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Tuesday
September 27, 1988

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Presidential Documents

Title 3—

The President

Presidential Determination No. 88-23 of September 13, 1988

Determination Under Section 702 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204)

Memorandum for the Secretary of State

Pursuant to Section 702 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204), I hereby determine that, with regard to the United Nations,

—the consensus based decision-making procedure established by General Assembly Resolution 41/213 is being implemented and its results respected by the General Assembly;

—progress is being made toward the 50 percent limitation on seconded employees of the Secretariat from any one member state as called for by recommendations 55 and 57 of the Group of High Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations (Group of 18); and

—the 15 percent reduction in the staff of the Secretariat as called for by recommendation 15 of the Group of 18 is being implemented and that such reduction is being equitably applied among the nationals on such staff.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, September 13, 1988.

[FR Doc. 88-22209
Filed 9-23-88; 2:58 pm]
Billing code 3195-01-M

Editorial note: For a White House statement, dated Sept. 13, on United States funding of the United Nations, see the *Weekly Compilation of Presidential Documents* (vol. 24, p. 1145).

Rules and Regulations

Federal Register
Vol. 53, No. 187
Tuesday, September 27, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Expenses and Assessment Rate for Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 910 for the 1988–89 marketing year established under the lemon marketing order. The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable lemons handled from the beginning of such year. An annual budget of expenses is prepared by the Lemon Administrative Committee (Committee), the agency responsible for local administration of the lemon marketing order, and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of lemons. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of lemons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committees' expected expenses. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1988, through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodrigues, Marketing Specialist, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 910 (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

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

The lemon marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable lemons handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of lemons. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of lemons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on July 26, 1988, and unanimously recommended 1988–89 marketing order expenditures of $734,000 and an assessment rate of $0.045 per carton of lemons. In comparison, 1987–88 marketing year budgeted expenditures were $695,000 and the assessment rate was $0.045 per carton. Assessment income for 1988–89 is estimated to total $715,500 based on a crop of 15,900,000 cartons of lemons. The remaining $18,500 is expected to be derived from interest and miscellaneous income. Reserve funds may also be used to meet any deficit in assessment income.

While this final action will impose some additional cost on handlers, the cost are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 910.226 and is based on Committee

recommendations and other information. A proposed rule was published in the September 2, 1988, issue of the **Federal Register** (53 FR 34107). Comments on the proposed rule were invited from interested persons until September 12, 1988. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Committee at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 533).

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, a new § 910.226 is added as follows:

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

PART 910—[AMENDED]

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

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

2. Add a new § 910.226 to read as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

§ 910.226 Expenses and assessment rate.

Expenses of $734,000 by the Lemon Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 910.41 is fixed at $0.045 per carton of assessable lemons. Unexpended funds may be carried over as reserve.

Dated: September 22, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–22104 Filed 9–26–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 24594; Amendment Nos. 25–66 and 121–198]

Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; findings concerning additional comments; correction.

SUMMARY: In the August 25, 1988, issue of the **Federal Register** (53 FR 32564) the FAA published a final rule amending its regulations to upgrade the fire safety standards for cabin interior materials in transport category airplanes by establishing refined fire test procedures and apparatus and a new requirement for smoke emission testing. Deletions were inadvertently made to the amendatory language and test of these amendments, and this document corrects those errors.

Correction of the Amendment

1. In the second column on page 32573, line 13, after "IV;" add the phrase "inserting a new Figure 5 of Part IV;".

2. In the second column on page 23573, line 34, after the word "corners" add the parenthetical reference "(Figure 5)".

An additional correction to this document is published elsewhere in the Corrections Section of this issue.

Issued in Washington, DC on September 21, 1988.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 88–21982 Filed 9–26–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–128–AD: Amdt. 39–6034]

Airworthiness Directives: McDonnell Douglas Model DC–10–30, –30F, –40, and KC–10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes, which currently requires that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in the existing AD are not met. This amendment requires that all short piston sleeve brakes be modified, and all landing gear brakes be inspected for wear and replaced if the new wear limits prescribed in this amendment are not met. This amendment is necessary to provide for longer piston travel for the short piston sleeve brakes and to revise the brake wear limit. This action is prompted by further testing and analysis of the brakes which revealed that the wear limits specified in the existing AD, and short piston sleeve brakes are inadequate to provide enough brake mass to accomplish a maximum energy rejected takeoff (RTO) stop. This condition, if not corrected, could result in the loss of the landing gear brakes.

DATE: *Effective* October 14, 1988.

ADDRESSES: There is no applicable service information.

FOR FURTHER INFORMATION CONTACT: Mr. E.S. Chalpin, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5335.

SUPPLEMENTARY INFORMATION: On July 26, 1988, the FAA issued AD 88–16–02, Amendment 39–5911 (53 FR 28999; August 2, 1988), which requires that all landing gear brakes on McDonnell Douglas Model DC–10–30, –30F, –40, and KC–10A series airplanes be inspected for wear, and replaced if the wear limits prescribed within the AD were not met.

Subsequent to the issuance of AD 88–16–02, further testing and analysis of the brake at the prescribed limits, and at other limits, has been accomplished to determine the kinetic energy capacity of the brake at rejected takeoff (RTO) energy levels. It was determined that the set wear limits specified in the existing AD are inadequate to provide enough brake mass to accomplish a maximum energy RTO stop. Additionally, it was determined that short piston sleeve brakes, as designed, and with a more conservative limit, would not be adequate to accomplish a maximum energy RTO stop. Thus, the FAA has determined that, in order to provide an acceptable level of safety, a more conservative wear limit is necessary and modification of short piston sleeve brakes to long sleeve configuration must be accomplished as well.

The limitations specified in this amendment must be utilized in lieu of those previously required, since the affected airplanes attempting an RTO with brakes at or near those brake wear

limits, or with short piston sleeve brakes, could experience failure of the main landing gear brakes and overrun of the runway by the airplane.

Since this condition is likely to exist or develop on other airplanes of the same type design, this amendment revises AD 88-16-02 to require an inspection of the main landing gear brakes to new wear limits set forth in this amendment, replacement of those brakes which are not within this limit with ones which are within the limit, and modification of short sleeve brakes to a long sleeve configuration. This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking to address it.

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

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

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By amending AD 88-16-02, Amdt. 39-5991 (53 FR 28999; August 2, 1988), by adding new paragraphs C., D., E., and F.; and redesignating existing paragraphs C. and D. as G. and H., to read as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-30, -30F, -40, and KC-10A (Military) series airplanes, certificated in any category. Compliance required as indicated unless previously accomplished.

To prevent the loss of main landing gear brake effectiveness, accomplish the following:

A. Within 30 days after August 20, 1988 (the effective date of Amendment 39-5991), inspect the brakes for wear. If the brake wear is greater than the following limits, replace the brake with one within limits prior to further flight. Thereafter, these limits must be maintained until the requirements of paragraphs E. and F., below, are accomplished:

1. For Goodyear/Loral Systems part number 5000758-2, -3, and -5, the maximum brake wear limit is 1.50 inches.

2. For Goodyear/Loral Systems part number 5000758-4, -6, and -10, the maximum brake wear limit is 1.75 inches.

B. Within 30 days after August 20, 1988 (the effective date of Amendment 39-5991), incorporate the wear limits listed in paragraph A., above, into the FAA-approved maintenance inspection program.

C. Beginning 30 days after the effective date of this amendment, replace any removed brake with either of the following:

1. Goodyear/Loral Systems brake, part number 5000758-4, -6, or -10; or

2. Goodyear/Loral Systems brake, part number 5000758-2, -3, or -5, modified with all long piston sleeves, part number 5003366, in accordance with Goodyear/Loral Maintenance Manual AP-391. Identify the modified brake in accordance with accepted practices.

D. Within 90 days after the effective date of this amendment, replace all Goodyear/Loral Systems unmodified brakes, part numbers 5000758-2, -3, and -5, with either:

1. Goodyear/Loral Systems brakes, part number 5000758-4, -6, or -10; or

2. Goodyear/Loral Systems brake, part number 5000758-2, -3, or -5, modified with all long piston sleeves, part number 50003366, in accordance with Goodyear/Loral Maintenance Manual AP-391.

E. Within 90 days after the effective date of this amendment, inspect the brakes for wear. Any brake that is worn more than 0.75 inch must be replaced, prior to further flight, with one within this limit.

F. Within 90 days after the effective date of this amendment, incorporate the 0.75 inch brake wear limit into FAA-approved maintenance inspection program.

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

Note. The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

This Amendment becomes effective October 14, 1988.

Issued in Seattle, Washington on September 16, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-22089 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AWP-12]

Revision to VOR Federal Airways; Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule revises the description of VOR Airway V-2. VOR Airway V-2 between Lanai VOR and Upolu VOR is reduced in width near the restricted area R-3104. This restricted area was originally stratified into R-3104A, R-3104B, and R-3104C and described by segments in the revised description of the Airway. This rule revises the description of VOR Airway V-2 to eliminate reference to the segments of restricted airspace. Lateral limits of R-3104 are not altered by the segmentation.

EFFECTIVE DATE: 0901 u.t.c., November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1642.

SUPPLEMENTARY INFORMATION:

History

On October 25, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the description of VOR Federal Airway V-2 in HI. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the description of V-2 in HI and eliminates reference to the segments of restricted area R-3104.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§71.151 [Amended]

2. Section 71.151 is amended as follows:

V-2 [Revised]

From South Kauai, HI; Lihue, HI; INT Lihue 130° and Honolulu, HI 269° radials; Honolulu; Lanai, HI; INT Lanai 106° and Upolu Point, HI, 305° radials; Upolu Point; INT Upolu Point 093° and Hilo, HI, 336° radials; Hilo. The airspace within R-3104 is excluded.

Issued in Los Angeles, California on September 15, 1988.

Merle D. Clure,

Assistant Manager, Air Traffic Division.

[FR Doc. 88-21976 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 88-ANE-30]

Subdivision of Restricted Area R-4105; No Man's Land Island, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action subdivides the existing Restricted Area R-4105 No Man's Land Island, MA, into two areas, R-4105A and R-4105B. This action allows the more efficient use of airspace by enabling that portion of the area above 10,000 feet mean sea level (MSL) to be released for access by civil traffic when it is not being used by the military. In addition, the Continental Control Area is amended to reflect R-4105B.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations subdivide Restricted Area R-4105 No Man's Land Island, MA, into two areas, R-4105A and R-4105B. Most of the military activities within the area are conducted below 10,000 feet MSL. Subdividing the area at 10,000 feet MSL will, therefore, result in more efficient use of airspace allowing increased access for civil traffic to the airspace between 10,000 feet MSL and 18,000 feet MSL. The Continental Control Area is also amended to reflect R-4105B. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor technical amendments in which the public would not be particularly interested. Sections 71.151 and 73.41 of Parts 71 and 73 of the Federal Aviation Regulations were published in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Restricted areas and continental control area.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§71.151 [Amended]

2. Section 71.151 is amended as follows:

R-4105 No Man's Land Island, MA [Remove]

R-4105B No Man's Land Island, MA [New]

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§73.41 [Amended]

4. Section 73.41 is amended as follows:

R-4105 No Man's Land Island, MA [Remove]

R-4105A No Man's Land Island, MA [New]

Boundaries. A circular area within a 3-mile radius centered at lat. 41°15'30"N., long. 70°48'40"W.

Designated altitudes. Surface to but not including 10,000 feet MSL.

Time of designation. Sunrise to sunset, other times by NOTAM at least 48 hours in advance.

Controlling agency. FAA, Otis Approach Control.

Using agency. U.S. Navy, Commanding Officer NAS, South Weymouth, MA.

R-4105B No Man's Land Island, MA [New]

Boundaries. A circular area within a 3-mile radius centered at lat. 41°15'30"N., long. 70°48'40"W.

Designated altitudes. 10,000 feet MSL to but not including 18,000 feet MSL.

Time of designation. Sunrise to sunset, other times by NOTAM at least 48 hours in advance.

Controlling agency. FAA, Otis Approach Control.

Using agency. U.S. Navy, Commanding Officer NAS, South Weymouth, MA.

Issued in Washington, DC on July 28, 1988.

O.E. Falsetti,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-21977 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM88-27-000; Order No. 504]

Procedure for Filing Petitions for Review With the Federal Energy Regulatory Commission

Issued: September 21, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its rules of practice and procedure to provide that persons instituting proceedings in a United States Court of Appeals for review of a Commission order, decision or rulemaking must file a copy of the petition for review with the Secretary. The Commission is amending the rules of practice and procedures in response to a congressional mandate in Pub. L. No. 100-236 (Act). The Act provides that, when petitions for judicial review of a federal energy order have been filed in more than one circuit court within ten days of the issuance of the order, a special panel will determine the circuit court initially responsible for the petitions. The Act requires each federal agency to designate the officer who will receive the petitions for review.

EFFECTIVE DATE: September 21, 1988.

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

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

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

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its rules of practice and procedure to provide that persons instituting proceedings in a Federal Court of Appeals for review of a Commission order, decision or rulemaking must file a copy of the petition for review with the Secretary.

II. Background and Discussion

On January 8, 1988, Congress passed Pub. L. No. 100-236 (Act), establishing procedures for selection of the appropriate United States Court of Appeals in which the agency record is to be filed for review of a federal agency order when petitions are filed in more than one court.[1] The Act adopts an Administrative Conference of the United States recommendation to eliminate or simplify the "race to the courthouse" in appeals of a federal agency order.[2] The Act provides that, when petitions for judicial review of a federal agency order have been filed in more than one circuit court within ten days of the issuance of the order, the Judicial Panel on Multidistrict Litigation will choose by random selection a circuit court from among those in which petitions have been filed. The Act also requires each federal agency to designate the officer who will receive the petitions for review.

This rule amends the Commission's rules of practice and procedures to require persons filing petitions for review of any Commission order, decision or rulemaking in a United States Court of Appeals to file a copy of the petition (stamped by the court with the date of filing) with the Commission's Secretary.[3] If, within ten days after issuance of the Commission order, the Office of the Secretary has physically received court-stamped copies of petitions for review of the same order, which petitions have been filed in two or more U.S. Courts of Appeals, the Commission will forward copies of those petitions to the Judicial Panel on Multidistrict Litigation pursuant to 28 U.S.C. 2112(a).[4]

Since this final rule is a matter of agency organization, procedure and practice, prior notice and comments are unnecessary under section 5 of the Administrative Procedure Act.[5] The Commission will not prepare an environmental assessment or an environmental impact statement in this rulemaking docket. This final rule is procedural in nature and therefore categorically exempt from the requirement to prepare an environmental assessment.[6] In addition, the Commission finds that this rule will improve the procedures for notifying the Commission of petitions for review of Commission orders filed in United States Courts of Appeals. Therefore, the Commission finds good cause to make this rule effective immediately upon issuance.

[1] Act of Jan. 8, 1988, Pub. L. No. 100-236, 101 Stat. 1731 (1988) (codified at 28 U.S.C. 2112).

[2] Administrative Conference, Recommendation 80-5, Eliminating or Simplifying the "Race to the Courthouse" in Appeals from Agency Action (Dec. 12, 1980).

[3] 18 CFR 385.2012 (1988).

[4] Consistent with § 385.2007 of the Commission's regulations (18 CFR 385.2007 (1988)), if the tenth day is a Saturday, Sunday or holiday, the time period does not end until the close of the Commission business of the next working day. The copy of the petition may be either hand delivered or mailed. If it is mailed, for purposes of calculating the ten-day period the relevant date is the date on which the copy of the petition is received in the Office of the Secretary, regardless of the date on which it was mailed.

[5] 5 U.S.C. 553(b) (1982).

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

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Pipelines, Reporting and recordkeeping requirements.

Accordingly, the Commission, effective September 21, 1988, amends Part 385, Title 18, Chapter I, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

2. A new § 385.2012 is added to read as follows:

§ 385.2012 Petitions for review of Commission Orders (Rule 2012).

When a petition for review of an order issued by the Commission is filed in a United States Court of Appeals, a copy of the petition which has been stamped by the court with the date of filing must be mailed or hand delivered to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. If within ten days after issuance of the Commission order, the Office of the Secretary has physically received court-stamped copies of petitions for review of the same order, which petitions have been filed in two or more U.S. Courts of Appeals, the Commission will forward copies of those petitions to the Judicial Panel on Multidistrict Litigation pursuant to 28 U.S.C. 2112(a).

[FR Doc. 88–22038 Filed 9–26–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 15 and 2002

[Docket No. R–88–1348; FR–2362]

The Freedom of Information Reform Act of 1986; Fee Schedule and Fee Waiver Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD regulations governing fees charged for services incurred in response to Freedom of Information Act requests. The purpose of the rule is to conform HUD policy to changes in the statute effected by the Freedom of Information Reform Act of 1986.

DATES: Effective Date: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: William Cregar, Assistant General Counsel for Administrative Law, Office of General Counsel, Room 10254, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755–7137. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 24, 1987, HUD published a proposed rule to implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–750). These provisions require agencies to publish a schedule of fees to be charged and procedures to be followed in processing requests for records and requests for waiver or reduction of fees under the Freedom of Information Act. HUD received two sets of comments on the proposed rule.

The first commenter objected to HUD's definition of the term "representative of the news media," HUD's observance of Department of Justice policy guidance in developing rule provisions regarding the granting of fee waivers, and HUD's proposed requirement of advance payment of fees of over $250 for members of the news media.

Regarding the definition of "representative of the news media" in § 15.15(c)(2), the commenter urged HUD to change its definition by substituting the word "information" for the word "news." The commenter stated that the use of the word "news" in the proposed definition would require HUD to judge the newsworthiness of the information requested, making the information requested the focus rather than the identity of the requester. HUD has determined not to change the definition. Since HUD, pursuant to the Reform Act, must establish regulations in conformance with OMB guidelines, it has adopted OMB's recommended definition. HUD believes that the definition OMB recommended is proper and correct under the Freedom of Information Reform Act.

The commenter also requested that HUD reject the Department of Justice's six recommended waiver standards and, instead, use less restrictive standards which the commenter contends would be more consistent with legislative intent. HUD does not agree that the Department of Justice fee waiver policy guidance is restrictive and inconsistent with the legislative intent of the Freedom of Information Reform Act. HUD finds that the Department of Justice fee waiver standards, incorporated in § 15.16(c) of the proposed regulations, restate the statutory language, are consistent with legislative intent and provide a useful framework for deciding "public interest" fee waiver requests. The fee waiver standards are therefore retained in the final regulation.

The commenter further noted that the fee waiver standards do not contain a separate statement excepting the news media's news dissemination function from the test for determining a requester's commercial interest. Such a statement, however, is contained in § 15.15(c) of the regulation and provides that a request for records supporting the news dissemination function of a representative of the news media shall not be considered a request that is for a commercial use.

Finally, the first commenter contended that the requirement for advance payment of fees in excess of $250 for news media requesters who have no previous payment history for FOIA requests would delay the dissemination of news and that the requirement should, therefore, be dropped. The Freedom of Information Reform Act specifically allows agencies to require advance payment of fees from all requesters when estimated charges exceed $250 and the requester has no history of payment. HUD's proposed and final regulations comply with the statute and the OMB guidelines. Moreover, we believe that FOIA requests from the news media with estimated costs of over $250 are unlikely to occur frequently enough to cause delays. Accordingly, we have determined that we will not change the advance payment requirement.

The second commenter was concerned whether all requests for

information, including descriptive information about the agency's functions contained in agency publications, would be considered requests under the FOIA, thereby requiring the payment of fees for requested information. In answer to this concern, we note that HUD usually makes available at no charge preprinted brochures and pamphlets about its programs. Free dissemination of these pamphlets and brochures will not be affected by the Freedom of Information Reform Act. This information is obtained through the HUD library.

The second commenter also requested that HUD publish costs for computer searches by specifying real computer time and related staff time charges. The commenter contended that § 15.14(c) is vague on the subject of costs for computer searches because the real computer time and related staff time charges are not specified. HUD believes that publication of a specific fee schedule for computer searches is infeasible for the following reasons. As § 15.14(c) points out, the actual direct cost of providing computer search services depends on a combination of the cost of operating the central processing unit (CPU) and the operator/programmer salary for the amount of time attributable to the search for records to respond to a FOIA request. The cost of operating the CPU depends upon which type of CPU is used, since HUD has many types and the costs vary accordingly. At the same time, the actual operator/programmer salary will vary according to the identity and salary level of the particular operator/programmer, and there are many salary levels involved, including approximately fourteen grades with ten steps within each grade. Accordingly, it would be impossible to establish in advance a set fee schedule with so many variables involved in determining fees for computer searches. Therefore, HUD has not adopted the second commenter's suggestion that such a fee schedule be published.

The second commenter urged also that search fees be presumptively waived for all public and non-profit organizations with a public purpose. HUD has not incorporated this recommendation into § 15.16(c). HUD finds no support in the Freedom of Information Reform Act or in OMB's guidelines for the notion of giving preference for fee waivers to one group of requesters over others. The new statutory fee waiver standard sets forth two basic requirements, both of which must be met before fees can be waived or reduced. First, it must be established that "disclosure of the [requested] information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." Second, it must be established that "disclosure of information * * * is not primarily in the commercial interest of the requester." Each application for a fee waiver will be evaluated on its individual merit under the factors prescribed by the statute, and a presumptive fee waiver would negate this statutory purpose.

Finally, the second commenter urged that amendments to 24 CFR Part 2002, HUD's Office of Inspector General FOIA regulations, implementing the Freedom of Information Reform Act, should be published as a proposed rule before this final rule is published. The Department has decided not to adopt this suggestion. The Department had indicated in the proposed rule that the final rule would contain comparable amendments for 24 CFR Part 2002. This final rule amends both 24 CFR Parts 15 and 2002 to implement the Freedom of Information Reform Act.

HUD has made one minor amendment in the final rule. Section 15.16(c) of this rule pertains to waiving or reducing fees. The last two sentences of this section as proposed state that the official authorized to grant access to records may waive or reduce the fee where requested and that the determination not to waive or reduce the fee will be subject to administrative review. This provision was erroneously located at the end of § 15.16(c)(6) in the proposed rule. The effect of placing it in that location was that it could not be read as applying to § 15.16(c) in its entirety. This paragraph has been relocated in the final rule so that it is clear that it applies to the entire section rather than one subsection.

Findings and Certifications

This rule is not subject to environmental review under the Department's procedures set out in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. Under 24 CFR 50.20(k), internal administrative procedures are categorically excluded from NEPA requirements.

This rule does not constitute a "major rule" as that term is defined in section (1)(b) of Executive Order 12291 on Federal Regulation, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since its effect is limited to details of agency procedure.

This rule was listed as Sequence Number 885 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

This rule does not affect any program included in the Catalog of Federal Domestic Assistance Programs.

List of Subjects

24 CFR Part 15

Classified information, Freedom of information, Testimony, Production and disclosure of material or information by HUD employees.

24 CFR Part 2002

Classified information, Freedom of information.

For the reasons set out in the preamble, 24 CFR Parts 15 and 2002 are amended as follows:

PART 15—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation for 24 CFR Part 15 is revised to read as follows:

Authority: Freedom of Information Act (5 U.S.C. 552); Freedom of Information Reform Act of 1986 (Pub. L. 99-570); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2.–3. Section 15.14 is revised and added to Subpart C, and new §§ 15.15 through 15.18 are added to Subpart C, to read as follows:

§ 15.14 Fees.

(a) *Copies of records.* HUD will charge $0.10 per page for copies of documents up to 11" x 14". For copies prepared by computer, such as tapes or printouts, HUD will charge the actual costs, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, HUD will charge the actual direct costs of producing the document(s).

(b) *Manual searches for records.* Whenever feasible, HUD will charge at

the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively in a search (e.g., all administrative/clerical, or all professional/executive), HUD will charge $9.25 per hour for clerical time and $18.50 per hour for professional time. Charges for search time less than a full hour will be billed by five-minute (1/12 of one hour) segments.

(c) *Computer searches for records.* HUD will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(d) *Contract services.* HUD will contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, HUD will ensure that the ultimate cost to the requester is no greater than it would be if HUD itself had performed these tasks. In no case will HUD contract out responsibilities which the FOIA provides that HUD alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. HUD will ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the National Technical Information Service, HUD will inform requesters of the steps necessary to obtain records from those sources. Information provided routinely in the normal course of business will be provided at no charge.

(e) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, HUD will provide the first 100 pages of duplication and the first two hours of search time without charge. For non-commercial use requesters, HUD will not begin to assess fees until after HUD has provided the free search and reproduction. No charge will be assessed non-commercial use requesters when the search time and reproduction costs, over and above the free search time and reproduction allocation, totals no more than $5.00. For commercial use requesters, no charge will be assessed when the search time, reproduction and review costs total no more than $5.00. "Search time" in this context is based on *manual search.* To apply this term to searches made by computer, HUD will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, HUD will begin assessing charges for computer search.

(f) *Payment of fees.* Payment of fees under this section and under § 15.16(a) shall be made in cash or by U.S. money order of by certified bank check payable to the Treasurer of the United States. The fees shall be sent to the organizational unit within HUD responding to the request.

(g) *Definitions.*

As used in this subpart:

(1) "Direct costs" means those expenditures which HUD actually incurs in searching for and duplicating (and, in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is distinguished from "review" of material in order to determine whether the material is exempt from disclosure.

(3) "Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) "Review" means the process of examining a document located in response to a request that is for a commercial use to determine whether any portion of it may be withheld, excising portions to be withheld and otherwise preparing the document for release. "Review" does not include time spent resolving general legal or policy issues regarding the application of exemptions.

§ 15.15 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. Specific levels of fees are prescribed for each of these categories:

(a) *Commercial use requesters.* (1) HUD will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating records sought for commercial use. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents.

(2) "Commercial use" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, HUD must determine the use to which a requester will put the documents requested. Moreover, where HUD has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, HUD will seek additional clarification before assigning the request to a specific category.

(b) *Educational and non-commercial scientific institution requesters.* (1) HUD will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought for furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commerical scientific institution) research. Requesters must reasonably describe the records sought.

(2) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(3) "Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is referenced in § 15.15(a) and which is operated solely for the purpose of conducting scientific research the results of which are not intended to

promote any particular product or industry.

(c) *Requesters who are representatives of the news media.* (1) HUD will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonable describe the records sought.

