name and Address)	
Administered By (If other than Contracting Office)	Effective Date / Estimated Completion Date
Cognizant Scientific/Technical Office (Name, Office Symbol, Address)	Accounting and Appropriation Data PIO/T Number (if applicable)_____ Appropriation Number _____
Supervising Officer	Budget Plan code _____
This is a Consulting Services Contract (AIDAR 737.272) ☐ Yes ☐ No	Nationality _____ Social Security Number _____
Payment Will be Made By	Green Card Holder ☐ Yes ☐ No Type of Advance ("X" Appropriate Box) ☐ INITIAL ☐ NONE AUTHORIZED

The United States of America, hereinafter called the Government, represented by the Contracting Office executing this contract, and the Contractor agree that the Contractor shall perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

SPECIAL NOTE: As an employee for purposes of Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, (22 USC 2396(a)(3)), the Contractor is generally an employee of the United States for purposes of laws other than those administered by the Office of Personnel Management (i.e., Title 5, United States Code). This includes being an employee of the United States for purposes of Title 26, United States Code, which subjects the Contractor to withholding for both FICA and Federal Income Tax, and precludes the Contractor from receiving the federal earned income tax exclusion of 26 USC Section 911.

(Fill in Appropriate Spaces)

This Contract consists of this Cover Page, the Schedule of _____ pages, including the Table of Contents, the General Provisions Section 11 and Section 12 FAR Clauses by reference.

	UNITED STATES OF AMERICA AGENCY FOR INTERNATIONAL DEVELOPMENT
Signature of Contractor	By (Signature of Contracting Officer)
Typed or Printed Name	Typed or Printed Name
Date	Date

AID 1420-36A (4/92)

BILLING CODE 6116-01-C

Privacy Act Statement

This information is provided pursuant to Public Law 93–579 (Privacy Act of 1974), December 31, 1974, for individuals who complete this form.

The Executive Office of the President, Office of Management and Budget has required that all departments and agencies comply with the reporting requirements of Section 6041 of the Internal Revenue Code. Section 6041 states that all departments and agencies making payments totalling $600.00 or more in one year to a recipient for services provided must be reported to the Internal Revenue Service (IRS). The SSN and all financial numbers will be disclosed to Agency for International Development (AID) payroll office personnel and personnel in the Department of the Treasury, Division of Disbursements. AID will use this SSN to complete Form W–2 of the Code on employee compensation. Disclosure by the personal services contractor of the SSN is necessary to obtain the services, benefits or processes provided by this contract. Disclosure of the SSN may be made outside AID (a) pursuant to any applicable routine use listed in AID's Notice for Implementing the Privacy Act as published in the **Federal Register**, or (b) when disclosure by virtue of a contract being a public document after signatures is authorized under the Freedom of Information Act.

Table of Contents

Schedule:

(The illustrated Schedule consists of this Table of Contents and Articles I–VI)

Article I—Statement of Duties
Article II—Period of Service Overseas
Article III—Contractor's Compensation and Reimbursement in U.S. Dollars
Article IV—Costs Reimbursable and Logistic Support
Article V—Precontract Expenses
Article VI—Additional Clauses
General Provisions:

The following provisions numbered as shown below omitting number(s) _____, are the General Provisions (GPs) of this Contract:

1. Definitions
2. Laws and Regulations Applicable Abroad
3. Physical Fitness and Health Room Privileges
4. Work week and Compensation (Pay Comparability Adjustments)
5. Leave and Holidays
6. Differential and Allowances
7. Social Security and Federal Income Tax
8. Advance of Dollar Funds
9. Insurance
10. Travel and Transportation Expenses
11. Payment
12. Conversion of U.S. Dollars to Local Currency
13. Post of Assignment Privileges
14. Security Requirements
15. Contractor-Mission Relationships
16. Termination
17. Release of Information
18. Notices
19. Reports
20. Use of Pouch Facilities
21. Biographical Data
22. Resident Hire PSC
23. Orientation and Language Training
24. Conditions for Contracting Prior to Receipt of Security Clearance
25. Medical Evacuation Services

For each tour of duty, attach the applicable General Provisions.

Schedule: (Note: Use of the following Schedule Articles are not mandatory. They are intended to serve as guidelines for contracting offices in drafting contract schedules. Article language may be changed to suit the needs of the particular contract).

Article I—Statement of Duties

(The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Any AID consultation or orientation.)

Article II—Period of Service Overseas

Within _____ days after written notice from the Contracting Officer that all clearances, including the doctor's certification required under General Provisions Clause 3, have been received or unless another date is specified by the Contracting Officer in writing, the contractor shall proceed to _____ where he/she shall promptly commence performance of the duties specified above. The contractor's period of service overseas shall be approximately _____ in _____. (Specify time of duties in each location as well as authorized stopovers with purpose of each.)

Article III—Contractor's Compensation and Reimbursement in U.S. Dollars

A. Except to the extent reimbursement therefor is payable in the currency of the Cooperating Country pursuant to Article IV, AID shall pay the contractor compensation after it has accrued and reimburse him/her in U.S. dollars for necessary and reasonable costs actually incurred by him/her in the performance of this contract within the categories listed in paragraph C, below, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately _____ (days) (weeks) (months) (years) which is to include:

(1) vacation, sick, and home leave which may be earned during the contractor's tour of duty (GP Clause 5);

(2) _____ days for authorized travel (GP Clause 10); and

(3) _____ days for orientation and consultation in the United States (GP Clause 23).

C. Allowable Costs: 1. Compensation at the rate of $_____ per (year) (month) (week) (day). Adjustments in compensation (pay) for periods when the contractor is not in compensable pay status shall be calculated as follows: Rate of $_____ per (day) (hour).

Contingency for Compensation (Pay Comparability) Adjustments. $_____.

Annual Salary increase (3%) _____.

2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.)

$_____.

[1] 3. Overseas Differential (Ref. GP Clause No. 6.) Rate _____and Contingency $_____

$_____

[2] 4. Allowances in Cooperating Country (Ref. GP Clause 6.)

[2] 5. Travel and Transportation (Ref. GP Clause 10.) (Includes the value of GTRs furnished by the Government, not payable to contractor). $_____

a. United States $_____

b. International $_____

c. Cooperating and Third Country $_____

Subtotal Item 5 $_____

[2] 6. Subsistence or Per Diem (Ref. GP Clause 10.)

a. United States $_____

b. International $_____

c. Cooperating and Third Country $_____

Subtotal Item 6 $_____

7. Other Direct Costs.

a. Health and Life Insurance (Ref. GP Clause 9.) $_____

b. Precontract Costs, passport, visa, inoculations, etc. (Ref. GP Clause 8.) $_____

c. Physical Examination (Ref. GP Clause 3.) $_____

d. Communications, Miscellaneous. $_____

Subtotal Item 7 $_____

8. F.I.C.A.—U.S.C. contribution (not payable to contractor). $_____

D. Maximum U.S.-Dollar Obligation:

In no event shall the maximum U.S.-dollar obligation under this contract, exceed $_____. Contractor shall keep a close account of all obligations he/she incurs and accrues hereunder and promptly notify the Contracting Officer whenever in his/her opinion the said maximum is not sufficient to cover all compensation and costs reimbursable in U.S. dollars which he/she anticipates under the contract.

Total estimated costs (lines 1 thru 8). $_____

Article IV—Costs Reimbursable and Logistic Support

A. General: The contractor shall be provided with or reimbursed in local currency (_____) for the following:

[Complete]

B. Method of Payment of Local Currency Costs: Those contract costs which are specified as local currency costs in paragraph A above, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with General Provision Clause 11. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

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[1] If post differential is applicable to the assigned post, a contingency for the adjusted amount of differential resulting from compensation (pay comparability) adjustment should be included.

[2] Do not include the value of any costs to be paid or reimbursed in local currency.

Article V—Precontract Expenses

No expense incurred before execution of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the Contracting Officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

(Additional Schedule clauses may be added such as the implementation of General Provisions or Additional Clauses.)

Appendix D

Section 11

General Provisions

Contract with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad.

Appendix D

Section 11

General Provisions

Contract with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad.

The following clauses are to be used (when applicable), for both tours of duty of less than 1 year as well as 1 year or more.

Index of Clauses

1. Definitions
2. Compliance with Laws and Regulations Applicable Abroad
3. Physical Fitness and Health Room Privileges
4. Workweek and Compensation (Pay Comparability Adjustments)
5. Leave and Holidays
6. Differential and Allowances
7. Social Security, Federal Income Tax, and Foreign Earned Income
8. Advance of Dollar Funds
9. Insurance
10. Travel and Transportation Expenses
11. Payment
12. Conversion of U.S. Dollars to Local Currency
13. Post of Assignment Privileges
14. Security Requirements
15. Contractor-Mission Relationships
16. Termination
17. Release of Information
18. Notices
19. Reports
20. Use of Pouch Facilities
21. Biographical Data
22. Resident Hire PSC
23. Orientation and Language Training
24. Conditions for Contracting Prior to Receipt of Security Clearance
25. Medical Evacuation Services

1. Definitions (June 1990)

(a) "AID" shall mean the Agency for International Development.

(b) "Administrator" shall mean the Administrator or the Deputy Administrator of AID.

(c) "Contracting Officer" shall mean a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) "Contractor" shall mean the individual engaged to serve under this contract.

(e) "Cooperating Country" shall mean the foreign country in or for which services are to be rendered hereunder.

(f) "Cooperating Government" shall mean the government of the Cooperating Country.

(g) "Government" shall mean the United States Government.

(h) "Local currency" shall mean the currency of the Cooperating Country.

(i) "Mission" shall mean the United States AID Mission to, or principal AID office in, the Cooperating Country.

(j) "Mission Director" shall mean the principal officer in the Mission in the Cooperating Country, or his/her designated representative.

(k) "Project Officer" shall mean the AID official to whom the contractor reports, and who is responsible for monitoring the contractor's performance.

(l) "Tour of duty" shall mean the contractor's period of service under this contract and shall include orientation in the United States (less language training), authorized leave, and international travel.

(m) "Traveler" shall mean (i) The contractor in authorized travel status or (ii) dependents of the contractor who are in authorized travel status.

(n) "Dependents" means:

(1) Spouse.

(2) Children (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support.

(3) Parents (including step and legally adoptive parents) of the employee or of the spouse, when such parents are at least 51 percent dependent on the contractor for support.

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the contractor, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the contractor for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support.

(o) "U.S. Resident Alien", as used in this contract, shall mean an alien immigrant, legally resident in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and having a valid "Alien Registration and Receipt Card" (Immigration and Naturalization Service forms I–151 or I–551).

(p) "Resident Hire Personal Services Contractor (PSC)" means a U.S. citizen who, at the time of hiring as a PSC, resides in the Cooperating Country:

(1) as a spouse or dependent of a U.S. citizen employed by a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or

(2) for reasons other than for employment with a U.S. Government Agency or under any U.S. Government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes a person who at the time of contracting, is a lawfully admitted permanent resident of the United States.

2. Compliance With Laws and Regulations Applicable Abroad (July 1993)

(a) *Conformity to Laws and Regulations of the Cooperating Country.* Contractor agrees that, while in the cooperating country, he/she as well as authorized dependents will abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) *Purchase or Sale of Personal Property or Automobiles.* To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles in the cooperating country by the contractor shall be subject to the same limitations and prohibitions which apply to Mission U.S.-citizen direct-hire employees.

(c) *Code of Conduct.* The contractor shall, during his/her tour of duty under this contract, be considered an "employee" (or if his/her tour of duty is for less than 130 days, a "special Government employee") for the purposes of, and shall be subject to, the provisions, of 18 U.S.C. 202(a) and the AID General Notice entitled "Employee Review of the New Standards of Conduct" pursuant to 5 CFR part 2635. The contractor acknowledges receipt of a copy of these documents by his/her acceptance of this contract.

3. Physical Fitness and Health Room Privileges (July 1993)

(a) *Physical Fitness.* (1) For all assignments, the contractor and any authorized dependents shall be required to be examined by a licensed doctor of medicine, and the contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the contractor is physically able to engage in the type of activity for which he/she is to be employed under the contract, and the contractor and any dependents are physically able to reside in the Cooperating Country. A copy of the certificate(s) shall be provided to the Contracting Officer prior to the contractor's departure for the Cooperating Country, or for a resident hire, before he/she starts work under the contract.

(2) For assignments of 60 days or more in the Cooperating Country, the Contracting Officer shall provide the contractor and all authorized dependents copies of the "AID Contractor Employee Physical Examination Form". This form is for collection of information; it has been reviewed and approved by OMB, and assigned Control No. 0412–0536. Information required by the Paperwork Reduction Act (burden estimate, points of contract, and OMB approval expiration date) is printed on the form. The contractor and all authorized dependents shall obtain a physical examination from a licensed physician, who will complete the form for each individual. The contractor will deliver the physical examination form(s) to the embassy health unit in the Cooperating Country. A copy of the doctor's certification at the end of the form which identifies the contractor or dependent by name may be used to meet the requirement in (a)(1) of this clause.

(b) *Reimbursement.* (1) As a contribution to the cost of medical examinations required by paragraph (a)(1) of this clause, AID shall

reimburse the contractor not to exceed $100 for the physical examination, plus reimbursement of charges for immunizations.

(2) As a contribution to the cost of medical examinations required by paragraph (a)(2) of this clause the contractor shall be reimbursed in an amount not to exceed half of the cost of the examination up to a maximum AID share of $300, plus reimbursement of charges for immunizations for the contractor and all authorized dependent 12 years of age or under. The contractor must obtain the prior written approval of the Contracting Officer to receive any AID contributions higher than these limits.

(c) *Health Room Privileges.* Routine health room services may be available, subject to post policy and in accordance with the requirements of paragraph (a) of this clause, to U.S. citizen contractors and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services normally include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, and home visits as medically indicated. Emergency medical treatment is provided to U.S. citizen contractor employees and dependents, whether or not they may have been granted access to routine health room services, on the same basis as it would be to any U.S. citizen in an emergency medical situation in the country.

4. Workweek and Compensation (Pay Comparability Adjustments) (Dec. 1985)

(a) *Workweek.* The contractor's workweek shall not be less than 40 hours, unless otherwise provided in the Contract Schedule, and shall coincide with the workweek for those employees of the Mission or the Cooperating Country agency most closely associated with the work of this contract. If the contract is for less than full time (40 hours weekly), the annual and sick leave earned shall be prorated (see the General Provision of this contract entitled Leave and Holidays).

(b) *Compensation (Pay Comparability) Adjustments.* The contractor's compensation shall be adjusted to reflect the pay comparability adjustments which are granted from time to time to U.S. direct-hire employees by Executive Order for the statutory pay systems. Any adjustments authorized are subject to the availability of Mission funds and shall not exceed that percentage stated in the Executive Order granting the adjustment. Further, the adjusted compensation may not exceed the maximum FS–1 annual compensation (or the equivalent daily rate).

5. Leave and Holidays (July 1993)

(a) *Vaction Leave.* (1) The contractor shall earn vacation leave at the rate of 13 workdays per annum or 4 hours every 2 weeks. However, no vacation shall be earned if the tour of duty is less than 90 days.

(2) Notwithstanding paragraph (a)(1) above, if the contractor has had previous PSC service (i.e., has served under other personal services contracts (PSCs) covered by Sec. 636(a)(3) of the FAA), he/she shall earn vacation leave at the rate of either 6 hours every two weeks for cumulative PSC service exceeding 3 years, or 8 hours every two weeks for cumulative PSC service exceeding 15 years. Former Civil Service, Foreign Service, or a Military Service experience is not creditable toward PSC service for annual leave purposes.

(3) It is understood that vacation leave is provided under this contract primarily for the purposes of affording necessary rest and recreation during the tour of duty in the Cooperating Country. The contractor in consultation with the AID Mission shall develop a vacation leave schedule early in his/her tour of duty taking into consideration project requirements, employee preference and other factors. All vacation leave earned by the contractor must be used during his/her tour of duty. All vacation leave earned by the contractor but not taken by the end of his/her tour of duty will be forfeited unless the requirements of the project precluded the employee from taking such leave and the Contracting Officer, with the endorsement of the Mission, approves one of the following as an alternative:

(i) Taking, during the concluding weeks of the employee's tour, leave not permitted under (a)(3) of this clause, or

(ii) Lump-sum payment for leave not taken provided such leave does not exceed the number of days which can be earned by the employee during a twelve month period.

(4) With the approval of the Mission Director, and if the circumstances warrant, a contractor may be granted advance vacation leave in excess of that earned, but in no case shall a contractor be granted advance vacation leave in excess of that which he/she will earn over the life of the contract. The contractor agrees to reimburse AID for leave used in excess of the amount earned during the contractor's assignment under the contract.

(b) *Sick Leave.* Sick leave is earned at a rate not to exceed 13 workdays per annum or 4 hours every 2 weeks. Unused sick leave may be carried over under an extension of this contract but the contractor will not be compensated for unused sick leave at the completion of this contract.

(c) *Home Leave.* (1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A contractor who is a U.S. citizen or U.S. resident alien and has served at least 2 years overseas, as defined in paragraph (c)(4) of this clause, under this contract, and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 workdays for each such year of service overseas; provided, that the contractor agrees to return overseas upon completion of home leave under an additional 2 year appointment, or for such shorter period of not less than 1 year of overseas service under the contract as the Mission Director may approve in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2) of this clause, that the contractor must have served 2 years overseas under this contract to be eligible for home leave, the contractor may be granted advance home leave subject to all of the following conditions:

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this contract;

(ii) The contractor shall have served a minimum of 18 months in the Cooperating Country on his/her current tour of duty under this contract; and

(iii) The contractor shall have agreed to return to the Cooperating Country to serve out the remainder of his/her current tour of duty and an additional 2 year appointment under this contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2), or paragraph (c)(3) above, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the U.S. port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the U.S. port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days of vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The contractor will be responsible for reimbursing AID for payments made during home leave if, in spite of the undertaking of the new appointment, the contractor, except for reasons beyond his/her control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this contract.