(2) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually emloyed by it. A publication contract would be the clearest proof, but HUD may also look to the past publication record of a requester in making this determination.

(d) *All other requesters.* HUD will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from subjects for records about themselves filed in agencies' systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

§ 15.16 Review of records, aggregating requests and waiving or reducing fees.

(a) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time HUD spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the *initial* review; *i.e.*, the review undertaken the first time HUD analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 15.14.

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

(c) *Waiving or reducing fees.* HUD will furnish documents without charge or at reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The official authorized to grant access to records may waive or reduce the applicable fee where requested. The determination not to waive or reduce the fee will be subject to administrative review as provided in § 15.61 after the decision on the request for access has been made. Six factors shall be used in determining whether the requirements for a fee waiver or reduction are met. These factors are as follows:

(1) *The subject of the request:* Whether the subject of the requested records concerns "the operations or activities of the government";

(2) *The informative value of the information to be disclosed:* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure:* Whether disclosure of the requested information will contribute to "public understanding";

(4) *The significance of the contribution to public understanding:* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(5) *The existence and magnitude of a commercial interest:* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) *The primary interest in disclosure:* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

§ 15.17 Charges for interest and for unsuccessful searches; Utilization of Debt Collection Act.

(a) *Charging interest.* HUD will begin assessing interest charges on an upaid bill starting on the 31st day following the day on which the billing was sent. A fee received by HUD, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(b) *Charge for unsuccessful search.* Ordinarily no charge for search time will be assessed when the records requested are not found or when the records located are withheld as exempt. However, if the requester has been notified of the esimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees shall be charged.

(c) *Use of Debt Collection Act of 1982.* When a requester has failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), HUD may, under the authority of the Debt Collection Act and Part 17, Subpart C of this title, use consumer reporting agencies and collection agencies, where appropriate, to recover the indebtedness owed the Department.

§ 15.18 Advance payments.

(a) HUD may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) HUD estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, HUD will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date

of the billing), HUD may require the requester to pay the full amount owed plus any applicable interest as provided by § 15.17(a) or demonstrate that he has, in fact, paid the fees, and to make an advance payment of the full amount of the estimated fee before HUD begins to process a new request or a pending request from that requester.

(b) When HUD acts under paragraphs (a)(1) or (a)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after HUD has received fee payments described above.

(c) Where it is anticipated that either the duplication fee individually, the search fee individually, or a combination of the two exceeds $25.00 over and above the free search time and duplication costs, where applicable, and the requesting party has not indicated in advance a willingness to pay so high a fee, the requesting party shall be promptly informed of the amount of the anticipated fee or such portion thereof as can readily be estimated. The notification shall offer the requesting party the opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet that party's needs at a reduced cost.

PART 2002—AVAILABILITY OF INFORMATION TO THE PUBLIC

4. The authority citation for 24 CFR Part 2002 is revised to read as follows:

Authority: Freedom of Information Act (5 U.S.C. 552); Freedom of Information Reform Act of 1986 (Pub. L. 99-570); Inspector General Act of 1978 (5 U.S.C. App.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Delegation of Authority, Jan. 9, 1981 (46 FR 2389).

5-6. In § 2002.3, paragraph (c) is revised to read as follows:

§ 2002.3 Request for records.

* * * * *

(c) The request must be accompanied by the fee or an offer to pay the fee as determined in § 2002.7. At its discretion, the Office of Inspector General may require advance payment in accordance with § 2002.15.

* * * * *

§§ 2002.17, 2002.19, 2002.21, 2002.23 and 2002.25 [Redesignated from §§ 2002.9, 2002.11, 2002.13, 2002.15 and 2002.17 Respectively]

7. In Part 2002, § 2002.7 is revised, §§ 2002.9, 2002.11, 2002.13, 2002.15, and 2002.17 are redesignated as §§ 2002.17, 2002.19, 2002.21, 2002.23 and 2002.25, respectively, and new §§ 2002.9, 2002.11, 2002.13, and 2002.15 are added, to read as follows:

§ 2002.7 Fees.

(a) *Copies of records.* HUD will charge $0.10 per page for copies of documents up to 11" × 14". For copies prepared by computer, such as tapes or printouts, HUD will charge the actual costs, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, HUD will charge the actual direct costs of producing the document(s).

(b) *Manual searches for records.* Whenever feasible, HUD will charge at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively in a search (e.g., all administrative/clerical, or all professional/executive), HUD will charge $9.25 per hour for clercial time and $18.50 per hour for professional time. Charges for search time less than a full hour will be billed by five-minute (1/12 of one hour) segments.

(c) *Computer searches for records.* HUD will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary approtionable to the search.

(d) *Contract services.* HUD will contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficent and least costly method. When doing so, however, HUD will ensure that the ultimate cost to the requester is no greater than it would be if HUD itself had performed these tasks. In no case will HUD contract out responsibilities which the FOIA provides that HUD alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. HUD will ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the National Technical Information Service, HUD will inform requesters of the steps necessary to obtain records from those sources. Information provided routinely in the normal course of business will be provided at no charge.

(e) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, HUD will provide the first 100 pages of duplication and the first two hours of search time without charge. For non-commercial use requesters, HUD will not begin to assess fees until after HUD has provided the free search and reproduction. No charge will be assessed non-commercial use requesters when the search time and reproduction costs, over and above the free search time and reproduction allocation, totals no more than $5.00. For commercial use requesters, no charge will be assessed when the search time, reproduction and review costs total no more than $5.00. "Search time" in this context is based on *manual search.* To apply this term to searches made by computer, HUD will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, HUD will begin assessing charges for computer search.

(f) *Payment of fees.* Payment of fees under this section and under § 2002.11(a) shall be made in cash or by U.S. money order or by certified bank check payable to the Treasurer of the United States. The fees shall be sent to the organizational unit within HUD responding to the request.

(g) *Definitions.* As used in this subpart:

(1) "Direct costs" means those expenditures which HUD actually incurs in searching for and duplicating (and, in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is distinguished from "review" of material

in order to determine whether the material is exempt from disclosure.

(3) "Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) "Review" means the process of examining a document located in response to a request that is for a commerical use to determine whether any portion of it may be withheld, excising portions to be withheld and otherwise preparing the document for release. "Review" does not include time spent resolving general legal or policy issues regarding the application of exemptions.

§ 2002.9 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. Specific levels of fees are prescribed for each of these categories:

(a) *Commercial use requesters.* (1) HUD will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating records sought for commercial use. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents.

(2) "Commercial use" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, HUD must determine the use to which a requester will put the documents requested. Moreover, where HUD has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, HUD will seek additional clarification before assigning the request to a specific category.

(b) *Educational and non-commercial scientific institution requesters.* (1) HUD will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought for furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(2) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(3) "Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is referenced in § 2002.9(a) and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(c) *Requesters who are representatives of the news media.* (1) HUD will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(2) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but HUD may also look to the past publication record of a requester in making this determination.

(d) *All other requesters.* HUD will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from subjects for records about themselves filed in agencies' systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

§ 2002.11 Review of records, aggregating requests and waiving or reducing fees.

(a) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time HUD spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the *initial* review; *i.e.*, the review undertaken the first time HUD analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 2002.7.

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

(c) *Waiving or reducing fees.* HUD will furnish documents without charge or at reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The official authorized to grant access to records may waive or reduce the applicable fee where requested. The determination not to waive or reduce the fee will be subject to administrative review as provided in § 2002.25 after the decision on the request for access has been made. Six factors shall be used in

determining whether the requirements for a fee waiver or reduction are met. These factors are as follows:

(1) *The subject of the request:* Whether the subject of the requested records concerns "the operations or activities of the government";

(2) *The informative value of the information to be disclosed:* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure:* Whether disclosure of the requested information will contribute to "public understanding";

(4) *The significance of the contribution to public understanding:* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(5) *The existence and magnitude of a commercial interest:* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) *The primary interest in disclosure:* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

§ 2002.13 Charges for interest and for unsuccessful searches; utilization of Debt Collection Act.

(a) *Charging interest.* HUD will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. A fee received by HUD, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(b) *Charge for unsuccessful search.* Ordinarily no charge for search time will be assessed when the records requested are not found or when the records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees shall be charged.

(c) *Use of Debt Collection Act of 1982.* When a requester has failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), HUD may, under the authority of the Debt Collection Act and Part 17, Subpart C of this title, use consumer reporting agencies and collection agencies, where appropriate, to recover the indebtedness owed the Department.

§ 2002.15 Advance payments.

(a) HUD may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) HUD estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, HUD will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), HUD may require the requester to pay the full amount owed plus any applicable interest as provided by § 2002.13(a) or demonstrate that he has, in fact, paid the fees, and to make an advance payment of the full amount of the estimated fee before HUD begins to process a new request or a pending request from that requester.

(b) When HUD acts under paragraph (a)(1) or (a)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after HUD has received fee payments described above.

(c) Where it is anticipated that either the duplication fee individually, the search fee individually, or a combination of the two exceeds $25.00 over and above the free search time and duplication costs, where applicable, and the requesting party has not indicated in advance a willingness to pay so high a fee, the requesting party shall be promptly informed of the amount of the anticipated fee or such portion thereof as can readily be estimated. The notification shall offer the requesting party the opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet that party's needs at a reduced cost.

§§ 2002.3, 2002.17, 2002.21, 2002.25 [Amended]

3. In addition to the amendments set forth above in 24 CFR Part 2002, the following nomenclature changes are made:

(a) In § 2002.3, paragraph (b), remove the reference "§ 2002.9" and add in its place "§ 2002.17"; and

(b) In newly redesignated § 2002.17, paragraph (c), remove the reference "§ 2002.1" and add in its place "§ 2002.25"; and

(c) In newly redesignated § 2002.21, remove the references "§§ 2002.11" and "2002.17" wherever they appear and add in their place "§§ 2002.19" and "2002.25", respectively; and

(d) In newly redesignated § 2002.25, remove the references "§§ 2002.9" and "2002.13" wherever they appear and add in their place "§§ 2002.17" and "2002.21", respectively.

Date: September 9, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-21864 Filed 9-26-88; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 48 and 602

[T.D. 8231]

Gasoline Excise Tax Bond Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides rules for determining whether and in what amount a bond may be required of a person applying to register for purposes of the gasoline excise tax. Changes to the applicable law were made by the Tax Reform Act of 1986. These regulations affect certain persons required to register for purposes of the gasoline excise tax and provide those persons with guidance necessary to determine the amount of bond, if any, that such persons may be required to give as a condition of registration.

In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in a notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective as of April 1, 1988, except for § 48.4101-2T(c)(3) (relating to the amount of bond required of a registered gasohol blender) which is effective as of July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111

Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 533). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-0725. The estimated average burden associated with the collection of information in this regulation is 1 hour per respondent.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden and suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Background

This document contains temporary regulations relating to the gasoline excise tax bond requirement authorized by section 4101(b) of the Internal Revenue Code of 1986 (Code). Section 4101 was amended by section 1703 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2774) (Act). The Internal Revenue Service published proposed regulations in the **Federal Register** on November 18, 1987 (52 FR 44141) (proposed regulations), and issued two Notices, Notice 88-16, 1988-7 IRB 51 (February 16, 1988), and Notice 88-34, 1988-13 IRB 26 (March 28, 1988), that provide guidance under section 4101. As explained below, the temporary regulations provided by this document restate some of the rules provided in the proposed regulations and two Notices, change some of those rules, and provide additional guidance. These temporary regulations are effective until superseded by final regulations on these subjects.

These temporary regulations are intended to address only issues under section 4101 relating to the gasoline excise tax bond procedures. No inference should be drawn regarding issues not expressly addressed in the regulations.

Explanation of Provisions

In General

Section 1703 of the Act amended sections 4081 and 4101 of the Code. As amended, section 4081 generally imposes a tax on the earlier of the removal or sale of gasoline by a refiner, importer, or terminal operator. Section 4101 requires that every person subject to tax under section 4081 register with the Secretary. Section 4101(b) provides that, under regulations prescribed by the Secretary, persons that register may be required to give a bond.

Sections 48.4101-1 (a) and (c) of the proposed regulations required every person applying for registration under sections 4081 and 4101 to give a bond. However, as provided in Notice 88-16, § 48.4101-2T(b) of these temporary regulations generally does not require a bond of a gasoline excise taxpayer applying for registration under section 4101 if the district director is satisfied with the applicant's tax filing, deposit, and payment history. However, if the district director is not satisfied with the applicant's tax history, or no such history exists, a bond will generally be required. Any required bond must be executed on Form 928. If the district director determines that there are extenuating circumstances, the district director may waive the bond requirement and accept an alternative form of security. Section 48.4101-2T(b)(3) provides for release of bond if a registered person subsequently establishes a satisfactory tax filing, deposit, and payment history.

Amount of Bond

Section 48.4101-1(c)(2) of the proposed regulations generally required a bond in an amount equal to the amount of tax under section 4081 for which the principal was expected to incur liability during an average three-month period. A terminal operator was required to give a bond in an amount equal to the amount of tax that would be imposed under section 4081 on the expected volume of gasoline that would flow through its terminal during an average three-month period. However, as provided in Notice 88-16, under § 48.4101-2T(c) of these temporary regulations, if a bond is required, the amount of the bond will generally be equal to the lesser of (1) $1,000,000, or (2) the amount of gasoline excise tax that would be imposed on the expected volume of gasoline that will be removed or sold by the principal during an average one-month period if all such removals or sales were taxable. If a bond is required of a terminal operator, the amount of such bond will be based on the expected volume of gasoline that will flow through the operator's terminal during an average one-month period. The maximum amount of bond required of a terminal operator that is solely a for-hire terminal operator is $500,000. As provided in Notice 88-34, if a bond is required of a gasohol blender that registers to purchase gasoline at the reduced rate of tax under section 4081(c)(1) for the production of gasohol, the amount of such bond will be based on the blender's expected purchases of gasoline at the reduced rate during an average one-month period multiplied by the rate at which tax is imposed under section 4081(c)(2) (currently 5⅔ cents per gallon). See § 48.4101-2T(c) (2) and (3).

If a principal's experience for any month, and tax rates in effect at that time, would result in a bond amount that is greater than 120 percent of the amount of its outstanding bond, the taxpayer must give a strengthening or superseding bond that reflects its actual experience. The strengthening or superseding bond must be given to the district director within either (1) two weeks after the end of the calendar quarter that includes such month or (2) a reasonable period of time after those two weeks, provided the principal applies for a bond before the end of those two weeks and has sufficient evidence of such application. If a principal's average volume of gasoline removals or sales decreases, the principal may be able to have its bond amount reduced. See § 48.4101-2T(h).

Other Requirements

The temporary regulations under section 4101 also provide additional rules relating to the gasoline excise tax bond requirement. As provided in Notice 88-16, § 48.4101-2T(d) specifies that acceptable sureties on bonds required under section 4101 are those persons included in Department of the Treasury Circular 570. Section 48.4101-2T(e) provides rules relating to (1) conditions that apply to all bonds, and (2) persons that can sign a bond on behalf of a principal. Section 48.4101-2T(f) allows the inclusion of a cancellation clause in a bond. Under § 48.4101-2T(g), no change may be made in the terms of a bond that has been filed except with the surety's consent and the district director's approval. Any such change must be reflected on Form 928.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not

apply, and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of these temporary regulations is Timothy J. McKenna of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects

26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

26 CFR Part 602

Reporting and recordkeeping requirements

Adoption of Amendments to the Regulation

Accordingly, 26 CFR Parts 48 and 602 are amended as follows:

PART 48—[AMENDED]

Paragraph 1. The authority for Part 48 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 48.4101-2T is also issued under 26 U.S.C. 4101(b).

Par. 2. Section 48.4101-2T is added to read as follows:

§ 48.4101-2T Bond requirements; gasoline.

(a) *Outline of provisions.* The provisions of this section are as follows:

(a) Outline of provisions.
(b) Bond requirement.
(1) In general.
(2) District director's determination.
(3) Release of bond.
(c) Amount of bond.
(1) In general.
(2) Terminal operators.
(3) Gasohol blenders.
(d) Sureties.
(e) Other requirements.
(1) Conditions of bond.
(2) Signatures.
(f) Cancellation clause.
(g) Changes in bond.
(h) Strengthening or superseding bond.
(1) In general.
(2) Superseding bond for reduced volume.
(i) Other provisions relating to bonds.
(j) Effective date.

(b) *Bond requirement*—(1) *In general.* A taxpayer must furnish a bond as a condition of registration for purposes of the gasoline excise tax imposed by section 4081, unless the district director determines that no bond is required as provided in paragraph (b)(2) of this section. If a bond is required, it must be given to the same district director with which the applicant files its application for registry under section 4101 (as it relates to section 4081) in order to complete the application. Any bond required of an applicant must be executed on Form 928, in accordance with 26 CFR 301.7101-1(a)(1) and this section.

(2) *District director's determination.* The district director will examine the applicant's filing, deposit, and payment history for all Federal taxes, including income, employment, and excise taxes, for either the preceding eight quarters (for taxes due on a quarterly basis) or the preceding two years (for taxes due on an annual basis) to determine whether the applicant has filed tax returns and made deposits and payments of tax in a timely manner. If the district director is not satisfied with the tax filing, deposit, and payment history of the applicant, or no such history exists (*e.g.*, in the case of a newly created business), a bond will be required as provided under this section. If the district director determines that there are extenuating circumstances and some alternative form of security will adequately protect the government in the collection of tax imposed under section 4081, the district director may waive the bond requirement and accept such alternative form of security. See § 48.4101-2T(i).

(3) *Release of bond.* A district director may release a bond required under this section if the district director determines that the principal has subsequently established a satisfactory tax filing, deposit, and payment history as described in paragraph (b)(2) of this section. A principal may request that the district director review the bond requirement under this section to determine whether the bond may be released only once every 12 months.

(c) *Amount of bond*—(1) *In general.* The amount of the bond will be equal to the lesser of $1,000,000 or the amount of tax that would be imposed under section 4081 on the expected volume of gasoline that will be removed or sold by the principal during an average one-month period (as determined by the district director) if all such removals or sales were taxable. The amount of the bond will be computed at the rate of tax in effect at the time the bond is given. See paragraph (h) of this section for strengthening or superseding bond requirements. In all cases (under this paragraph (c))—

(i) Where the approximate amount of tax so calculated is not an even multiple of $100, the amount of the bond will be increased to the next higher multiple of $100. For example, if the approximate amount of tax liability to be incurred during the one-month period is calculated at $3,333.33, the amount of the bond is $3,400.

(ii) The amount of the bond shall not be less than $2,000.

Failure to maintain a bond that is currently valid and is in an adequate amount as required by this section may result in suspension or revocation of a taxpayer's registration.

(2) *Terminal operators.* In the case of a terminal operator, the amount of the bond will be equal to the lesser of $1,000,000 or the amount of tax that would be imposed under section 4081 on the expected volume of gasoline that will flow through the terminal operator's equipment or facility (determined as if the terminal operator were the owner of all such gasoline and as if all removals or sales of gasoline from the terminal were taxable) during an average one-month period (as determined by the district director), computed at the rate of tax in effect at the time the bond is given. For example, if a terminal operator expects to have 1,000,000 gallons of gasoline flowing through its terminal facilities, 500,000 gallons of which is owned by the terminal operator while the remaining 500,000 gallons is owned by other persons leasing space in the terminal, then the amount of any bond required of the terminal operator under this section will be based on the total volume of gasoline (1,000,000 gallons) flowing through the terminal. However, any bond required of a for-hire terminal operator (*i.e.*, a terminal operator that does not own any of the gasoline in its terminal) will not be greater than $500,000.

(3) *Gasohol blenders.* In the case of a person that is registered, or wishes to register, under section 4101 as a gasohol blender, the amount of the bond will be equal to the lesser of $1,000,000, or an amount equal to the rate of tax imposed under section 4081(c)(2) on the separation of gasoline from gasohol multiplied by the number of gallons of gasoline the blender expects to purchase at the reduced rate of tax under section 4081(c)(1) (relating to gasoline used in producing gasohol) during an average one-month period (as determined by the

district director). This paragraph (c)(3) is effective as of July 1, 1988. If before that date a district director required a gasohol blender to give a bond in an amount greater or less than the amount determined under this paragraph (c)(3), then the district director shall permit a reduction, or require an increase, in the amount of the bond.

(d) *Sureties.* Any bond required under this section must be executed by a surety that is approved for inclusion in Department of the Treasury Circular 570 as an acceptable surety or reinsurer on Federal bonds. No person can be a surety for purposes of sections 4081 and 4101 (as they relate to the gasoline excise tax) that is not approved for inclusion in Department of the Treasury Circular 570.

(e) *Other requirements*—(1) *Conditions of bond.* A bond required under this section will be accepted by the district director only if both the principal and the surety agree to the following conditions—

(i) The principal will not engage in any attempt, alone or in collusion with others, to defraud the United States of any tax imposed under section 4081;

(ii) The principal will render truly and completely all returns, statements, records, and inventories required by law or regulations in respect of the tax imposed under section 4081 and will pay any liability for such tax; and

(iii) The principal will comply with all requirements of law and regulation with respect to the tax imposed under section 4081.

Violation of any of the conditions in this paragraph (e)(1) may result in suspension or revocation of the principal's registration, forfeiture of the bond amount, or imposition of other applicable penalties under the Internal Revenue Code.

(2) *Signatures.* Any bond required under this section must be signed by the individual if the applicant is an individual; the president, vice president, or other principal officer, if the applicant is a corporation; a responsible and duly authorized member or officer having knowledge of its affairs, if the applicant is a partnership or other unincorporated organization; or the fiduciary, if the applicant is a trust or estate.

(f) *Cancellation clause.* Any bond required under this section may be accepted with a cancellation clause incorporated therein. The cancellation clause must provide that—

(1) Any surety on the bond may at any time give notice in writing to the principal and the district director that such surety desires to be relieved of liability under the bond after a certain date, which date must be at least 60 days after the receipt of notice by the district director.

(2) The rights of the principal under the bond will be terminated on the date named in the notice (unless supported by another bond or bonds), and the surety will be relieved from liability under the bond for any acts done wholly subsequent to the date named in the notice, if the notice is not withdrawn in writing prior to the date named in the notice. However, the surety will remain liable for any unpaid gasoline excise tax liability imposed under section 4081, including penalties and interest, incurred by the principal before cancellation, unless the principal pays the tax and penalties and interest.

(3) The notice may not be given by an agent of the surety, unless it is accompanied by a power of attorney duly executed by the surety authorizing the agent to give the notice or by a verified statement that the power of attorney is on file with the district director.

(g) *Changes in bond.* After filing of any bond required under this section, no change may be made in the terms thereof except with the consent of the surety and subject to the approval of the district director. Any change, along with the surety's consent thereto, must be shown on Form 928. In any case where a change is proposed in the terms on the bond, Form 928 must be executed and filed in the same manner as that prescribed with respect to the bond itselt and must be accompanied by information showing the registration number of the principal.

(h) *Strengthening or superseding bond*—(1) *In general.* A strengthening or superseding bond will be required under this section, even if a new application for registry is not required, if—

(i) The district director deems it necessary in order to ensure the collection of the tax imposed by section 4081; or

(ii) The amount of tax that would be imposed on the actual volume of gasoline removed or sold by a taxpayer in any month (determined as if all such removals or sales were taxable) is greater than 120 percent of the taxpayer's outstanding bond amount, the amount of the taxpayer's outstanding bond is less than $1,000,000, and the district director deems it necessary in order to ensure the collection of the tax imposed by section 4081. Similarly, the 120 percent test is applied to a terminal operator based on the acutal volume of gasoline flowing through its terminal during any month and the tax rates then in effect under section 4081(a)(1), and is applied to a gasohol blender based on the actual number of gallons of gasoline purchased at the reduced rate and the tax rates then in effect under section 4081(c)(2). Therefore, if the amount of the bond that would be required, based on the principal's actual experience for the month and tax rates in effect for the month, exceeds 120 percent of the outstanding bond amount, then the principal must give a strengthening or superseding bond in accordance with the requirements of this section that reflects current tax rates and the principal's actual experience for the month. This strengthening or superseding bond must be given within either (A) two weeks after the end of the calendar quarter containing the applicable month or (B) a reasonable period to time after those two weeks, provided the principal has properly applied for a bond in accordance with the requirements of this section before the end of those two weeks and maintains sufficient evidence of such application.

A strengthening bond is an additional bond given by a taxpayer to increase the total amount of the taxpayer's outstanding bond to the amount required of the taxpayer under this section. A superseding bond is a new bond that takes the place of an existing bond. Failure to submit a strengthening or superseding bond as required by this paragraph (h)(1) may result in suspension or revocation of a taxpayer's registration.

(2) *Superseding bond for reduced volume.* If the average monthly volume of gasoline actually removed or sold by the taxpayer during the most recent 12 consecutive months is less than 80 percent of the volume used in computing the taxpayer's outstanding bond amount, then the taxpayer may request the district director's permission for the taxpayer to give a superseding bond in an amount that is less than the amount of bond outstanding. This test is similarly applied to a terminal operator based on the average monthly volume of gasoline flowing through its terminal during the most recent 12 consecutive months, and to a gasohol blender based on the average monthly number of gallons of gasoline purchased at the reduced rate of tax during the most recent 12 consecutive months. If the district director determines that this test is met, then the principal may give a superseding bond in accordance with the requirements of this section that reflects the principal's average monthly experience during the most recent 12 consecutive months. A taxpayer may apply to the district director to give a

superseding bond under this paragraph (h)(2) only once every 12 months.

(i) *Other provisions relating to bonds.* For general provisions relating to bonds, see section 7101 and the regulations thereunder. Pursuant to section 7101(2), bonds or notes of the United States may be deposited in lieu of the surety bond described in this section. The provisions of § 301.7101-1(b)(2), permitting substitution of certain types of sureties or collateral in lieu of a bond, do not apply, except as provided in § 48.4010-2T(b)(2).

(j) *Effective date.* Except as otherwise provided in this section, these regulations are effective after March 31, 1988.

PART 602—[AMENDED]

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table, "§ 48.4101-2T...1545-0725."

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: August 15, 1988.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 88-21434 Filed 9-26-88; 8:45 am]

BILLING CODE 4830-01-M

Office of Foreign Assets Control

31 CFR Parts 560 and 565

Iranian and Panamanian Transactions; Information Collection Provisions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Treasury Department is amending the Iranian Transactions Regulations and the Panamanian Transactions Regulations to reflect approval by the Office of Management and Budget ("OMB") of information collection provisions contained in these regulations.

EFFECTIVE DATE: September 27, 1988.

FOR FURTHER INFORMATION: William B. Hoffman, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel. (202)376-0412.

SUPPLEMENTARY INFORMATION: The Iranian Transactions Regulations, 31 CFR Part 560 (53 FR 44076, November 17, 1987), were issued by the Treasury Department in implementation of Executive Order No. 12613 of October 39, 1987 (53 FR 41940, October 30, 1987). The Panamanian Transactions regulations, 31 CFR Part 565 (53 FR 20566, June 3, 1988, as amended at 53 FR 23620, June 23, 1988, and 53 FR 32221, August 24, 1988) were issued by the Treasury Department in implementation of Executive Order No. 12635 of April 8, 1988 (53 FR 12134, April 12, 1988).

The Iranian Transactions Regulations and the Panamanian Transactions Regulations are being amended to insert notices of OMB approval of information collection provisions contained in these regulations.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Parts 560 and 565

Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 31, Chapter V of the Code of Federal Regulations is amended as set forth below:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

31 CFR Chapter V, Part 560, is amended as set forth below:

1. The authority citation for Part 560 continues to read as follows:

Authority: 22 U.S.C. 2349aa-9; E.O. 12613, 52 FR 41940, October 30, 1987.

2. Part 560 is amended by adding a new Subpart I to read as follows:

Subpart I—Paperwork Reduction Act

§ 560.901 Paperwork Reduction Act Notice.

The information collection requirements in §§ 560.601, 560.602, and 560.801 have been approved by the Office of Management and Budget and assigned control number 1505-0106.

31 CFR Chapter V, Part 565, is amended as set forth below:

PART 565—PANAMANIAN TRANSACTIONS REGULATIONS

1. The authority citation for Part 565 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*, E.O. 12635, 53 FR 12134, April 12, 1988.

2. Part 565 is amended by removing the word "[Reserved]" from Subpart I—Paperwork Reduction Act and adding § 565.901 *Paperwork Reduction Act Notice* to read as follows:

§ 565.901 Paperwork Reduction Act Notice.

The information collection requirements in §§ 565.601, 565.602, and 565.801 have been approved by the Office of Management and Budget and assigned control number 1505-0113.

Dated: September 14, 1988.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: September 14, 1988.

Salvatore R. Martoche,
Assistant Secretary (Enforcement).

[FR Doc. 88-22002 Filed 9-22-88; 12:51 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11-88-04]

Anchorage Ground; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the southwestern boundary of Anchorage 5 in San Francisco Bay by extending it 450 yards to the west. This will increase the anchorage area in the deeper waters needed by larger vessels, while still providing an ample northbound shipping channel.

EFFECTIVE DATE: October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael J. Lodge, Office of Aids to Navigation, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822-5399. Phone number: (213) 499-5410.

SUPPLEMENTARY INFORMATION: On June 6, 1988, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (53 FR 20652). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Michael J. Lodge, project officer; Lieutenant Commander James Spitzer, project officer; and Lieutenant G.R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

The one comment received was in support of this change. The commentor requested the Coast Guard relocate San Francisco Bay North Channel Lighted Bell Buoy 10 (LLNR 5500) to mark the new channel edge. This relocation, along with the relocation of San Francisco Bay North Channel Lighted Buoy 8 (LLNR 5485), will be accomplished in conjunction with the effective date of this regulation. Additionally, the commentor suggested the Coast Guard consult with the U.S. Army Corps of Engineers regarding dredging of the expanded anchorage area. The Coast Guard has consulted the Army Corps of Engineers. The Army cannot arbitrarily dredge an area without prior approval and funding by Congress. The Army will, however, attempt to obtain sounding information and distribute it to interested parties.

This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The increase of area in Anchorage 5 will not impede transiting vessels.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations is amended as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46(c) and 33 CFR 1.05-1(g).

2. Section 110.224(e)(2) is revised to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif.

* * * * *

(e) * * *

(2) *Anchorage No. 5, Southampton Shoal.* In San Francisco Bay at Southampton Shoal bounded by a line connecting the following coordinates:

Latitude	*Longitude*
37°55'48" N	122°25'52" W; to
37°55'50" N	122°26'32" W; to
37°54'49" N	122°26'39" W; to
37°54'03" N	122°26'06" W; to
37°53'25" N	122°25'30" W; to
37°53'23" N	122°25'09" W; to
37°55'19" N	122°25'33" W; to
37°55'42" N	122°25'45" W; thence back to
37°55'48" N	122°25'52" W.

* * * * *

Dated: September 13, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 88-21971 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD5-88-28]

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Amendment to temporary rule.

SUMMARY: At the request of the Cianbro Corporation, contractors for the District of Columbia, Department of Public Works, the Coast Guard is amending the regulations governing the operation of the Woodrow Wilson Memorial Bridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, to change the weekend dates the contractor will be conducting repair work on the drawspan and to clarify the purpose of the five hour advance notice requirement. This action provides for the reasonable needs of navigation.

DATES: This amendment to the temporary rule is effective from August 6, 1988, until November 20, 1988, unless amended or terminated before that date.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: On August 2, 1988, the Coast Guard published a temporary regulation with request for comments in the **Federal Register** (53 FR 29032) to permit Cianbro Corporation to replace parts of the drawspan of the Woodrow Wilson Bridge during the weekends when traffic is light. The comment period for the temporary regulation ends on September 2, 1988.

This amendment is being issued because two discrepancies were found after the temporary regulation was published. The comment period for the temporary regulation has not yet ended. Therefore, further amendment is possible if warranted by comments received. Persons interested in commenting on this amendment are encouraged to do so by following the procedures set out in the August 2, 1988, **Federal Register** publication (53 FR 29032).

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

Discussion of Comments

Cianbro Corporation, contractors for the District of Columbia, Department of Public Works, previously stated that they would not conduct repair work on the drawspan during holiday weekends. Consequently, the Coast Guard omitted Columbus Day weekend (October 8-9, 1988) from the effective dates of the temporary regulation. According to a spokesman for Cianbro Corporation, however, the District of Columbia, Department of Public Works, had authorized Cianbro to work the weekend of October 8-9. This change is reflected in § 117.255(a)(3) of the temporary rule.

Subparagraphs 117.255 (a)(1)(iv) and (a)(2) are changed to clarify the five hours advance notice required by commercial vessels during the scheduled weekend repair periods. The purpose of the five hour advance notice requirement is to give the contractors sufficient time to clear the obstructed half of the channel for vessels that are unable to pass through the other half of the main channel or the flanking channels. It is not intended to provide time to open the drawbridge. The tour boat industry and the major commercial waterway users are aware of this fact. They understand that the five hour advance notice requirement pertains only to clearing the channel and not to opening the drawbridge.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and

nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

While the temporary rule may have some economic impact on commercial navigation, the impact is expected to be minimal; therefore, a full regulatory evaluation is considered unnecessary. This conclusion is based on the fact that the schedule has been coordinated with the major commercial waterway users, who have indicated it is acceptable to them. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 449; 49 CFR 1-46; 33 CFR 1-05-(g); 33 CFR 117.43.

2. Section 117.255(a)(1)(iv) and (2) and (3) are revised to read as follows:

§ 117.255 Potomac River.

(a) * * *

(1) * * *

(iv) For the passage of an vessel from August 6, 1988, to November 20, 1988, between the hours of 9:30 p.m. on Fridays and 7:30 a.m. on Saturdays and the hours of 8:00 p.m. on Saturdays and 10:30 a.m. on Sundays.

(2) From August 6, 1988, until November 20, 1988, between the hours of 9:30 p.m. on Fridays and 7:30 a.m. on Saturdays and between 8:00 p.m. on Saturdays and 10:30 a.m. on Sundays, the operator of the bridge may obstruct half of the channel under the draw, but shall clear the channel upon at least five hours advance notice by any commercial vessel that is otherwise unable to pass under the draw span or flanking spans of the bridge.

(3) This temporary rule is effective from August 6, 1988, through November 20, 1988, but it is not effective on September 3 and 4, and November 12 and 13, 1988

Dated: August 26, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-20546 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Cleveland Regulation 88-07]

Safety Zone Regulations; Lake Erie, OH

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Lake Erie with its center at 41-31.07'N, 081-44.48'W, and extending for a one thousand yard radius around that point. The zone is needed to protect life and property in connection with the search for a possible unexploded piece of ordnance beginning on September 11, 1988, and continuing until the search is concluded. Entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 7:00 p.m. September 11, 1988. It terminates on January 11, 1989, unless sooner terminated by the Captain of the Port, Cleveland.

FOR FURTHER INFORMATION CONTACT: CDR Patrick A. Turlo, Captain of the Port, (216) 522-4406.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to preclude damage to vessels or injury to people in the vicinity.

Drafting Information

The drafters of this regulation are CDR Patrick A. Turlo, the Captain of the Port, Cleveland, and LCDR Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstance requiring this regulation resulted from the report of a possible piece of unexploded ordnance in the vicinity of N 41-31.07', W 81-44.48'

A ring buoy with twenty feet of line was attached to the object before it was lost over the side of a patrol craft. Anchoring, fishing or transitting the area could present a danger to vessels. Coast Guard and other designated personnel will be conducting search activities using underwater equipment deployed from patrol boats. The safety zone will also facilitate the search efforts.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C 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. 1225 and 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 new § 165.T0903 is added to read as follows:

§ 165.T0903 Safety Zone: Lake Erie.

(a) *Location.* The following area is a safety zone: The waters of Lake Erie for a one thousand yard radius surrounding the point 41-31.07'N, 081-44.48'W. The zone will be in effect beginning at 7:00 p.m. September 11, 1988. It will terminate on January 11, 1989.

(b) *Effective Date.* This regulation becomes effective at 7:00 p.m., September 11, 1988. It terminates on January 11, 1989 unless sooner terminated by the Captain of the Port.

(c) *Regulations*—(1) *General Rule.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: September 11, 1988.

Patrick A. Turlo,

Captain of the Port, Cleveland, Ohio.

[FR Doc. 88-21972 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3451-4]

Ocean Dumping; Site Designation for Georgetown Harbor et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the existing, interim-approved Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Georgetown, South Carolina, as an EPA-approved ocean dump site for the dumping of suitable dredged material. This action is necessary to provide an acceptable ocean dump site for the current and future disposal of dredged material from the greater Georgetown, South Carolina area. This ODMDS offshore Georgetown is referred to as the "Georgetown Harbor" ODMDS in 40 CFR 228.12(a)(3) (revised as of July 1, 1987), which lists the interim-approved ODMDS. This Final Rule therefore also characterizes this interim ODMDS hereby designated on a permanent basis as the "Georgetown Harbor" ODMDS, although references to simply the "Georgetown" ODMDS are made in this Final Rule as well as in some previous documentation.

This Final Rule presents the correct boundary coordinates for the Georgetown Harbor ODMDS and comments on some previously-presented coordinates that were apparently in error. Besides coordinates, this Final Rule also corrects other aspects of the Proposed Rule (52 FR 30189 (August 13, 1987)) for the Georgetown site. Furthermore, this Final Rule corrects omission in the Final Rule (53 FR 6987 (March 4, 1988)) designating the Pensacola (Florida) ODMDS (i.e., the existing Pensacola (nearshore) ODMDS as opposed to the proposed Pensacola (offshore) ODMDS), the two Gulfport (Mississippi) ODMDSs, and the Mobile (Alabama) ODMDS; the Final Rule (52 FR 25008 (July 2, 1987)) designating the ODMDSs offshore Savannah (Georgia), Wilmington (North Carolina) and Charleston (South Carolina) (two ODMDSs: Charleston and Charleston Harbor Deepening Project); and the Final Rule (52 FR 30360 (August 14, 1987)) designating the ODMDS offshore Morehead City (North Carolina). This Final Rule additionally corrects one coordinate component for one of the Gulfport ODMDSs (Eastern Site) presented in the March 4 Final Rule (and the attendant draft and final Environmental Impact Statement (EIS)) and one coordinate component for the ODMDS offshore Morehead City presented in the August 14 Final Rule. This Final Rule also removes the listings of the two former Tampa Harbor ODMDSs that are still listed as interim ocean disposal sites in 40 CFR 228.12(a)(3).

DATE: This designation shall become effective on October 27, 1988.

ADDRESSES: Send comments to: Frank M. Redmond, Chief, Wetlands and Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

The file supporting this site designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW., Washington, DC 20460

EPA/Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Reginald G. Rogers 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dump sites to the Regional Administrator of the Region in which the sites are located. This final designation of the Georgetown Harbor ODMDS, which is within Region IV, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under the Act (40 CFR Chapter I, Subchapter H, §228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 (January 11, 1977)). The list established the Georgetown Harbor site as an interim site. This site designation is being published as Final Rulemaking in accordance with §228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for suitable dredged material.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

The object of NEPA is to build careful consideration of all environmental aspects of proposed actions into the agency decision-making process. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (see 30 FR 16186 (May 7, 1974)).

EPA, in cooperation with the U.S. Army Corps of Engineers (COE), has prepared a draft and final EIS entitled "Environmental Impact Statement for Savannah, Georgia, Charleston, South Carolina, Wilmington, North Carolina, Ocean Dredged Material Sites Designation." A draft and final supplement to that EIS (i.e. SEIS) entitled "Supplement to Final Environmental Impact Statement, Final Designation Georgetown Ocean Dredged Material Disposal Site" have also been prepared for the Georgetown site designation. The SEIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The SEIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation for continuing use and is based on one of a series of disposal site environmental studies. The environmental studies and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation. The Proposed Rule and the present Final Rule are procedural follow-ups to the SEIS. These Rules may include excerpts of the SEIS. This Final Rule does include excerpts from the Proposed Rule.

On January 24, 1986, a Notice of Availability of the Georgetown final SEIS for public review and comment was published in the **Federal Register** (51 FR 3250 (January 24, 1986)). The public comment period on the final SEIS closed February 24, 1986. No comments were received on the final SEIS.

On August 13, 1987, the Proposed Rule for the Georgetown site designation was published in the **Federal Register** (52 FR 30189 (August 13, 1987)). The public comment period on the Proposed Rule closed September 14, 1987.

The action discussed in the final SEIS and the Proposed Rule is the final designation for continuing use of the interim ODMDS offshore Georgetown, South Carolina. The purpose of EPA's action is to provide an environmentally-acceptable location for the ocean disposal of suitable dredged materials from the greater Georgetown, South Carolina area (as opposed to being limited to the "Georgetown Harbor channel system" as incorrectly indicated (pg. 30189) in the Proposed Rule for the ODMDS (52 FR 30189 (August 13, 1987)) if an ocean disposal site is needed for such materials. The need for ocean

disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal. Use applicants could be either Federal or private entities.

C. Site Designation

The proposed site is located outside of State of South Carolina waters approximately three nautical miles offshore Georgetown, South Carolina. The ODMDS occupies an area of approximately one square nautical mile. Water depths at the site range from six to 11 meters. The correct boundary coordinates for the Georgetown Harbor ODMDS being designated on a permanent basis are as follows:

33°11'18" N.,	79°07'20" W.;
33°11'18" N.,	79°05'23" W.;
33°10'38" N.,	79°05'24" W.;
33°10'38" N.,	79°07'21" W.

Boundary coordinates presented in the draft and final SEIS (page 8) were the same as those presented above. The western component of the third set of coordinates (79°07'24" W.) presented in the Rulemaking section (p. 30192) of the Proposed Rule (52 FR 30189 (August 13, 1987)) was apparently in error and should have been 79°05'24" W. as presented above and in the Preamble of the Proposed Rule (p. 30189). The third set of coordinates (33°10'38" N., 79°07'21" W.) presented in 40 CFR 228.12(a)(3) [revised as of July 1, 1984 and July 1, 1987] for the interim Georgetown Harbor site is also apparently in error since it is identical to the last set of coordinates presented in the two CFRs and above. Previously presented (p. 2485) coordinates in the **Federal Register** (42 FR 2461 (January 11, 1977)) are correct when plotted, although the last two sets of coordinates were presented in reverse order.

On August 13, 1987, EPA proposed a rule change for the existing ODMDS offshore Georgetown from interim to final (permanent) EPA-approved designation (52 FR 30189 (August 13, 1987)). The Preamble to that Proposed Rule presented the characteristics of the site in terms of the five general criteria for the selection and approval for continuing use of ocean disposal sites. It also considered the eleven specific factors identified in § 228.5 of the Ocean Dumping Regulations, which, taken together, constitute an assessment of the site's suitability as a repository for dredged material. As concluded in that Proposed Rule, the interim site is appropriate for final designation.

The Proposed Rule for the Georgetown ODMDS stated that "[t]he South Carolina Coastal Council has concurred with EPA's coastal consistency determination." While EPA believes that the designation of this site is consistent with the South Carolina Coastal Management Program, some clarification is needed and is presented in this Final Rule. EPA originally provided the South Carolina Coastal Council a "negative determination" regarding consistency of the Georgetown Harbor site designation with the South Carolina Coastal Management Program. However, upon its review of the determination, the Coastal Council stated in a letter to EPA dated June 24, 1986, that "it disagrees that a negative determination is appropriate in this case." The Council further stated that "the Coastal Council does find that the designation of the area as a dredged material site is consistent with the South Carolina Coastal Management Program provided that the Coastal Council does have the opportunity to review for consistency any permits issued by the Corps of Engineers or any other Federal agency that would allow the actual placement of dredged materials in this site." EPA interprets this to mean that the Coastal Council concurs with the ODMDS designation itself; however, the Council wants to be involved in individual permit reviews. Since designation of the ODMDS does not, by itself, authorize any dredging or on-site dumping, EPA believes that the South Carolina Coastal Council should exercise their permit review provisions under 15 CFR 930 with the permitting agency (COE), rather than request conditioning of this EPA site designation. As such, EPA believes that the designation of the ODMDS is consistent with the South Carolina Coastal Management Program.

By letter dated June 4, 1986, the U.S. Fish and Wildlife Service (FWS) concurred with the EPA determination that the species under FWS jurisdiction will not be affected by the site designation. In response to EPA's request for project concurrence from the National Marine Fisheries Service (NMFS), the NMFS requested, in a letter dated June 8, 1984, a Biological Assessment (BA) from EPA regarding endangered or threatened species under NMFS jurisdiction for South Carolina. This NMFS response letter, which was not referenced in the Proposed Rule, resulted in EPA providing a subject BA in a letter dated June 1, 1988, which indicated that the site designation was not expected to result in significant impacts to the endangered or threatened species under NMFS jurisdiction for South Carolina. By letter dated June 10, 1988, the NMFS concurred with EPA's determination of no adverse effect. The NMFS concurrence referenced in the Proposed Rule was therefore premature.

Regarding comments on the Proposed Rule, one letter dated September 10, 1987, was received from the U.S. Department of the Interior. No comments, however, were offered.

Some coordination with the South Carolina Wildlife & Marine Resources Department (SCWMRD) and the COE Charleston District preceded EPA's completion of this Final Rule. Comments were considered but were not formally discussed in this Final Rule.

D. Action

Dredged material disposal has occurred at the dump site during the past 30 years. Recent surveys have detected no persistence or cumulative changes in the water quality or ecology at the site. Impacts from dumping have been found to be temporary and restricted to within the site boundary. The nearshore location of the proposed site facilitates surveillance and monitoring and decreases the likelihood of sediment texture/chemistry changes resulting from disposal at the disposal sites.

The SEIS considered mid-shelf and shelf-break alternative sites using the general criteria and specific factors contained in the Ocean Dumping Regulations. Dredged material disposal has not occurred previously at the mid-shelf or shelf-break alternative site locations. There are significant dissimilarities between the physical and chemical characteristics of the dredged material sediments and sediments covering the mid-shelf or shelf-break regions. Altering the sediment texture and composition through the addition of finer coastal sediments may have a potential long-term adverse impact on the benthic infauna at the mid-shelf and shelf-break regions, especially in the vicinity of hard bottom areas and shelf-break areas. These hard bottom areas are unique habitats, support several species of commercially and recreationally important finfish, and are sensitive to the effects of dredged material disposal. Thus, use of mid-shelf or shelf-break sites could result in a greater potential for interference with fishing activities. Moreover, use of offshore sites would be restricted to periods of calm weather and sea conditions because the hopper dredges cannot operate in rough seas.

It should be emphasized that designation of an ocean dump site does not, by itself, constitute approval for dredging projects or actual disposal of materials at the site. Before ocean dumping of dredged material from a private applicant's specific project may commence at the designated site, the

COE must evaluate a permit application according to EPA's Ocean Dumping Criteria (40 CFR Part 227). If a Federal project is involved, the COE must also evaluate the proposed ocean disposal in accordance with the same criteria. In either case, EPA has the authority to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met. Because the Georgetown Harbor ODMDS is located outside the State of South Carolina waters, the State's involvement is concerned with consistency with the South Carolina Coastal Management Program.

The Georgetown Harbor ODMDS is not restricted to disposal use by Federal Projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to disposal of suitable dredged material from the greater Georgetown, South Carolina area.

The designation of the existing, interim, EPA-approved ODMDS as a permanent, EPA-approved ODMDS is today being published as Final Rulemaking. Site management of the Georgetown Harbor ODMDS is the responsibility of EPA as well as the COE, although EPA/Region IV assumes overall responsibility for this site management. A Memorandum of Understanding (MOU) between EPA/Region IV and the South Atlantic Division of the COE is being developed to establish a management/monitoring framework for ODMDSs in the southeast under the jurisdiction of EPA/Region IV, which is to lead to a site-specific plan for the Georgetown Harbor ODMDS. The existence, magnitude, and implementation of a site monitoring plan is dependent upon available funding and coordination between the EPA and the COE.

Pertaining to site management and monitoring, EPA made two recommendations in the final SEIS (pg. 45). These were the following (excerpted):

- Dumping of spoil should be centered within the disposal site to minimize impact outside the designated area. The material will spread out after being dumped. The dredging operator should be required to provide precise Loran-C coordinates to indicate compliance. Additionally, the operator should be required to buoy the center of the site during disposal periods to aid visual monitoring.
- Detailed bathymetric profiles should be obtained for the ODMDS site immediately following a disposal operation, and then again at reasonable intervals to assess mounding and movement of the disposed sediments.

EPA believes these recommendations should be updated. However, EPA continues to support the concept that appropriate placement of dredged material within site boundaries and appropriate site monitoring is needed to minimize environmental impacts attributable to disposal of suitable dredged material at the Georgetown Harbor ODMDS. After updating, EPA's recommendations are as follows:

- Dumping of dredged material should be located and oriented within the ODMDS boundaries so as to minimize environmental impacts due to on-site disposal. A pending regional Memorandum of Understanding (MOU) between EPA/Region IV and the South Atlantic Division of the COE [referenced above] is to establish a management/monitoring framework for ODMDSs in the southeast under the jurisdiction of EPA/Region IV. This MOU is to lead to a site-specific plan for the Georgetown Harbor ODMDS. Appropriate placement of dredged material at the Georgetown site should be delineated in such a site-specific plan so as to minimize environmental impacts. Prior to such an agreed upon site-specific plan, the Charleston District COE should base the location and orientation of dredged material disposal on available local water current and bathymetric information to minimize environmental impacts attributable to on-site disposal.
- Monitoring of the Georgetown Harbor ODMDS through bathymetric surveys and/or other forms of monitoring (e.g., sediment mapping) should also be delineated in the site-specific plan for the Georgetown site. Frequencies of such monitoring techniques should also be addressed in the site-specific plan. Prior to such an agreed upon plan, the Charleston District COE should conduct bathymetric surveys at reasonable intervals relative to on-site disposal events so as to monitor dredged material mounding and mound dispersion. For impact analysis of potential off-site effects, EPA may wish to provide the sediment mapping technique.

In the final SEIS (pg. 45), EPA also made the following recommendation (excerpted):

- The Corps should provide advanced notification to the SCWMRD of any harbor channel dredging project and ODMDS usage to occur during the period from mid-February to June 30. This would allow SCWMRD opportunity to assess the potential project impact on sturgeon activity at the inlet jetties and also any effects on post-larval shrimp migration.

The critical time period in this recommendation (from mid-February to June 30) was an expansion from the time period (mid-February through May) presented in the recommendation provided (pg. 43) in the draft SEIS ("Disposal operations should avoid the period of mid-February through May, which is the time of maximum Sturgeon activity at the inlet jetties and adjacent coastal waters"). This expansion was influenced by a SCWMRD letter to EPA dated October 24, 1984, which requested avoidance of disposal operations for an additional one and one-half month period to avoid impacts on post-larval brown and white shrimp.

Because EPA believes that COE notification to the SCWMRD should be timely, the recommendation made in the final SEIS has been updated to the following:

- The Charleston District COE should provide timely advanced notification to the SCWMRD of any project in the greater Georgetown, South Carolina area proposed to use the Georgetown Harbor ODMDS for disposal during the time period from mid-February to June 30. This notification should be timely to allow the SCWMRD the opportunity to assess the potential impact of dredged material due to on-site dumping relative to sturgeon activities, post-larval shrimp migration, and/or other biological activities. Notification should also be timely so that effective SCWMRD/COE discussions can still occur prior to potential on-site dumping.

In this recommendation, EPA is not restricting the time of use of the ODMDS by the Charleston COE (a four and one-half month use restriction was opposed by the Charleston COE in a letter to EPA dated February 22, 1985) or by any local private applicant. However, EPA is recommending timely advanced notification so that SCWMRD review and effective SCWMRD/COE discussion can still occur before any potential on-site disposal of suitable dredged material from mid-February to June 30 is implemented.

E. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Final Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

This Final Rulemaking Notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: September 14, 1988.

Approved by:

Lee A. DeHihns, III,

Acting Regional Administrator.

In consideration of the foregoing, Subchapter H of Chapter I of Title 409 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

§ 228.12 [Amended]

2. Part 228 is amended by removing § 228.12(a)(1)(i)(B) [1] and removing from § 228.12(a)(3) the words and coordinates:

Georgetown Harbor—33°11'18" N.; 79°07'20" W.; 33°11'18" N., 79°05'23" W.; 33°10'38" N., 79°07'21" W.; 33°10'38" N., 79°07'21" W.

and adding to § 228.12(b)(40) one ODMDS for Region IV as follows:[2] [3]

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(40) Georgetown Harbor; Georgetown, South Carolina; Ocean Dredged Material Disposal Site—Region IV.