(6) To the extent deemed necessary by the Contracting Officer, a contractor in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation at AID/Washington before returning to post of duty. Consultation at locations other than AID/Washington as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(d) *Holidays.* The contractor, while serving abroad, shall be entitled to all holidays granted by the Mission to U.S.-citizen direct-hire employees.

(e) *Military Leave.* Military leave of not more than 15 calendar days in any calendar year may be granted to a contractor who is a reservist of the Armed Forces, provided that military leave has been approved in advance by the Contracting Officer or the

Mission Director. A copy of any such approval shall be provided to the Contracting Officer.

(f) *Leave Without Pay.* Leave without pay may be granted only with the written approval of the Contracting Officer or Mission Director.

(g) *Leave Records.* The contractor shall maintain current leave records for himself/herself and make them available, as requested by the Mission Director or the Contracting Officer.

6. Differential and Allowances (June 1990)

(a) The following differential and allowances will be granted to the contractor and his/her authorized dependents to the same extent and on the same basis as they are granted to U.S. citizen direct-hire employees at the Mission by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended, except as noted to the contrary below:

	Applicable reference to standardized regulations
(1) Post Differential ...	Chapter 500 and Tables in Chapter 900.
(2) Living Quarters Allowance.	Section 130.
(3) Temporary Lodging Allowance.	Section 120.
(4) Post Allowance	Section 220.
(5) Supplemental Post Allowance.	Section 230.
(6) Payments During Evacuation.	Section 600.
(7) Educational Allowance.	Section 270.
(8) Separate Maintenance Allowance.	Section 260.
(9) Danger Pay Allowance.	Section 650.
(10) Education Travel	Section 280.

(1) Post Differential

Post differential is an additional compensation of service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive. In areas where post differential is paid to AID direct-hire employees, post differential not to exceed the percentage of salary as is provided such AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas) Chapter 500 (except the limitation contained in Section 552, "Ceiling on Payment") Tables-Chapter 900, as from time to time amended, will be reimbursable hereunder for employees in respect to amounts earned during the time such employees actually spend overseas on work under this contract. When such post differential is provided to the contractor, it shall be payable beginning on the date of arrival at the post of assignment and continue, including periods away from post on official business, until the close of business on the day of departure from post of assignment en route to the United States. Sick or vacation leave taken at or away from the post of assignment will not interrupt the continuity of the assignment or require a discontinuance of such post differential payments, provided such leave is not taken within the United States or the territories of the United States. Post differential will not be payable while the employee is away from his/her post of assignment for purposes of home leave. Short-term employees shall be entitled to post differential beginning with the forty-third (43rd) day at post.

(2) Living Quarters Allowance

Living quarters allowance is an allowance granted to reimburse an employee for substantially all of his/her cost for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to him/her at his/her post without charge. Such costs are those incurred for temporary lodging (temporary lodging allowance) or one unit of residence quarters (living quarters allowance) and include rent, plus any costs not included therein for heat, light, fuel, gas, electricity and water. The temporary lodging allowance and the living quarters allowance are never both payable to an employee for the same period of time. The contractor will receive living quarters allowance for payment of rent and utilities if such facilities are not supplied. Such allowances shall not exceed the amount paid AID employees of equivalent rank in the Cooperating Country, in accordance with either the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 130, as from time to time amended, or other rates approved by the Mission Director. Subject to the written approval of the Mission Director, short-term employees may be paid per diem (in lieu of living quarters allowance) at rates prescribed by the Federal Travel Regulations, as from time to time amended, during the time such short-term employees spend at posts of duty in the Cooperating Country under this contract. In authorizing such per diem rates, the Mission Director shall consider the particular circumstances involved with respect to each such short-term employee including the extent to which meals and/or lodging may be made available without charge or at nominal cost by an agency of the United States Government or of the Cooperating Government, and similar factors.

(3) Temporary Lodging Allowance

Temporary lodging allowance is a quarters allowance granted to an employee for the reasonable cost of temporary quarters incurred by the employee and his/her family for a period not in excess of (i) three months after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier, and (ii) one month immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters. The contractor will receive temporary lodging allowance for himself/herself and authorized dependents, in lieu of living quarters allowance, not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 120, as from time to time amended.

(4) Post Allowance

Post allowance is a cost-of-living allowance granted to an employee officially stationed at a post where the cost of living, exclusive of quarters cost, is substantially higher than in Washington, DC. The contractor will receive post allowance payments not to exceed those paid AID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 220, as from time to time amended.

(5) Supplemental Post Allowance

Supplemental post allowance is a form of post allowance granted to an employee at his/her post when it is determined that assistance is necessary to defray extraordinary subsistence costs. The contractor will receive supplemental post allowance payments not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 230, as from time to time amended.

(6) Payments During Evacuation

The Standardized Regulations (Government Civilians, Foreign Areas) provide the authority for efficient, orderly, and equitable procedure for the payment of compensation, post differential and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons or because of imminent danger to their lives. If evacuation has been authorized by the Mission Director, the contractor will receive payments during evacuation for himself/herself and authorized dependents evacuated from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600, and the Federal Travel Regulations, as from time to time amended.

(7) Educational Allowance

Educational allowance is an allowance to assist the contractor in meeting the extraordinary and necessary expenses, not otherwise compensated for, incurred by reason of his/her service in a foreign area in providing adequate elementary and secondary education for his/her children. The contractor will receive educational allowances payments for his/her dependent children in amounts not to exceed those set forth in Standardized Regulations (Government Civilians, Foreign Areas), Chapter 270, as from time to time amended.

(8) Separate Maintenance Allowance

Separate maintenance allowance is an allowance to assist an employee who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at his/her post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expense of maintaining his/her dependents elsewhere than at such post. The contractor will receive separate maintenance allowance payments not to exceed that made to AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign

Areas), Chapter 260, as from time to time amended.

(9) Danger Pay Allowance

Danger pay allowance is an allowance to provide additional compensation above basic compensation to employees in foreign areas where civil insurrection, civil war, terrorism or wartime conditions threaten physical harm or imminent danger to the health or well-being of the employee. The danger pay allowance is in lieu of that part of the post differential which is attributable to political violence. Consequently, the post differential may be reduced while danger pay is in effect to avoid dual crediting for political violence. The contractor shall be allowed danger pay allowance not to exceed that paid AID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 650, as from time to time amended.

(10) Educational Travel

Educational travel is travel to and from a school in the United States for secondary education (in lieu of an educational allowance) and for college education. The contractor will receive educational travel payments for his/her dependent children provided such payment does not exceed that which would be payable in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 280, as from time to time amended. Educational travel shall not be authorized for contractors whose assignment is less than two years.

The allowances provided in paragraphs 1 through 10 of this provision shall be paid to the contractor in dollars or in the currency of the Cooperating Country in accordance with practice prevailing at the Mission, or the Mission Director may direct that the contractor be paid a per diem in lieu thereof as prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

7. Social Security, Federal Income Tax, and Foreign Earned Income (June 1990)

(a) Since the contractor is an employee, F.I.C.A. contributions and U.S. Federal Income Tax withholding shall be deducted in accordance with regulations and rulings of the Social Security Administration and the U.S. Internal Revenue Service, respectively.

(b) As an employee, the contractor is not eligible for the "foreign earned income" exclusion under the IRS Regulations (see 26 CFR 1.911–3(c)(3)).

8. Advance of Dollar Funds (Dec 1985)

If requested by the contractor and authorized in writing by the Contracting Officer, AID will arrange for an advance of funds to defray the initial cost of travel, travel allowances, authorized precontract expenses, and shipment of personal property. The advance shall be granted on the same basis as to an AID U.S.-citizen direct-hire employee in accordance with AID Handbook 22, Chapter 4.

9. Insurance (June 1990)

(a) *Worker's Compensation Benefits.* The contractor shall be provided worker's compensation benefits in accordance with the Federal Employees' Compensation Act.

(b) *Health and Life Insurance.* (1) The contractor shall be provided a maximum contribution of up to 50% against the actual costs of the contractor's annual health insurance costs, provided that such costs may not exceed the maximum U.S. Government contribution for direct-hire personnel as announced annually by the Office of Personnel Management.

(2) The contractor shall be provided a contribution of up to 50% against the actual costs of annual life insurance not to exceed $500.00 per year.

(3) Retired U.S. Government employees shall not be paid additional contributions for health or life insurance under their contracts. The Government will normally have already paid its contribution for the retiree unless the employee can provide to the satisfaction of the Contracting Officer that his/her health and life insurance does not provide or specifically excludes coverage overseas. If excluded coverage overseas were the case, then eligibility as cited above would be applicable.

(4) Proof of health and life insurance coverage shall be submitted to the Contracting Officer before any contribution is paid.

On assignments of less than one year, costs for health and life insurance shall be prorated and paid accordingly.

(5) A contractor who is a spouse of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's Government health or life insurance policy is ineligible for the contribution under paragraphs (a)(1) or (a)(2) of this provision.

(c) *Insurance on Private Automobiles.* If the contractor or his/her dependents transport, or cause to be transported, privately owned automobile(s) to the Cooperating Country, or any of them purchase an automobile within the Cooperating Country, the contractor agrees to ensure that all such automobile(s) during such ownership within the Cooperating Country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director, payable in U.S. dollars or its equivalent in the currency of the Cooperating Country: Injury to persons, $10,000/$20,000; property damage, $5,000. The contractor further agrees to deliver, or cause to be delivered to the Mission Director, the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobile(s) is operated within the Cooperating Country. The premium costs for such insurance shall not be a reimbursable cost under this contract.

10. Travel and Transportation Expenses (July 1993)

(a) *General.* (1) AID/Washington Office of Administrative Services, or such other office as may be designated by that office, may furnish Transportation Requests (TR's) to the contractor for transportation authorized by this contract originating in the United States, and the executive or administrative officer at the Mission may furnish TR's for such authorized transportation which is payable in local currency or is to originate overseas. When transportation is not provided by the Government-issued TR, the contractor shall procure his/her own transportation, the costs of which will be reimbursed in accordance with the terms of this contract.

(2) The contractor will be reimbursed for reasonable, allocable and allowable travel and transportation expenses incurred under and for the performance of this contract. Determination of reasonableness, allocability and allowability will be made by the Contracting Officer in accordance with AID's established policies and procedures for AID direct-hire employees, and the particular needs of the project being implemented by this contract. Paragraphs (b) through (o) of this clause provide specific guidance and limitations on particular items of cost.

(b) *U.S. Travel and Transportation.* The contractor shall be reimbursed for actual transportation costs and travel allowances in the United States as authorized in the Contract Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances shall not be reimbursed in any amount greater than the cost of, and time required for, economy-class commercially scheduled air travel by the most expeditious route except as otherwise provided in paragraph (g) of this provision unless economy air travel is not available and the contractor certifies to this in his/her voucher or other documents submitted for reimbursement.

(c) *International Travel.* For travel to and from post of assignment, the contractor shall be reimbursed for travel costs and travel allowances from place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of the travel from the contractor's residence in the United States) to the post of duty in the Cooperating Country and return to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel from the post of duty in the Cooperating Country to the contractor's residence) upon completion of services by the individual. Reimbursement for travel will be in accordance with AID's established policies and procedures for its direct-hire employees and the provisions of this contract, and will be limited to the cost of travel by the most direct and expeditious route. If the contract is for longer than one year and the contractor does not complete one full year at post of duty (except for reasons beyond his/her control), the costs of going to and from the post of duty for the contractor and his/her dependents are not reimbursable hereunder. If the contractor serves more than one year but less than the required service in the Cooperating Country (except for reasons beyond his/her control) the costs of going to the post of duty are reimbursable hereunder but the costs of going from post of duty to the contractor's permanent, legal place of residence at the time he or she was employed for work under this contract, or other location as approved by the Contracting Officer, are not reimbursable under this

contract for the contractor and his/her dependents. When travel is by economy class accommodations, the contractor will be reimbursed for the cost of transporting up to 10 kilograms/22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not exceed that regularly allowed for first class travelers. Travel allowances for travelers shall not be in excess of the rates authorized in the Standardized Regulations (Government Civilians, Foreign Areas)—hereinafter referred to as the Standardized Regulations—as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover en route for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the Federal Travel Regulations as from time to time amended.

(d) *Local Travel.* Reimbursement for local travel in connection with duties directly referable to the contract shall not be in excess of the rates established by the Mission Director for the travel costs of travelers in the Cooperating Country. In the absence of such established rates the contractor shall be reimbursed for actual travel costs in the Cooperating Government or the Mission, including travel allowances at rates not in excess of those prescribed by the Standardized Regulations.

(e) *Indirect Travel for Personal Convenience.* When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of allowable air fare via the direct usually traveled route. If such costs include fares for air or ocean travel by foreign flag carriers, approval for indirect travel by such foreign flag carriers must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by the United States-flag carriers will be reimbursable within the above limitation of allowable costs.

(f) *Limitation on Travel by Dependents.* Travel costs and allowances will be allowed for authorized dependents of the contractor and such costs shall be reimbursed for travel from place of abode to assigned station in the Cooperating Country and return, only if the dependent remains in the Cooperating Country for at least 9 months or one-half of the required tour of duty of the contractor, whichever is greater, except as otherwise authorized hereunder for education, medical or emergency visitation travel. If the dependent is eligible for educational travel pursuant to the "Differential and Allowances" clause of this contract, time spent away from post resulting from educational travel will be counted as time at post.

(g) *Delays En Route.* The contractor may be granted reasonable delays en route while in travel status when such delays are caused by events beyond the control of the contractor and are not due to circuitous routing. It is understood that if delay is caused by physical incapacitation, he/she shall be eligible for such sick leave as provided under the "Leave and Holidays" clause of this contract.

(h) *Travel by Privately Owned Automobile (POV).* If travel by POV is authorized in the contract schedule or approved by the Contracting Officer, the contractor shall be reimbursed for the cost of travel performed in his/her POV at a rate not to exceed that authorized in the Federal Travel Regulations plus authorized per diem for the employee and for each of the authorized dependents traveling in the POV, if the POV is being driven to or from the Cooperating Country as authorized under the contract, provided that the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travelers by surface common carrier or authorized air fare, whichever is less.

(i) *Emergency and Irregular Travel and Transportation.*

Emergency transportation costs and travel allowances while enroute, as provided in this section, will be reimbursed not to exceed amounts authorized by the Foreign Service Travel Regulations for AID-direct hire employees in like circumstances under the following conditions:

(1) The costs of going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other location for contractor employees and dependents and returning to the post of duty, subject to the prior written approval of the Mission Director that such travel is necessary for one of the following reasons.

(i) Need for medical care beyond that available within the area to which the employee is assigned, or serious effect on physical or mental health if residence is continued at assigned post of duty. The Mission Director may authorize a medical attendant to accompany the employee at contract expense if, based on medical opinion, such an attendant is necessary.

(ii) Death, or serious illness or injury of a member of the immediate family of the employee or the immediate family of the employee's spouse.

(2) When, for any reason, the Mission Director determines it is necessary to evacuate the contractor or contractor dependents, the contractor will be reimbursed for travel and transportation expenses and travel allowance while en route, for the cost of the individuals going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other approved location. The return of such employees and dependents may also be authorized by the Mission Director when, in his/her discretion, he/she determines it is prudent to do so.

(3) The Mission Director may also authorize emergency or irregular travel and transportation in other situations, when in his/her opinion, the circumstances warrant such action. The authorization shall include the kind of leave to be used and appropriate restrictions as to time away from post, transportation of personal and household effects, etc.

(j) *Home Leave Travel.* To the extent that home leave has been authorized as provided in the "Leave and Holidays" clause of this contract, the cost of travel for home leave is reimbursable for travel costs and travel allowances of travelers from the post of duty in the Cooperating Country to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel to the contractor's residence in the United States) and return to the post of duty in the Cooperating Country. Reimbursement for travel will be in accordance with the Uniform State/AID/USIA Foreign Service Travel Regulations, as from time to time amended, and will be limited to the cost of travel by the most direct and expeditious route. Travel allowances for travelers shall be accordance with the rates authorized in the Standardized Regulations as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover en route for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the Standardized Regulations.

(k) *Rest and Recuperation Travel.* If approved in writing by the Mission Director, the contractor and his/her dependents shall be allowed rest and recuperation travel on the same basis as authorized AID direct-hire Mission employees and their dependents.

(l) *Transporation of Motor Vehicles, Personal Effects and Household Goods.*

(1) Transportation costs will be paid on the same basis as for AID direct-hire employees serving the same length tour of duty, as authorized in the schedule. Transportation, including packing and crating costs, will be paid for shipping from the point of origin in the United States (or other location as approved by the Contracting Officer) to post of duty in the Cooperating Country and return to point of origin in the United States (or other location as approved by the Contracting Officer) of one privately-owned vehicle for the contractor, personal effects of the contractor and authorized dependents, and household goods of the contractor not to exceed the limitations in effect for such shipments for AID direct-hire employees in accordance with the Foreign Service Travel Regulations in effect at the time shipment is made. These limitations may be obtained from the Contracting Officer.