Location: 33°11'18" N.; 79°07'20" W.; 33°11'18" N.; 79°05'23" W.; 33°10'38" N.; 79°05'24" W.; 33°10'38" N.; 79°07'21" W.

Size: 1 square nautical mile.

Depth: 6 to 11 meter range.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to suitable dredged material from the greater Georgetown, South Carolina area.

* * * * *

Pertaining to the Final Rule (53 FR 6987 [March 4, 1988]) for the Pensacola (Florida) ODMDS, the Mobile (Alabama) ODMDS, and the two Gulfport (Mississippi) ODMDSs, Subchapter H of Chapter I of Title 409 is amended as set forth below.

3. Part 228 is amended by removing from § 228.12(a)(3) the words and coordinates:[4]

Pensacola, FL—30°16.8' N., 87°19.0' W.; 30°16.7' N., 87°8.3' W.; 30°16.3' N., 87°16.3' W.; 30°16.0' N., 87°19.4' W.; 30°16.5' N., 87°19.4' W.

Gulfport, MS—30° 12.0' N., 89° 00.5' W.; 30° 12.0' N., 88° 59.5' W.; 30° 11.0' N., 89° 00.0' W.; 30° 07.0' N., 88° 56.5' W.; 30° 06.6' N., 88° 57.0' W.; 30° 10.5' N., 89° 00.6' W.

Gulfport, MS—30° 11.3' N., 88° 58.4' W.; 30° 11.2' N., 88° 57.5' W.; 30° 07.6' N., 88° 54.4' W.; 30° 07.4' N., 88° 54.8' W.

Mobile, AL—30° 10.0' N., 88° 07.7' W.; 30° 10.4' N., 88° 05.2' W.; 30° 09.4' N., 88° 04.7' W.; 30° 08.5' N., 88° 05.2' W.; 30° 08.5' N., 88° 08.2' W.

* * * * *

Pertaining to the Final Rule (52 FR 25008 [July 2, 1987]) for the ODMDSs offshore Savannah (Georgia), Wilmington (North Carolina), and Charleston (South Carolina) (two ODMDSs: Charleston and Charleston Harbor Deepening Project), Subchapter H of Chapter I of Title 409 is amended as set forth below.

4. Part 228 is amended by removing from § 228.12(a)(3) the words and coordinates:[5]

Charleston Harbor—32°38'06" N., 79°41'57" W.; 32°40'42" N., 79°47'30" W.; 32°39'04" N., 79°49'21" W.; 32°36'28" N., 79°43'48" W.

Savannah River—Atlantic outlet, Ga., Savannah River Bar Channel, maintenance dredging disposal area 2 nautical miles wide by 2 nautical miles long adjacent to the channel, located on the southeast side and being 6 nautical miles from shore at point of beginning at 31°57'55" N. and 80°46'48" W., thence due east to 31°57'55" N. and 80°44'20" W., thence due south to 31°55'53" N. and 80°46'48" W., thence northward to the point of beginning.

Wilmington Harbor, NC—Hopper dredge disposal in area east of a line beginning 33°50'00" and 78°02'30" to 33°48'45" and 78°04'00" to 33°45'00" and 78°05'00".

* * * * *

Pertaining to the Final Rule (52 FR 30360 [August 14, 1987]) for the ODMDS offshore Morehead City (North Carolina), Subchapter H of Chapter I of Title 409 is amended as set forth below.

5. Part 228 is amended by removing § 228.12(a)(1)(i)(A).[6]

* * * * *

Pertaining to the Tampa Harbor ODMDSs listed as interim ocean dumping sites in 40 CFR 228.12(a)(3) [Revised as of July 1, 1987], Subchapter H of Chapter I of Title 409 is amended as set forth below.

6. Part 228 is amended by removing from § 228.12(a)(3) the words and coordinates:

Tampa Harbor—27°38'08" N., 82°55'06" W.; 27°38'08" N., 82°54'00" W.; 27°37'08" N., 82°54'00" W.; 27°37'08" N., 82°55'06" W.

Tampa Harbor—27°37'28" N., 83°00'09" W.; 27°37'34" N., 82°59'19" W.; 27°36'43" N., 82°59'13" W.; 27°36'37" N., 80°00'03" W.

[FR Doc. 88-21771 Filed 9-26-88; 8:45 am]

BILLING CODE 6560-50-M

[1] (*Note:* This deletion should already have been proposed in the Rulemaking section (pg. 30192) of the Proposed Rule (52 FR 30189 [August 13, 1987]) for the ODMDS offshore Georgetown, South Carolina.)

[2] (*Note:* The 79°05'24" W. coordinate component was incorrectly stated as 79° 07' 24" W. in the Rulemaking section (pg. 30192) of the Proposed Rule (52 FR 30189 [August 13, 1987]) for the ODMDS offshore Georgetown, South Carolina. Also, the third set of coordinates (33°10'38" N.; 79°07'21" W.) presented in 40 CFR 228.12(a)(3) [revised as of July 1, 1984 and July 1, 1987] for the interim Georgetown Harbor site is apparently in error since it is identical to the last set of coordinates presented in the two CFRs. Previously-presented (pg. 2485) coordinates in the *Federal Register* (42 FR 2461 [January 11, 1977]) are corrected when plotted, although the last two sets of coordinates were presented in reverse order.)

[3] (*Note:* The "Depth" category in the Proposed Rule (52 FR 30189 [August 13, 1987]) was listed as "Average from 6 to 11 meters" (pg. 30192) instead of the above corrected "6 to 11 meter range." The "Restriction" category in the Proposed Rule, which limited disposal to "dredged material from the Georgetown Harbor, SC area" was corrected above to "suitable dredged material from the greater Georgetown, South Carolina area." A similar correction was made in this Final Rule text (EIS Development section).)

[4] (*Note:* This removal should be made in addition to the words already removed from Section 228.12(a)(1)(i)(H) in the March 4 Final Rule and in association with the words and coordinates already added in sections specified as Section 228.12(b)(48), 228.12(b)(49) and 228.12(b)(50) in the March 4 Final Rule. However, the section specified as Section 228.12(b)(50) in the March 4 Final Rule should be corrected so that the first set of coordinates for the Eastern Site of the Gulfport (Mississippi) ODMDS reads as 30°11'18" N., 88°58' 24" W. instead of 30°11'10" N., 88°58'24" W. It should also be noted that the draft and final EIS entitled "Environmental Impact Statement (EIS) for the Pensacola, Fl., Mobile, Al., and Gulfport, Ms., Dredged Material Disposal Site Designation" Should also be so corrected. This correction is consistent with 40 CFR 228.12(a)(3) (revised as of July 1, 1987) for that site. Also, Section 228.12 cited in the March 4 Final Rule as "Delegation of management authority for dumping sites" should have been cited as "Delegation of management authority for interim ocean dumping sites" per the 40 CFR revised as of July 1, 1987.)

[5] (*Note:* This removal should be made in addition to the words already specified for removal from Section 228.12(a)(1)(ii)(C) in the July 2 Final Rule for the Charleston, Savannah and Wilmington sites as well as the additions of Sections 228.12(b)(32), 228.12(b)(33), 228.12(b)(34), and 228.12(b)(35) already specified in the July 2 Final Rule for the Savannah, Charleston, Charleston Harbor Deepening Project, and Wilmington ODMDSs, respectively. Also, Section 228.12 cited in the July 2 Final Rule as "Delegation of management authority for ocean dumping sites" should have been cited as "Delegation of management authority for interim ocean dumping sites" per the 40 CFR revised as of July 1, 1987.)

40 CFR Part 262

[FRL-3454-8]

Hazardous Waste Management System; Standards for Generators of Hazardous Waste

AGENCY: Enviromental Protection Agency.

ACTION: Final rule; Notice of extension of expiration date for the Uniform Hazardous Waste Manifest Form.

SUMMARY: The purpose of today's action is to extend the expiration date of the Uniform Hazardous Waste Manifest Form (EPA Forms 8700-22 and 8700-22A; 40 CFR Part 262) allowing its continued use from Spetember 30, 1988 to December 31, 1988. This extension will allow the Agency time to include a new Office of Management and Budget (OMB) requirement for a burden disclosure statement (53 FR 16618; May 10, 1988); provide a modified form to the States and interested parties; and facilitate the transition to a new form by providing States that print their own manifests the time necessary to reproduce and distribute their new forms.

EFFECTIVE DATE: This extension is effective September 27, 1988.

ADDRESSES: A copy of EPA's request for extension and documentation of OMB's approval of the extension may be obtained from Emily Roth (OS-332), U.S. EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline toll-free at (800) 424-9346, or in Washington, DC call 382-3000. For information on specific aspects of today's notice, contact Emily Roth, (202) 382-4777, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Basis for Extending the Uniform Hazardous Waste Manifest Form Expiration Date

The Agency is extending the expiration date for the Uniform Hazardous Waste Manifest Form in order to: (1) Implement a new Office of Management and Budget burden disclosure statement requirement (53 FR 16618, May 10, 1988), (2) allow the Agency the time needed to provide the renewed form to the States and other interested parties, and (3) facilitate the transition to the renewed form by providing the States that print their own manifests the time necessary to reproduce and distribute their new forms. The agency has good cause for making this extension effective immediately because the regulated community is currently using the form and, therefore, does not require a time period to comply with the change. The Agency will provide guidance on the inclusion of OMB's burden disclosure statement and renew the Uniform Hazardous Waste Manifest Form for a period of three years in a subsequent Federal Register notice.

On March 20, 1984, EPA promulgated a rule that required generators who transport, or offer for transportation, hazardous waste for offsite treatment, storage, or disposal to prepare a Manifest (OMB control number 2000-0404) according to the instructions included in the Appendix to Part 262 (49 FR 10501, March 20, 1984). On August 8, 1986, exporters of hazardous waste were required to comply with the manifest system (51 FR 28685, August 8, 1986). On October 1, 1986, the Uniform Hazardous Waste Manifest Form was revised to include a generator certification statement, a new OMB Number (2050-0039), and expiration date of September 30, 1988 (51 FR 35192, October 1, 1986).

Effective with today's notice, hazardous waste generators and transporters may continue to use their existing supplies of the Manifest Form (EPA Forms 8700-22 and 8700-22A) until December 31, 1988.

Dated: September 21, 1988.

Joseph Cannon,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-22031 Filed 9-26-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Chs. I and III

[CGD 88-071]

Authority Citation Update

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document updates authority citations in Parts 1 through 199 and 401 through 403. Many of these citations are no longer current because of recent legislative revisions. Providing updated authority citations will make it easier to understand the legal basis for issuing regulations to which the citations refer.

EFFECTIVE DATE: September 27, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William Register, Office of Chief Counsel, (202) 267-1534.

SUPPLEMENTARY INFORMATION: In 1983, the Congress revised and consolidated many of the shipping laws in Title 46, United States Code (see Pub. L. 98-89). Because of these changes, many of the authority citations in Chapters I and III of Title 46, CFR are no longer current. The purpose of this document is to update the authority citations in Title 46, CFR in accordance with 1 CFR 21.41 which requires agency citations to be formally amended to reflect any changes.

Some of the updated citations in this document include references to laws and Executive Orders included in previous CFR citations but which were inadvertently deleted in subsequent amendments to those citations. Those references have been included in this document as measures taken to comply with the mandate in 1 CFR 21.40 that each citation be as complete as possible.

The citations in this document refer primarily to laws which specifically provide authority to issue regulations implementing substantive provisions of other laws. To facilitate the reader's understanding of this document, Table I below lists the updated citations and the principal subject matter of the substantive laws they implement.

TABLE I

Citation	General subject matter
5 U.S.C. 552	Administrative procedure.
14 U.S.C. 633	All matters applicable to the Coast Guard.
31 U.S.C. 9701	Fees charged for government services.
33 U.S.C. 151	Inland navigation rules.
33 U.S.C. 1321(j)	Water pollution prevention.
33 U.S.C. 1509	Deepwater port activities.
33 U.S.C. 1903	Prevention of pollution from ships.
42 U.S.C. 9118	Ocean thermal energy conversion facilities and plantships.
42 U.S.C. 9119	Ocean thermal energy conversion facilities and plantships.
42 U.S.C. 9153	Ocean thermal energy conversion facilities and plantships.
43 U.S.C. 1333	Outer continental shelf activities.
44 U.S.C. 3507	Public information collection activities.
46 U.S.C. 2103	Vessels and seamen generally.
46 U.S.C. 2113	Oceanographic vessels; exemptions.
46 U.S.C. 2306	Vessel reporting requirements.
46 U.S.C. 3102	Exposure suits.
46 U.S.C. 3306	Inspected vessels generally.
46 U.S.C. 3703	Tank vessels.
46 U.S.C. 4104	Uninspected vessels.
46 U.S.C. 4302	Recreational vessels.
46 U.S.C. 5115	Load lines.
46 U.S.C. 6101	Reporting of marine casualties.
46 U.S.C. 6301	Investigation of marine casualties.
46 U.S.C. 6305	Reporting of investigations of marine casualties.
46 U.S.C. 7101	Merchant marine officer licenses.
46 U.S.C. 7301	Merchant seamen documents.

TABLE I—Continued

Citation	General subject matter
46 U.S.C. 7701	Suspension and revocation of merchant marine licenses and documents.
46 U.S.C. 8105	Vessel manning.
46 U.S.C. 9303	Great Lakes pilotage.
46 U.S.C. 9304	Great Lakes pilotage.
46 U.S.C. 10104	Merchant seamen protection and relief.
46 U.S.C. 12115	Documentation of vessels; names of vessels.
46 U.S.C. 12121	Documentation of vessels.
46 U.S.C. 14102	Measurement of vessels.
46 U.S.C. App, Note Prec. § 1.	Waiver of compliance with navigation and inspection laws.
46 U.S.C. App. 876.	Documentation of vessels.
46 U.S.C. App. 983.	Recording and endorsing of vessel mortgages.
46 U.S.C. App. 1295g.	Maritime education and training; nautical school ships.
49 U.S.C. App. 1804.	Hazardous materials transportation.
49 U.S.C. App. 1903.	Investigation of major marine casualties.
E.O. 11735	Delegation of authority concerning water pollution prevention matters.
E.O. 12234	Delegation of authority to implement international convention relating to safety of life at sea.
46 CFR 1.45	Delegation of authority from DOT to USCG.
46 CFR 1.46	Delegation of authority from DOT to USCG.

The text of the regulations in Title 46, CFR also contains numerous references to laws which are no longer current. Certain of those references which relate to hazardous material matters have already been updated in a separate rulemaking project (CGD 86–033) published in the **Federal Register** of September 16, 1988 (53 FR 36022). Remaining textual references which need updating will be revised in an upcoming rulemaking project and, depending upon revisions made in that project, further updating of the authority citations to CFR parts in Title 46 may also be required.

This final rule simply updates authority citations to existing CFR parts and does not include substantive changes to regulatory text of existing regulations. Accordingly, a prior notice of proposed rulemaking pursuant to 5 U.S.C. 553 is unnecessary and has not been provided. Delaying the effective date of publication of this final rule is likewise unnecessary and, therefore, the rule is being made effective immediately upon publication.

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary.

The principal persons involved in drafting this final rule were: Lieutenant Sam Watkins, and Mr. William Register, Office of the Chief Counsel.

Since this rulemaking simply updates authority citations, the Coast Guard certifies that the amendments will not have a significant economic impact on a substantial number of small entities.

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

In accordance with the foregoing, the authority citations in Chapters I and III of Title 46 of the code of Federal Regulations are amended as set forth below. For clarity in presentation, the authority citation for each part is being published even if it is not being revised in this document.

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—PROCEDURES APPLICABLE TO THE PUBLIC

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

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

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 49 CFR 1.45, 1.46; Section 1.30 also issued under the authority of 44 U.S.C. 3507.

PART 2—VESSEL INSPECTIONS

2. The authority citation for Part 2 is revised to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, ch. 1155, §§1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

PART 3—DESIGNATION OF OCEANOGRAPHIC RESEARCH VESSELS

3. The authority citation for Part 3 is revised to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 CFR 1.46.

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

4. The authority citation for Part 4 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2306, 6101, 6301, 6305; 49 CFR 1.46; except subpart 4.40 for which the authority is 49 U.S.C. App. 1903.

PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

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

Authority: 46 U.S.C. 2103, 7101, 7301, 7701; 49 CFR 1.46.

PART 6—WAIVERS OF NAVIGATION AND VESSEL INSPECTION LAWS AND REGULATIONS

6. The authority citation for Part 6 is revised to read as follows:

Authority: Act Dec. 27, 1950, ch. 1155, §§ 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1); 49 CFR 1.46.

PART 7—BOUNDARY LINES

7. The authority citation for Part 7 is revised to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 151; 49 CFR 1.46.

PART 9—EXTRA COMPENSATION FOR OVERTIME SERVICES

8. The authority citation for Part 9 is revised to read as follows:

Authority: 46 U.S.C. 2103; 49 CFR 1.46.

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 10—LICENSING OF OFFICERS AND MOTORBOAT OPERATORS AND REGISTRATION OF STAFF OFFICERS

9. The authority citation for Part 10 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 2103, 7101, 7701, 8105; 46 U.S.C. App. 1295g; 49 CFR 1.45, 1.46; § 10.01–6 also issued under the authority of 44 U.S.C. 3507.

PART 12—CERTIFICATION OF SEAMEN

10. The authority citation for Part 12 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 7301, 7701, 8105, 10104; 49 CFR 1.46.

PART 14—SHIPMENT AND DISCHARGE OF SEAMEN

11. The authority citation for Part 14 is revised to read as follows and all other authority citations in the part are removed:

Authority: 5 U.S.C. 552; 46 U.S.C. 2103, 2113, 3306, 8105, 10104; 49 CFR 1.46.

PART 15—MANNING REQUIREMENTS

12. The authority citation for Part 15 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3703, 8105; 49 CFR 1.46.

SUBCHAPTER C—UNINSPECTED VESSELS

PART 24—GENERAL PROVISIONS

13. The authority citation for Part 24 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 25—REQUIREMENTS

14. The authority citation for Part 25 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 4104, 4302; 49 CFR 1.46.

PART 26—OPERATIONS

15. The authority citation for Part 26 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277.; 49 CFR 1.46.

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

16. The authority citation for Part 30 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 30.01-2 also issued under the authority of 44 U.S.C. 3507.

PART 31—INSPECTION AND CERTIFICATION

17. The authority citation for Part 31 is revised to read as follows and all other authority citations in the part are removed:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

18. The authority citation for Part 32 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 33—LIFESAVING EQUIPMENT

19. The authority citation for Part 33 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3102, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 34—FIREFIGHTING EQUIPMENT

20. The authority citation for Part 34 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 35—OPERATIONS

21. The authority citation for Part 35 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 36—ELEVATED TEMPERATURE CARGOES

22. The authority citation for Part 36 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 37—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR NUCLEAR VESSELS

23. The authority citation for Part 37 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 38—LIQUEFIED FLAMMABLE GASES

24. The authority citation for Part 38 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 40—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CARRYING CERTAIN FLAMMABLE OR COMBUSTIBLE DANGEROUS CARGOES IN BULK

25. The authority citation for Part 40 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980, Comp., p. 277; 49 CFR 1.46.

SUBCHAPTER E—LOAD LINES

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

26. The authority citation for Part 42 is revised to read as follows:

Authority: 46 U.S.C. 5115; 49 CFR 1.45, 1.46; Section 42.01-5 also issued under the authority of 44 U.S.C. 3507.

PART 44—VARIANCE FOR CERTAIN VESSELS

27. The authority citation for Part 44 is revised to read as follows:

Authority: 46 U.S.C. 5115; 49 CFR 1.46.

PART 45—GREAT LAKES LOAD LINES

28. The authority citation for Part 45 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 5115; 49 CFR 1.46.

PART 46—SUBDIVISION LOAD LINES FOR PASSENGER VESSELS

29. The authority citation for Part 46 is revised to read as follows:

Authority: 46 U.S.C. 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 47—COMBINATION LOAD LINES

30. The authority citation for Part 47 is revised to read as follows:

Authority: 46 U.S.C. 5115; 49 CFR 1.46.

SUBCHAPTER F—MARINE ENGINEERING

PART 50—GENERAL PROVISIONS

31. The authority citation for Part 50 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 50.01-20 also issued under the authority of 44 U.S.C. 3507.

PART 52—POWER BOILERS

32. The authority citation for Part 52 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 53—HEATING BOILERS

33. The authority citation for Part 53 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 54—PRESSURE VESSELS

34. The authority citation for Part 54 is revised to read as follows and all other authority citations in the part are removed:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C.3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 55—NUCLEAR POWERPLANT COMPONENTS

35. The authority citation for Part 55 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 56—PIPING SYSTEMS AND APPURTENANCES

36. The authority citation for Part 56 is revised to read as follows and all other authority citations in the part are removed;

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 57—WELDING AND BRAZING

37. The authority citation for Part 57 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703, E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

38. The authority citation for Part 58 is revised to read as follows and all other authority citations in the part are removed:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 59—REPAIRS TO BOILERS, PRESSURE VESSELS AND APPURTENANCES

39. The authority citation for Part 59 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 227; 49 CFR 1.46.

PART 61—PERIODIC TESTS AND INSPECTIONS

40. The authority citation for Part 61 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 62—VITAL SYSTEM AUTOMATION

41. The authority citation for Part 62 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 63—CONTROL SYSTEMS FOR AUTOMATIC AUXILIARY HEATING EQUIPMENT

42. The authority citation for Part 63 is revised to read as follows and all other authority citations in the part are removed.

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 64—MARINE PORTABLE TANKS

43. The authority citation for Part 64 is revised to read as follows:

Authority 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.46.

SUBCHAPTER G—DOCUMENTATION AND MEASUREMENT OF VESSELS

PART 67—DOCUMENTATION OF VESSELS

44. The authority citation for Part 67 is revised to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 12115, 12121; 46 U.S.C. App. 876, 983; 49 CFR 1.46.

PART 68—DOCUMENTATION OF VESSELS PURSUANT TO EXTRAORDINARY LEGISLATIVE GRANTS

45. The authority citation for Part 68 is revised to read as follows:

Authority: 46 U.S.C. App. 876; 49 CFR 1.46.

PART 69—MEASUREMENT OF VESSELS

46. The authority citation for Part 69 is revised to read as follows:

Authority: 46 U.S.C. 14102; 49 CFR 1.45, 1.46; Section 69.01–21 also issued under the authority of 44 U.S.C. 3507.

SUBCHAPTER H—PASSENGER VESSELS

PART 70—GENERAL PROVISIONS

47. The authority citation for Part 70 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804, E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

PART 71—INSPECTION AND CERTIFICATION

48. The authority citation for Part 71 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

PART 72—CONSTRUCTION AND ARRANGEMENT

49. The authority citation for Part 72 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 75—LIFESAVING EQUIPMENT

50. The authority citation for Part 75 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 76—FIRE PROTECTION EQUIPMENT

51. The authority citation for Part 76 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

52. The authority citation for Part 77 is revised to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 78—OPERATIONS

53. The authority citation for Part 78 is revised to read as follows and all other authority citations in the part are removed:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 8105; 49 U.S.C. App. 1804; E.O. 11735, 38

FR 21243; 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 79—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS AND NUCLEAR VESSELS

59. The authority citation for Part 79 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 80—DISCLOSURE OF SAFETY STANDARDS AND COUNTRY OF REGISTRY

60. The authority citation for Part 80 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 90—GENERAL PROVISIONS

61. The authority citation for Part 90 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 91—INSPECTION AND CERTIFICATION

62. The authority citation for Part 91 is revised to read as follows:

Authority: 46 U.S.C. 3306; 33 U.S.C. 1321(j); E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 3 CFR 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

PART 92—CONSTRUCTION AND ARRANGEMENT

63. The authority citation for Part 92 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 93—STABILITY

64. The authority citation for Part 93 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 94—LIFESAVING EQUIPMENT

65. The authority citation for Part 94 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3102; 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 95—FIRE PROTECTION EQUIPMENT

66. The authority citation for Part 95 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

67. The authority citation for Part 96 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 97—OPERATIONS

68. The authority citation for Part 97 is revised to read as follows and all other authority citations in the part are removed:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 227; 49 CFR 1.46.

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

72. The authority citation for Part 98 is revised to read as follows and all other authority citations in the part are removed:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 99—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR NUCLEAR VESSELS

73. The authority citation for Part 99 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

74. The authority citation for Part 105 is revised to read as follows and all other authority citations in the part are removed:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

PART 106—OCEAN THERMAL ENERGY CONVERSION FACILITIES AND PLANTSHIPS

75. The authority citation for Part 106 is revised to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 49 CFR 1.46.

SUBCHAPTER I-A—MOBILE OFFSHORE DRILLING UNITS

PART 107—INSPECTION AND CERTIFICATION

76. The authority citation for Part 107 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115; 49 CFR 1.45, 1.46; Section 107.05 also issued under the authority of 44 U.S.C. 3507.

PART 108—DESIGN AND EQUIPMENT

77. The authority citation for Part 108 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306, 5115; 49 CFR 1.46.

PART 109—OPERATIONS

78. The authority citation for Part 109 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115, 6101, 10104; 49 CFR 1.46.

SUBCHAPTER J—ELECTRICAL ENGINEERING

PART 110—GENERAL PROVISIONS

79. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 4104; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 110.01–2 also issued under the authority of 44 U.S.C. 3507.

PART 111—ELECTRIC SYSTEMS—GENERAL REQUIREMENTS

80. The authority citation for Part 111 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; 49 CFR 1.46.

PART 112—EMERGENCY LIGHTING AND POWER SYSTEMS

81. The authority citation for Part 112 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

82. The authority citation for Part 113 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

SUBCHAPTER N—DANGEROUS CARGOES

PART 146—TRANSPORTATION OR STORAGE OF MILITARY EXPLOSIVES ON BOARD VESSELS

83. The authority citation for Part 146 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1904; 49 CFR 1.45, 1.46; Section 146.01-5 also issued under the authority of 44 U.S.C. 3507.

PART 147—REGULATIONS GOVERNING USE OF DANGEROUS ARTICLES AS SHIPS' STORES AND SUPPLIES ON BOARD VESSELS

84. The authority citation for Part 147 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 147A—INTERIM REGULATIONS FOR SHIPBOARD FUMIGATION

85. The authority citation for Part 147A is revised to read as follows:

Authority: 46 U.S.C. App. 1804; 49 CFR 1.46.

PART 148—CARRIAGE OF SOLID HAZARDOUS MATERIALS IN BULK

86. The authority citation for Part 148 is revised to read as follows:

Authority: 49 U.S.C. App. 1804; 49 CFR 1.46.

SUBCHAPTER O—CERTAIN BULK DANGEROUS CARGOES

PART 150—COMPATIBILITY OF CARGOES

87. The authority citation for Part 150 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; Section 150.105 also issued under the authority of 44 U.S.C. 3507.

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

88. The authority citation for Part 151 is revised to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

89. The authority citation for Part 153 is revised to read as follows:

Authority: 46 U.S.C. 3703; 49 U.S.C. App. 1804; 33 U.S.C. 1903; 49 CFR 1.46.

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

90. The authority citation for Part 154 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 154a—SPECIAL INTERIM REGULATIONS FOR ISSUANCE OF LETTERS OF COMPLIANCE TO BARGES AND EXISTING LIQUEFIED GAS VESSELS

91. The authority citation for Part 154a is revised to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46.

SUBCHAPTER Q—EQUIPMENT, CONSTRUCTION, AND MATERIALS: SPECIFICATIONS AND APPROVAL

PART 159—APPROVAL OF EQUIPMENT AND MATERIALS

92. The authority citation for Part 159 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; 3703; 49 CFR 1.45, 1.46; Section 159.001-9 also issued under the authority of 44 U.S.C. 3507.

PART 160—LIFESAVING EQUIPMENT

93. The authority for Part 160 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 161—ELECTRICAL EQUIPMENT

94. The authority citation for Part 161 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 162—ENGINEERING EQUIPMENT

95. The authority citation for Part 162 is revised to read as follows and all other authority citations in the part except the authority citation for Subpart 162.050, are removed:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 11735, 38 FR 21243, 3 CFR 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 163—CONSTRUCTION

96. The authority citation for Part 163 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 164—MATERIALS

97. The authority citation for Part 164 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

SUBCHAPTER R—NAUTICAL SCHOOLS

PART 166—DESIGNATION AND APPROVAL OF NAUTICAL SCHOOL SHIPS

98. The authority citation for Part 166 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 2103, 3306, 8105; 46 U.S.C. App. 1295g; 49 CFR 1.46.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

99. The authority citation for Part 167 is revised to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 168—CIVILIAN NAUTICAL SCHOOL VESSELS

100. The authority citation for Part 168 is revised to read as follows:

Authority: 46 U.S.C. 3306; 46 U.S.C. App. 1295g; 49 CFR 1.46.

PART 169—SAILING SCHOOL VESSELS

101. The authority citation for Part 169 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.45, 1.46; Section 169.117 also issued under the authority of 44 U.S.C. 3507.

SUBCHAPTER S—SUBDIVISION AND STABILITY

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

102. The authority citation for Part 170 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

103. The authority citation for Part 171 is revised to read as follows:

Authority: 46 U.S.C. 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

104. The authority citation for Part 172 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 173—SPECIAL RULES PERTAINING TO VESSEL USE

105. The authority citation for Part 173 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2113, 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

106. The authority citation for Part 174 is revised to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 175—GENERAL PROVISIONS

107. The authority citation for Part 175 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 175.01-3 also issued under the authority of 44 U.S.C. 3507.

PART 176—INSPECTION AND CERTIFICATION

108. The authority citation for Part 176 is revised to read as follows and all other authority citations in the part are removed:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 8105; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 177—CONSTRUCTION AND ARRANGEMENT

109. The authority citation for Part 177 is revised to read as follows and all other authority citation in the part are removed:

Authority: 46 U.S.C. 3306, 5115; 49 CFR 1.46.

PART 180—LIFESAVING EQUIPMENT

110. The authority citation for Part 180 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 181—FIRE PROTECTION EQUIPMENT

111. The authority citation for Part 181 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

PART 182—MACHINERY INSTALLATION

112. The authority citation for Part 182 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

PART 183—ELECTRICAL INSTALLATION

113. The authority citation for Part 183 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

PART 184—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

114. The authority citation for Part 184 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

PART 185—OPERATIONS

115. The authority citation for Part 185 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3306, 6101, 8105; 49 CFR 1.46.

SUBCHAPTER U—OCEANOGRAPHIC RESEARCH VESSELS

PART 188—GENERAL PROVISIONS

116. The authority citation for Part 188 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 2113, 3306, 5115; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 189—INSPECTION AND CERTIFICATION

117. The authority citation for Part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

PART 190—CONSTRUCTION AND ARRANGEMENT

118. The authority citation for Part 190 is revised to read as follows:

Authority: 46 U.S.C. 2213, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 192—LIFESAVING EQUIPMENT

119. The authority citation for Part 192 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 2213, 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 193—FIRE PROTECTION EQUIPMENT

120. The authority citation for Part 193 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 194—HANDLING, USE AND CONTROL OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES

121. The authority citation for Part 194 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

122. The authority citation for Part 195 is revised to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 196—OPERATIONS

123. The authority citation for Part 196 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

SUBCHAPTER V—MARINE OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 197—GENERAL PROVISIONS

124. The authority citation for Part 197 is revised to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 6101; 49 CFR 1.46.

CHAPTER III—COAST GUARD (GREAT LAKES PILOTAGE), DEPARTMENT OF TRANSPORTATION

PART 401—GREAT LAKES PILOTAGE REGULATIONS

125. The authority citation for Part 401 is revised to read as follows:

Authority: 46 U.S.C. 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46; Section 401.105 also issued under the authority of 44 U.S.C. 3507.

PART 402—GREAT LAKES PILOTAGE RULES AND ORDERS

126. The authority citation for Part 402 is revised to read as follows:

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

PART 403—GREAT LAKES PILOTAGE UNIFORM ACCOUNTING SYSTEM

126. The authority citation for Part 403 is revised to read as follows:

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

Dated: September 16, 1988.

J.E. Vorbach,

Chief Counsel.

[FR Doc. 88–21973 Filed 9–26–88; 8:45 am]

BILLING CODE 4910–14–M

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46 CFR Parts 31, 70, 90, 107, 153 and 188

[CGD 88–070]

Editorial Changes Reflecting Recent Coast Guard Reorganization; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting errors to zip codes which appear in rule document 88–070 published on September 7, 1988 at 53 FR 34532.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don M. Wrye: (202) 267–1534.

In rule document 88–070 beginning on page 34532 in the issue of Wednesday, September 7, 1988, make the following corrrections:

PARTS 31, 70, 90, 107 AND 188—[CORRECTED]

1. In the following amendatory instructions of rule document 88–070, on the page number indicated for the issue dated Wednesday, September 7, 1988, for the sections of Title 46, Chapter I, the zip code "07654" is removed and the zip code "07653–910" is added in its place at: amendatory instruction 15, page 34533, § 31.10–1(b); amendatory instruction 29, page 34534, § 70.35–5; amendatory instruction 32, page 34534, § 90.35–5; amendatory instruction 38, page 34534, § 107.115(b)(1); and amendatory instruction 139, page 34538, § 188.35(a).

PART 153—[CORRECTED]

2. In amendatory instruction 48 of rule document 88–070, on page 34535 of the issue dated Wednesday, September 7, 1988, for § 153.9, the zip code "20593–0001" is removed and the zip code "20593–0100" is added in its place.

Dated: September 19, 1988.

J. E. Vorbach,

Chief Counsel.

[FR Doc. 88–21974 Filed 9–26–88; 8:45 am]

BILLING CODE 4910–14–M

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46 CFR Parts 146 and 147

[CGD 88–072]

OMB Control Numbers Reporting and Recordkeeping Requirements; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting errors in its document publishing paperwork management control numbers assigned for Title 46, CFR, by the Office of Management and Budget (OMB) appearing at 53 FR 34296 on September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don M. Wrye, (202) 267–1534.

SUPPLEMENTARY INFORMATION: In rule document 88–072 published at 53 FR 34296 on September 6, 1988, the Coast Guard misnumbered the control number section for 46 CFR Part 147. This error was due to a revision of Part 147, which changed the section numbering throughout the Part, appearing at 53 FR 7749 on March 10, 1988. The correction to the section number for Part 147 will also require a correction to the control number display section appearing at 46 CFR 146.01–5(b), which was amended in the March 10, 1988 revision of Part 147 to contain the OMB control number assigned for Part 147.

In consideration of the foregoing, the following corrections adding language amending the display section in 46 CFR 146.01–5(b), and correcting the section number for the entry for Part 147 are made to rule document 88–072 published at 53 FR 34296 on September 6, 1988.

PART 146—[AMENDED]

§ 146.01–5 [Amended]

1. In the heading of the table displayed in § 146.01–5(b), the words "Subchapter N" are removed, and the words "46 CFR" are added in their place. The entry for Part 147 and its corresponding OMB control number are removed.

PART 147—[CORRECTED]

2. In rule document 88–072 published at 53 FR 34296 on September 6, 1988, in amendatory instruction 6, amending Part 147, on pages 34297 and 34298, the number 147.01–8 is removed in both places where it appears and the number 147.8 is added in its place.

Dated: September 19, 1988.

J. E. Vorbach,

Chief Counsel.

[FR Doc. 88–21975 Filed 9–26–88; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

46 CFR Part 326

RIN 2133–AA51

Marine Protection and Indemnity Insurance Under Contracts With Agents

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule revises regulations under which Protection and Indemnity (P&I) insurance is made available for vessels in the National Defense Reserve Fleet (NDRF), which includes the Ready Reserve Force (RRF) vessels. This rule omits all obsolete references to commercial underwriters and reflects that MARAD is now

providing self insurance for P&I coverage of NDRF vessels, including RRF vessels, which are assigned under contract to "Agents" (which term includes, General Agents, Berth Agents, Service Agreement Contractors and Ship Managers). It also explains how Agents should report claims and establishes the procedure under which Agents may settle P&I claims when in the best interests of the United States.

EFFECTIVE DATE: October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: On May 14, 1986, MARAD published in the **Federal Register** (51 FR 7659) a notice of proposed rulemaking (NPRM) that would amend its regulations on the responsibility for obtaining P&I insurance for vessels in the NDRF. The NPRM inadvertently omitted any reference to Berth Agents and referred to the vessel operators as General Agents. This reference included the traditional General Agents and the Service Agreement contractors that had been assigned RRF ships over the past decade. Since that time, MARAD has adopted a Ship Manager Contract for the operation and maintenance of its RRF vessels. Accordingly, as used in this final rule, the term "Agent" includes Ship Managers, traditional General Agents, Berth Agents and Service Agreement contractors.

The NPRM discussed MARAD's responsibility to preserve and maintain all vessels placed in the NDRF (50 U.S.C. 17434). Since MARAD acts as "owner" of these NDRF vessels, it enters into contracts with Agents. All these contracts require the Agent to assist the Government in processing claims for injury to persons or property arising out of the maintenance and operation of the vessel.

This final rule reflects MARAD's current practice of self-insuring all P&I risks with respect to the operation and maintenance of all NDRF vessels that are under contracts with Agents, consistent with P&I insurance provisions set forth in other MARAD regulations (46 CFR Part 315). It also preserves MARAD's option of engaging a commercial underwriter.

The 60 day comment period for the NPRM expired on July 14, 1986. The sole comment received by MARAD was from Interocean Management Corporation (IOM). IOM addressed the appropriate dollar limit on the settlement authority of an Agent, without prior MARAD approval. The NPRM proposed $3,000 as a reasonable upper limit for this claims settlement authority. IOM believes the $3,000 figure to be inadequate, as it would only cover a vessel's liability for the most minor costs of injuries, i.e., a single month's unearned wages, overtime and vacation benefits for an ordinary seaman. Specifically, IOM submits that in a $3,000 settlement, the salary compensation alone would total almost $2,000. It would allocate the remaining $1,000 for legal fees, assuming that the attorney will receive one-third of the settlement amount.

IOM further suggests that the $3,000 authorized settlement limit would not allow payment of an additional $240 cost ($8/day for 30 days) for maintenance due to the seaman's inability to work during the month. In order to make it worthwhile for the Agent to effect a settlement that would relieve MARAD of the administrative burden for a particular claim and use the Agent's expertise, IOM proposes that the minimum settlement authority should be $7,500. IOM concludes that this figure would allow a payment to the seaman of up to $5,000 for lost wages and related compensation, without regard to maintenance and cure payments that might be at issue, and up to $2,500 for attorney's fees. (The term "maintenance and cure" refers to the maritime practice that holds a shipowner to be responsible, irrespective of fault, for providing subsistence and care for a seaman who accidentally falls ill or is injured while in the service of the vessel.)

IOM's comments prompted MARAD to analyze its history of nonlitigated settlements for personal injury claims covered by P&I insurance for the two fiscal years ended September 30, 1986 and 1987. During this period, MARAD has authorized its Agents to settle fourteen claims. MARAD has analyzed these settlements by dollar population intervals of $0 to $3,000, $3,001 to $5,000, and above $5,000. Four of these settled claims were within the $0 to $3,000 range, four were within the $3,001 to $5,000 and six claims were greater than $5,000. In recognition of this experience, as well as its objective to reduce its administrative burden and to avail itself of the expertise of Agents in evaluating and disposing of routine P&I insurance claims, MARAD provides in the final rule for Agents to have settlement authority of $5,000 for routine P&I claims.

MARAD is not adopting IOM's proposal that settlement authority be increased to $7,500 in order to allow for legal fees. The amount of legal fees is a matter between a claimant and his or her counsel. To fix a settlement limit that has a built-in component for attorney's fees could encourage inflated settlements. A $5,000 settlement limit would provide for unearned wages, repatriation expenses (where appropriate) and other expenses routinely paid to seamen, which are the usual components of a settlement. This increased settlement authority is subject to the condition that Agents may settle claims up to $5,000 only when it is in the best interests of the United States. Prior to executing a settlement agreement, the Agent is required to notify MARAD of the offer to be tendered in order to assure the availability of funds. MARAD reviews settlements on a quarterly basis.

E.O. 12291 Statutory and DOT Requirements

MARAD has determined that this final rule is neither major, as defined in E.O. 12291, nor significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The rule merely formalizes the present arrangement between MARAD and Agents concerning the responsibility for providing P&I insurance and handling incidents of a P&I nature. This longstanding practice is reflected in contractural provisions. MARAD has not placed P&I insurance with underwriters since 1971 and is unaware of any other persons with an economic interest in this rulemaking. There would be no shifting of significant cost burdens between the Agents and MARAD with respect to insurance. MARAD has always paid the full cost of P&I insurnace premiums when policies were issued by a commercial underwriter. When Agents were responsible for placing the insurance, they merely had to contract the designated underwriter to arrange P&I insurance for specific vessels. MARAD has already contracted with the underwriters to insure NDRF vessels.

The adoption of this rule reflects that MARAD has realized savings through electing to self-insure for P&I risks, rather than paying an annual P&I insurance premium. The estimated savings in insurance premiums would average about $250,000 per vessel, during peacetime, in the present insurance market. This estimated $250,000 annual premium rate is based upon insuring a single typical cargo vessel in the NDRF for a liability limit of $100,000,000 per accident, with a $25,000 deductible, and is exclusive of war risk P&I insurance coverage.

During the period for which MARAD reviewed its P&I claim settlement, only

five vessels were activated, all from the RRF. MARAD's claims experience as a self-insurer over the past decade has been limited, due to the small number of vessels and claims involved, and has been favorable. Based on MARAD's recent claims experience, the average annual amount of P&I claims settled, on a per vessel basis, was $9,200. Since this amount was within the typical "deductibles" limit of $25,000 for commercial P&I insurance coverage for a single vessel, in no case did MARAD incur a cost that would have been paid by insurance if it had obtained P&I insurance from an underwriter. However, this experience does not preclude the possibility of the Government absorbing claims and expenses in excess of the estimated savings in insurance premiums.

Accordingly, the economic impact has been found to be so minimal that further evaluation is not necessary. Since this rule has application to and effect only on MARAD and Agents that are usually of substantial size, the Maritime Administrator certifies that it will not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). The existing rule contains information reporting requirements in §§ 326.4 through 326.7. Since the respondents are agents of the United States, pursuant to their contracts with MARAD, and the collected information is not "used for general and statistical purposes," this is not a "collection of information" (5 CFR 1320.7) requiring OMB approval, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this final rule has no federalism implication that warrants the preparation of a federalism assessment.

List of Subjects in 46 CFR Part 326

Claims, Insurance, Seamen.

Accordingly, 46 CFR Part 326 is revised to read as follows:

PART 326—MARINE PROTECTION AND INDEMNITY INSURANCE UNDER AGREEMENTS WITH AGENTS

Sec.

326.1 Purpose.
326.2 Insurer.
326.3 Insured.
326.4 Reports of Accidents and occurrences.
326.5 Report of claims.
326.6 Settlement of claims.
326.7 Litigation.

Authority: 50 U.S.C. App. 1744; 46 U.S.C. 121a; 1114(b); 49 CFR 1.66.

§ 326.1 Purpose.

This part states that the Maritime Administration (MARAD) shall be responsible for providing or obtaining marine protection and indemnity (P&I) insurance for any vessel that has been placed in the National Defense Reserve Fleet (NDRF), which includes the Ready Reserve Force component, which vessel is assigned under a General Agency Agreement. These various forms of Agreements are entered into by the United States, acting by and through the National Shipping Authority, MARAD, and a private company (Agent). An agreement also contains procedures for the Agent to report accidents and occurrences of a P&I nature to MARAD and to report and settle P&I claims.

§ 326.2 Insurer.

MARAD shall be responsible for providing or obtaining P&I insurance for all vessels assigned to Agents under an Agreement. At its election, MARAD may be a self-insurer of any one or more vessels covered by the Agreement, or may obtain P&I insurance coverage under one or more policies written by underwriters of marine insurance. MARAD shall determine the amount of coverage to be provided or obtained.

§ 326.3 Insured.

The insureds are: The United States of America, acting by and through the Director, National Shipping Authority, Maritime Administration, Department of Transportation, and its Agents (including Agents' employees). Sub-agents shall be insureds only as expressly provided in the Agreement. Independent contractors of the Agents are not insureds.

§ 326.4 Reports of Accidents and occurrences.

The Agent shall report every accident or occurrence of a P&I nature promptly to both the Director, Office of Trade Analysis and Insurance, Maritime Administration, 500 Seventh Street, SW., Room 8121, Washington, DC 20590, Tel. (202) 366-1461, and the contracting officer named in the Agreement. If MARAD has obtained P&I insurance through a marine insurance underwriter, the Agent also shall concurrently file a report of such accident or occurrence with the underwriter. MARAD shall disclose full details as the identity of such underwriter to the Agent.

§ 326.5 Report of claims.

The Agent also shall submit a quarterly report of all claims of a P&I insurance nature to the Director, Office of Trade Analysis and Insurance. The report shall contain all relevant information, *e.g.*, the names of the vessels and of the claimant, the date of the injury or occurrence, the amount claimed, the basis for any payments already disbursed in behalf of the United States, estimated future costs and an evaluation of the claim of the merits.

§ 326.6 Settlement of claims.

(a) After ascertaining from MARAD the availability of funds, the Agent is authorized to settle individual claims of a P&I insurance nature that do not exceed $5,000. For a settlement in excess of $5,000, the Agent shall obtain MARAD's prior approval through the Director, Office of Trade Analysis and Insurance. If MARAD has placed the P&I insurance with an insurance underwriter, the Agent also shall obtain the prior approval of the underwriter to settle claims.

(b) The amount of individual claims that do not exceed the Agent's limit for settlement shall be chargeable by the Agent to the vessel expense and shall be accounted for in accordance with current accounting instructions of MARAD.

(c) When settling any such claim, the Agent shall advise the claimant that such settlement shall be accounted for in accordance with current accounting instructions, and shall also advise the claimant that such settlement is not to be construed as an admission of liability by or on behalf of the United States, the Agent or any other person.

(d) The Agent shall apply sound judgment and follow standard practices of vessel operators in the settlement or other disposition of such P&I insurance claims, and shall settle such claims only when the settlement is adequately supported by all the facts and circumstances and is in the best interest of the United States.

§ 316.7 Litigation.

(a) If a court suit of a P&I nature is filed which arises out of the activities of the Agent under its Agreement, wherein the Agent is named as the party defendant or one of the parties' defendant irrespective of whether the risk is covered by P&I insurance, the Agent shall immediately forward copies of the pleading and all other related legal documents, by first class mail, to the Chief Counsel, Maritime Administration, Department of Transportation, Washington, DC 20590, and to the Attorney General, Attn: Civil Division, Torts Branch, Department of Justice, Washington, DC 20530. No agent or authorized subagent shall incur any legal expenses in connection with any

claim of a P&I nature, unless approved in advance by MARAD, and by the underwriter, where applicable. However, the Agent may incur legal expenses if the mission of the vessel will be frustrated or impeded and/or time will not permit such prior approval.

(b) In the event of any attachment or seizure of a vessel, whether or not the risk is of a P&I nature, the Agent shall immediately notify the Chief Counsel, Maritime Administration, Washington, DC 20590, Tel. (202) 366-05711, by telegram, radio, or cable.

By order of the Maritime Administrator.

Dated: September 22, 1988.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 88-22101 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-431; RM-5767; RM-5819]

Radio Broadcasting Services; Cottonwood, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 289A to Cottonwood, Arizona, as that community's second local FM services, as requested by KVRD, Inc. (RM-5767). A second proposal at Cottonwood to substitute Channel 240C for Channel 240A and to modify the license of Station KSMK(FM), as requested by Central Broadcasting Company (RM-5819) will be treated in a separate document since that proponent's preferred site is in conflict with the site specified by Station KQZE-FM, Channel 239C, St. Johns, Arizona, thus requiring additional information from each. Reference coordinates for Channel 289A are 34-44-42 and 112-01-24. With this action, the proceeding is terminated with respect to RM-5767 only.

DATES: Effective November 7, 1988; the window period for filing applications on Channel 289A at Cottonwood, Arizona, will open on November 8, 1988, and close on December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530, concerning the allotment. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, MM Docket No. 87-431, adopted August 18, 1988, and released September 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Arizona, by adding Channel 289A at Cottonwood.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22054 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-440; RM-5921]

Radio Broadcasting Services; Pukalani, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C2 for Channel 252A at Pukalani, Hawaii, and modifies the license for Station KMVI-FM at the request of the licensee, Obie Broadcasting of Maui, Inc., to provide for a first wide coverage area station at coordinates 20-42-19 and 156-21-54. With this action this proceeding is terminated.

EFFECTIVE DATE: November 7, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-440, adopted August 18, 1988, and released September 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Hawaii by adding Channel 252C2 at Pukalani and removing Channel 252A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22058 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-613; RM-6055]

Radio Broadcasting Services; Jenkins, KY

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This document substitutes Channel 232C2 for Channel 232A at Jenkins, Kentucky, and modifies the Class A license for Station WIFX(FM) to specify Channel 232C2, as requested, thereby providing that community with its first wide coverage area FM service. The coordinates for Channel 232C2 at Jenkins, Kentucky are 37-09-00 and 82-46-30. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 7, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-613, adopted August 2, 1988, and released September 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202)

857-3800, 2100 M Street NW; Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Jenkins, Kentucky by adding Channel 232C2 and deleting Channel 232A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22053 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-310; RM-5851, RM-6121]

Radio Broadcasting Services; and Chippewa Falls, WI and Red Wing, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 290C2 for Channel 288A at Red Wing, Minnesota, and modifies the license of Station KWNG(FM) to reflect operation on the higher class channel, at the request of Sorenson Broadcasting Corp. The upgrade could provide Red Wing with its first wide coverage area FM station. Channel 290C2 can be allotted to Red Wing in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.5 kilometers (14.6 miles) east of the community at coordinates 44-29-10 and 92-14-30. This action also denies a mutually exclusive proposal for the substitution of Channel 291C2 for 288A at Chippewa Falls, Wisconsin (RM-5851). With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-310, adopted August 29, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Minnesota by deleting Channel 288A and adding Channel 290C2 for Red Wing.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22057 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-399; RM-5967, RM-6171]

Radio Broadcasting Services; Kingwood and Barrackville, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 226A to Barrackville, West Virginia, as that community's first local FM service at the request of Barrackville Radio. This document also allots Channel 299A to Kingwood, West Virginia, as that community's second local FM service, as requested by WFSP, Inc. The channels can be allotted in compliance with the Commission's minimum spacing requirements. The coordinates for Barrackville are 39-30-13 and 80-10-01 and Kingwood's coordinates are 39-28-18 and 79-41-00. With this action, this proceeding is terminated.

DATES: Effective November 7, 1988; the window period for filing applications will open on November 8, 1988, and close on December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-399, adopted August 23, 1988, and released September 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Channel 226A to Barrackville, West Virginia; and adding Channel 299A to Kingwood, West Virginia.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22055 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-249; RM-6336]

Television Broadcasting Services; Cochran, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of the Georgia Public Telecommunications Commission, substitutes noncommercial educational television Channel *29+ for noncommercial educational Channel *15 at Cochran, Georgia, and modifies its license for Station WDCO to specify operation on the newly allotted channel. Channel *29+ can be allotted to Cochran in compliance with the Commission's minimum distance separation requirements and can be used at Station WDCO's present transmitter site. The coordinates for this allotment are North Latitude 32-28-11 and West Longitude 83-15-17. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 7, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-249, adopted August 18, 1988, and released September 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets

Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments for Georgia is revised by amending the entry for Cochran by deleting Channel *15 and adding Channel *29+.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22060 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-174; RM-5465]

Radio Broadcasting Services; Glenwood Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 256C2 for Channel 255C2 in Glenwood Springs, Colorado, and modifies the license of Station KMTS-FM, Glenwood Springs, in response to a petition for reconsideration filed by Whale Communications of Colorado, Inc. The allotment of Channel 256C2 will provide Glenwood Springs with its first wide coverage area FM broadcast service, and allow the grant of Whale Communication's application to modify its station. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-174, adopted August 19, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suit 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado is amended by substituting Channel 256C2 for Channel 255C2 at Glenwood Springs.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22051 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-400; RM-5809, RM-5908]

Radio Broadcasting Services; Mosinee and Shawano, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 234C2 to Mosinee, Wisconsin, as that community's first local FM service at the request of William A. Kasten. A site restriction of 18.6 kilometers (11.6 miles) north of the community is required, at coordinates 44-56-55 and 89-41-52. In addition, this action denies a mutually exclusive proposal for the substitution of Channel 234C2 for Channel 257A at Shawano, Wisconsin (RM-5908). With this action, this proceeding is terminated.