(2) The cost of transporting motor vehicles and household goods shall not exceed the cost of packing, crating, and transportation by surface common carrier. In the event that the carrier does not require boxing or crating of motor vehicles for shipment to the Cooperating Country, the cost of boxing or

crating is not reimbursable. The transportation of a privately owned motor vehicle for a contractor may be authorized as a replacement of the last such motor vehicle shipped under this contract for such contractor when the Mission Director determines, in advance, and so notifies the contractor in writing, that the replacement is necessary for reasons not due to the negligence or malfeasance of the contractor. The determination shall be made under the same rules and regulations that apply to authorized Mission U.S. citizen direct-hire employees.

(m) *Unaccompanied Baggage.* Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival of the contractor and dependents, consideration should be given to advance shipments of unaccompanied baggage. The contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance for household effects) not to exceed the limitations in effect for AID direct-hire employees in accordance with the Foreign Service Travel Regulations as in effect when shipment is made. These limitations are available from the Contracting Officer. This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used. This provision is applicable to home leave travel when authorized by the terms of this contract.

(n) *International Ocean Transportation.*

(i) *Transportation of things.* Where U.S. flag vessels are not available, or their use would result in a significant delay, the contractor may obtain a release from the requirement to use U.S. flag vessels from the Transportation Division, Office of Procurement, Agency for International Development, Washington, DC 20523–1419, or the Mission Director, as appropriate, giving the basis for the request.

(ii) *Transportation of persons.* Where U.S. flag vessels are not available, or their use would result in a significant delay, the contractor may obtain a release from the requirement to use U.S. flag vessels from the Contracting Officer or the Mission Director, as appropriate.

(2) *Transportation of foreign-made vehicles.* Reimbursement of the costs of transporting a foreign-made motor vehicle will be made in accordance with the provisions of the Foreign Service Travel Regulations.

(3) Reduced rates on U.S.-flag carriers are in effect for shipments of household goods and personal effects of AID contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Bill of Lading documentary evidence that the shipment is for the account of AID. The Contracting Officer will, on request, furnish to the contractor current information concerning the availability of a reduced rate with respect to any proposed shipment. The contractor will not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates which are available in accordance with the foregoing.

(o) *Storage of household effects.* The cost of storage charges (including packing, crating, and drayage costs) in the U.S. of household goods of the contractor will be permitted in lieu of transportation of all or any part of such goods to the Cooperating Country under paragraph (l) of this clause provided that the total amount of effects shipped to the Cooperating Country or stored in the U.S. shall not exceed the amount authorized for AID direct-hire employees under the Uniform Foreign Service Travel Regulations. These amounts are available from the Contracting Officer.

11. Payment (June 1990)

(a) Once each month (or at more frequent intervals, if approved by the paying office indicated on the Cover Page), the contractor may submit to such office form SF 1034 "Public Voucher for Purchases and Services Other Than Personal" (original) and SF 1034–A (three copies), each voucher identified by the AID contract number properly executed in the amount of dollars claimed during the period covered. The voucher forms shall be supported by:

(1) The contractor's detailed invoice, in original and two copies, indicating for each amount claimed the paragraph of the contract under which payment is to be made, supported when applicable as follows:

(ii) For compensation—a statement showing period covered, days worked, and days when contractor was in authorized travel, leave, or stopover status for which compensation is claimed. All claims for compensation will be accompanied by, or will incorporate, a certification signed by the Project Officer covering days or hours worked, or authorized travel or leave time for which compensation is claimed.

(ii) For travel and transportation—a statement of itinerary with attached carrier's receipt and/or passenger's coupons, as appropriate.

(iii) For reimbursable expenses—an itemized statement supported by original receipts.

(2) The first voucher submitted shall account for, and liquidate the unexpended balance of, any funds advanced to the contractor.

(b) A final voucher shall be submitted by the contractor promptly following completion of the duties under this contract but in no event later than 120 days (or such longer period as the Contracting Officer may in his/her discretion approve in writing) from the date of such completion. The contractor's claim, which includes his/her final settlement of compensation, shall not be paid until after the performance of the duties required under the terms of this contract has been approved by AID. On receipt and approval of the voucher designated by the contractor as the "final voucher" submitted on form SF 1034 (original) and SF 1034–A (three copies), together with a refund check for the balance remaining on hand of any funds which may have been advanced to the contractor, the Government shall pay any amounts due and owing the contractor.

(c) Interest on Overdue Payments

(1) The Prompt Payment Act, Public Law 97–177 (96 Stat. 85.31; U.S.C. 1801) is applicable to payments under this contract and requires the payment to the contractor of interest on overdue payments and improperly taken discounts.

(2) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A–125 except as provided in paragraph (c)(3) of this claim or as otherwise specifically provided under this contract.

(3) Notwithstanding the provisions of OMB Circular A–125, Section 4.1, the Government will use its best efforts to make payments under this contract as soon as practicable following receipt of a proper invoice.

12. Conversion of U.S. Dollars to Local Currency (Dec 1985)

Upon arrival in the Cooperating Country, and from time to time as appropriate, the contractor shall consult with the Mission Director or his/her authorized representative who shall provide, in writing, the policy the contractor shall follow in the conversion of U.S. dollars to local currency.

This may include, but not be limited to the conversion of said currency through the cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

13. Post of Assignment Privileges (July 1993)

Privileges such as the use of APO, PX's commissaries and officer's clubs are established at posts abroad under agreements between the U.S. and host governments. These facilities are intended for and usually limited to members of the official U.S. establishment including the Embassy, AID Mission, U.S. Information Service and the Military. Normally, the agreements do not permit these facilities to be made available to non-official Americans. However, in those cases where facilities are open to non-official Americans, they may be used.

14. Security Requirements (June 1990)

(a) This entire provision shall apply to the extent that this contract involves access to classified information ("Confidential", "Secret", or "Top Secret") or access to administratively controlled information ("Limited Official Use"). Contractors that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with appropriate instructions furnished by the AID Office of Security (IG/SEC), as referenced in paragraph (d) of this provision and shall not supply, disclose, or otherwise permit access to classified information or administratively controlled information to any unauthorized person; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information except with the prior written authorization of the Contracting Officer or Mission Director; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified and/or administratively

controlled information except with the prior written authorization of the Contracting Officer.

(c) The contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storing, and destroying official material in accordance with the regulations in the Foreign Affairs Manual, Chapter 5 (5 FAM 900), a copy of which will be furnished by the Contracting Officer or Mission Director.

(d) The contractor agrees to submit immediately to the Mission Director or Contracting Officer a complete detailed report, appropriately classified, of any information which the contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(e) The Government agrees that, when necessary, it shall indicate by security classification or administratively controlled designation, the degree of importance to the national defense of information to be furnished by the contractor to the Government or by the Government to the contractor, and the Government shall give written notice of such security classification or administratively controlled designation to the contractor and of any subsequent changes thereof. The contractor is authorized to rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(f) The contractor agrees to certify after completion of his/her assignment under this contract that he/she has surrendered or disposed of all classified and/or administratively controlled information in his/her custody in accordance with applicable security instructions.

15. Contractor-Mission Relationships (Dec 1985)

(a) The Contractor acknowledges that this contract is an important part of the U.S. Foreign Assistance Program and agrees that his/her duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails.

(b) While in the Cooperating Country, the contractor is expected to show respect for the conventions, customs, and institutions of the Cooperating Country and not interfere in its political affairs.

(c) If the contractor's conduct is not in accordance with paragraph (b) of this provision, the contract may be terminated under General Provision 16 of this contract. The Contractor recognizes the right of the U.S. Ambassador to direct his/her immediate removal from any country when, in the discretion of the Ambassador, the interests of the United States so require.

(d) The Mission Director is the chief representative of AID in the Cooperating Country. In this capacity, he/she is responsible for the total AID Program in the Cooperating Country including certain administrative responsibilities set forth in this contract and for advising AID regarding the performance of the work under the contract and its effect on the U.S. Foreign Assistance Program. The contractor will be responsible for performing his/her duties in accordance with the statement of duties called for by the contract. However, he/she shall be under the general policy guidance of the Mission Director, and shall keep the Mission Director or his/her designated representative currently informed of the progress of the work under this contract.

16. Termination (Nov 1989)

(This is an approved deviation to be used in place of the clause specified in FAR 52.249–12)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part:

(1) For cause, which may be effected immediately after establishing the facts warranting the termination, by giving written notice and a statement of reasons to the contractor in the event (i) the Contractor commits a breach or violation of any obligations herein contained, (ii) a fraud was committed in obtaining this contract, or (iii) the contractor is guilty (as determined by AID) of misconduct in the Cooperating Country. Upon such a termination, the contractor's right to compensation shall cease when the period specified in such notice expires or the last day on which the contractor performs services hereunder, whichever is earlier. No costs of any kind incurred by the contractor after the date such notice is delivered shall be reimbursed hereunder except the cost of return transportation (no including travel allowances), if approved by the Contracting Officer. If any costs relating to the period subsequent to such date have been paid by AID, the contractor shall promptly refund to AID any such prepayment as directed by the Contracting Officer.

(2) For the convenience of AID, by giving not less than 15 calendar days advance written notice to the contractor. Upon such a termination, contractor's right to compensation shall cease when the period specified in such notice expires except that the contractor shall be entitled to return transportation costs and travel allowances and transportation of unaccompanied baggage costs at the rates specified in the contract and subject to the limitations which apply to authorized travel status.

(3) For the convenience of AID, when the contractor is unable to complete performance of his/her services under the contract by reason of sickness or physical or emotional incapacity based upon a certification of such circumstances by a duly qualified doctor of medicine approved by the Mission. The contract shall be deemed terminated upon delivery to the Contractor of a termination notice. Upon such a termination, the contractor shall not be entitled to compensation except to the extent of any unused vacation or sick leave but shall be entitled to return transportation, travel allowances, and unaccompanied baggage costs at rates specified in the contract and subject to the limitations which apply to authorized travel status.

(b) The contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

17. Release of Information (Dec 1985)

All rights in data and reports shall become the property of the U.S. Government. All information gathered under this contract by the contractor and all reports and recommendations hereunder shall be treated as confidential by the Contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than AID, except as otherwise expressly provided in this contract.

18. Notices (Dec 1985)

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

To AID: Administrator, Agency for International Development, Washington, DC 20523, Attention: Contracting Officer.

(name of the cognizant Contracting Officer with a copy to the appropriate Mission Director)

To Contractor:

As his/her post of duty while in the Cooperating Country and at the Contractor's address shown on the Cover Page of this contract or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective in accordance with this clause or on the effective date of the notice, whichever is later.

19. Reports (June 1987)

(a) The Contractor shall prepare and submit 2 copies of each technical report required by the schedule of this contract to the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division (PPC/CDIE/DI). All documents should be mailed to:

PPC/CDIE/DI, Acquisitions, room 209, SA–18, Agency for International Development, Washington, DC 20523–1802.

The title page of all reports forwarded to PPC/CDIE/DI pursuant to this paragraph shall include a descriptive title, the author's name(s), contract number, project number and title, contractor's name, name of the AID project office, and the publication or issuance date of the report.

(b) When preparing reports, the contractor shall refrain from using elaborate art work, multicolor printing and expensive paper/binding, unless it is specifically authorized in the Contract Schedule. Wherever possible, pages should be printed on both sides using single spaced type.

20. Use of Pouch Facilities (July 1993)

(a) Use of a diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID contractors and their employees as a general policy, as detailed in paragraph (a)(1) through (a)(6) of this provision. However, the final decision regarding use of pouch facilities rests with the Embassy or AID Mission. In consideration of the use of pouch facilities are hereinafter stated, the Contractor agrees to indemnify and hold harmless the Department of State and AID for loss or damage occurring in pouch transmission.

(1) Contractors are authorized use of the pouch for transmission and receipt of up to

a maximum of 0.90 kilogram/2 pounds per shipment of correspondence and documents needed in the administration of foreign assistance programs.

(2) U.S. citizen contractors are authorized use of the pouch for personal mail up to a maximum of 0.45 kilogram/one pound per shipment (but see paragraph (a)(3) of this clause). Non-U.S. citizen Contractors are not permitted use of the pouch for personal mail except to the extent that such use may be authorized by the Chief of Mission.

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this clause, and are not authorized to be sent or received by pouch.

(4) Official and personal mail under paragraphs (a) (1) and (2) of this provision, sent by pouch, should be addressed as follows:

Individual's Name (C), Agency for International Development, Washington, DC 20523–0001.

(5) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(6) AID contractors hired in the United States are authorized use of military postal facilities (APO/FPO). Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch, may, however, accept official and personal mail for the pouch provided, of course, adequate postage is affixed when onward transmission (mail to other than AID/W) through U.S. postal channels is required.

(b) The contractor shall be responsible for compliance with these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or AID Mission.

21. Biographical Data (June 1990)

(a) The contractor agrees to furnish biographical information to the Contracting Officer, on forms (SF 171 and 171As) provided for that purpose.

(b) Emergency locator information. The contractor agrees to provide the following information to the Mission Administrative Officer on arrival in the host country regarding himself/herself and dependents:

(1) Contractor's full name, home address, and telephone number including any after-hours emergency number(s).

(2) The name and number of the contract, and whether the individual is the contractor or the contractor's dependent.

(3) The name, address, and home and office telephone number(s) of each individual's next of kin.

(4) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

22. Resident Hire Personal Services Contractor (June 1990)

A contractor meeting the definition of a Resident Hire PSC contained in Section 11, General Provisions, Clause 1, Definitions, shall not be eligible for any fringe benefits (except contributions for FICA, health insurance and life insurance), allowances, or differentials, including but not limited to travel and transportation, medical, orientation, home leave, etc., unless such individual can demonstrate to the satisfaction of the Contracting Officer that he/she has received similar benefits/allowances from their immediately previous employer in the Cooperating Country, or the Mission Director determines that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interests of the U.S. Government.

23. Orientation and Language Training (Long Tour) (July 1993)

(a) Except as set forth in paragraph (b)(4) of this clause, the Contractor shall receive a maximum of 2 weeks AID orientation before travel overseas. The dates of orientation shall be selected by the Contractor and approved by the Contracting Officer from the orientation schedule provided by AID.

(b) As either set forth in the Contract Schedule, or provided in writing by the Contracting Officer, the following may be authorized taking into consideration specific job requirements, contractor's prior overseas experience, or unusual circumstances, in connection with orientation of individual Contractors:

(1) Modified orientation,

(2) Language training,

(3) Orientation for Contractor's dependents at contract expense,

(4) Waiver of orientation for individual contractor.

(c) Transportation costs and travel allowances not to exceed one round trip from the Contractor's residence to place of orientation and return will be reimbursed, pursuant to Clause 10 of the General Provisions, entitled "Travel and Transportation Expenses," if the orientation is more than 80 kilometers/50 miles from the contractor's residence. Allowable salary costs during the period of orientation are also reimbursable.

24. Conditions for Contracting Prior to Receipt of Security Clearance (July 1993)

(a) Resident Hire U.S. PSC. The contractor may commence work prior to the completion of the security clearance. However, until such time as clearance is received, the contractor shall have no access to classified or administratively controlled materials. Further, failure to obtain clearance will constitute cause for contract termination in accordance with paragraph (a)(2) of General Provision 16 of this contract.

(b) U.S. PSC—Non-Resident Hire. The contractor may elect to commence travel to post immediately to begin work prior to completion of the security clearance. However, until such time as security clearance is received, the contractor shall:

(1) Have no access to classified or administratively controlled materials;

(2) Be authorized to travel to post himself/herself only; and

(3) Be authorized no entitlements other than those normally authorized for short term (less than a year) employees at post. Even if the contract is for one year or more, dependents may not accompany contractor unless at his/her expense, and transportation/storage of household/personal effects and motor vehicle will not be financed by AID prior to the receipt of the security clearance. Upon receipt of clearance, the Contracting Officer will authorize reimbursement of any such costs borne at contractor's expense prior to clearance provided they are reasonable, allocable and allowable. If appropriate given the length of time remaining, the Contracting Officer will authorize dependent travel and shipment/storage of motor vehicle and effects. Allowances which would not be provided to short term employees will be authorized after clearance is received provided that the contractor is otherwise entitled to such benefits. Failure to obtain the security clearance will constitute cause for contract termination in accordance with paragraph (a)(2) of General Provision 16 of this contract.

25. Medical Evacuation (Medevac) Services (July 1993)

(a) The contractor agrees to obtain medevac service coverage for himself/herself and his/her authorized dependents while performing personal services abroad. Coverage shall be obtained pursuant to the terms of the contract between AID and AID's medevac service provider unless exempted in accordance with paragraph (b).

(b) The following are exempted from the requirements in paragraph (a):

(i) Contractors and their dependents with a health insurance program that includes sufficient medevac coverage as approved by the Contractor Officer.

(ii) Contractors and their dependents located at Missions where the Mission Director makes a written determination to waive the requirement for such coverage based on findings that the quality of local medical services or other circumstances obviate the need for such coverage.

(c) Information on the current medevac service provider, including application procedures, is available from the Contracting Officer.

Appendix D

Section 12

FAR Clauses

The following FAR Clauses are always to be used along with the General Provisions. They are required in full text.

1. Officials Not To Benefit 52.203–1
2. Covenant Against Contingent Fees 52.203–5
3. Disputes 52.233–1 (Alternate 1)
4. Preference for U.S.-Flag Air Carriers 52.247–63

The following FAR Clauses are to be used along with the General Provisions, and when appropriate, be incorporated in each personal services contract by reference:

1. Inspection 52.246–5.
2. Examination of Records by Comptroller General 52.215–1.
3. Audit—Negotiation 52.215–2.
4. Privacy Act Notification 52.224–1.
5. Privacy Act 52.224–2.
6. Taxes—Foreign Cost Reimbursement Contracts 52.229–8.
7. Interest 52.232–17.

8. Assignment of Claims 52.232–23.
9. Protection of Government Buildings, Equipment, and Vegetation 52.237–2.
10. Notice of Intent to Disallow Costs 52.242–1.
11. Limitation of Cost 52.232–20.
12. Limitation of Funds 52.232–22.
13. Limitation of Liability—Services 52.246–25.
14. Anti-Kickback Procedures 52.203–7.
15. Certification and Disclosure Regarding Payments To Influence Certain Federal Transactions 52.203–12.

5. Appendix J is revised as follows:

Appendix J—Direct AID Contracts With Cooperating Country Nationals and With Third Country Nationals for Personal Services Abroad

1. General

(a) *Purpose.* This appendix sets forth the authority, policy, and procedures under which AID contracts with cooperating country nationals or third country nationals for personal services abroad.

b. *Definitions.* For the purpose of this appendix:

(1) *Personal services contract* (PSC) means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, Government employees (see FAR 37.104).

(2) *Employer-employee relationship* means an employment relationship under a service contract with an individual which occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, the contractor is subject to the relatively continuous supervision and control of a Government officer or employee.

(3) *Non-personal services contract* means a contract under which the personnel rendering the services are not subject either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

(4) *Independent contractor relationship* means a contract relationship in which the contractor is not subject to the supervision and control prevailing in relationships between the Government and its employees. Under these relationships, the Government does not normally supervise the performance of the work, or the manner in which it is to be performed, control the days of the week or hours of the day in which it is to be performed, or the location of performance.

(5) *Contractor* means a cooperating country national or a third country national who has entered into a contract pursuant to this appendix.

(6) *Cooperating country* means the country in which the employing AID Mission is located.

(7) *Cooperating country national (CCN)* means an individual who is a cooperating country citizen or a noncooperating country citizen lawfully admitted for permanent residence in the cooperating country.

(8) *Third Country National (TCN)* means an individual (i) who is neither a citizen nor a permanent legal resident alien of the United States nor of the country to which assigned for duty, and (ii) who is eligible for return to his/her home country or country of recruitment at U.S. Government expense [see Section 12, General Provision 9 paragraph (n)].

2. Legal Basis

(a) Section 635(b) of the Foreign Assistance Act of 1961, as amended, hereinafter referred to as the "FAA", provides the Agency's contracting authority.

(b) Section 636(a)(3) of the FAA authorizes the Agency to enter into personal services contracts with individuals for personal services abroad and provides further that such individuals "* * * shall not be regarded as employees of the U.S. Government for the purpose of any law administered by the Civil Service Commission."[1]

3. Applicability

(a) This appendix applies to all personal services contracts with CCNs or TCNs to provide assistance abroad under Section 626(a)(3) of the FAA.

(b) This appendix does not apply to:

(1) Contracts for non-personal services with TCNs or CCNs; such contracts are covered by the basic text of the FAR and AIDAR.

(2) Personal services contracts with U.S. citizens or U.S. resident aliens for personal services abroad; such contracts are covered by appendix D of this chapter.

(3) Appointments of experts and consultants as AID direct-hire employees; such appointments are covered by AID Handbook 25, Employment and Promotion.

4. Policy

(a) *General.* AID may finance, with either program or operating expense (OE) funds, the cost of personal services as part of the Agency's program of foreign assistance by entering into a direct contract with a CCN or a TCN for personal services abroad.

(1) *Program funds.* Under the authority of Section 636(h) of the FAA, program funds may be obligated for periods up to five years where necessary and appropriate to the accomplishment of the tasks involved.

(2) *Operating expense funds.* Pursuant to AID budget policy, OE funded salaries and other recurrent cost items may be forward funded for a period of up to three (3) months beyond the fiscal year in which these funds were obligated. Non-recurring cost items may be forward funded for periods not to exceed twenty-four (24) months where necessary and appropriate to accomplishment of the work.

(b) *Limitations on Personal Services Contracts.* (1) Personal services contracts may only be used when adequate supervision is available.

(2) Personal services contracts may be used for commercial activities. Commercial activities provide a product or service which could be obtained from a commercial source. See Attachment A of OMB Circular A–76 for a representative list of such activities.

(3) Personal services contracts may be used for Governmental functions (defined by OMB Circular A–76 as functions so intimately related to the public interest as to mandate performance by Government employees) *except:*

(i) Entering into any agreement (e.g., loan, grant, contract) on behalf of the United States.

(ii) Making decisions involving governmental functions such as planning, budget, programming and personnel selection. Services will be limited to making recommendations with final decision-making authority reserved for authorized AID direct-hire employees.

(iii) Supervision of AID direct-hire U.S. citizen employees.

(iv) Services which involve security classified material.

(c) *Conditions of Employment.* (1) *General.* For the purpose of any law administered by the U.S. Office of Personnel Management, AID PSC contractors are not to be regarded as employees of the U.S. Government, are not included under any retirement or pension program of the U.S. Government, and are not eligible for the Incentive Awards Program covered by Uniform State/AID/USIA regulations. Each AID Mission is expected to participate in the Joint Special Embassy Incentive Awards Program. The program is administered by a joint committee which establishes procedures for submission, review and approval of proposed awards. Other than these exceptions, CCNs and TCNs who are hired for work in a cooperating country under PSCs generally will be extended the same benefits and be subject to the same restrictions as Foreign Service Nationals (FSNs) employed as direct-hires by the AID Mission.

(2) *Compensation.* (i) It is AID's general policy (see AIDAR 722.170) that PSC compensation may not, without the approval of the Mission Director or Assistant Administrator, exceed the prevailing compensation paid to personnel performing comparable work in the cooperating country. Compensation for TCN or CCN personal services contractors set in accordance with the provisions in paragraphs 4c(2)(ii) (A) and (B) of this clauses satisfies this requirement.

(ii) In accordance with section 408(a)(1) of the Foreign Service Act of 1980, a local compensation plan forms the basis for all compensation payments to FSNs which includes CCNs and TCNs. The plan is each post's official system of position classification and pay, consisting of the local salary schedule which includes salary rates, statements authorizing fringe benefit payments, and other pertinent facets of compensation for TCNs and CCNs, and the local position classification system as reflected in the Local Employee Position Classification Handbook (LEPCH) or equivalent in effect at the Mission. Compensation for PSCs will be in accordance with the local compensation plan, to the extent that it covers employees of the type or category being employed, unless the Mission Director determines otherwise. If the Mission Director determines that compensation in accordance with the local plan would be inappropriate in a particular instance, then compensation will be set in accordance with (in order of preference):

(A) Any other Mission policies on foreign national employee compensation; or

[1] The Civil Service Commission is now the Federal Office of Personnel Management.

(B) Paragraphs 4 (c) (d) (e) (g) and (h) of appendix D. When compensation is set in accordance with this exception, the record shall be documented in writing with a justification prepared by the requesting office and approved by the Mission Director.

(iii) The earning of leave (annual and sick), allowances and differential (if applicable), salaries and all other related benefits cannot be enumerated in this appendix as they vary from Mission to Mission and are based upon the compensation plan for each.

(iv) Unless otherwise authorized, the currency in which compensation is paid to contractors shall be in accordance with the prevailing local compensation practice of the post.

(v) CCN and TCN contractors are eligible for allowances and differential on the same basis as direct-hire FSN employees under the post compensation plan.

(vi) An AID PSC who is a spouse of a current or retired U.S. Civil Service, U.S. Foreign Service, or U.S. military service member, and who is covered by their spouse's government health or life insurance policy, is ineligible for a contribution towards the costs of annual health and life insurance.

(vii) Retired CCNs and TCNs may be awarded personal services contracts without any reduction in or offset against their Government annuity.

(3) *Incentive Awards.* (i) All Cooperating Country Nationals direct-hire and Personal Services Contractors (PSCs) and Third Country Nationals (PSCs) of the Foreign Affairs Community are eligible for the Joint Special Embassy Incentive Awards Program.

(ii) The Joint Country Awards Committee administers each post's (Embassy) award program, including establishment of procedures for submission, review and approval of proposed awards.

(4) *Training.* CCN and TCN PSCs are eligible for most of the training courses offered in the Training Course Schedule. However, applications will be processed on a case-by-case basis and are required to be approved by the Contracting Officer.

5. Soliciting for Personal Services Contracts

(a) *Project Officer's Responsibilities.* The Project Officer will prepare a written detailed statement of duties and a statement of minimum qualifications to cover the position being recruited for; the statement shall be included in the procurement request. The procurement request shall also include the following additional information as a minimum:

(1) The specific foreign location(s) where the work is to be performed, including any travel requirements (with an estimate of frequency);

(2) The length of the contract, with beginning and ending dates, plus any options for renewal or extension;

(3) The basic education, training, experience, and skills required for the position;

(4) A certification from the officer in the Mission responsible for the LEPCH or equivalent that the position has been reviewed and is properly classified as to a title, series and grade in accordance with the LEPCH. If the position does not fall within the LEPCH or equivalent system, an estimate of compensation based on paragraphs 4(c)(2)(ii)(A) or (B) of this appendix after consultations or in coordination with the contract officer or executive officer;

(5) A list of Government or host country furnished items (e.g., housing); and

(6) If the PSC will be providing advisory and assistance services, include the justification required by AIDAR 737.270(b).

(b) *Contracting Officer's Responsibilities.* (1) The Contracting Officer will prepare the solicitation for personal services which shall contain:

(i) Three sets of certified biographical data and salary history. (Upon receipt, one copy of the above information shall be forwarded to the Project Officer);

(ii) A detailed statement of duties or a completed position description for the position being recruited for;

(iii) A copy of the prescribed contract Cover Page, Contract Schedule, and General Provisions as well as the FAR Clauses to be included in full text as well as those to be incorporated by reference; and

(iv) A copy of General Notice entitled "Employee Review of the New Standards of Conduct" dated October 30, 1992.

(2) The Contracting Officer shall comply with the limitations of AIDAR 706.302–70(c) as detailed in paragraph 5(c) of this clause.

(c) *Competition.* (1) Under AIDAR 706.302–70(b)(1), Personal Services Contracts are exempt from the requirements for full and open competition with two limitations that must be observed by Contracting Officers.

(i) Offers are to be requested from as many potential offerors as is practicable under the circumstances, and

(ii) A justification supporting less than full and open competition must be prepared in accordance with FAR 6.303.

(2) A class justification was approved by the AID Procurement Executive to satisfy the requirements of AIDAR 706.302–70(c)(2) for a justification in accordance with FAR 6.303. Use of this class justification for Personal Services Contracts with Cooperating Country Nationals and Third Country Nationals is subject to the following conditions:

(i) New contracts are publicized consistent with Mission/Embassy practice on announcement of direct hire FSN positions. Renewals or extensions with the same individual for continuing service do not need to be publicized.

(ii) A copy of the class justification (which was distributed all AID Contracting Officers via Contract Information Bulletin) must be included in the contract file, together with a written statement, signed by the Contracting Officer, that the contract is being awarded pursuant to AIDAR 706.302–70(b)(1); that the conditions for use of this class justification have been met; and that the cost of the contract is fair and reasonable. If the conditions in paragraphs (2)(i) and (ii) are not followed, the Contracting Officer must prepare a separate justification as required under AID 706.302–70(c)(2).

(3) Since the award of a personal services contract is based on technical qualifications, not price, and since the biographical data and salary history are used to solicit for such contracts, FAR Subparts 15.4 and 15.5 are inappropriate and shall not be used. Instead, the solicitation and selection procedures outlined in this appendix shall govern.

6. Negotiating a Personal Services Contract

Negotiating a Personal Services Contract is significantly different from negotiating a nonpersonal services contract because it establishes an employer-employee relationship; therefore, the selection and negotiations procedures are more akin to the personnel selection procedures.

(a) *Project Officer's Responsibilities.* The Project Officer shall be responsible for reviewing and evaluating the applications received in response to the solicitation issued by the Contracting Officer. If deemed appropriate, interviews may be conducted with the applicants before the final selection is submitted to the Contracting Officer.

(b) *Contracting Officer's Responsibilities.* (1) The Contracting Officer shall forward a copy of biographical data and salary history received under the solicitation to the Project Officer for evaluation.

(2) On receipt of the Project Officer's recommendation, the Contracting Officer shall conduct negotiations with the recommended applicant. The terms and conditions of the contract will normally be in accordance with the local compensation plan which forms the basis for all compensation on payments paid to FSNs which includes CCNs and TCNs.

(3) The Contracting Officer shall use the certified salary history on the certified statement of biographical data and salary history as the basis for salary negotiations, along with the Project Officer's cost estimate.

(4) The Contracting Officer will obtain necessary data for a security and suitability clearance to the extent required by AID Handbook 6, Security.

7. Executing a Personal Services Contract

Contracting activities, whether AID/W or Mission, may execute Personal Services Contracts, provided that the amount of the contract does not exceed the contracting authority that has been redelegated to them. See AIDAR 701.601.

In executing a personal service contract, the Contracting Officer is responsible for insuring that:

(a) The proposed contract is within his/her delegated authority;

(b) A written detailed statement of duties covering the proposed contract has been received;

(c) The proposed scope of work is contractible, contains a statement of minimum qualifications from the technical office requesting the services, and is suitable for a personal services contract in that:

(1) Performance of the proposed work requires or is best suited for an employer-employee relationship, and is thus not suited to the use of a non-personal services contract;

(2) The scope of work does not require performance of any function normally reserved for direct-hire Federal employees (under paragraph 4(b) of this appendix); and

(3) There is no apparent conflict of interest involved (if the Contracting Officer believes that a conflict of interest may exist, the

question should be referred to the cognizant legal counsel);

(d) Selection of the contractor is documented and justified (AIDAR 706.302–70(b)(1) provides an exception to the requirement for full and open competition for Personal Services Contracts abroad, see paragraph 5(c) of this appendix);

(e) The standard contract format prescribed for a Cooperating Country National and a Third Country National personal services contract (Sections 9, 10 or 11, 12, and 13 of this Appendix as appropriate) is used, or that any necessary deviations are processed as required by AIDAR 701.470;

(f) The contractor has submitted the names, addresses, and telephone numbers of at least two persons who may be notified in the event of an emergency (this information is to be retained in the contract file);

(g) The contract is complete and correct and all information required on the contract Cover Page (AID form 1420–36B) has been entered;

(h) The contract has been signed by the Contracting Officer and the contractor, and fully executed copies are properly distributed;

(i) The following clearances, approvals and forms have been obtained, properly completed, and placed in the contract file before the contract is signed by both parties:

(1) Security clearance to the extent required by AID Handbook 6, *Security;*

(2) Mission, host country, and project office clearance, as appropriate;

(3) Medical clearance(s) based on a full medical examination(s) and certification of same by a licensed physician. The physician's certification must be in the possession of the Contracting Officer prior to signature of contract. If a TCN is recruited, medical clearance requirements apply to the contractor and each dependent who is authorized to accompany the contractor;

(4) The approval for any salary in excess of FS–1, in accordance with appendix G of this chapter;

(5) A copy of the class justification or other appropriate explanation and support required by AIDAR 706.302–70, if applicable;

(6) Any deviation to the policy or procedures of this Appendix, processed and approved under AIDAR 701.470;

(7) The memorandum of negotiation;

(j) The position description is classified in accordance with the LEPCH, and the proposed salary is consistent with the local compensation plan or the alternate procedures established in paragraph 4(c)(2)(ii) of this clause;

(k) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 134 (the Contracting Officer ensures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected contractor);

(l) The contractor receives and understands AID General Notice entitled "Employee Review of the New Standards of Conduct" dated October 30, 1992 and a copy is attached to each contract, as provided for in paragraph (c) of General Provision 2, Section 12;

(m) Agency conflict of interest requirements, as set out in Chapter 2D and 2F of AID Handbook 24, are met by the contractor prior to his/her reporting for duty;

(n) A copy of a Checklist for Personal Services Contractors which may be in the form set out above or another form convenient for the contracting officer, provided that a form containing all of the information described in this paragraph 7 shall be prepared for each PSC and placed in the contract file;

(o) In consultation with the regional legal advisor and/or the regional contracting officer, the contract is modified by deleting from the General Provisions (Sections 12 and 13 of this appendix) the inapplicable clause(s) by a listing in the Schedule; and

(p) The block entitled, "Project No." on the Cover Page of the contract format is completed by inserting the four-segment project number as prescribed in AID Handbook 18, *Information Services* if the PSC is project-funded.

8. Contracting Format

The prescribed Contract Cover Page, Contract Schedules, General Provisions and FAR Clauses for personal service contracts for TCNs and CCNs covered by this appendix are included as follows:

9. "Cover Page" for a contract with a Cooperating Country National or with a Third Country National.

10. "Schedule" for a contract with a Cooperating Country National or with a Third Country National.

11. "Optional Schedule for Contract with a Cooperating Country National or with a Third Country National." [Use of the Optional Schedule is intended to serve as an alternate procedure for OE funded Foreign Service National PSCs. The schedule was developed for use when the Contracting Officer anticipates incremental recurring cost funded contracts. It should be noted that the Optional Schedule eliminates the need to amend the contract each time funds are obligated. However, the Contracting Officer is required to amend each contract not less than twice during a 12 month period to ensure that the contract record of obligations is up to date and agrees with the figures in the master funding document.]