DATES: Effective November 3, 1988; the window period for filing applications will open on November 4, 1988, and close on December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-400, adopted August 29, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Wisconsin by adding Channel 234C2 for Mosinee.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22049 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-114; RM-5496, RM-5987, RM-5988]

Television Broadcasting Services; Tallahassee, Port St. Joe, Panama City Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Family Group Broadcasting, allots Channel 24 to Tallahassee, Florida, as the community's third local commercial television service. Channel 27 can be allotted to Tallahassee in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.6 kilometers (10.4 miles) to avoid a short-spacing to Stations WGXA, Channel 24, Macon, Georgia, and WTXL-TV, Channel 27, Tallahassee. The coordinates for this allotment are North Latitude 30-17-56 and West Longitude 84-19-41. However, since this allotment is within 329.0 kilometers of Tampa, Florida, applications may not be accepted for filing if the Commission's freeze on such applications is still in effect. *See, Order,* 52 FR 28346, July 29, 1987. The counterproposal of Tallahassee—27 Limited Partnership requesting the allotment of Channel 24 to Port St. Joe, Florida, is denied since

no interest in its use was expressed. The counterproposal filed by the G. Weaver Corporation requesting the allotment of Channel 24 to Panama City Beach, Florida, is dismissed as moot. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 31, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-114, adopted August 24, 1988, and released September 15, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments for Florida is amended by amending the entry for Tallahassee by adding Channel 24.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22050 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-614; RM-5996]

Radio Broadcasting Services; Valley Station, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290A to Valley Station, Kentucky, as its first FM channel at the request of Mid-America Communications, Inc. Coordinates for Channel 290A are 38-06-40 and 85-52-13. With this action, this proceeding is terminated.

DATES: *Effective* October 31, 1988; the window period for filing applications will open on November 1, 1988, and close on December 1, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-614, adopted August 24, 1988, and released September 15, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Valley Station, Kentucky, Channel 290A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-21873 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-189G; Amdt. No. 172-113]

Hazardous Materials Regulations; Miscellaneous Amendment

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations (HMR) to relocate the identification number cross reference to proper shipping names which appears as Appendix A to Subpart B in Part 172 (49 CFR Parts 171-179). This cross reference listing will appear as an index in the 1989 edition of the 49 CFR immediately following the Table of Contents to Part 172. This action will allow RSPA to update and publish the listing in the Code of Federal Regulations without the cost and effort associated with publication in the **Federal Register.** The intended effect of this action is to provide up-to-date cross reference information to users of the HMR.

EFFECTIVE DATE: September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Jacquelyn F. Smith, Standards Division, Office of Hazardous Materials Transportation, 400 Seventh Street SW., Washington, DC 20590, Telephone (202) 366-4488.

SUPPLEMENTARY INFORMATION: An alphanumeric listing, containing a cross reference index of identification numbers and proper shipping names shown in the Hazardous Materials Table in § 172.101 and the Optional Hazardous Materials Table in § 172.102, appears as Appendix A to Subpart B in Part 172. This listing is provided for informational purposes only and as a convenience for users. RSPA has not routinely updated this listing largely due to the effort and cost associated with publishing the listing in the **Federal Register.** Removing the listing as Appendix A to Subpart B of Part 172 and adding it as an index immediately following the Table of Contents to Part 172 allows RSPA to update and publish the index annually in the Code of Federal Regulations without the added burden of publishing it in the **Federal Register.**

Since this amendment imposes no new requirement and is merely procedural in nature, notice and public procedure are unnecessary. For this same reason, this amendment is effective without the customary 30-day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

The RSPA has determined that this rule, as promulgated, is not a major rule under the terms of Executive Order 12291 or significant under DOT implementing procedures (44 FR 11034). A final regulatory evaluation and environmental assessment were not prepared as this amendment is not a substantive change in the HMR.

Given the fact that this amendment is procedural in nature and imposes no regulatory duties, I certify that this amendment will not, as promulgated, have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule has no federalism implications.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation.

In consideration of the foregoing, 49 CFR Part 172 is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, and 1806; 49 CFR Part 1, unless otherwise noted.

Appendix A to Subpart B [Removed].

2. In Part 172, Appendix A to Subpart B, titled "Identification Number Cross Reference to Proper Shipping Names in §§ 172.101 and 172.102" is removed. Note: The listing will be updated annually by RSPA and published in the 49 CFR as an index immediately following the Table of Contents to Part 172.

Issued in Washington, DC, on September 13, 1988, under authority delegated in 49 CFR Part 1.53.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88-22097 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Technical Amendments to the Sea Otter Translocation Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the Translocation Regulations for southern sea otters, a threatened species of marine mammal, that were published in the **Federal Register** on August 11, 1987. The original regulations were promulgated for the translocation of southern sea otters to San Nicolas Island pursuant to Pub. L. 99-625.

The amendment rectifies certain technical problems identified during the first year of the translocation project. The problems concerned the age and number of animals released at any one time, the number of animals with radio transmitters to be captured, the reason for capture, and the retention of animals in temporary holding pens. The changes are expected to promote survival and reduce dispersal of the translocation sea otters.

DATES: This rule takes effect on September 27, 1988.

ADDRESSES: The complete file for this final rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service (Service), Ventura Endangered Species Recovery Office, 2140 Eastman Avenue, Suite 100, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Opdycke, Field Supervisor, at the above address (805-644-1766 or FTS 983-6039).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Pub. L. 99-625, the original regulations found at 50 CFR 17.84(d) provided for a four-stage plan for the translocation of southern sea otters (*Enhydra lutris nereis*) from a parent population on the central California coast to a Translocation Zone around San Nicolas Island, California. The process described in the original regulations included techniques for capture, transport, holding, and release. During the first year of translocation, under the original regulations, it became apparent that the techniques could be improved to enhance survival and reduce dispersal of the translocated sea otters, and that improved techniques can be expected to have a lesser impact on the parent population.

Authorization of the translocation enabled the Service to translocate up to 70 sea otters a year, totaling no more than 250 sea otters in a 5-year period. According to the original translocation regulations up to 20 of the animals translocated each year were to be adults; the remainder were to be weaned, immature sea otters. The capture was restricted to the period between August and mid-October, during which time the weather in Southern California is mostly passive.

After capture, the animals were to be inspected by veterinarians and tagged for identification. Each year, up to thirty sea otters were to be captured prior to translocation and surgically inplanted with radio transmitters. They were then to be released back into the parent population. Of the thirty radioed sea otters up to fifteen were to be recaptured and translocated to San Nicolas Island.

All of the translocated sea otters were to be transported from their place of capture to be held and observed in specially constructed holding facilities. A minimum of 20 sea otters were to be translocated at each time; therefore, the captured sea otters were to be held in captivity until at least 20 individuals had been captured. After each sea otter was determined to be fit-to-travel, the group was to be transported by truck, then flown by airplane to San Nicolas Island.

Once at the island, the sea otters were to be transferred to a stationary floating pen, where they were to be held for up to 5 days. Male and female sea otters were to be held separately, and no more than ten sea otters were to be held in any pen. After allowing time for the sea otters to acclimatize to their new surroundings, the nets were to be removed from the pens and the animals allowed to leave at will.

The translocated sea otters were to be monitored to determine the population growth rate, behavior, impact on the marine environment, and dispersal tendencies. Sea otters from either population were to be restricted to their current range on the mainland coast north of Point Conception or to the Translocation Zone around San Nicolas Island. Any sea otter found in the "no otter" Management Zone was captured using non-lethal means and transported back to the Translocation Zone or the current mainland range.

Problems arose with the translocation during the first year of the project. The difficulties occured primarily because sea otters became wary and increasingly difficult to capture after exposure to capture activities in their home territories. This affected the ability of the Service to select specific individuals for translocation. It also affected the time needed to obtain the correct number and composition of sea otters. As a result, the age ratio of translocated sea otters was very difficult to predetermine, as was the recapture of sea otters with radio transmitters. In addition, the stress imposed upon the animals while awaiting translocation in holding pens on the mainland resulted in several mortalities.

Another problem arose when the sea otters were held in floating pens at the translocation site. Instead of calming the animals and allowing them time to adjust to the new environment, the additional holding period increased stress and unduly agitated the sea otters. As a result, three sea otters died.

The final amendments to the regulations improve the probability for sea otter survival by minimizing stress, thereby enhancing the establishment of the population at San Nicolas Island.

The changes are intended to: (1) provide more flexibility in selecting the ages of sea otters for translocation; (2) eliminate the restriction to capture sea otters only within the August to mid-October time-frame; (3) eliminate the requirement to surgically implant up to thirty sea otters with radio transmitters; (4) provide flexibility to either immediately transport sea otters or hold them on the mainland before release at San Nicolas Island; and (5) eliminate the restriction to translocate a minimum of 20 sea otters at a time. All other aspects of the translocation, including administration of the "no-otter" Management Zone, remain the same as stated in the original rule.

Pursuant to 5 U.S.C. 553(d)(3), the Service finds that good cause exists to have this rule take effect upon publication. It is essential to the success of this year's translocation that it commence during the period in which weather conditions are most likely to be favorable.

Summary of Comments and Recommendations

The proposed rule was published in the **Federal Register** on August 19, 1988 (53 FR 31722), at which time all interested parties were invited to comment on the proposal during the comment period that extended through August 29, 1988. Written comments on the proposal were received from the following organizations: Friends of the Sea Otter, Save Our Shellfish, and the Central California Council of Diving Clubs (Council). Friends of the Sea Otter supported the second year phase of the translocation and all procedural modifications, as proposed. Save Our Shellfish and the Council did not support the proposed changes and provided comments on the proposed rule, as well as comments of a general nature concerning the translocation project or responding to an annual report on the project.

The Marine Mammal Commission recommended in a comment on the Service's application for a permit for the translocation project under the Endangered Species Act that future status and progress reports should include assessments of the impacts of the reintroduction effort on the parent sea otter population in California. Since 1982, biologists from the Service and the California Department of Fish and Game have conducted spring surveys on the parent sea otter population in California. These data are provided below:

SUMMARY OF SPRING SURVEYS OF THE SEA OTTER POPULATION IN CALIFORNIA, 1982–88

Year	Independent	Pups	Total
1982	1,124	222	1,346
1983	1,131	120	1,251
1984	1,181	123	1,304
1985	1,124	236	1,360
1986	1,345	225	1,570
1987	1,430	220	1,650
1988	1,505	219	1,724

The Service plans to continue these spring surveys in future years. Based on the 1988 spring survey, compared to previous spring surveys, there is no evidence of any impact on the mainland population from translocating sea otters to San Nicolas Island.

Responses to all comments responding to the proposal are presented below:

Comment 1: The comment period of 10 days for the proposed rule was inadequate.

Response: The proposed rule explained why the Service limited the public comment period to only 10 days. The best time to capture sea otters for the translocation is during late summer and early autumn before the winter storm systems start to arrive on the central California coast. In addition, the availability of sea otters of the size required for the translocation is best during this same time period. Therefore, the implementation of a decision to carry out the second year of the translocation would have to begin as soon as possible to maximize the chances of establishing a new colony of sea otters at San Nicolas Island.

Comment 2: The Fish and Wildlife Service's containment program for the 1987/88 experiment has been inadequate.

Response: The containment program is a cooperative effort between the Fish and Wildlife Service and the California Department of Fish and Game and has been in effect since the first sea otters were released at San Nicolas Island on August 27, 1987. A Containment Strategy Plan developed and implemented by the Service outlines the program operation. The Service's Ventura Endangered Species Recovery Office has the lead for surveillance of the Management Zone, primarily by aerial and land-based surveys. All reports of sea otters in the Management Zone are validated by the Ventura Office biologists. If otters are found, their activity is closely monitored preparatory to mounting a capture effort. California Department of Fish and Game biologists comprise the principal capture team at this time with support from the Service's management and research biologists. Transportation, release, and post-release monitoring of captured otters is accomplished primarily by Service biologists. Service biologists are expected to receive training in the use of rebreathers this year after which they will also participate more intensively in capture operations. As of late July 1988, 37 reports of otters have been received, only 15 of which proved to be sea otters. A female and her pup were captured and returned to the mainland range. No otters have become established in the Management Zone.

Comment 3: The rule should specify improvements to the containment process.

Response: The existing rule does not limit or restrict containment operation beyond the requirement to use non-lethal means. The Service and/or the California Department of Fish and Game can implement new non-lethal procedures within the Management Zone without proposing a rule change. Improvements are currently being implemented. For example, Service biologists are expected to receive training in the use of rebreathers this year to augment future capture operations. Such improvements to the containment program do not need to be covered in any rule change in order to be implemented.

Comment 4: The rule should be augmented to specify attachment of radio transmitters or transponders to all translocated otters.

Response: The existing rule does not limit or restrict the use of flipper tag transmitters, therefore it need not be included in the proposed rule change. The Service requested and was granted an amendment to its Federal permit to use radio flipper tags. All otters translocated to San Nicolas Island this year will be flipper-tagged with a transmitter or transponder.

Comment 5: The statement that younger sea otters are less likely to disperse is not supportable.

Response: While several of the animals that returned to their mainland range were juveniles, in the opinion of the Service large or old sea otters are more likely to leave San Nicolas Island than are small or young animals. As of late July 1988, the average weight of the 14 sea otters that returned to the mainland (dead or alive) was 39 lbs. The average weight of 16 sea otters remaining at San Nicolas Island (four of the 20 individuals at the Island could not be individually identified, and thus their weights were now known) was 32 lbs.

These mean weights are significantly different (probability is less than 0.05; Student's t-test). The smallest animal that left the Island weighed 24 lbs. Of the 14 sea otters that left San Nicolas Island by late July, only 4 (29%) weighed less than 35 lbs., whereas of the 16 animals with known weights remaining at the Island, 12 (75%) weighed less than 35 lbs. These data clearly illustrate that small or young animals are more likely to remain at San Nicolas Island.

Comment 6: Future severe winter storms will tear out kelp beds and disperse sea otters.

Response: The Service agrees that severe storms will tear out some kelp beds and may also result in the dispersal of some otters. There is no indication such storms at San Nicolas Island will result in a failure of otters to colonize the island. San Nicolas Island differs from the mainland range of the sea otter in California in that there is always some part of the island that is protected from the full force of a storm. One of the worst winter storms on record occurred in southern California during January 1988. This storm caused considerable damage to the kelp beds around San Nicolas Island. However, there were still large amounts of kelp remaining after the storm.

Comment 7: The El Nino oceanic phenomenon will cause sea otters to disperse from San Nicolas Island, and as pelagic crabs become abundant as a result of El Nino, this forage base will assist in the dispersal of sea otters.

Response: There are no data to support this comment. Based on the behavior of sea otters at San Nicolas Island last winter, they will seek refuge in kelp that remains undamaged nearshore and on the protected side of the island. In addition, all the evidence from the first year indicates that the sea otters are "homing," rather than "dispersing." There is no evidence from the containment program that any of the sea otters have dispersed into the "no otter" Management Zone and become residents. Instead, all sea otters that have returned to the mainland have either been accounted for back in the parent population (homing) or they have disappeared (they have either died, not been resighted yet, or lost their tags and are not identifiable). It is unlikely to make much difference whether there is an increase in the abundance of pelagic red crabs, since the sea otters seem capable of reaching the mainland without the pelagic crabs. The sea otters that are leaving San Nicolas Island are not remaining between the islands, around the islands, or in the Management Zone, but rather passing through the Management Zone on their way back to the parent population. It is unlikely that pelagic red crabs would alter this strong homing behavior.

Comment 8: The Fish and Wildlife Service failed to radio tag all sea otters translocated to San Nicolas Island.

Response: It was never proposed or planned to radio-tag all the sea otters reintroduced to San Nicolas Island. The original plan was to recapture and translocate about 15 sea otters that had been previously implanted with intraperitoneal transmitters. It turned out to be very difficult to recapture these sea otters; only three were translocated to San Nicolas Island. However, transmitters mounted on flipper tags were used on several of the sea otters taken to the island toward the end of the first year. It has been proposed that all sea otters translocated to the island in the future be fitted with flipper-mounted transmitters.

Comment 9: Any success gained by introducing young sea otters to San Nicolas Island will be short lived and likely undone in a short period of time as a result of the problems mentioned in the comments above.

Response: Comment Noted. In the opinion of the Service, there is good indication that with the proposed changes the translocation program will be a success, as examined in an environmental assessment prepared in August 1988 in connection with the adoption of these amendments.

Comment 10: One comment expressed skepticism that, with or without the proposed amendments, the Service would be able to capture a sufficiently large number of otters to establish a colony of 70 at San Nicolas. The respondent estimated that over 400 otters would have to be captured to provide the 250 they may eventually be translocated, and maintained that increased wariness of otters would hamper captures.

Response: The objectives of the changes in the translocation procedures are to reduce sea otter mortality associated with the capture and transport processes and to reduce the number of animals leaving San Nicolas Island. Based on an analysis of weights in relation to sea otters that have returned to the mainland population from San Nicolas Island, the number of homing sea otters will be significantly reduced by the proposed changes since it is likely that some animals died from stress after being released at San Nicolas Island, the proposed changes in the transport and release procedures should result in more sea otters being successfully established at the Island and thus somewhat reduce the number that need to be translocated.

Nevertheless, the Service recognizes that many more otters may have to be captured than are translocated, particularly since the Service will concentrate on translocating younger otters, so that the proportion released at capture will likely be greater during the second year. Due to recruitment, a large number of sea otters in the 25 to 35 pound range become available each year for capture. Given the multi-year time span of the translocation project, the Service is confident that it will be possible to capture a large enough number of otters.

Comment 11: Prior to translocation, the Fish and Wildlife Service stated there was sufficient knowledge concerning sea otter behavior to support a successful relocation. The failures of the first year appear to demonstrate that it has been a "learn as you go/on the job training program funded at great public expense."

Response: According to criteria established in the Translocation Plan, the first year's translocation effort is not a failure. Although the first year did not go as well as had been hoped, the results are sufficiently encouraging to continue with the project. Furthermore, as identified in the Translocation Plan, the purpose of the project is essentially twofold: (1) a recovery action; and (2) a research project to establish an experimental population of sea otters. From the beginning, the Service expected to gain new and important insights into the factors that determine a successful translocation as well as information on sea otter behavior and ecological relationships. These goals were presented as an integral component of the Translocation Plan.

Comment 12: Aircraft used for overflights should always be equipped with the proper receiving equipment to detect radio-tagged otters.

Response: This past year the Service has equipped survey aircraft with proper receiving equipment whenever searching for otters with radio transmitters that are missing from San Nicolas Island. This procedure will continue this second year. Radio tracking equipment has been ordered by the Ventura Field Office and will be used during all surveillance flights over the Management Zone.

Comment 13: The annual report excludes traffic other than fishing boats in assessing boat traffic in the vicinity of San Nicolas.

Response: Table 2 of the annual report on the sea otter translocation does not exclude vessels other than fishing boats. A kelp cutter and research and military vessels have been observed and

recorded off San Nicolas Island and are included in Table 2 under the category "Other Vessels." As indicated in the table, fishing activity accounts for the majority of the vessels at San Nicolas Island, and the number and frequency of island visits by "Other Vessels" is relatively small. For this reason kelp cutting, research, and military vessels were included in a single category. Should the activities of these or any other vessels increase and become significant, such activities will also be specifically identified.

Comment 14: How many otters remain at San Nicolas?

Response: As of the distribution date of the annual report in mid-August 1988, 20 sea otters had been consistently sighted at San Nicolas Island (see Page 3 of annual report). Since then, as the kelp beds were expanded, the otters have moved farther off-shore and consequently are more difficult to locate. This phenomenon also occurs on the mainland—autumn counts are always lower than spring counts. Surveys over the past few weeks have identified at least 14 otters in the nearshore waters around San Nicolas Island.

Comment 15: The Service promised not to restrict access to the vicinity of the island, but then imposed restrictions.

Response: In 1985, the Project Leader for the Office of Sea Otter Coordination, Sacramento, California, stated that the Service did not intend to restrict public access for otherwise legal activities at San Nicolas Island. Activities known to be harmful to sea otters, such as gill and trammel net fishing, were to have been restricted. The Service has not restricted or closed off any public access to San Nicolas Island, although it has assisted, at the request of the Navy (see pages 9–10 of annual report), with enforcement of preexisting Federal regulations promulgated in 1965 that close certain areas around the island to non-military vessel activity. Service Wildlife Officers have assisted the navy with informing vessel operators when they are in violation of Federal law.

Comment 16: One flying survey per month is inadequte to monitor the presence of otters in the Management Zone.

Response: In the opinion of Service biologists responsible for managing the containment program, a single aerial survey a month is adequate to determine if otters are becoming established in the Management Zone. In addition to this survey, the Service relies heavily on public reporting of sea otters and, in fact, most reports of sea otters received by the Service have been from the public. A "watch dog" committee has been established by the fishing community to report sea otters observed in the Management Zone and to stay with the sea otters until the Service can arrive at the site for validation, monitoring and capture. Also, the California State Department of Fish and Game conducts monthly aerial surveys over portions of the Management Zone and reports to the Service any sea otters that are observed. Furthermore, State Law Enforcement Wardens patrol the Channel Island with several vessels and report sea otters if they are observed. Last, the Service has requested the National Park Service, National Marine Fisheries Service, State Department of Parks and Recreation and County Parks and Beaches to report any sea otters that are observed.

Comment 17: The annual report contains no information on observations of otter behavior, but considerable detail on observations of fishermen. The Service has placed more emphasis on observing fishermen than biological study of sea otters.

Response: The Service has in fact been gathering information on the behavior of otters. As an example, a preliminary analysis of 561 sea otter foraging dives at San Nicolas Island indicates the following proportion of food items in their diet: 51% sea urchins, 18.5% unknown, 9% mole crabs, 7% crabs, 4.5% black abalone, 2% snails, 1% lobster, and 7% of other known species.

Comment 18: The report is biased because it compares the San Nicolas translocation with the 1969–70 Washington State translocation, but not with an unsuccessful translocation in Oregon at about the same time.

Response: The discussion in the annual report centers around the initial decline, but eventual success, of a translocated population of sea otters. The Washington State reintroduction was a good example of what might be expected from a successful sea otter translocation. If the San Nicolas Island experimental translocation fails, then a comparison with the failed sea otter translocation in Oregon would be appropriate.

Executive Order 12291, Paperwork Reduction Act and Regulatory Flexibility Act

The Service has determined that this is not a major rule as defined by Executive Order 12291, that the rule will not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and that the rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These conclusions were reached after an analysis that is documented in a Determination of Effects of Rules, which is on file and available for public review at the address listed under **ADDRESSES,** above.

The effects of the amendments will not be significantly greater than those of the original rule. Since the establishment of the sea otter population at San Nicolas Island is not proceeding as rapidly as had been originally expected, effects to commercial and sport fisheries will occur later than had been projected. Projected increases in commercial kelp harvest may also be delayed.

National Environmental Policy Act

An Environmental Assessment pertaining to this proposal has been prepared and is available for inspection at: Ventura Endangered Species Recovery Office, (see **ADDRESSES** above). It has been determined that this is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Author

The primary author of this final rule is Teresa Nichols, Ventura Endangered Species Recovery Office (see **ADDRESSES,** above).

Final Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Section 17.84 is amended by revising paragraphs (d)(2), (d)(3)(i), (d)(3)(ii) and (d)(3)(iii) to read as follows:

§ 17.84 Special Rules—vertebrates.

* * * * *

(d) * * *

(2) *Description of experimental population.* The experimental population of southern sea otters shall include all southern sea otters found within the translocation zone or the management zone. The Service will translocate no more than 70 southern sea otters during the first year, supplemented as

necessary with up to 70 otters per year in subsequent years from the parent population to the translocation zone. Although a maximum of 250 southern sea otters may be moved from the parent population in order to establish the experimental population in the translocation zone, it is not likely that supplemental translocation after the initial 70 will involve more than small numbers of southern sea otters, although under this plan a maximum of 70 could be moved if needed in each year up to a total of 250. The majority of animals translocated each year will be weaned, immature sea otters with a sex ratio of about 4 to 1, females to males. Of the adult sea otters selected for translocation, approximately 3 out of every 4 animals will be female.

(3) *Translocation process*—(i) *Capture.* Capture locations will be selected primarily from the southern third of the range of the parent population. Sea otters will be captured using diver-held devices, dip nets, surface entangling nets, or other methods which may be proven to be safe and effective in the future. All captured otters will be tagged and examined by a veterinarian experienced in treating marine mammals.

(ii) *Transport.* All animals to be translocated will be transported directly to the translocation zone or held in specially constructed holding facilities prior to their movement to the translocation zone. Access to and care of animals will be restricted to Federal and State personnel and designated agents directly involved with the translocation. Each captured animal will be placed in a carrying cage and transported by truck to the local airport, from which point they will be flown to the translocation zone. From there they will be trucked to the release site.

(iii) *Release.* The animals will be released directly into the wild from their transport cages, or held for up to 5 days in secured floating pens at the release site. No more than 10 individuals will be held in any pen, and adult males will be held separately. When held in floating pens the animals will be released passively by opening the floating pens and allowing animals to leave at will.

* * * * *

Dated: September 21, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-21981 Filed 9-26-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of closure.

SUMMARY: NOAA announces closure of the Bering Sea and Aleutian Islands Management Area to further retention of Atka mackerel by U.S. vessels. This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), limits retention of Atka mackerel to those amounts specified for total allowable catch (TAC) and allowable biological catch (ABC).

DATES: Effective September 22, 1988. Comments will be accepted through October 7, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Pat Peacock, Resource Management Specialist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the EEZ of the Bering Sea and Aleutian Islands area under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.93 and Part 675.

Under § 675.20(a)(4)(ii)(8), the Regional Director has determined that the TAC of Atka mackerel in the Bering Sea and Aleutian Islands Management Area (17,850 mt) will be reached by September 22, 1988. Therefore, U.S. fishermen must treat Atka mackerel in the same manner as prohibited species, as described in § 675.20(c), for the remainder of the fishing year.

Other notices concerning Atka mackerel are at 53 FR 894 (January 14, 1988) and 53 FR 33140 (August 30, 1988).

Classification

This action is taken under the authority of 50 CFR 675.20(a) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and opportunity for comment. Immediate effectiveness of this notice is necessary to prevent the TAC and ABC of Atka mackerel from being exceeded.

Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: September 22, 1988.

Joe P. Clem,

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

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Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amendment No. 306 EH]

Food Stamp Program; Employment and Training Requirements—Performance-based Funding

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish a performance-based measure and allocation method to distribute $7.5 million in grant funds to State agencies for their Food Stamp Employment and Training (E&T) Programs, beginning in Fiscal Year 1989. The Department originally announced its intention to establish such a performance-based measure in the preamble to the final rulemaking published on December 31, 1986 (51 FR 35152), which implemented the E&T requirements contained in the Food Security Act of 1985. The allocation method proposed in this rule is intended to provide financial incentives for State agencies to operate effective E&T programs.

DATE: There is a need to expedite final publication of this rule because it calls for the distribution of $7.5 million in Fiscal Year 1989. For this funding to be distributed with enough time for State agencies to incorporate it into their E&T programs the usual comment period is being shortened. Comments must be received October 27, 1988.

ADDRESS: Comments should be addressed to Art Foley, Supervisor, Legislation and Work Policy Section, Family Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to Mr. Foley at the above address or by telephone at (703) 756–3389.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as non-major. The effect of this action on the economy will be less than $100 million. This action will have no effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.551. For the reasons set forth in the final rule related Notice(s) of 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). S. Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected as they administer the Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the Act. The OMB approval number for these requirements is 0584–0339.

Background

This rulemaking proposes a performance-based measure and allocation method to distribute $7.5 million in Employment and Training Program grant funds to State agencies to assist the States in meeting their administrative costs in operating E&T programs.

The employment and training provisions of the Food Stamp Act of 1977 were enacted "for the purpose of assisting members of households participating in the Food Stamp Program in gaining skills, training or experience that will increase their ability to obtain regular employment." (7 U.S.C. 2015(d)(4)(A)) These previsions were implemented in the final regulations issued on December 31, 1986 (51 FR 35152). A major point of emphasis in the legislation is that State agencies be provided flexibility in designing the programs they wish to operate. The role of the Department in approving State plans and monitoring State agency performance is to ensure that each State agency operates a meaningful program that enables its able-bodied stamp recipients to improve their employment prospects.

The Department believes that achievement of these goals can be enhanced by using a performance-based measure and allocation method to allocate among the State agencies some of the grant funds available. By doing so, the Department will reward State agencies for good performance and will thereby provide extra incentive for State agencies to perform well. The Department announced its intention to use such a method to allocate $15 million in grant funds in the preamble to the December 31, 1986 rule. (51 Fr 35152, 35155) For Fiscal Year 1989 this amount has been reduced by one-half to enable State agencies to maximize their expenditures, but will be set at $15 million in subsequent years.

Performance-Based Funding

Public Law 99–198 amend the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*) to authorize the Department of Agriculture to distribute among State agencies $60 million in E&T grants in Fiscal Year 1988 and $75 million in each of Fiscal Years 1989 and 1990. (In addition to E&T grants which require no State matching, State agencies also receive Federal matching funds for approved expenditures for participant reimbursements up to $12.50 per participant per month and 50 percent reimbursement for additional administrative costs above the initial Federal grant.)

Current regulations allocate E&T grant money according to each State agency's food stamp caseload as a percentage of the country's total food stamp caseload. (7 CFR 273.7(d)) This ratio determines each State agency's portion of the available grant funds. The Department will allocate the additional $7.5 million in FY 1989 and $15 million in subsequent years according to a measure of each State agency's performance in operating employment and training programs relative to the performance of all State agencies

To arrive at a performance measure, the Department considered a variety of input, process and outcome measures. Input measures, such as the number of work registrants in a State, would base performance-based funding shares on the potential size or cost of a State's E&T program. (In and of themselves, however, input measures would be a poor means of determining performance, although they could be used in conjunction with other measures to rank States in terms of cost-effectiveness or by the percentage of the potential caseload being served.) Process measures would emphasize the relative level of E&T activities among State agencies by tracking the number of food stamp recipients who actually participate in E&T activities or are otherwise dealt with by program operators. Outcome measures would either track participants during or after E&T involvement, or use a proxy to determine a program's success in helping participants reach a predetermined goal, such as the number of participants who obtain jobs and therefore receive fewer food stamp benefits.

The Department is proposing to use a process measure which calculates the total number of each eligible State agency's E&T mandatory placements as a percentage of all the State agencies' E&T mandatory participants eligible to be placed. An E&T mandatory participants is defined as a food stamp program applicant or participant who is required to work register under 7 U.S.C. 2014(d)(1) or (2) and who the State determines should not be exempted from participation in an employment and training program. State agencies may consider a person placed if the person commences an employment and training component, or fails to comply with E&T requirements and is sent a Noticed of Adverse Action for noncompliance. (Eligibility for performance-based funding will be explained later in this preamble.) This percentage would then be multiplied by $7.5 million FY 1989 and $15 million in later years, to arrive at each State agency's share of performance-based funding.

The Department is proposing this measure for several reasons. First, using this measure would provide more money to those State agencies which are more active than others in providing training and services to food stamp particpants and in taking administrative action in accordance with regulatory requirements against noncompliant individuals. Second, this will provide States with an incentive to serve E&T mandatory participants, the population for whom food stamp E&T is intended. We do not believe that the Department is providing a disincentive to States which wish to serve volunteers, and will continue counting volunteers toward achievement of performance standards. Third, this measure will use data which all State agencies should be collecting and reporting consistently. Data necessary for an outcome performance standard are not now available. State agencies are not currently required to track and report on participants who obtain jobs, the types of jobs they obtain, or the effects of employment or disqualifications on program costs. On examination, other proxies of program outcomes, such as a comparison of the number of work registrants in different time periods, were judged to be too dependent on factors (such as general economic conditions) to be a fair measure of a State agency's E&T program. The Department has decided, therefore, that the number of E&T mandatory participants reported as placed by State is currently the best measure for distributing performance-based funding.

Measurement Period for Performance-Based Funding

The Department is proposing that the measurement period for each fiscal year's funding be the calendar which ends three quarters before the beginning of the pertinent fiscal year. For example, data from Calendar Year 1988 would be used to determine performance-based funding allocations for Fiscal Year 1990. This schedule would apply for each year after Fiscal Year 1989, the first year in which performance-based funding will be distributed. For Fiscal Year 1989, only data from the second, third and fourth quarters of Calendar Year 1987 would be used, because employment and training programs were not implemented until April, 1987. This schedule will enable the Department to notify State agencies prior to the beginning of each fiscal year of the portion of the enhanced funding they will receive that year. This schedule would then allow State agencies to effectively plan for the use of the performance-based funding. The schedule also minimizes the period of time between the end of the measurement period and issuance of allocation amounts, while using data due to be reported early enough for there to be some time to resolve questions on the data, such as discrepancies between monthly, quarterly and annual figures, or to obtain missing categories of data.

For Fiscal Year 1989, however, performance-based funding cannot be allocated until final regulations are pulished. This will not occur before the Fiscal Year 1989 E&T plans are due to be submitted. For Fiscal Year 1989, therefore, State agencies will receive extra performance-based funding after the start of the fiscal year. While this is not ideal, the Department believes it is preferable to move to a performance-based measure after the start of Fiscal Year 1989, rather than to distribute an additional $7.5 million according to the current, general allocation formula in Fiscal Year 1989 only to remove it from the general allocation base in Fiscal Year 1990.

Eligibility for Performance-Based Funding

The performance-based funding method proposed in this rule is not the only measure of State agency E&T performance that has a financial impact. Current regulations provide that, starting in Fiscal Year 1989, State agencies must meet performance standards or be liable for a financial sanction. These performance standards require 35 percent of the State agency's non-exempt work registrants to begin a component or be referred for sanction during both the first quarter of Fiscal Year 1989 and the remainder of Fiscal Year 1989. (Fiscal Year 1989 is somewhat unusual because it is the only year in which State agencies must meet a standard for the first quarter and one for the remaining three quarters of the year.) The performance standard level increases to 50 percent for Fiscal Year 1990. Under current regulations, the Department will inform State agencies of performance standard requirements for following years at a later time. State agencies may request, and have approved prospectively, lower performance standards for a fiscal year if they supply convincing justification that a lower standard is warranted due to the types of individuals they are serving or high-intensity components being offered. If a State agency does not meet its performance standard, it loses a portion of its administrative funding

equal to the percentage by which it failed to meet its performance standard, multiplied by its E&T grant.

Because the use of a ratio of State agency placements to national placements provides a portion of performance-based funding to those State agencies which are being financially penalized for poor performance, the Department is proposing to limit the eligibility for performance-based funding starting in Fiscal Year 1991 to State agencies which have met their performance standards, as set forth in § 273.7(o), for the second prior fiscal year. (For Fiscal Year 1991, the Fiscal Year 1989 standard must be met.) The delay in applying this provision is because performance standards take effect for the first time in Fiscal Year 1989. For example, if a State agency does not meet each of the performance standards for Fiscal Year 1989 (for the first quarter and the remaining three quarters), then it would be ineligible for any performance-based funding for Fiscal Year 1991. If a State agency does not meet the 50 percent performance standard for Fiscal Year 1990, then it would be ineligible for any share of Fiscal Year 1992 performance-based funding. As stated above, State agencies may request and have approved prospectively lower performance standards for a fiscal year, if they supply convincing justification. If a State agency has had its performance standard lowered prospectively, it need meet only that lower standard to be eligible for a portion of the performance-based funding pool. State agencies which are determined to be ineligible for any performance-based funding in a given year will have their placements omitted in computing the national placement total when calculating performance-based shares for eligible State agencies.

Because the Department intends to inform State agencies in May or June of each year of the funding shares available for the following fiscal year for E&T grants, including any performance-based funding, the Department needs to establish a final date by which reports must be received in order for the data to be considered. The FNS-583 report is due to the appropriate regional office 45 days following the end of a quarter. The Department expects reports to be submitted by this date. However, in order to clearly state how late reports will be treated, this rule proposes that any report received by FNS later than March 1 shall not be considered when performance-based funding is calculated for the fiscal year beginning the next October. Additionally, if a State agency has not submitted all reports for the prior fiscal year (the last of which is due by mid-November) and, due to missing reports, the Department cannot determine whether the State agency has met the pertinent performance standard, the State agency will not be eligible to receive any performance-based funding for the fiscal year beginning the following October.

This rule also proposes that the data used to determine whether a State agency has met its performance standard in order to be considered eligible for performance-based funding shall be the data that is submitted on the quarterly reports for a fiscal year. Even if a State agency files an appeal to show that it had good cause for not meeting its performance standard, the results of that hearing would not render the State agency eligible for a share of the performance-based funding, if the data it submitted shows that its performance was below the standard. The appeal, of course, would have an impact on whether the State agency is sanctioned for failure to meet the standard. The proposed approach is necessary in order to ensure that the distribution of performance-based funding is not belatedly or repeatedly modified for all State agencies, based on the results of hearings of a small number of State agencies.

Outcome Measures

This proposed measure does not attempt to distribute funding based on the outcomes of participation in food stamp employment and training programs (such as the number of participants who obtain regular employment). We currently do not require State agencies to track participants to determine who obtains jobs. We believe that outcome-based performance measures may be more appropriate as the employment and training program matures, and will be exploring this option in the future. To that end, in addition to soliciting comments on the approach proposed in this rulemaking, we are also soliciting comments on whether performance-based funding should ultimately rely on outcome-based measures and recommendations on what those measures should be, as well as how State agencies should be required to gather and report data to determine those measures.

The Department is committed to distributing funding on the basis which provides the most effective incentives for realizing the goals of the E&T Program. The Department views this proposed regulation as an interim measure which makes the best possible use of the existing data base. However, the Department is willing to require expanded data collection if any added burden of data collection is outweighed by the benefits of better aligning funding with performance. For example, measures of program outcomes such as increased earnings and decreased dependency on food stamps may offer better evidence of program success than measures of the breadth of implementation. Outcome measures are not reported now and collecting them would entail increased reporting requirements. The Department is soliciting comments on (1) the potential of different allocation methodologies for improving services to participants; (2) the effect of these methodologies on the equity of State agency funding; (3) the specifications for any new data to be collected; (4) the costs of any new data collection. If the response to these issues indicates that there is a better methodology, the Department will move as quickly as possible to replace the interim measures developed as a result of this rulemaking with the better approach.

List of Subjects in 7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food Stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

For the reasons set out in the preamble, 7 CFR Part 273 is proposed to be amended as follows.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. The authority citation for Part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

2. In § 273.7:

a. The title of paragraph (d)(1) is revised.

b. The first sentence of paragraph (d)(1)(i)(A) is amended by removing the words "paragraph (d)(1)(i)(B)" and adding the words "paragraphs (d)(1)(i)(B) and (C)" in their place.

c. Paragraphs (d)(1)(i)(B) through (E) are redesignated as paragraphs (d)(1)(i)(C) through (F), and a new paragraph (d)(1)(i)(B) is added to read as follows:

§ 273.7 Work requirements.

* * * * *

(d) *Federal financial participation*

(1) Employment and training grants.

(i) * * *

(B) *Performance-based funding.* The Secretary shall allocate $7.5 million in Fiscal Year 1989 and $15 million of the Federal funds available each fiscal year thereafter for employment and training grants on the basis of the number of E & T mandatory participants reported as placements, as defined in 273.7(o)(2), in a prior period. Performance-based funding shall be based on the number of E & T mandatories placed in an eligible State as a ratio of E & T mandatory participants placed in all eligible States in the calendar year that ends nine months before the beginning of the fiscal year (e.g., Fiscal Year 1990 performance-based funding shall be based on placements in Calendar Year 1988). In order to be eligible for a share of performance-based funding for Fiscal Year 1991, a State agency must have met its performance standard (as established prospectively) for the first quarter of Fiscal Year 1989 and its performance standard for the final three quarters of Fiscal Year 1989. In order to be eligible for a share of performance-based funding for Fiscal Year 1992 or any fiscal year thereafter, a State agency must have met its performance standard (as established prospectively) for the second preceding fiscal year (e.g., to receive any performance-based funding for Fiscal Year 1992, a State agency must have met its performance standard for Fiscal Year 1990). Reports containing data on mandatories placed, described in § 273.7(c)(6), (7), and (8), shall be received by FNS no later than March 1 in order to be used in determining whether a State agency is eligible for performance-based funding and in calculating the performance-based funding share for the fiscal year beginning the following October. If the data on the reports show that a State agency did not meet its performance standard for the second preceding fiscal year or if missing reports prevent the Department from being able to determine if a State agency met such performance standard, data on placements by the State agency shall be completely disregarded when determining performance-based funding shares for other eligible State agencies. No State agency will be eligible for performance-based funding if it has met its performance standard for the second preceding fiscal year, regardless of whether a good cause appeal is filed.

* * * * *

Date: September 20, 1988.

Sonia F. Crow,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 88-21998 Filed 9-26-88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 906

Proposed Expenses and Assessment Rate for Marketing Order Covering Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 906 for the 1988–89 fiscal period established for that order. The proposal is needed for the Texas Valley Citrus Committee to incur operating expenses during the 1988–89 fiscal period and to collect funds during that period to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by October 7, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20900-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

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

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 906 (7 CFR Part 906) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 22 handlers of oranges and grapefruit under this marketing order, and approximately 3,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may classified as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such period. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Texas Valley Citrus Committee met September 6, 1988, and unanimously recommended 1988–89 fiscal period expenditures of $1,376,634 and an assessment rate of $0.12 per 7/10 bushel carton of assessable oranges and

grapefruit shipped under M.O. 906. In comparison, 1987–88 budgeted expenditures were $857,400 with an assessment rate of $0.10 per 7/10 bushel carton shipped. Major expenditure items this year in comparison to 1987–88 actual expenditures (in parentheses) are $1,080,000 ($462,000) for advertising and promotion, $143,634 ($96,601) for the mex-fly program, and $153,000 ($96,920) for program administration. The increase in advertising expenses is needed to market the 1988–89 production expected to be 15 percent higher than last season. The increase in program administration expenses is needed to cover salary and rent increases and the anticipated cost of participating in a possible citrus conference in California.

An estimated assessment income of $918,528 based on the shipment of 7,654,400 cartons of oranges and grapefruit, along with $35,000 in interest income, $54,000 in prepaid advertising and $369,106 to be taken from the operating reserve will be utilized to cover the proposed 1988–89 fiscal period expenditures.

Unexpended funds from the 1987–88 fiscal period will be placed in the committee's operating reserves. The reserves are well within the maximum authorized under the order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days in appropriate because the budget and assessment rate approvals for the Texas citrus program need to be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 906

Marketing agreements and orders, Oranges and grapefruit, Texas.

For the reasons set forth in the preamble, it is proposed that § 906.228 be added as follows:

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

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

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

2. New § 906.228 is added to read as follows:

§ 906.228 Expenses and assessment rate.

Expenses of $1,376,634 by the Texas Valley Citrus Committee are authorized, and an assessment rate of $0.12 per 7/10 bushel carton of assessable oranges and grapefruit is established for the fiscal period ending July 31, 1989. Unexpended funds from the 1987–88 fiscal year may be carried over as a reserve.

Dated: September 22, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–22106 Filed 9–26–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 981

[FV-88-126]

Almonds Grown in California; Administrative Rules and Regulations Concerning Reporting Requirements for Handler Information Sheets And Order Requirements for Sample Almond Packages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

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

The first change is sought to allow the Board to have on file certain organizational information regarding almond handlers regulated under the order to improve compliance activities. The second change would give the Board additional time to arrange for the production of sample packages. Additional time is necessary due to greatly increased handler demand for such packages.

DATE: Comments must be received by October 27, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20250–6456. Comments should reference the date and page number of this issue of the **Federal Register.** Comments will be available for public inspection in the Office of the Docket Clerk during regular business hours.

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

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

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

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

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

There are an estimated 115 handlers of almonds subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been

defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers, producers, and accepted users of California almonds may be classified as small entities.

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

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

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the new information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

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

This proposed addition of deadlines by which handlers must place orders with the Board for sample almond packages is needed because of the greatly increased volume of generic package sales to handlers.

Orders need to be placed 16 to 20 weeks in advance in order to provide adquate time to prepare the large volume of packages requested. The deadlines would help ensure an adequate suply of the sample almond packs for use by handlers in promoting California almonds, which may futher benefit the industry through subsequently increased sales of almonds in the marketplace.

Due to the addition of the above paragraph (F) to § 981.441(d)(1)(i), it is therefore also proposed that the present paragraph (F) be redesignated as paragraph (G).

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

List of subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

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

PART 981—[AMENDED]

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

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

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

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(d) * * *

(1) * * *

(i) * * *

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

(G) Handlers must file claims with the Board in order to receive credit for the distribution of sample packages. Except as provided in paragraph (b) of this section, no credit shall be granted unless a preliminary claim is filed on or before July 15 of the succeeding crop year and a final claim is filed on or before October 15 of the succeeding crop year. Each preliminary claim must be filed on ABC Form 31 (claim for advertising credit), stating that proof of distribution will be submitted as expeditiously as possible, but no later than October 15. If this preliminary claim is not filed on or before July 15, there will be no consideration of the claim under any circumstances. Each final claim must be submitted on ABC Form 31, and accompanied by appropriate proof of performance. This proof shall consist of a signed statement from the organization to which sample packages were distributed, on that organization's letterhead, stating:

(*1*) The name and address of the handler from whom the packages were received;

(*2*) The date of receipt;

(*3*) The volume of package received;

(*4*) How such packages will be used;

(*5*) A statement that such packages will not be used for resale.

* * * * *

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

* * * * *

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

Dated: September 21, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–21954 Filed 9–26–88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-26-AD]

Airworthiness Directives; Beech 33, T34, 35, 36, T42, 55, 56, and 95 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Beech 33, T34, 35, 36, T42, 55, 56, and 95 Series airplanes which would require repetitive inspections of the magnesium elevator control fittings for cracks and replacement of any found cracked with an aluminum fitting. The FAA has received several reports of these fittings cracking in service. Cracking of the magnesium fittings, if allowed to go uncorrected, may result in vibration, loss of elevator control, and possible loss of the airplane.

DATE: Comments must be received on or before November 29, 1988.

ADDRESSES: Beech Service Bulletin Number 2242, Revision 1, dated August 1988, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Dept. 52, P. O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-26-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Federal Aviation Administration, Wichita Aircraft Certification Office, ACE-120W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-26-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Inspection of the elevator magnesium control fittings on Beech 33, T34, 35, 36, T42, 55, 56, and 95 Series airplanes revealed several that were cracked in the vicinity of the four holes used to attach the fitting to the elevator and in areas around the fitting lightening holes. There has been one report of an in-flight failure of this fitting which resulted in the loss of elevator control and severe vibrations. Failure of this fitting could result in the loss of the airplane. As a result, Beech has developed Service Bulletin Number 2242 Revision 1, dated August 1988, that defines procedures to inspect these fittings, and if found cracked, replacement with an aluminum alloy casting.

Since the condition described is likely to exist or develop in other Beech Models of the same design, the proposed AD would require compliance with the Beech service bulletin on Beech 33, T34, 35, 36, T42, 55, 56, and 95 Series airplanes.

The FAA has determined there are approximately 15,000 airplanes affected by the proposed AD. The cost of labor and parts in the proposed AD is estimated to be $1120 per airplane. The total cost is estimated to be $16,800,000 to the private sector. The cost of compliance with the proposed AD is so small that it would be necessary that a small entity own four or more of the affected airplanes for there to be a significant financial impact on these entities. Few, if any, small entities will own this many of the affected airplanes.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1970) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contracting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to the airplanes listed below, certificated in any category:

Models	Serial numbers
35-33, 35-A33, 35-B33, 35-C33, E33.	CD-1 through CD-1234.
35-C33A, E33A	CE-1 through CE-289.
E33C	CJ-1 through CJ-25.
35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35-TC, V35A, V35A-TC.	D-1 through D-9068, D-15001 and D-15002.
36	E-1 through E-184.
95-55, 95-A55, 95-B55 95-B55A.	TC-1 through TC-1287.
95-C55, 95-C55A, D55, D55A.	TE-1 through TE-767.

Models	Serial numbers
56TC	TG-2 through TG-83.
95, B95, B95A, D95A, E95.	TD-2 through TD-721.

This Ad also applies to any of the following military airplanes which have been modified for civil certification as described on the applicable Federal Aviation Administration Type Certificate Data Sheet or Aviation Specification:

T34A, T34B (Commercial Model 45 Series)
T42A (Commercial Model 95-B55B)

Note: The magnesium fittings may have been installed as original equipment or as replacement spares.

Compliance: Required as indicated, unless already accomplished.

To prevent the failure of the magnesium elevator control fittings, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, determine the composition of the elevator control fittings in accordance with the instructions contained in Beech Service Bulletin No. 2242, Revision 1, dated August 1988.

(1) If the fittings are determined to be aluminum, no further action is required by this AD.

(2) If the fittings are determined to be magnesium, accomplish the actions specified below.

(b) At the time of the inspection per paragraph (a) above, and every 100 hours TIS thereafter, visually inspect each magnesium elevator control fitting for cracks in accordance with the above referenced Service Bulletin.

(c) If any fitting is found to be cracked, prior to further flight replace the cracked fitting with an aluminum fitting as described in the above referenced Service Bulletin.

(d) The above inspections are no longer required when aluminum fittings have been installed on both elevators.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) An equivalent means of compliance with this AD may be used if approved by the Manager, FAA Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beechcraft Aero and Aviation Centers; Beech Aircraft Corporation, Commercial Service, Dept. 52, P.O. Box 85, Wichita, Kansas 67201-0085, or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 15, 1988.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-21978 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASO-10]

Proposed Revocation of Transition Area; Camden, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Camden, AL, transition area. The transition area was designed to afford airspace protection for a NDB Standard Instrument Approach Procedure (SIAP) to the Camden Municipal Airport. The SIAP is no longer in effect; thus, no valid need exists to retain the transition area.

DATE: Comments must be received on or before: November 15, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 88-ASO-10, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a sefl-addressed, stampted postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASO-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the transition area, Camden, Alabama. The 700-foot transition area was established to afford airspace protection for aircraft executing a NDB standard instrument approach procedure to the Camden Municipal Airport. The approach procedure is no longer is effect; thus, no valid need exists to retain the transition area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

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

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Camden, AL [Removed]

Issued in East Point, Georgia, on September 16, 1988.

James L. Wright,

Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-22090 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[LR-115-86]

Tax on Sale or Removal of Gasoline

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment to proposed rules.

SUMMARY: This document withdraws and reserves the text of a paragraph that was part of a previously issued notice of proposed rulemaking. The Internal Revenue Service is issuing temporary regulations and a cross-referenced notice of proposed rulemaking relating to bond requirements under the gasoline excise tax to provide guidance that replaces the guidance provided in the paragraph that is hereby withdrawn. The notice of proposed rulemaking that is the subject of this amendment would provide guidance to gasoline refiners, importers, terminal operators, blenders, compounders, throughputters, and certain taxpayers that file for credit or refund of the gasoline excise tax.

ADDRESS: Internal Revenue Service, Attention CC:LR:T (LR-115-86), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1987, the Internal Revenue Service published a notice of proposed rulemaking (52 FR 44141) relating to the imposition of an excise tax on the removal or sale of gasoline by a refiner, importer, terminal operator, throughputter, blender, or compounder. That notice, in part, set forth proposed rules under Part 48 of Title 26, Code of Federal Regulations, including rules under section 4101 of the Internal Revenue Code of 1986.

This document withdraws and reserves the text of paragraph (c) of the proposed regulations under section 4101. All other provisions are unchanged.

Drafting Information

The principal author of the proposed regulations is Timothy J. McKenna, Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service.