12. "General Provisions" for contract with a Cooperating Country National or with a Third Country National.

13. FAR Clauses to be incorporated in full text as well as by reference in personal services contracts.

Section 9

Appendix J

Cover Page

Contract with a Cooperating Country National or a Third Country National for Personal Services.

—AID Form 1420–36B (APRIL 1992)

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

CONTRACT WITH A COOPERATING COUNTRY NATIONAL FOR PERSONAL SERVICES ABROAD [ ]

CONTRACT WITH A THIRD COUNTRY NATIONAL FOR PERSONAL SERVICES ABROAD [ ]

Negotiated Pursuant to the Foreign Assistance Act of 1961, as amended, and Executive order 11223	Contract Number	
Country of Performance	Amount Obligated This Action	Total Estimated Contract Cost $
Contract For Technical Services	Project Number (if applicable)	
For	Contractor (Name, Street, City, Country, Postal Zone)	
Contracting Office (Name and Address)		
Administered By (If other than Contracting Office)	Effective Date	Estimated Completion Date
Cognizant Scientific/Technical Office (Name, Office Symbol, Address)	Accounting and Appropriation Data PIO/T Number (if applicable) _____	
Supervising Officer	Appropriation Number _____	
This is a Consulting Services Contract (AIDAR 737.272) ☐ Yes ☐ No	Budget Plan Code _____	
Payment Will be Made By	Type of Advance ("X" Appropriate Box) ☐ INITIAL ☐ NONE AUTHORIZED	

The United States of America, hereinafter called the Government, represented by the Contracting Office executing this contract, and the Contractor agree that the Contractor shall perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

This Contract consists of this Cover Page, the Schedule of _____ pages, including the Table of Contents, the General Provisions Section 12 and Section 13 FAR Clauses by reference.

	UNITED STATES OF AMERICA AGENCY FOR INTERNATIONAL DEVELOPMENT
Signature of Contractor	By (Signature of Contracting Officer)
Typed or Printed Name	Typed or Printed Name
Date	Date

AID 1420-36B (4/92)

BILLING CODE 6116-01-C

Section 10—Schedule

Cooperating Country National or Third Country National PSC

Contract No. ____

Table of Contents

The Schedule on pages ____through ____ consists of this Table of Contents and the following Articles:

Article I Statement of Duties
Article II Period of Service
Article III Contractor's Compensation and Reimbursement
Article IV Costs Reimbursable and Logistic Support
Article V Precontract Expenses
Article VI Additional Clauses

General Provisions

The following provisions, numbered as shown below, omitting number(s) ____, are the General Provisions (GPs) of this Contract:

1. Definitions
2. Compliance with Applicable Laws and Regulations
3. Physical Fitness
4. Security
5. Workweek
6. Leave and Holidays
7 Social Security and Cooperating Country Taxes
8. Insurance
9. Travel and Transportation
10. Payment
11. Contractor-Mission Relationships
12. Termination
13. Allowances
14. Advance of Dollar Funds
15. Conversion of U.S. Dollars to Local Currency
16. Post of Assignment Privileges
17. Release of Information
18. Notices
19. Incentive Awards
20. Training
21. Medical Evacuation Services

Schedule

Note: Use of the following Schedule is not mandatory. The Schedule is intended to serve as a guideline and as a checklist for contracting offices in drafting contract schedules. Article language shall be changed to suit the needs of the particular contract. Special attention should be given to the financial planning sections where unnecessary line items should be eliminated.

Article I—Statement of Duties

[The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Orientation or training to be provided by USAID.]

Article II—Period of Service

Within ____days after written notice from the Contracting Officer that all clearances, including the doctor's certificate required under General Provision Clause 3, have been received or unless another date is specified by the contracting officer in writing, the contractor shall proceed to ____and shall promptly commence performance of the duties specified above. The contractor's period of service shall be approximately ____ in ____. (Specify time of duties in each location.)

Article III—Contractor's Compensation and Reimbursement

A. Except as reimbursement may be specifically authorized by the Mission Director or contracting officer, AID shall pay the contractor compensation after it has accrued and make reimbursements, if any are due, in currency of the post or for necessary and reasonable costs actually incurred in the performance of this contract within the categories listed in paragraph D of this article, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately ____(days) (weeks) (months) (years) (which is to include (1) vacation and sick leave which may be earned during contractor's tour of duty (GP Clause No. 6), (2) ____days for authorized travel (GP Clause 9), and (3) ____days for orientation and consultation if required by the Statement of Duties.

C. The contractor shall earn vacation leave at the rate of ____days per year under the contract (provided the contract is in force for at least 90 days) and shall earn sick leave at the rate of ____days per year under the contract.

D. Allowable Costs.

1. Compensation at the rate of LC ____per (year) (month) (week) (day), equivalent to Grade FSN– ____/____, in accordance with the Mission's Local Compensation Plan. If during the effective period of this contract the Local Compensation Plan is revised, contractor's compensation will be revised accordingly and contractor will be notified in writing by the contracting officer. Adjustments in compensation for periods when the contractor is not in compensable pay status shall be calculated as follows:

Rate of LC ____per (day) (hour).
LC ____

2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.)

3. Travel and Transportation (Ref. GP Clause 9). (Includes the value of TRs furnished by the Government, not payable to contractor).

a. United States	$____	
b. International	$____	
c. Cooperating and Third Country	$____	LC____
Subtotals Item 3 ...	$____	LC____
4. Subsistence or Per Diem (Ref. GP Clause 9).		
a. United States	$____	
b. International	$____	
c. Cooperating and Third Country	$____	LC____
Subtotals Item 4 ...	$____	LC____
5. Other Direct Costs		
a. Physical Examination (Ref. GP Clause 3)	.....	LC____
b. Miscellaneous	.....	LC____
Subtotals Item 5 ...	.....	LC____
A Total Estimated Costs (Lines 1 thru 5)	$____	LC____

E. Maximum U.S. Dollar and Local Currency Obligation.

In no event shall a maximum U.S. Dollar obligation under this contract exceed $____ nor shall maximum local currency obligation exceed LC ____. Contractor shall keep a close account of all obligations incurred and accrued hereunder and promptly notify the contracting officer whenever it appears that the said maximum is not sufficient to cover all compensation costs reimbursable which are anticipated under the contract.

Article IV—Costs Reimbursable and Logistic Support

A. General

The contractor shall be provided with or reimbursed in local currency (____) for the following:

[Complete]

B. Method of Payment of Local Currency Costs

Those contract costs which are specified as local currency costs in paragraph A of this article, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor is a manner adapted to the local situation, based on vouchers submitted in accordance with GP Clause 10. The documentation for such costs shall be on such forms in such manner as the Mission Director shall prescribe.

C. Cooperating or U.S. Government Furnished Equipment and Facilities

[List any logistical support, equipment, and facilities to be provided by the cooperating government or the U.S. Government at no cost to this contract; e.g., office space, supplies, equipment, secretarial support, etc., and the conditions, if any, for use of such equipment.]

Article V—Precontract Expenses

No expense incurred before signing of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the contracting officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

[Additional Schedule Clauses may be added to meet specific requirements of an individual contract.]

Section 11—Optional Schedule

Cooperating Country National or Third Country National PSC

Contract No. ____

Table of Contents

(Optional Schedule)

[Use of the Optional Schedule is not mandatory. It is intended to serve as an alternate procedure for OE funded

Cooperating Country National and Third Country National PSCs. The schedule was developed for use when the Contracting Officer anticipates incremental recurring cost funded contracts.

It should be noted that use of the Optional Schedule eliminates the need to amend the contract each time funds are obligated. However, Contracting Officer is required to amend each contract not less than twice during a 12 month period to ensure that the contract record of obligations is up to date and agrees with the figures in the master funding document.]

The Schedule on pages ____through ____ consists of this Table of Contents and the following Articles:

Article I Statement of Duties
Article II Period of Service
Article III Contractor's Compensation and Reimbursement
Article IV Costs Reimbursable and Logistic Support
Article V Precontract Expenses
Article VI Additional Clauses

General Provisions

The following provisions, numbered as shown below, omitting number(s) ____, are the General Provisions (GPs) of this contract.

1. Definitions
2. Compliance with Applicable Laws and Regulations
3. Physical Fitness
4. Security
5. Workweek
6. Leave and Holidays
7. Social Security and Cooperating Country Taxes
8. Insurance
9. Travel and Transportation
10. Payment
11. Contractor-Mission Relationships
12. Termination
13. Allowances
14. Advance of Dollar Funds
15. Conversion of U.S. Dollars to Local Currency
16. Post of Assignment Privileges
17. Release of Information
18. Notices
19. Incentive Awards
20. Training
21. Medical Evacuation Services

Article I—Statement of Duties

[The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Orientation or training to be provided by USAID.]

Article II—Period of Service

Employment under this contract is of a continuing nature. Its duration is expected to be part of a series of sequential contracts; all contract provisions and clauses and regulatory requirements concerning availability of funds and the specific duration of this contract shall apply.

Within 10 days after written notice from the Contracting Officer that all clearances have been received, unless another date is specified by the Contracting Officer in writing, the contractor shall proceed to (name place) and shall promptly commence performance of the duties specified in ARTICLE I of this contract. The contractor's period of service shall be approximately (specify duration from date to date).

Article III—Contractor's Compensation and Reimbursement

A. Except as reimbursement may be specifically authorized by the Mission Director or Contracting Officer, AID shall pay the contractor compensation after it has accrued and make reimbursements, if any are due, in currency of the cooperating country (LC) in accordance with the prevailing practice of the post or for necessary and reasonable costs actually incurred in the performance of this contract within the categories listed in paragraph D of this article, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately ____(days) (weeks) (months) (years) (which is to include (1) vacation and sick leave which may be earned during the contractor's tour of duty) (GP Clause No. 6), (2) ____days for authorized travel (GP clause 9), and (3) ____days for orientation and consultation if required by the Statement of Duties.

C. The contractor shall earn vacation leave at the rate of ____days per year under the contract (provided the contract is in force for at least 90 days) and shall earn sick leave at the rate of ____days per year under the contract.

D. All employee rights and benefits from the previous contract or employment, i.e., accumulated annual and sick leave balances, original service computation dates, reserve fund contributions, accumulated compensatory time, social security contributions, seniority and longevity bonuses are considered allowable costs and as a continuation as long as the break in service does not exceed three days.

E. Allowable Costs.

1. The following illustrative budget details allowable costs under this contract and provides estimated incremental recurrent cost funding in the total amount shown. Additional funds for the full term of this contract will be provided by the preparation of a master PSC funding document issued by the Mission Controller for the purpose of providing additional funding for a specific period. The master PSC funding document will be attached to this contract and will form a part of the executed contract while also serving to amend the budget.

2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.)

LC ____

3. Travel and Transportation (Ref. CP Clause 9). (Includes the value of TRs furnished by the Government, not payable to contractor).

a. United States	$____	
b. International	$____	
c. Cooperating and Third Country	$____	LC ____
Subtotals Item 3	$____	LC ____

4. Subsistence or Per Diem (Ref. GP Clause 9.)

a. United States	$____	
b. International	$____	
c. Cooperating and Third Country	$____	LC ____
Subtotals Item 3	$____	LC ____

5. Other Direct Costs.

a. Physical Examination (Ref. GP Clause 3)	.....	LC ____
b. Miscellaneous	.....	LC ____
Subtotals Item 5	.....	LC ____
Total Estimated Costs (Lines 1 thru 5)	$____	LC ____

F. Allowable costs compensation and all terms and benefits of employment under this contract will be in accordance with the Mission's local compensation plan. Salary changes and personnel-related contract actions will be made by processing the same forms as used in making such changes and actions for direct-hire FSN employees. When issued by the Contracting Officer, the forms utilized will be attached to the contract and will form a part of the contract terms and conditions.

Any adjustment or increase in the compensation granted to direct-hire employees under the local compensation plan will be allowed for in the PSCs subject to the availability of funds. Such an adjustment will be effected by a mass pay adjustment notice from the Contracting Officer, which will be attached to the contract and form a part of the executed contract.

At the end of each year of satisfactory service, PSC contractors will be eligible to receive an increase equal to one annual step increase as shown in the local compensation plan, pending availability of funds. Such increase will be effected by the execution of an SF–1126, payroll change slip which is to be attached to each contract and each action forms a part of the official contract file.

Under the Joint incentive awards program for FSNs, monetary awards will be made pending availability of funds. The increase for the award will be effected by the execution of an SF–1126 which will be attached to the contract and will form a part of the contract. In no event may costs under the contract exceed the total amount obligated.

The master PSC funding document may not exceed the term or estimated total cost of this contract. Notwithstanding that additional funds are obligated under this contract through the issuance and attachment of the master PSC funding document, all other contract terms and conditions remain in full effect.

Article IV—Costs Reimbursable and Logistic Support

A. General

The contractor shall be provided with or reimbursed in local currency (____) for the following:

[Complete]

B. Method of Payment of Local Currency Costs

Those contract costs which are specified as local currency costs in Paragraph A of this article, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with GP Clause 10. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

C. Cooperating or U.S. Government Furnished Equipment and Facilities

[List any logistical support, equipment, and facilities to be provided by the cooperating government or the U.S. Government at no cost to this contract; e.g., office space, supplies, equipment, secretarial support, etc., and the conditions, if any, for use of such equipment.]

Article V—Precontract Expenses

No expense incurred before signing of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the contracting officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

[Additional Schedule Clauses may be added to meet specific requirements of an individual contract.]

Section 12

General Provisions—Contract With a Cooperating Country National or Third Country National for Personal Services

To be used to contract with cooperating country nationals or third country nationals for personal services.

Index of Clauses

1. Definitions
2. Compliance with Applicable Laws and Regulations
3. Physical Fitness
4. Security
5. Workweek
6. Leave and Holidays
7. Social Security and Cooperating Country Taxes
8. Insurance
9. Travel and Transportation
10. Payment
11. Contractor-Mission Relationships
12. Termination
13. Allowances
14. Advance of Dollar Funds
15. Conversion of U.S. Dollars to Local Currency
16. Post of Assignment Privileges
17. Release of Information
18. Notices
19. Incentive Awards
20. Training

1. Definitions (July 1993) [For Use in Both Cooperating Country National (CCN) and Third Country National (TCN) Contracts]

(a) *AID* shall mean the Agency for International Development.

(b) *Administrator* shall mean the Administrator or the Deputy Administrator of the Agency for International Development.

(c) *Contracting Officer* shall mean a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) *Cooperating Country National* shall mean the individual engaged to serve in the Cooperating Country under this contract.

(e) *Cooperating Country* shall mean the foreign country in or for which services are to be rendered hereunder.

(f) *Cooperating Government* shall mean the government of the Cooperating Country.

(g) *Government* shall mean the United States Government.

(h) *Economy Class* air travel shall mean a class of air travel which is less than business or first class.

(i) *Local Currency* shall mean the currency of the cooperating country.

(j) *Mission* shall mean the United States AID Mission to, or principal AID office in, the Cooperating Country.

(k) *Mission Director* shall mean the principal officer in the Mission in the Cooperating Country, or his/her designated representative.

(l) *Third Country National* shall mean an individual (i) who is neither a citizen of the United States nor of the country to which assigned for duty, and (ii) who is eligible for return travel to the TCN's home country or country from which recruited at U.S. Government expenses, and (iii) who is on a limited assignment for a specific period of time.

(m) *Tour of Duty* shall mean the contractor's period of service under this contract and shall include, authorized leave and international travel.

(n) *Traveler* shall mean the contractor or dependents of the contractor who are in authorized travel status.

(o) *Dependents* shall mean spouse and children (including step and adopted children who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support.

2. Compliance With Laws and Regulations Applicable Aboard (July 1993) [For Use in Both CCN and TCN Contracts]

(a) *Conformity to Laws and Regulations of the Cooperating Country.* Contractor agrees that, while in the cooperating country, he/she as well as authorized dependents will abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) *Purchase or Sale of Personal Property or Automobiles.* [For TCNs Only].

To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles in the cooperating country by the contractor shall be subject to the same limitations and prohibitions which apply to Mission U.S.-citizen direct-hire employees.

(c) *Code of Conduct.* The contractor shall, during his/her tour of duty under this contract, be considered an "employee" (or if his/her tour of duty is for less than 130 days, a "special Government employee") for the purposes of, and shall be subject to, the provisions of 18 U.S.C. 202(a) the AID General Notice entitled Employee Review of the New Standards of Conduct. The contractor acknowledges receipt of a copy of these documents by his/her acceptance of this contract.

3. Physical Fitness (July 1993) [For Use in Both CCN and TCN Contracts]

(a) *Cooperating Country National.* The contractor shall be examined by a licensed doctor of medicine, and shall obtain a certificate that, in the doctor's opinion, the contractor is physically qualified to engage in the type of activity for which he/she is to be employed under the contract. A copy of the certificate shall be provided to the Contracting Officer before the contractor starts work under the contract. The contractor shall be reimbursed for the cost of the physical examination based on the rates prevailing locally for such examinations in accordance with Mission practice.

(b) *Third Country National.* (i) The contractor shall obtain a physical examination for himself/herself and any authorized dependents by a licensed doctor of medicine. The contractor shall obtain a certificate from the doctor that, in the doctor's opinion, the contractor is physically qualified to engage in the type of activity for which he/she is to be employed under the contract, and the contractor's authorized dependents are physically qualified to reside in the cooperating country. A copy of that certificate shall be provided to the Contracting Officer prior to the dependents' departure for the cooperating country.

(ii) The contractor shall be reimbursed for the cost of the physical examinations mentioned above as follows: (1) Based on those rates prevailing locally for such examinations in accordance with Mission practice or (2) if not done locally, not to exceed $100 per examination for the contractor's dependents of 12 years of age and over and not to exceed $40 per examination for contractor's dependents under 12 years of age. The contractor shall also be reimbursed for the cost of all immunizations normally authorized and extended to FSN employees.

4. Security (July 1993) [For Use in Both CCN and TCN Contracts]

(a) The contractor is obligated to notify immediately the Contracting Officer if the contractor is arrested or charged with any offense during the term of this contract.

(b) The contractor shall not normally have access to classified or administratively controlled information and shall take conscious steps to avoid receiving or learning of such information. However, based on contractor's need to know, Mission may authorize access to administratively controlled information for performance of assigned scope of work on a case-by-case basis in accordance with AID Handbook 6.

(c) The contractor agrees to submit immediately to the Mission Director or

Contracting Officer a complete detailed report marked "Privileged Information", of any information which the contractor may have concerning existing or threatened espionage, sabotage, or subversive activity against the United States of America or the USAID Mission or the cooperating country government.

5. Workweek (Oct 1987) [For Use in Both CCN and TCN Contracts]

The contractor's workweek shall not be less than 40 hours, unless otherwise provided in the Schedule, and shall coincide with the workweek for those employees of the Mission or the cooperating country agency most closely associated with the work of this contract. If approved in advance in writing, overtime worked by the contractor shall be paid in accordance with the procedures governing premium compensation applicable to direct-hire foreign service national employees. If the contract is for less than full time (40 hours weekly), the leave earned shall be prorated.

6. Leave and Holidays (Oct 1987) [For Use in Both CCN and TCN Contracts]

(a) *Vacation Leave.* The contractor may accrue, accumulate, use and be paid for vacation leave in the same manner as such leave is accrued, accumulated, used and paid to foreign service national direct-hire employees of the Mission. No vacation leave shall be earned if the contract is for less than 90 days. Unused vacation leave may be carried over under an extension or renewal of the contract as long as it conforms to Mission policy and practice. With the approval of the Mission Director, and if the circumstances warrant, a contractor may be granted advance vacation leave in excess of that earned, but in no case shall a contractor be granted advance vacation leave in excess of that which he/she will earn over the life of the contract. The contractor agrees to reimburse AID for leave used in excess of the amount earned during the contractor's assignment under the contract.

(b) *Sick Leave.* The contractor may accrue, accumulate, and use sick leave in the same manner as such leave is accrued, accumulated and used by foreign service national direct-hire employees of the Mission. Unused sick leave may be carried over under an extension of the contract. The contractor will not be paid for sick leave earned but unused at the completion of this contract.

(c) *Leave Without Pay.* Leave without pay may be granted only with the written approval of the Contracting Officer or Mission Director.

(d) *Holidays.* The contractor shall be entitled to all holidays granted by the Mission to direct-hire cooperating country national employees who are on comparable assignments.

7. Social Security and Cooperating Country Taxes (Dec 1986) [For Use in Both CCN and TCN Contracts]

Funds for Social Security, retirement, pension, vacation or other cooperating country programs as required by local law shall be deducted and withheld in accordance with laws and regulations and rulings of the cooperating country or any agreement concerning such withholding entered into between the cooperating government and the United States Government.

8. Insurance (July 1993) [For Use in Both CCN and TCN Contracts]

(a) *Worker's Compensation Benefits.* The contractor shall be provided worker's compensation benefits under the Federal Employees Compensation Act.

(b) *Health and Life Insurance.* The contractor shall be provided personal health and life insurance benefits on the same basis as they are granted to direct-hire CCNs and TCN employees at the post under the Post Compensation Plan.

(c) *Insurance on Private Automobiles—Contractor Responsibility* [For use in TCN contracts]. If the contractor or dependents transport, or cause to be transported, any privately owned automobile(s) to the cooperating country, or any of them purchase an automobile within the cooperating country, the contractor agrees to ensure that all such automobile(s) during such ownership within the cooperating country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director, payable in U.S. dollars or its equivalent in the currency of the cooperating country: injury to persons, $10,000/$20,000; property damage, $5,000. The contractor further agrees to deliver, or cause to be delivered to the Mission Director, copies of the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobile(s) is operated within the cooperating country. The premium costs for such insurance shall not be a reimbursable cost under this contract.

(d) *Claim for Private Personal Property Losses* [For use in TCN contracts]. The contractor shall be reimbursed for private personal property losses in accordance with AID Handbook 23, "Overseas Support", Chapter 10.

9. Travel and Transportation Expenses (July 1993) [For Use in Both CCN and TCN Contracts as appropriate]

(a) *General.* The contract will be reimbursed in currency consistent with the prevailing practice at post and at the rates established by the Mission Director for authorized travel in the cooperating country in connection with duties directly referable to work under this contract. In the absence of such established rates, the contractor shall be reimbursed for actual costs of authorized travel in the cooperating country if not provided by the cooperating government or the Mission in connection with duties directly referable to work hereunder, including travel allowances at rates prescribed by AID Handbook 22, "Foreign Service Travel Regulations", as from time to time amended.

The Executive or Administrative Officer at the Mission may furnish Transportation Requests (TR's) for transportation authorized by this contract which is payable in local currency or is to originate outside the United States. When transportation is not provided by Government issued TR, the contractor shall procure the transportation, and the costs will be reimbursed. The following paragraphs provide specific guidance and limitations on particular items of cost.

(b) *International Travel.* For travel to and from post of assignment, the TCN contractor shall be reimbursed for travel costs and travel allowances from place of residence in the country of recruitment (or other location provided that the cost of such travel does not exceed the cost of the travel from the place of residence) to the post of duty in the cooperating country and return to place of residence in the country of recruitment (or other location provided that the cost of such travel does not exceed the cost of travel from the post of duty in the cooperating country to the contractor's residence) upon completion of services by the individual. Reimbursement for travel will be in accordance with AID's established policies and procedures for its CCN and TCN direct-hire employees and the provisions of this contract, and will be limited to the cost of travel by the most direct and expeditious route. If the contract is for longer than one year and the contractor does not complete one full year at post of duty (except for reasons beyond his/her control), the costs of going to and from the post of duty for the contractor and his/her dependents are not reimbursable hereunder. If the contractor serves more than one year but less than the required service in the cooperating country (except for reasons beyond his/her control) costs of going to the post of duty are reimbursable hereunder but the costs of going from post of duty to the contractor's permanent, legal place of residence at the time he or she was employed for work under this contract are not reimbursable under this contract for the contractor and his/her dependents. When travel is by economy class accommodations, the contractor will be reimbursed for the cost of transporting up to 10 kilograms/22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not exceed that regularly allowed for first class travelers. Travel allowances for travelers shall not be in excess of the rats authorized in the Standardized Regulations (Government Civilians, Foreign Areas) hereinafter referred to as the Standardized Regulations—as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover en route for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the Federal Travel Regulations as from time to time amended.

(c) *Local Travel.* Reimbursement for local travel in connection with duties directly referable to the contract shall not be in excess

of the rates established by the Mission Director for the travel costs of travelers in the Cooperating Country. In the absence of such established rates the contractor shall be reimbursed for actual travel costs in the Cooperating Government or the Mission, including travel allowances at rates not in excess of those prescribed by the Standardized Regulations.

(d) *Indirect Travel for Personal Convenience of a TCN.* When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of allowable air fare via the direct usually traveled route. If such costs include fares for air or ocean travel by foreign flag carriers, approval for indirect travel by such foreign flag carriers must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by the United States-flag carriers will be reimbursable within the above limitation of allowable costs.

(e) *Limitation on Travel by TCN Dependents.* Travel costs and allowances will be allowed for authorized dependents of the contractor and such costs shall be reimbursed for travel from place of abode in the country of recruitment to the assigned station in the Cooperating Country and return, only if the dependent remains in the Cooperating Country for at least 9 months or one-half of the required tour of duty of the contract, whichever is greater, except as otherwise authorized hereunder for education, medical, or emergency visitation travel.

Dependents of the TCN contractor must return to the country of recruitment or home country within thirty days of the termination or completion of the contractor's employment, otherwise such travel will not be reimbursed under this contract.

(f) *Delays En Route.* The contractor may be granted reasonable delays en route while in travel status when such delays are caused by events beyond the control of the contractor and are not due to circuitous routing. It is understood that if delay is caused by physical incapacitation, he/she shall be eligible for such sick leaves as provided under the "Leave and Holidays" clause of this contract.

(g) *Travel by Privately Owned Automobile (POV).* If travel by POV is authorized in the contract schedule or approved by the Contracting Officer, the contractor shall be reimbursed for the cost of travel performed in his/her POV at a rate not to exceed that authorized in the Federal Travel Regulations plus authorized per diem for the employee and, if the POV is being driven to or from the cooperating country as authorized under the contract, for each of the authorized dependents traveling in the POV, provided that the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travelers by surface common carrier or authorized air fare, whichever is less.

(h) *Emergency and Irregular Travel and Transportation.* [For TCNs only]. Emergency transportation costs and travel allowances while enroute, as provided in this section, will be reimbursed not to exceed amounts authorized by the Foreign Service Travel Regulations for FSN direct-hire employees in like circumstances under the following conditions:

(1) The costs of going from post of duty in the cooperating country to another approved location for the contractor and authorized dependents and returning to post of duty, subject to the prior written approval of the Mission Director, when such travel is necessary for one of the following reasons:

(i) Need for medical care beyond that available within the area to which contractor is assigned.

(ii) Serious effect on physical or mental health if residence is continued at assigned post of duty.

(iii) Serious illness, injury, or death of a member of the contractor's immediate family or a dependent, including preparation and return of the remains of a deceased contractor or his/her dependents.

(2) Emergency evacuation when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Transportation and travel allowances at safe haven and the transportation of household effects and automobile or storage thereof when authorized by the Mission Director, shall be payable in accordance with established Government regulations.

(3) The Mission Director may also authorize emergency or irregular travel and transportation in other situations when in his/her opinion the circumstances warrant such action. The authorization shall include the kind of leave to be used and appropriate restrictions as to time away from post, transportation of personal and household effects, etc.

(i) *Country of Recruitment Travel and Transportation.* [For TCNs only]. The contractor shall be reimbursed for actual transportation costs and travel allowances in the country of recruitment as authorized in the Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances shall not be reimbursed in any amount greater than the cost of, and time required for, economy-class commercial-scheduled air travel by the most expeditious route except as otherwise provided in paragraph (h) of this clause unless economy air travel is not available and the contractor adequately documents this to satisfaction of the Contracting Officers in documents submitted with the voucher.

(j) *Rest and Recuperation Travel.* [For TCNs only].

If approved in writing by the Mission Director, the contractor and his/her dependents shall be allowed rest and recuperation travel on the same basis as direct-hire TCN employees and their dependents at the post under the local compensation plan.

(k) *Transportation of Personal Effects (Excluding Automobiles and Household Goods).* [For TCNs only].

(1) *General.* Transportation costs will be paid on the same basis as for direct-hire employees at post serving the same length tour of duty, as authorized in the schedule. Transportation, including packing and crating costs, will be paid for shipping from contractor's residence in the country of recruitment or other location, as approved by the Contracting Officer (provided that the cost of transportation does not exceed the cost from the contractor's residence) to post of duty in the cooperating country and return to the country of recruitment or other location provided the cost of transportation of the personal effects of the contractor not to exceed the limitations in effect for such shipments for AID direct-hire employees in accordance with the Foreign Service Travel Regulations in effect at the time shipment is made. These limitations may be obtained from the Contracting Officer.

The cost of transporting household goods shall not exceed the cost of packing, crating, and transportation by surface common carrier.

(2) *Unaccompanied Baggage.* Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival of the contractor and dependents. To permit the arrival of effects to coincide with the arrival of the contractor and dependents, consideration should be given to advance shipments of unaccompanied baggage. The contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance for household effects) not to exceed the limitations in effect for AID direct-hire employees in accordance with the Foreign Service Travel Regulations in effect when shipment is made. These limitations are available from the Contracting Officer. This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used.

(l) *Reduced Rates on U.S.-Flag Carriers.* Reduced rates on U.S-flag carriers are in effect for shipments of household goods and personal effects of AID contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Bill of Lading documentary evidence that the shipment is for the account of AID. The Contracting Officer will, on request, furnish to the contractor current information concerning the availability of a reduced rate with respect to any proposed shipment. The contractor will not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates which are available in accordance with the foregoing.

(m) *Transportation of things.* [For TCNs Only.] Where U.S. flag vessels are not available, or their use would result in a significant delay, the contractor may obtain a release from the requirement to use U.S. flag vessels from the Transportation Division, Office of Procurement, Agency for International Development, Washington, DC 20523–1419, or the Mission Director, as appropriate, giving the basis for the request.

(n) *Repatriation Travel.* [For TCNs Only.] Notwithstanding other provisions of this Clause 9, a TCN must return to the country of recruitment or to the TCN's home country within 30 days after termination or

completion of employment or forfeit all right to reimbursement for repatriation travel. The return travel obligation [repatriation travel] assumed by the U.S. Government may have been the obligation of another employer in the area of assignment if the employee has been in substantially continuous employment which provided for the TCN's return to home country or country from which recruited.

(o) *Storage of household effects.* [For TCNs Only.] The cost of storage charges (including packing, crating, and drayage costs) in the country of recruitment of household goods of regular employees will be permitted in lieu of transportation of all or any part of such goods to the Cooperating Country under paragraph (k) of this clause provided that the total amount of effects shipped to the Cooperating Country or stored in the country of recruitment shall not exceed the amount authorized for AID direct-hire employees under the Foreign Service Travel Regulations. These amounts are available from the Contracting Officer.

10. Payment (DEC 1992) [For Use in Both CCN and TCN Contracts]

(a) Payment of compensation shall be based on written documentation supporting time and attendance which may be: (1) Maintained by the Mission in the same way as for direct-hire CCNs and TCNs or (2) the contractor may submit such written documentation in a form acceptable to Mission policy and practice as required for other personal services contractors and as directed by the Mission Controller or paying office. The documentation will also provide information required to be filed under cooperating country laws to permit withholding by AID of funds, if required, as described in the clause of these General Provisions entitled Social Security and Cooperating Country Taxes.

(b) Any other payments due under this contract shall be as prescribed by Mission policy for the type of payment being made.

(c) Interest on Overdue Payments.

(1) The Prompt Payment Act, Public Law 97–177 (96 Stat. 85.31; U.S.C. 1801) is applicable to payments under this contract and requires the payment to the contractor of interest on overdue payments and improperly taken discounts.

(2) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A–125 except as provided in paragraph (c)(3) of this clause or as otherwise specifically provided under this contract.

(3) Notwithstanding the provisions of OMB Circular A–125, Section 4.1, the Government will use its best efforts to make payments under this contract as soon as practicable following receipt of a proper invoice.

11. Contractor-Mission Relationships (Dec. 1986) [For Use in Both CCN and TCN Contracts]

(a) The contractor acknowledges that this contract is an important part of the U.S. Foreign Assistance Program and agrees that his/her duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails. Favorable relations between the Mission and the Cooperating Government as well as with the people of the cooperating country require that the contractor shall show respect for the conventions, customs, and institutions of the cooperating country and not become involved in any illegal political activities.

(b) If the contractor's conduct is not in accordance with paragraph (a), the contract may be terminated pursuant to the General Provision of this contract, entitled "Termination." If a TCN, the contractor recognizes the right of the U.S. Ambassador to direct his/her immediate removal from any country when, in the discretion of the Ambassador, the interests of the United States so require.

(c) The Mission Director is the chief representative of AID in the cooperating country. In this capacity, he/she is responsible for the total AID Program in the cooperating country including certain administrative responsibilities set forth in this contract and for advising AID regarding the performance of the work under the contract and its effect on the U.S. Foreign Assistance Program. The contractor will be responsible for performing his/her duties in accordance with the statement of duties called for by the contract. However, he/she shall be under the general policy guidance of the Mission Director and shall keep the Mission Director or his/her designated representative currently informed of the progress of the work under this contact.

12. Termination (Nov. 1989) [For Use in Both CCN and TCN Contracts]

(This is an approved deviation to be used in place of the clause specified in FAR 52.249–12.)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part:

(1) For cause, which may be effected immediately after establishing the facts warranting the termination, by giving written notice and a statement of reasons to the contractor in the event: (i) The contractor commits a breach or violation of any obligations herein contained, (ii) a fraud was committed in obtaining this contract, or (iii) the contractor is guilty (as determined by AID) of misconduct in the cooperating country. Upon such a termination, the contractor's right to compensation shall cease when the period specified in such notice expires or the last day on which the contractor performs services hereunder, whichever is earlier. No costs of any kind incurred by the contractor after the date such notice is delivered shall be reimbursed hereunder except the cost of return transportation (not including travel allowances), if approved by the Contracting Officer. If any costs relating to the period subsequent to such date have been paid by AID, the contractor shall promptly refund to AID any such prepayment as directed by the Contracting Officer.

(2) For the convenience of AID, by giving not less than 15 calendar days advance written notice to the contractor. Upon such a termination, contractor's right to compensation shall cease when the period specified in such notice expires except that the contractor shall be entitled to any accrued, unused vacation leave, return transportation costs and travel allowances and transportation of unaccompanied baggage costs at the rates specified in the contract and subject to the limitations which apply to authorized travel status.

(3) For the convenience of AID, when the contractor is unable to complete performance of his/her services under the contract by reason of sickness or physical or emotional incapacity based upon a certification of such circumstances by a duly qualified doctor of medicine approved by the Mission. The contract shall be deemed terminated upon delivery to the contractor of a termination notice. Upon such a termination, the contractor shall not be entitled to compensation except to the extent of any accrued, unused vacation leave, but shall be entitled to return transportation, travel allowances, and unaccompanied baggage costs at rates specified in the contract and subject to the limitations which apply to authorized travel status.

(b) The contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

13. Allowances (Dec 1986) [For TCNs only]

Allowances will be granted to the contractor and authorized dependents on the same basis as to direct-hire TCN employees at the post under the Post Compensation Plan. The allowances provided shall be paid to the contractor in the currency of the cooperating country or in accordance with the practice prevailing at the Mission.

14. Advance of Dollar Funds (Dec 1986) [For TCNs only]

If requested by the contractor and authorized in writing by the Contracting Officer, AID will arrange for an advance of funds to defray the initial cost of travel, travel allowances, authorized precontract expenses, and shipment of personal property. The advance shall be granted on the same basis as to an AID U.S.-citizen direct-hire employee in accordance with AID Handbook 22, Chapter 4.

15. Conversion of U.S. Dollars to Local Currency (Dec 1986) [For TCNs only]

Upon arrival in the cooperating country, and from time to time as appropriate, the contractor shall consult with the Mission Director or his/her authorized representative who shall provide, in writing, the policy the contractor shall follow in the conversion of one currency to another currency. This may include, but not be limited to, the conversion of said currency through the cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

16. Post of Assignment Privileges (Dec 1986) [For TCNs only]

Privileges such as the use of APO, PX's, commissaries and officer's clubs are established at posts abroad pursuant to agreement between the U.S. and host governments. These facilities are intended for and usually limited to U.S. citizen members of the official U.S. Mission including the

Embassy, USAID, Peace Corps, U.S. Information Services and the Military. Normally, the agreements do not permit these facilities to be made available to non-U.S. citizens if they are under contract to the United States Government. However, in those cases where the facilities are open to TCN contractor personnel, they may be used.

17. Release of Information (Dec 1986) [For Use in Both CCN and TCN Contracts]

All rights in data and reports shall become the property of the U.S. Government. All information gathered under this contract by the contractor and all reports and recommendations hereunder shall be treated as privileged information by the contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than AID, except as otherwise expressly provided in this contract.

18. Notices (Dec 1986) [For Use in Both CCN and TCN Contracts]

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

(a) TO AID: To the Mission Director of the Mission in the Cooperating Country with a copy to the appropriate Contracting Officer.

(b) TO the Contractor: At his/her post of duty while in the Cooperating Country and at the contractor's address shown on the Cover Page of this contract or to such other address as either of such parties shall designate by notice given as herein required.

Notices hereunder shall be effective when delivered in accordance with this clause or on the effective date of the notice, whichever is later.

19. Incentive Awards (July 1993)

All Cooperating Country National (CCN) Personal Services Contractors (PSCs) and Third Country Nationals (TCNs) of the Foreign Affairs Community are eligible for the Joint Embassy Incentive Awards Program. The program is administered by each post's (Embassy) Joint Country Awards Committee.

20. Training (July 1993)

The contractor may be provided job related training to develop growth potential, expand capabilities and increase knowledge and skills. The training may be funded under the personal services contract.

21. Medical Evacuation (Medevac) Services (July 1993) [For TCN Contracts Only]

(a) The contractor agrees to obtain medevac service coverage for himself/herself and his/her authorized dependents while performing personal services abroad. Coverage shall be obtained pursuant to the terms of the contract between AID and AID's medevac service provider unless exempted in accordance with paragraph (b).

(b) The following are exempted from the requirements in paragraph (a):

(i) Contractors and their dependents with a health insurance program that includes sufficient medevac coverage as approved by the Contractor Officer.

(ii) Contractors and their dependents located at Missions where the Mission Director makes a written determination to waive the requirement for such coverage based on findings that the quality of local medical services or other circumstances obviate the need for such coverage.

(c) Information on the current medevac service provider, including application procedures, is available from the Contracting Officer.

Dated: August 27, 1993.

John F. Owens,

Procurement Executive.

[FR Doc. 93–26552 Filed 11–1–93; 8:45 am]

BILLING CODE 6116–01–M

federal register

Tuesday
November 2, 1993

Part III

Environmental Protection Agency

40 CFR Part 282
Underground Storage Tank Program; Approved Program for New Hampshire; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL–4794–8]

Underground Storage Tank Program; Approved State Program for New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency to grant approval to states to operate their underground storage tank programs in lieu of the federal program. This action establishes part 282 for codification of the decision to approve a state program and for incorporation by reference of those provisions of state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. As part of this initial action, part 282 codifies the prior approval of New Hampshire's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective January 3, 1994, unless EPA publishes a prior **Federal Register** rule withdrawing this immediate final rule. All comments on this regulation must be received by the close of business December 2, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of January 3, 1994, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket No. UST 4–5), Office of Underground Storage Tanks (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments received by EPA may be inspected in the public docket, located in room 2616 (Mall), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346 or in Washington, DC at (202) 382–3000. For technical questions on the part 282 rule, consult Jerry Parker, U.S. EPA, Office of Underground Storage Tanks, at (703) 308–8884. For technical questions on the New Hampshire codification, consult Susan Hanamoto, Underground Storage Tank Program, U.S. EPA Region I, JFK Federal Building, Boston, MA 02203–2211. Phone: (617) 573–5748.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency (EPA) to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a **Federal Register** rule announcing its decision to grant approval to New Hampshire (56 FR 28089, June 19, 1991). Approval was effective on July 19, 1991.

EPA will codify its approval of state programs in a new 40 CFR part 282 and incorporate by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rule establishes part 282, reserves sections within part 282 for each state, and codifies EPA's approval of the New Hampshire underground storage tank program. This codification reflects the state program in effect at the time EPA granted New Hampshire approval under section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. The establishment of part 282 is an Agency procedure exempt from the notice and comment requirements of 5 U.S.C. 553, as is the codification of the New Hampshire UST program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the New Hampshire program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved New Hampshire program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in New Hampshire, the status of federally approved requirements of the New Hampshire program will be readily discernible. Only those provisions of the New Hampshire underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of New Hampshire's underground storage tank program, EPA has added § 282.79 to title 40 of the CFR. Section 282.79 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.79 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities and federal procedures, rather than the state authorized analogs to these provisions. Therefore, the approved New Hampshire enforcement authorities will not be incorporated by reference. Section 282.79 lists those approved New Hampshire authorities that fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA subtitle I program because they are "broader in scope" than subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.79 simply lists for reference and clarity the New Hampshire statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Certification Under the Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the EPA hereby certifies that this action will not have any economic impact on any small entities. It establishes a new part 282 in 40 CFR and codifies the decision already made to approve the New Hampshire underground storage program and has no separate effect on owners and operators of underground storage tanks

or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

This immediate final rule has been submitted to OMB for review under Executive Order 12291. The Agency has determined that it is a non-major rule because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

The Office of Management and Budget has exempted individual state codifications from the requirements of section 3 of Executive Order 12291.

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 or final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: October 13, 1993.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended by adding a new part 282 to read as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

Subpart A—General Provisions

Sec.

282.1 Purpose and scope.
282.2 Incorporation by reference.
282.3–282.49 [Reserved]

Subpart B—Approved State Programs

282.50–282.78 [Reserved]
282.79–New Hampshire.
282.80–282.105 [Reserved]

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

Subpart A—General Provisions

§ 282.1 Purpose and scope.

This part sets forth the applicable state underground storage tank programs under section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c and 40 CFR part 281. "State" is defined in 42 U.S.C. 1004(31) as "any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands."

§ 282.2 Incorporation by reference.

(a) Material listed as incorporated by reference in part 282 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**.

(b) Copies of materials incorporated by reference may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of materials incorporated by reference may be obtained or inspected at the EPA OUST Docket, 401 M Street, SW., Washington, DC 20460, and at the library of the appropriate Regional Office listed below:

(1) Region 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): JFK Federal Building, Boston, MA 02203–2211.

(2) Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands): Federal Office Building, 26 Federal Plaza, New York, NY 10278.

(3) Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia): 841 Chestnut St. Building, Philadelphia, PA 19107.

(4) Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee): 345 Courtland St., NE, Atlanta, GA 30365.

(5) Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): 77 West Jackson Boulevard, Chicago, IL 60604.

(6) Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): 1445 Ross Avenue, Dallas, TX 75202–2733.

(7) Region 7 (Iowa, Kansas, Missouri, Nebraska): 726 Minnesota Avenue, Kansas City, KS 66101.

(8) Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): 999 18th Street, Denver, CO 80202–2405.

(9) Region 9 (Arizona, California, Hawaii, Nevada, Guam, American Samoa, Commonwealth of the Northern Mariana Islands): 75 Hawthorne Street, San Francisco, CA 94105.

(10) Region 10 (Alaska, Idaho, Oregon, Washington): 1200 Sixth Avenue, Seattle, WA 98101.

(c) For an informational listing of the state and local requirements incorporated in part 282, see appendix A to this part.

§§ 282.3 through 282.49 [Reserved]

Subpart B—Approved State Programs

§§ 282.50–282.78 [Reserved]

§ 282.79 New Hampshire.

(a) The State of New Hampshire is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the New Hampshire Department of Environmental Services, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA's approval was effective on July 19, 1991.

(b) New Hampshire has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other applicable statutory and regulatory provisions.

(c) To retain program approval, New Hampshire must revise its approved program to adopt changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If New Hampshire obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this section and notice of any change will be published in the **Federal Register**.

(d) New Hampshire has final approval for the following elements submitted to EPA in New Hampshire's program application for final approval and approved by EPA on June 19, 1991, becoming effective on July 19, 1991.

Copies may be obtained from the Underground Storage Tank Program, New Hampshire Department of Environmental Services, 6 Hazen Drive, Concord, NH 03302–0095.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) New Hampshire Statutory Requirements Applicable to the Underground Storage Tank Program, 1993.

(B) New Hampshire Regulatory Requirements Applicable to the Underground Storage Tank Program, 1993.

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: New Hampshire Revised Statutes Annotated (Supplement 1988) Sections 146–C:9a, 146–C:10, and 146–C:10a; 147 A:1 through 147–A:13; 541–A:1 through 541–A:10; 91–A:1 through 91–A:8.

(B) The regulatory provisions include: New Hampshire Code of Administrative Rules (1990) Part Env. C–602.08; Part He–P 1905.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: New Hampshire Revised Statutes Annotated (Supplement 1988) Section 146–C:1.XII, insofar as it refers to heating oil for consumptive use on the premises where stored.

(B) The regulatory provisions include: New Hampshire Code of Administrative Rules (1990) Sections Env–Ws 411.01 and 411.02, insofar as they refer to heating oil for consumptive use on the premises where stored.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of New Hampshire on November 1, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of New Hampshire to EPA, November 1, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures For Adequate Enforcement" submitted as part of the original application in December 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application in December 1990, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of agreement.* The Memorandum of Agreement between EPA Region I and the New Hampshire Department of Environmental Services, signed by the EPA Regional Administrator on August 8, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

§§ 282.80–282.105 [Reserved]

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

The following is an informational listing of the state requirements incorporated by reference in part 282 of the Code of Federal Regulations:

New Hampshire

(a) The statutory provisions include New Hampshire Revised Statutes Annotated 1955, 1990 Replacement Edition, and 1992 Cumulative Supplement, Chapter 146–C, Underground Storage Facilities:

Section 146–C:1 Definitions, except for the following words in 146–C:1. XII, "heating or."
Section 146–C:2 Discharges Prohibited.
Section 146–C:3 Registration of Underground Storage Facilities.
Section 146–C:4 Underground Storage Facility Permit Required.
Section 146–C:5 Records Required; Inspections.
Section 146–C:6 Transfer of Ownership.
Section 146–C:6–a Exemption.
Section 146–C:7 New Facilities.
Section 146–C:8 Prohibition Against Reusing Tanks.
Section 146–C:9 Rulemaking.
Section 146–C:11 Liability for Cleanup Costs; Municipal Regulations.
Section 146–C:12 Federal Assistance and Private Funds.

(b) The regulatory provisions include:

(1) New Hampshire Code of Administrative Rules (November 1990) Part Env-Ws 411, Control of Underground Storage Facilities:

Section 411.01 Purpose, except for the following words, "heating oils."
Section 411.02 Applicability, except for 411.02(d).
Section 411.03 Definitions.
Section 411.04 Registration.
Section 411.05 Change in Use.
Section 411.06 Information Required for Registration.
Section 411.07 Permit to Operate.
Section 411.08 Transfer of Facility Ownership.
Section 411.10 Financial Responsibility.
Section 411.11 Inventory Monitoring.
Section 411.12 Regulated Substance Transfers.
Section 411.13 Tightness Testing.
Section 411.14 Certification of Technicians Performing Tightness Tests.
Section 411.15 Tightness Test Failures.
Section 411.16 Unusual Operating Conditions.
Section 411.17 Temporary Closure.
Section 411.18 Permanent Closure.
Section 411.19 Prohibition Against Reusing Tanks.
Section 411.20 Requirements for Approval of Underground Storage Systems.
Section 411.21 Tank Standards for New Underground Storage Systems.
Section 411.22 Piping Standards for New Underground Storage Systems.
Section 411.23 Secondary Containment for New Tanks.
Section 411.24 Secondary Containment for New Pressurized Piping.
Section 411.25 Spill Containment and Overfill Protection.
Section 411.26 Leak Monitoring for New Tanks.
Section 411.27 Leak Monitoring for New Underground Piping Systems.
Section 411.28 Installation of New Underground Storage Systems.
Section 411.29 Release Detection for Tanks Without Secondary Containment and Leak Monitoring, except for the following words in 411.29(a), "With the exception of on premise use heating oil systems."
Section 411.30 Release Detection for Piping.
Section 411.31 Operation of Leak Monitoring Equipment.
Section 411.32 Corrosion Protection for Steel Tanks.
Section 411.33 Corrosion Protection for Piping.
Section 411.34 Submission of Corrosion Protection Plan.
Section 411.35 Relining Steel Tanks.
Section 411.36 Repair of Fiberglass-Reinforced Plastic Tanks.
Section 411.37 Repair and Replacement of Piping Systems.
Section 411.38 Field Fabricated Tanks.
Section 411.39 Secondary Containment for Hazardous Substance Systems.
Section 411.40 Waivers.

(2) New Hampshire Code of Administrative Rules (November 1990) Part Env-Ws 412, Reporting and Remediation of Oil Discharges:

Section 412.01 Purpose.
Section 412.02 Applicability.

Section 412.03 Definitions.
Section 412.04 Notification.
Section 412.05 Initial Response Action.
Section 412.06 Abatement Measures.
Section 412.07 Free Product Removal.
Section 412.08 Initial Site Characterization.
Section 412.09 Investigation Due to Discovery of Discharges from Unknown Sources.
Section 412.10 Site Investigation.
Section 412.11 Site Investigation Report.
Section 412.12 Remedial Action Plan.
Section 412.13 Public Notification.
Section 412.14 Waivers.

[FR Doc. 93–26409 Filed 11–01–93; 8:45 am]
BILLING CODE 6560–50–P

federal register

Tuesday
November 2, 1993

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Part 3180
Onshore Oil and Gas Unit Agreements: Unproven Areas; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3180

[WO-610-4111-02-2411-24 1A; Circular No. 2652]

RIN 1004-AB73

Onshore Oil and Gas Unit Agreements: Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends several administrative provisions in the regulations that govern Federal onshore oil and gas exploratory unit agreements. The rule codifies Bureau of Land Management (BLM) policy, made effective on January 29, 1990, that all such unit agreements approved by BLM after that date shall provide for payment to the Government of royalties on production from any participating area (PA) containing unleased Federal lands. A second rule change clarifies the effective date of Federally-approved unit agreements, and a third change provides for consistency in the appeals process under parts 3160 and 3180 of title 43 of the regulations.

EFFECTIVE DATE: December 2, 1993.

ADDRESSES: Suggestions or inquiries should be sent to: Director (610), Bureau of Land Management, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 653-2133, or Wayne Stevens, (916) 978-4735.

SUPPLEMENTARY INFORMATION: The Federal Government sustains a loss of royalty income when unleased Federal lands within a unit participating area (PA) are drained by producing wells on non-Federal tracts or on Federal tracts producing under a lower royalty rate. The BLM attempts to avoid this revenue loss by leasing these lands and having them committed to the unit agreement, but it is sometimes unable to do so for reasons beyond its control. For example, the lands may be in a wilderness area or withdrawn from mineral leasing for some other reason.

The public interest requires the United States to be assured of compensation for such lost royalty revenue, and on February 4, 1992, a rule was published proposing to require the inclusion of a royalty compensation provision in all subsequent Federally-approved exploratory unit agreements. In order to standardize this royalty payment provision, we proposed revision of sections 12 and 17 of the model form for Federal exploratory unit agreements at 43 CFR 3186.1. Although the new royalty compensation provision will be included in all new Federally-approved agreements for unproven areas, it will affect only those units containing unleased Federal land within a PA.

Comments on the proposed rule changes were received from 8 parties. Most comments supported the rule and suggested changes intended to clarify certain aspects of the proposal. Two comments, however, contend that BLM lacks the statutory authority to condition unit approval on the inclusion of a royalty payment provision for unleased lands in the unit agreement. These comments further assert that Congress has limited the authority of the Secretary to protect public lands from drainage to two means: either to lease the unleased lands that are being drained, or to negotiate voluntary agreements pursuant to 30 U.S.C. 226(j), and then only those who have drilled wells on adjacent lands. However, the very Interior Board of Land Appeals (IBLA) cases cited in the comments—*Nola Gay Ptasynski*, 63 IBLA 240 (1982) and *Bruce Anderson*, 80 IBLA 286 (1984)—refute this assertion by invoking a third mechanism available to the Secretary: assessing compensatory royalty against a Federal lessee as damages. In any event, this rule constitutes an exercise of authority under paragraph (m) of section 226. The Department does not rely on paragraph (j), which was cited as additional authority in the preamble to the proposed rule. Therefore, the Secretary need not be subject to the limits of paragraph (j)—that the lands be adjacent and negotiated agreements voluntary.

The comments city *Ptasynski* and *Anderson* for the proposition that actual drainage is a prerequisite to insisting on provisions in a unitization agreement to assure adequate compensation. However, these cases do not address Secretarial disapproval of unit agreements, but rather the very different issue of assessment of damages for losses already suffered. This rule does not seek to assess damages. Therefore, the cases are not applicable.

The Mineral Leasing Act requires BLM to approve a unit agreement involving Federal lands only when it determines that such approval is in the public interest (30 U.S.C. 226(m)). Congress did not intend BLM to approve drainage of unleased Federal lands by the unit operator with compensation, and did not intend that the owner of adjacent lands should have the discretion to refuse to compensate the Government when seeking BLM approval of a unit agreement for production from Federal lands. The BLM has determined that protecting the Federal royalty interest in unleased unit lands in the manner described in this rule is necessary to serve the public interest. This rule advises those who may seek the Department's approval of a unit agreement, whether before or after production has commenced, as to how it will apply this public interest test of 30 U.S.C. 226(m) to proposed agreements affecting unleased Federal acreage. See *Coors Energy Co.*, 110 IBLA 250 (1989), in which a concurring opinion stated that the Secretary could adopt a regulation providing for the sharing of production income with unleased Federal lands in a PA. 110 IBLA at 263 (Burski concurring).

Some respondents argued that the rule might serve as a disincentive for the Government to lease its unleased lands and that the rule should, therefore, provide for expedited leasing of the affected lands. The BLM has issued policy directives to its field offices to expedite the leasing of all unleased lands at the designation stage of unit formation. This involves offering available BLM-administered lands for lease at the next scheduled lease sale, and requesting the consent of other Federal agencies to offer their affected lands for lease as soon as possible. There is no need to include such internal policy direction in the agency's regulations.

Several comments suggested that limits be placed on the applicability of the royalty rule. One respondent thought that the royalty rule should apply only where actual drainage of unleased lands had been proven. Requiring such actual proof of drainage is unnecessary for lands within a PA. When proposing lands for inclusion in a PA, there is a presumption that such lands are underlain by a common reservoir. Furthermore, tract participation in a PA is normally determined by a simple surface acreage formula rather than by any proven occurrence of drainage. The manner of assessing royalty compensation under the rule is consistent with the approach. Other comments suggested the rule apply to Federal units but not to those units formed under a non-Federal form of unit agreement where Federal lands comprise less than ten percent of the unit area. The BLM's public interest obligations cover all Federal lands in exploratory units, not just those supervised under a Federal form of unit agreement. The rule applies to all exploratory unit agreements submitted

for Federal approval, regardless of the percentage of Federal participation. A final suggestion would exempt from the rule Federal lands that the Government has withheld from leasing. This suggestion was not accepted since it would offer no real protection of the Federal royalty interest in those situations the rule attempts to address, i.e., where the BLM is unable to lease a tract for administrative or statutory reasons, but unit production depletes Federal resources.

One comment requested clarification of the interplay between the proposed regulation and 43 CFR 3100.2 and 3162.2. In fact, there is no direct relationship: Each addresses a separate matter. Sections 3100.2 and 3162.2 govern the obligation of lessees and operators to protect the United States from drainage from leased tracts. That obligation may be satisfied by the joinder of the lease to a unit approved by the Secretary. This rule addresses the very different issue of the approval of a unit that includes unleased lands in its area.

Some comments urged that the royalty rate for unleased lands should be subject to reduction pursuant to 43 CFR 3103.4–1. Under a recent amendment of 43 CFR 3103.4–1, made effective September 10, 1992, a PA is considered a stripper oil well property if it meets the criteria spelled out in that subpart of the regulations, and all participating Federal leases are eligible for royalty rate reduction. Therefore, any royalty assessed under § 3181.5 for unleased Federal lands in a unit PA that qualifies as stripper well property is eligible for rate reduction as well.

Several comments suggested that the BLM should grant suspensions of operations and/or production for leased lands in an anticipated PA whenever adjacent Federal lands are unleased and cannot be leased within a reasonable period of time. This would help when the operator must spud a unit well in order to save leases nearing expiration but is reluctant to do so because of the nearby unleased lands. This matter is outside the scope of this rule, but such suspensions may be considered under BLM's existing authority to grant suspensions as prescribed in 43 CFR 3103.4–2, 43 CFR 3165.1, and in section 18(c) of the model Federal form for unit agreements for unproven areas at 43 CFR 3186.1. As noted earlier, the BLM will make every attempt to lease unleased Federal tracts as early in the unit approval process as possible.

Some respondents were concerned about how the final rule will deal with subsequent joinders—the commitment of a working interest after an agreement has been executed. The BLM has no intention of dictating the terms of joinder to the parties to the unit operating agreement. Such matters as cost and revenue sharing are properly the contractual concerns of the affected parties.

One comment stated that an early version of the royalty compensation provision issued under BLM's interim policy was ambiguous as to which lands and which parties would be subject to the royalty payment provision. It was BLM's intent when it issued the model agreement language of the 1990 interim policy that royalty payment under this provision will be required only for those unleased Federal lands located within the boundary of the PA, that is, those lands that would be entitled to allocated production from the PA if they were leased and committed to the unit agreement. Existing unit agreements that incorporate the earlier language will be so interpreted. The respondent also stated that the terminology used in the draft proposal for lands that are subject to the unit agreement was inconsistent and confusing. The BLM uses the terms "unitized tracts," "unitized lands," and "committed tracts" interchangeably in describing lands for which the basic royalty and working interest owners have committed their interests to the unitization agreement. These terms exclude unleased Federal tracts which, in this context, have no working interest.

Several comments addressed the proposed method of allocating production for royalty purposes and the possibility that the rule would be applied inconsistently. The BLM acknowledges that, while the new rule is simple in principle, it is more complex to explain. Much of this complexity grew out of the attempt to ensure that parties subject to a royalty liability for production attributable to unleased Federal acreage would not be required to pay a double royalty on that production. The BLM's primary concern is to protect the Federal royalty interest in unleased unit lands. The rule does this. However, it would be inappropriate then to dictate in the rule the specific accounting procedure to be used in meeting the Federal royalty obligation. This intentional omission apparently created confusion regarding who is responsible for paying the royalties on unleased Federal lands. The basic intent of the regulation is to capture the windfall royalties on production from unleased Federal lands now paid to other lessors in the PA. To accomplish this, we have implemented a two-phase allocation of production for settlement of the Federal royalty only. In the first phase, a prorated share of production is allocated to the unleased Federal acreage in the PA. Once the specified royalties on that production are paid to the Government, the remaining seven-eighths nonroyalty portion is returned to working interest owners, with no further obligation to pay royalties on that production to either the Government or to any other lessor in the PA. The texts of § 3181.5 and of sections 12 and 17 of the model unit agreement have been amended to clarify this point.

Several comments noted that special tract identification and royalty collection procedures are needed for the Minerals Management Service (MMS), the agency responsible for royalty collections on oil and gas produced from or allocated to Federal lands. While the MMS has not yet developed formal regulations that deal with royalty payments for unleased lands, it has procedural guidelines in effect that address unit agreements containing the royalty collection provision. Formal revision of the 30 CFR part 206 regulations may be considered at a later time.

The BLM also proposed revising § 3183.4 of the unit regulations to specify the effective date of an approved unit agreement as being the date the authorized officer signs the Certification-Determination addendum to the agreement. In commenting on this change, two parties stated that the authorized officer has too much discretion as to the time frame for unit approval and suggested that a specific period be provided within which the authorized officer is required to make a decision. We believe placing such a time limitation in the regulations might impair the authorized officer's ability to complete a proper review of the unit proposal, particularly in cases where more extensive review and coordination than usual are needed before final approval can be granted. However, the BLM will expedite the processing of any unit proposal that involves leases nearing expiration. The amendment of § 3183.4 is adopted as set forth in the proposed rule.

Finally, BLM proposed revising § 3185.1, Appeals, in order to make that section consistent with § 3165.3, which governs administrative appeals on matters related to onshore oil and gas lease operations in general. The change would require aggrieved parties who wish to appeal a decision of the authorized officer under the unit regulations in part 3180 to request a State Director review before pursuing an appeal to the IBLA. Two conflicting comments were received on this

proposal. One comment endorsed the proposed change, noting that review by the Interior Board of Land Appeals (IBLA) is a lengthy process and that the BLM State Director may be able to resolve some problems and avoid the need for IBLA involvement. However, another comment questioned whether State Director review prior to IBLA review is required even under § 3165.3. The latter reviewer suggested that appeal procedures under both §§ 3165.3 and 3185.1 be revised to allow an aggrieved party the choice of seeking either State Director or IBLA review. The IBLA in *Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club*, 122 IBLA 283 (March 5, 1992), examined this question and concluded that State Director review must be sought before an appeal may be taken to the Board. Although this case related to applications for permit to drill, the IBLA cited the applicability of the State Director review requirement to a broader class of instructions, orders, and decisions of the authorized officer. Consequently, any party appealing such action of the authorized officer, under § 3185.1, must first seek State Director review before filing an appeal with the Board.

For the reasons set forth in the proposal and in this document, we are adopting the regulatory amendments contained in the proposed rule with the modifications discussed herein and with minor nonsubstantive changes for clarity.

The principal author of this final rule is Wayne Stevens of the Division of Fluid Mineral Lease and Reservoir Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined this rule 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 Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the rule will not significantly affect the ten criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Since BLM will attempt to lease all unleased Federal tracts in proposed exploratory units prior to unit approval, it is anticipated that there will be relatively few approved exploratory units that contain unleased Federal lands within their producing (participating) areas. As a result, the rule will have little effect on costs or prices for consumers, nor would there be a need for increasing Federal, State, or local agency budget or personnel requirements. The rule will not have a gross annual effect on the economy of more than $100 million, nor will it cause major increases in costs or prices for any private or government sector of the economy.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The rule favors no demographic group, imposes no direct or indirect costs on small entities. Because the requirement for payment of compensatory royalties will be actually invoked in only a small number of Federal exploratory units, this rule will not have a significant effect on a substantial number of small entities.

The rule will result in no taking of private property; private property is not affected by the rule. The rule pertains only to the terms under which Federal oil and gas leases may be committed to unit agreements in the future, and merely ensures that the Federal Government receives compensation when its oil and gas resources are produced from a unit well. Therefore, as required by Executive Order 12630, the Department of the Interior has determined and certifies that the rule will not cause a taking of private property and is not a governmental action capable of interference with constitutionally protected property rights.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 3180

Government contracts, Indians-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, and for the reasons stated in the preamble, part 3180, group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: September 14, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

PART 3180—ONSHORE OIL AND GAS UNIT AGREEMENTS: UNPROVEN AREAS—[AMENDED]

1. The authority citation for 43 CFR part 3180 is revised to read as follows:

Authority: 30 U.S.C. 181 and 226.

Subpart 3181—Application for Unit Agreement—[Amended]

2. Section 3181.5 is added to read as follows:

§ 3181.5 Compensatory royalty payment for unleased Federal land.

The unit agreement submitted by the unit proponent for approval by the authorized officer shall provide for payment to the Federal Government of a 12½ percent royalty on production that would be attributable to unleased Federal lands in a PA of the unit if said lands were leased and committed to the unit agreement. The value of production subject to compensatory royalty payment shall be determined pursuant to 30 CFR part 206, except that no additional royalty shall be due from any lessee benefiting from a share in the production attributable to the unleased Federal lands.

Subpart 3183—Filing and Approval of Documents—[Amended]

3. Section 3183.4 is amended by revising paragraph (a) to read as follows:

§ 3183.4 Approval of executed agreement.

(a) A unit agreement shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources. Such approval shall be incorporated in a Certification-Determination document appended to the agreement (see § 3186.1 of this part for an example), and the unit agreement shall not be deemed effective until the authorized officer has executed the Certification-Determination document. No such agreement shall be approved unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

* * * * *

Subpart 3185—Appeals [Amended]

4. Section 3185.1 is revised to read as follows:

§ 3185.1 Appeals.

Any party adversely affected by an instruction, order, or decision issued under the regulations in this part may request an administrative review before the State Director under § 3165.3 of this title. Any party adversely affected by a decision of the State Director after State Director review may appeal that decision as provided in part 4 of this title.

Subpart 3186—Model Forms [Amended]

5. Section 3186.1 is amended by revising section 12 of the model unit agreement, and by redesignating the existing text of section 17 of the model unit agreement as paragraph (a) and adding a new paragraph (b) to section 17, to read as follows:

§ 3186.1 Model onshore unit agreement for unproven areas.

* * * * *

12. Allocation of Production. All unitized substances produced from a participating area established under this agreement, except any part thereof used in conformity with good operating practices within the unitized area for drilling, operating, and other production or development purposes, or for repressuring or recycling in accordance with a plan of development and operations that has been approved by the AO, or unavoidably lost, shall be deemed to be produced equally on an acreage basis from the several tracts or unitized land and unleased Federal land, if any, included in the participating area established for such production. Each such tract shall have allocated to it such percentage of said production as the number of acres of such tract included in said participating area bears to the total acres of unitized land and unleased Federal land, if any, included in said participating area. There shall be allocated to each working interest owner of a tract of unitized land in said participating area, in addition, such percentage of the production attributable to the unleased Federal land within the participating area as the number of acres of such unitized tract included in said participating area bears to the total acres of unitized land in said participating area, for the payment of the compensatory royalty specified in section 17 of this agreement. Allocation of production hereunder for purposes other than for settlement of the royalty, overriding royalty, or payment out of production obligations of the respective working interest owners, including compensatory royalty obligations under section 17, shall be prescribed as set forth in the unit operating agreement or as otherwise mutually agreed by the affected parties. It is hereby agreed that production of unitized substances from a participating area shall be allocated as provided herein, regardless or whether any wells are drilled on any particular part or tract of the participating area. If any gas produced from one participating area is used for repressuring or recycling purposes in another participating area, the first gas withdrawn from the latter participating area for sale during the life of this agreement shall be considered to be the gas so transferred, until an amount equal to that transferred shall be so produced for sale and such gas shall be allocated to the participating area from which initially produced as such area was defined at the time that such transferred gas was finally produced and sold.

17. Drainage.

* * * * *

(b) Whenever a participating area designated under section 9 of this agreement contains unleased Federal lands, the value of 12½ percent of the production that would be allocated to such Federal lands under section 12 of this agreement, if such lands were leased, committed, and entitled to participation, shall be payable as compensatory royalties to the Federal Government. Parties to this agreement holding working interests in leases within the applicable participating area shall be responsible for such compensatory royalty payment on the volume of production reallocated from the unleased Federal lands to their unitized tracts under section 12. The value of such production subject to the payment of said royalties shall be determined pursuant to 30 CFR part 206. Payment of compensatory royalties on the production reallocated from unleased Federal land to committed Federal tracts within the participating area shall fulfill the Federal royalty obligation for such production, and said production shall be subject to no further Federal royalty assessment under section 14 of this agreement. Payment of compensatory royalties as provided herein shall accrue from the date the committed tracts in the participating area that includes unleased Federal lands receive a production allocation, and shall be due and payable monthly by the last day of the calendar month next following the calendar month of actual production. If leased Federal lands receiving a production allocation from the participating area become unleased, compensatory royalties shall accrue from the date the Federal lands become unleased. Payment due under this provision shall end when the unleased Federal tract is leased or when production of unitized substances ceases within the participating area and the participating area is terminated, whichever occurs first.

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[FR Doc. 93–26878 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–84–M

federal register

Tuesday
November 2, 1993

Part V

The President

Presidential Determination 94–3—Delegation of Authority To Modify or Restrict Title VII Trade Action Taken Against Japan

Notice of November 1—Continuation of Iran Emergency

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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–3 of October 29, 1993

Delegation of Authority To Modify or Restrict Title VII Trade Action Taken Against Japan

Memorandum for the United States Trade Representative

By the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. section 301, I hereby delegate to the United States Trade Representative the powers granted the President in section 305(g)(2) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(2)) to modify or restrict the application of sanctions that were imposed upon Japan as a result of the identification of Japan as a country that discriminates against United States products or services in government procurement of construction, architectural and engineering services; 58 Fed. Reg. 36226 (July 6, 1993).

This delegation of authority is effective until November 8, 1993. You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 29, 1993.

[FR Doc. 93–27101
Filed 11–1–93; 11:37 am]
Billing code 3190–01–P

Presidential Documents

Notice of November 1, 1993

Continuation of Iran Emergency

On November 14, 1979, by Executive Order No. 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the **Federal Register**. The most recent notice appeared in the **Federal Register** on October 28, 1992. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1993. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
November 1, 1993.

[FR Doc. 93-27103
Filed 11-1-93; 12:04 pm]
Billing code 3195-01-P

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