List of Subjects in 26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

Amendments to Proposed Regulations

The proposed regulations for 26 CFR Part 48, published November 18, 1987, (52 FR 44141) are amended as follows:

PART 48—[AMENDED]

Paragraph 1. The authority for Part 48 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 48.4101-1 [Amended]

Par 2. In proposed regulations § 48.4101-1, the text for paragraph (c) is removed and reserved.

Lawrence B. Gibbs,

Commissioner of Internal Revenue

[FR Doc. 88-21436 Filed 9-26-88; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 48 and 602

[LR-77-88]

Gasoline Excise Tax Bond Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to bond requirements under the gasoline excise tax. The text of the temporary regulations also serves as the text for this Notice of Proposed Rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 28, 1988.

ADDRESS: Send comments and request for a public hearing to Internal Revenue Service, Attention: CC:LR:T (LR-77-88), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Internal Revenue Service, with copies to the Internal Revenue Service at the address previously specified.

The collection of information in this regulation is in section 26 CFR 48.4101-2T. This information is required by the Internal Revenue Service pursuant to section 4101. This information will be used to verify that registered gasoline excise taxpayers are financially responsible for payment of the gasoline excise taxes imposed. The likely respondents are individuals, business or other for-profit institutions, and small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden: 600 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 1 hour.

Estimated number of respondents and/or recordkeepers: 600.

Estimated frequency of responses: On occasion.

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 48 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations which are proposed to be based on the temporary regulations would amend Part 48 of Title 26 of the Code of Federal Regulations. The regulations provide rules relating to the bond requirements under sections 4101 and 4081 of the Internal Revenue Code of 1986, as added by section 1703 of the Tax Reform Act of 1986 (Pub. L. 99–514; 100 Stat. 2774).

For the text of the temporary regulations see T.D. 8231 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing, will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Timothy J. McKenna of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

26 CFR Part 602

Reporting and recordkeeping requirements.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–21435 Filed 9–26–88 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-029]

Generic Standard for Exposure Monitoring

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Notice is given that OSHA is undertaking, through rulemaking procedures under section 6(b) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655(b), an evaluation of the feasibility and usefulness of adoption of a generic standard on exposure monitoring for employees exposed to toxic substances. A generic standard is one that addresses a health related issue rather than a substance. The Agency is interested in determining if generic exposure monitoring requirements could be used, for example, to simplify development of future rules that where necessary, would contain exposure monitoring provisions, or could be used to provide for exposure measurement of employees who are not now entitled to such monitoring. Though OSHA has adopted exposure limits for the several hundred substances listed in the Z-tables contained in 29 CFR 1910.1000, there is no provision requiring that exposure monitoring be performed on employees exposed in excess of those limits. Thus, adoption of exposure monitoring requirements applicable to § 1910.1000 may be warranted.

DATES: Comments and information must be received on or before December 27, 1988.

ADDRESSES: Written submissions in response to this notice should be submitted in quadruplicate to the Docket Officer, Docket No. H–029, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone 202–523–7894. All written submissions and documents mentioned in this notice will be available for inspection and copying in Room N2625 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Director, Office of Information and Consumer Affairs, Room N3647, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION: OSHA's 6(b) health standards (with the exception of the 13 work practice standards governing carcinogens i.e. 29 CFR 1910.1003–1910.1016) contain employee exposure monitoring provisions as stipulated by section 6(b)(7) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 655 *et seq.* ("the Act".) These provisions, for the most part, address similar issues from standard to standard. These issues cover such topics as initial monitoring, frequency of monitoring, whether to use personal or area sampling, whether to use full shift or grab sampling, the notification of monitoring results to employees or employee representatives, the least acceptable accuracy of measurement, the provision and procedures for employees to observe monitoring, and the recordkeeping of employee exposure monitoring results.

The Agency is interested in determining if generic exposure monitoring requirements could be used to simplify the development of future rules that would necessarily contain exposure monitoring provisions or could be used where such requirements are not already in place. A generic standard would not be substance or industry specific but could apply to a broad number of chemicals and industries. By "where requirements are not already in place," the Agency is considering the application to some or all of the several hundred substances listed in the Z-tables contained in 29 CFR 1910.1000. Although OSHA has adopted exposure limits for these substances, there are currently no provisions in 29 CFR 1910.1000 requiring monitoring of employees' exposure. OSHA anticipates that the generic standard for exposure monitoring would establish broad performance criteria for an acceptable exposure monitoring program which

could include such provisions which have been adopted in most 6(b) standards and which are not specific to the chemical being regulated. However, OSHA is willing to consider other suggested regulatory and nonregulatory options which would accomplish our objectives of simplifying rulemaking and offering increased protection through exposure monitoring programs.

As an adjunct to the development of criteria for workplace exposure monitoring OSHA has initiated an evaluation of the effectiveness of exposure monitoring requirements in existing OSHA standards, in order to determine what has worked and what has not worked in practice, and if these requirements could be improved.

Comments and Information Requested

In order to assist the Agency in gathering as much information as possible for use in determining the usefulness of a generic exposure monitoring standard, OSHA has prepared a list of questions soliciting comment on issues pertinent to this rulemaking. OSHA requests that interested persons provide as much detail as possible in answer to the questions. Please explain the reasons for your responses and discuss why a particular action is advisable. The Agency also requests that interested persons submit additional comments and information on other issues deemed relevant that are not addressed by the questions in this notice. The information submitted in response to this notice will aid the Agency in determining whether to proceed with development of a notice of proposed rulemaking. All comments will become part of the record of any resulting rulemaking and will be carefully considered in the development of any proposed regulation.

In accordance with the provisions of Executive Order No. 12291 and the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, OSHA will determine whether this is a major action and if so, will prepare a Regulatory Impact Analysis. OSHA has prepared some questions to obtain information on technical feasibility, and economic and environmental impact of regulatory actions on affected industries in general and, on small businesses in particular. OSHA requests cost data related to the issues raised in the ANPR. To provide an accurate assessment and to best assist the Agency in estimating costs of regulatory alternatives, information should be as detailed as possible and should, if possible, discuss the effectiveness of various strategies in complying with a generic standard. (By cost data on strategies, OSHA is referring to the costs of any necessary monitoring, calibration, and analytical equipment incurred in complying with a generic standard. OSHA is also referring to additional costs incurred by such activities as taking samples, maintaining monitoring equipment, and keeping necessary records as required by a generic exposure monitoring standard.)

Issues

Data, views, and arguments are solicited on all of the issues described below as well as on other relevant issues.

1. Value of Exposure Monitoring

Exposure monitoring programs are used primarily to detect instances of employee overexposure and to indicate the effectiveness of an employer's exposure control program.

(a) Is exposure monitoring an effective means of determining overexposure and control method adequacy to enable the implementation of appropriate corrective actions to reduce exposure? If not, in what situations is it not?

(b) What exposure information is useful to determine that remedial action is necessary to reduce workplace heath risks?

(c) With respect to the objectives of exposure monitoring that were mentioned in the proceeding discussion, what data or information do you have that suggest that exposure monitoring programs meet these objectives? For example, are exposure monitoring programs effective tools for protection against overexposure or conditions that may lead to overexposure? For what specific objectives is exposure monitoring most effective? Least effective? Would it be appropriate for OSHA to adopt mandatory generic exposure monitoring provisions? Why? Why not?

(d) How should OSHA assess the cost and effectiveness of exposure monitoring as well as the balance between the two?

2. Criteria

Would it be possible or beneficial to develop standardized criteria to determine when and what workplace exposure monitoring is "necessary for the protection of employees" under section 6(b)(7) of the Act? Such criteria, for example, could be used to decide when mandatory exposure monitoring is appropriate, the frequency of monitoring, and the adequacy of certain monitoring methods. Should such criteria be developed through rulemaking or should they be developed as guidelines, perhaps by NIOSH or an expert advisory group? Do criteria or guidelines exist, perhaps in the public arena, which would be suitable for adoption by OSHA?

3. Effectiveness of Existing OSHA Requirements

(a) How effective have exposure monitoring requirements in OSHA standards been in ensuring compliance with the PELs? Is there information available about the effectiveness of specific standards? Have these requirements achieved the specific objectives which they were intended to achieve? What have been the costs?

(b) Could the exposure monitoring requirements be more effective? Could they be written so as to better complement and reinforce the other provisions of the standards? How should standards be written so as to optimize the value of exposure monitoring?

4. Scope and Application

OSHA is presently considering two options with respect to the applicability of a generic standard on exposure monitoring:

(a) OSHA could develop a standard that would be available for incorporation by reference into newly-developed 6(b) standards or revisions of existing standards (inluding revisions of the PELs found in the § 1910.1000 (Z tables.) Please comment on the appropriateness of this option, the impact that the implementation of this option would have on your industry, the technical and economic problems you foresee with implementation, and the benefits and advantages of implementing this option.

(b) Alternatively, adoption of generic exposure monitoring requirements only applicable to the substance in the Z tables found in § 1910.1000 is being considered. Monitoring could be required when the employer suspects that exposure levels could exceed a Z-table PEL or to ensure that levels do not exceed the PEL (by the use of initial monitoring.)

(1) Please comment on the appropriateness of this option, the impact that the implementation of this option would have on your industry, the problems you foresee with the implementation, and the benefits and advantages in implementing this option.

(2) If OSHA incorporates a generic exposure monitoring standard into § 1910.1000, are sampling and analytical methods available to the employer to determine compliance with the PELs found in the Z-tables? If not, which

substances cannot be feasibly monitored by employers and why?

(3) Are there other reasons why some of the § 1910.1000 substances would be more appropriate for coverage by a generic exposure monitoring standard than others?

(c) Technological feasibility of exposure measurement has been an issue during some of OSHA's 6(b) rulemaking efforts (e.g., asbestos (51 FR 22612) and ethylene oxide (49 FR 25734). These issues in some cases have included the availability of monitoring equipment for measuring exposures at the proposed permissible exposure limit, action level, short term exposure limit, or excursion limit. Has there been new information on the technological feasibility of exposure measurement which should be considered that was not considered in the previous rulemakings for 6(b) standards? Do recent evaluations of exposure monitoring programs exist that result in a better understanding of the role of exposure monitoring and reveal a more efficient way of targeting technical resources. If so, could this information be used in determining the applicability of the generic rule?

(d) Please identify any special processes or situations where a generic exposure monitoring standard would not be applicable.

5. Initial Monitoring and the Discontinuation of Monitoring

OSHA's specific 6(b) standards require that each affected employer undertake a program of initial monitoring and measurement. Subsequent monitoring depends on the results of initial measurement and is triggered by the action level. (The action level is usually defined to be half the permissible exposure limit.) Initial monitoring results not exceeding the action level normally do not require further monitoring. Results exceeding the action level but not exceeding the PEL require some program of subsequent monitoring on a regular basis. Results exceeding the PEL require more frequent subsequent monitoring on a regular basis.

(a) Please comment on the appropriateness of adopting an initial monitoring requirement in a generic standard.

(b) Should some mechanism other than an action level of PEL be used to trigger subsequent periodic monitoring? If so, what would that mechanism be and why would it be more appropriate?

(c) Are there situations where employers could estimate exposures without having to sample (such as estimating the exposure by way of the volume or mass of the chemical and the size of the room). Please describe where exposure estimation would be appropriate in lieu of exposure monitoring. What are advantages and disadvantages of estimating exposures over actual sampling? In particular, information is sought on the relative costs of estimating and monitoring exposure, and on the confidence that can be placed on exposure level determinations made by means other than sampling and analysis.

(1) Please explain how in your situation the estimation of exposures would be advantageous to actual sampling. If cost savings is the only advantage, please describe in as much detail as possible the costs that would be saved.

(2) What kinds of exposure estimation procedures are known in your industry? Please describe them in detail. In addition, if any comparisons to actual sampling have been done, please describe these comparisons and their results.

(3) OSHA's ethylene oxide (29 CFR 1910.1047(a)(2)) and asbestos (29 CFR 1910.1001) and (29 CFR 1926.58) standards contain exemptions where objective data can be relied upon to show that the form of the substance or the conditions under which it will be used make it impossible for an exposure greater than the regulated level to occur. Please specify if such a provision would be appropriate for a generic exposure monitoring standard. How should the provision be stated? What substances, designs, or processes can be given as examples to support the provision?

(4) OSHA believes that actual sampling may be more accurate than exposure estimation in most instances. If you agree or disagree with this belief, please give reasons and whatever factual data exist to support your answer.

(d) In OSHA's standards for Hazard Communication (1910.1200) and Benzene (1910.1028), exemptions are granted for mixtures in which the hazardous substance is less than a certain percentage. Should a generic standard on exposure monitoring contain similar exemptions and if so, how should the determination of such percentages be made?

(e) When exposure levels exceed the action level in the specific 6(b) standards, the employer may only discontinue a periodic monitoring program when two consecutive measurements taken several days apart show exposures to be below the action level. The employer needs to perform additional monitoring if processes, controls, or personnel have changed or some other situation has occurred which causes the employer to suspect that increased exposure has occurred.

(1) Is it reasonable to adopt this same policy of discontinuing and reestablishing monitoring in a generic standard?

(2) If you feel that OSHA should adopt another policy of discontinuing and reestablishing monitoring, please explain why and what that policy should be.

(3) Several of the 6(b) standards have set 7 days as the established number of days between the two consecutive measurements required to document reduction in exposure level below the action level. Do you agree or disagree with 7 days between two consecutive measurements as an established number of days between measurements in a generic standard? Please give reasons for you answer. If you disagree with 7 days as the established number of days, what number of days do you recommend and why?

(4) The 6(b) standards require that the employer, in addition to performing scheduled periodic monitoring, monitor whenever spills, leask, ruptures, or other breakdowns occur. Is it reasonable for OSHA to make this same additional monitoring requirement in a generic standard? If it is not, please explain why not. What other monitoring procedure would be appropriate for the situations listed above?

6. Frequency of Monitoring

OSHA's specific standards require sampling semiannually to quarterly (depending whether the initial sample and subsequent samples exceed the action level or the permissible exposure limit), while other 6(b) standards require sampling quarterly to monthly. The monitoring frequencies for the 6(b) standards were established as a result of administrative decisions in response to professional judgments as stated in the 6(b) rulemaking records. Some of the considerations for setting monitoring frequencies have been the length of time to get samples to and back from the laboratory and to properly notify employees of the results and the steps to mitigate any overexposures.

(a) Please state whether or not you agree with a seminannual to quarterly monitoring frequency and explain why.

(b) If you believe that OSHA should adopt another monitoring frequency, what frequency do you recommend and why?

(c) It may be appropriate to allow the employer to determine the monitoring frequency for his/her particular situation. This may be especially true in

a situation where the exposures are consistent and predictable such as in an automated process. The employer may determine that quarterly or semiannual monitoring is not necessary because it may be possible to predict with confidence that exposures over long periods will not exceed targeted control levels. In order to implement such a policy, OSHA would have to require some form of documentation of level of exposure. In what situations would a policy of employer-determined frequency monitoring be appropriate? What form should documentation take?

(d) Would it be appropriate to allow employers to sample exposures at some times and estimate exposures at other times. In what situations would estimation be appropriate? In what situations should sampling be used to verify exposure estimation?

7. Full Shift Personal Sampling or Area and Grab Sampling

In most instances, OSHA requires full shift personal sampling rather than area sampling for its specific standards. The Agency believes that full shift personal sampling gives a truer picture of an employee's exposure. If area sampling adequately represents actual employee exposure, its use might reduce the cost burden associated with sampling. OSHA does realize that if an employee is exposed to a substance for a short period of time, methods other than personal sampling may suffice. Also, for some substances the equipment to take continuous full shift samples may not be available. Experience suggests, however, that full shift sampling is the most appropriate means of adequately monitoring employees exposed to a substance on a continuous basis.

In answering the following questions please consider the analysis of samples as well as the sampling itself:

(a) Other than potential cost savings, what other advantages may be associated with area and grab sampling over personal full shift sampling in your industry?

(b) Are there situations where area and grab sampling would be more appropriate than personal and full shift sampling? Please describe those situations. Are there situations where it might be appropriate to alternate personal and area sampling?

(c) Please describe the best available methods for conducting area and grab sampling that are known in your industry, and in what situations these methods are used and why. Also, please discuss the costs associated with equipment and procedures used to perform area and grab sampling in your industry.

(d) If the cost burden is the essential disadvantage to performing personal and full shift sampling in lieu of other methods, please describe the cost burden known in your industry.

8. Appropriate Criteria for Representative Sampling

Some 6(b) standards such as asbestos and coke ovens define the criteria for representative monitoring. For example, asbestos requires samples representing full shift exposures for each employee in each job category in each work area for each shift (29 CFR 1910.1001 (d)(1)(ii).) Other 6(b) standards developed at an earlier time, such as 1,2-dibromo-3-chloropropane (29 CFR 1910.1044) (DBCP) do not. Ethylene oxide, in addition, contains a provision where if an employer can document equivalent exposure levels for different shifts for the same operation, the employer does not have to sample for different shifts (29 CFR 1910.1047(d)(1)(iii). OSHA is inviting comment on the appropriate criteria for representative sampling in a generic standard.

(a) In a generic exposure monitoring standard should OSHA use the ethylene oxide approach where employer does not have to sample several shifts for the same operation if proper documentation exists? Please provide reasons for your answer.

(b) Could you provide data for your industry demonstrating that exposures at different shifts for the same operation do not differ?

(c) Do you have data from your industry demonstrating that exposures do not differ from one operation to the next? Otherwise, it would seem reasonable to assume representative sampling means sampling each operation (i.e. industrial process which seemingly produces a different exposure scenario from another type of industrial process) where appropriate.

(d) The Agency requests any other information or comments concerning the criteria for representative sampling.

9. Accuracy of Sampling

For the most part, OSHA does not require specific methods for sampling and analysis in its substance specific standards. OSHA's specific standards do have requirements for the accuracy of sampling and analysis, but these requirements vary, depending upon the degree of achievable accuracy of the sampling device and analytical method at the required PEL and the action level.

(a) Should OSHA require a minimally acceptable accuracy in a generic standard? If not, why? If so, what minimally acceptable accuracy would you recommend that may appropriately apply to monitoring a large number of substance? What are the reasons for your recommendation?

(b) The National Institute for Occupational Safety and Health (NIOSH) and OSHA's Salt Lake Analytical Laboratory have recommended sampling and analytical methods for OSHA's own sampling activities in determining compliance with the Agency's standards. Should OSHA require that employers use these methods or methods documented as being equivalent with respect to accuracy in a generic standard? Please provide reasons supporting your response.

(c) Should OSHA require or recommend any particular methods of calibration in a generic standard? Which methods if any? Please explain why these methods should or should not be used.

10. Notification to Employees

In accordance with section 8(c) of the Act, OSHA's specific standards require that employees be notified in writing after the receipt of the results of any monitoring performed. In addition, the employer must include a description of the corrective action taken which will reduce the exposures below the PEL, whenever monitoring results indicate that the PEL has been exceeded.

(a) What requirements for employee notification would be appropriate in a generic standard?

(b) Should the language of the requirements be similar to the language in the 6(b) standards? In other words, what form should the notification take? Should employees be notified in writing as in the 6(b) standards? Should they be notified individually or should they be notified by the posting of results in an appropriate location such as a bulletin board accessible to affected employees?

11. Employee Observation of Monitoring

OSHA's specific 6(b) standards require the employer to provide affected employees or their designated representatives the opportunity to observe monitoring. Employees are to be provided with protective equipment and whatever other protection is required for the area in which sampling is occurring. They are entitled to receive explanations of the monitoring procedures and to receive copies of any results of measurements taken.

(a) Would it be appropriate for OSHA to make this same requirement in a generic standard?

(b) If OSHA's requirement for employee observation is inappropriate for a generic standard, what type of

requirements would you recommend, and why would they be more appropriate?

12. Recordkeeping

The specific 6(b) standards require that employers establish and maintain records of personal or environmental monitoring results (29 CFR 1910.20).

(a) How should a generic standard address the establishment of exposure monitoring records?

13. General Considerations

An issue during this rulemaking is whether an approach other than adoption of a generic approach might be more appropriate to effectuate the purpose of simplifying future rulemakings and requiring monitoring of employees not now being monitored.

(a) If you feel that OSHA should not develop a generic standard, please explain why.

(b) What alternative to a generic standard would be appropriate, and what would be the advantages of the alternative over the generic approach?

Public Participation

Interested persons are invited to submit comments on these and other pertinent issues relating to a generic standard for exposure monitoring by December 27, 1988. Comments should be sent in quadruplicate to the Docket Officer, Room N2625. Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone 202-523-7894. All written comments in response to this notice will be available for inspection and copying in the Docket Office at the above address between the hours of 8:15 a.m. and 4:15 p.m., Monday through Friday. The data received in response to this Advance Notice will be carefully reviewed and will be used by OSHA to determine whether it is necessary and appropriate to pursue further regulatory activity (and the nature of that activity) regarding a generic standard for exposure monitoring.

Authority and Signature

This document was prepared under the direction of John a. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act (84 State. 1593; 29 U.S.C. 655).

Signed at Washington, DC, this 20th day of September 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88-22017 Filed 9-26-88; 8:45 am]

BILLING CODE 4510-26-M

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29 CFR Part 1910

[Docket No. H-031]

Medical Surveillance Programs for Employees

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Notice is given that OSHA is undertaking, through rulemaking procedures under section 6(b) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655(b), and evaluation of the feasibility and usefulness of adoption of a generic standard on medical surveillance programs for employees exposed to toxic substances or hazardous physical agents. A generic standard is one that addresses a health related issue rather than a substance. The Agency is interested in determining if generic medical surveillance requirements could be used, for example, to simplify development of future rules that where necessary, would contain medical surveillance provisions, or could be used to provide medical protection to exposed employees who are not now entitled to medical surveillance. Though OSHA has adopted exposure limits for the several hundred substances listed in the Z-tables contained in 29 CFR 1910.1000, there is no provision requiring that medical surveillance be made available to employees exposed in excess of those limits. Thus, adoption of medical surveillance requirements applicable to § 1910.1000 may be warranted.

DATE: Comments in response to this Advance Notice should be submitted by December 27, 1988.

ADDRESS: Comments should be submitted to the Docket Officer, Occupational Safety and Health Administration, Docket No. H-031, Room N-2439, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210. Telephone 202-523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC. 20210, Telephone: (202) 523-8148.

SUPPLEMENTARY INFORMATION:

1. Background.

The concept of generic standards is not novel. OSHA has promulgated generic standards for Hazard Communication (29 CFR 1910.1200), and Employee Access to Exposure and Medical Records (29 CFR 1910.20), and has proposed a generic rule for Employee Exposure to Toxic Substances in Laboratories (52 FR 1212). Additionally, a draft proposed revision of the existing Respiratory Protection Standards (29 CFR 1910.134) is being reviewed. The above standards activities establish precedent for exploring the possibility of adopting generic standards.

Section 6(b)(7) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 655 *et. seq.* ("the Act") requires the Agency to adopt, where appropriate in new standards, provisions dealing with medical surveillance. Existence of a generic standard on medical surveillance would satisfy the Act's mandate with respect to adoption of such requirements in new standards and free OSHA to concentrate on more substance specific issues in future rulemakings.

OSHA's existing 6(b) standards contain medical surveillance provisions as stipulated by the Act. Experience suggests that certain requirements, described later, have potential for generic treatment as evidenced by their consistent treatment during previous rulemakings.

The specific content of the medical examinations, frequency of testing, and other provisions triggered by the results of the medical examination, however, vary for each 6(b) standard depending on the health effect associated with exposure to the specific substance. It may be necessary, therefore, to include specific recommended medical tests and procedures in an appendix to the generic standard that would be identified as being appropriate for groups of substances with similar chemical composition, or for substances leading to similar health effects.

As an adjunct to the development of criteria for workplace medical testing, OSHA has initiated an evaluation of the effectiveness of medical monitoring and surveillance requirements in existing OSHA standards, in order to determine what has worked and what has not worked in practice, and if these requirements could be improved.

2. Key Issues to be Addressed

(a) The Value of Workplace Medical Testing

The success of workplace medical surveillance and monitoring depends on the degree to which these activities contribute in practice to the detection of occupational disease or existing medical conditions that would progress or lead to disability without appropriate medical intervention and treatment. The value of medical surveillance in the prevention of occupational disease can logically be determined by reference to the specific surveillance strategy, which may be initial screening, detection of adverse effects, predicting future health effects, collecting data for health research, or other aims. OSHA intends to examine workplace medical testing carefully, including its experience with past standards, to determine its value for each of the specific objectives.

(b) Criteria

OSHA seeks to determine if criteria could be developed to decide when medical surveillance is appropriate, the frequency of examinations and the suitability of particular tests.

(c) Scope

OSHA must determine whether this generic standard will establish mandatory medical surveillance provisions applicable only to the substances with PELs found in section 1910.1000, to all toxic substance found in the workplace, or whether it will only be available for incorporation by reference in existing or future rules.

If it is determined that this standard should only apply to the substances in the Z-tables, OSHA believes that significant benefit may still be derived from a generic rule that provides medical protection to employees who are not being medically monitored even though their exposures may be above the permissible exposure limits ("PELs") in § 1910.1000. Each PEL was established based on scientific data demonstrating the occurrence of adverse health effects. Thus, requiring medical surveillance for overexposed employees may be warranted. In addition, OSHA is developing procedures to modify the Z-table PELs of 29 CFR 1910.1000 in an expeditious manner in response to current scientific data. However, section 6(b)(7) of the Act requires incorporation of appropriate provisions for labels and other forms of warning, personal protective equipment, medical surveillance, and exposure monitoring for each substance undergoing 6(b) rulemaking. Having generic standards for each of these topics as requirements in addition to the PELs of section 1910.1000 would satisfy the Act's requirement to address these topics and permit narrower specific rulemakings dealing with PELs. A generic standard dealing with warning labels (Hazard Communication) is already in place and generic standards for personal protective equipment and exposure monitoring are currently being considered. The addition of a generic standard on medical surveillance may provide an additional mechanism to accomplish the goal of more timely rulemakings for revision of the PELs in section 1910.1000

(d) Content of the Standard

Experience suggests that certain requirements have greatest potential for generic treatment as evidenced by their consistent treatment during previous rulemakings. OSHA 6(b) standards typically require that:

(1) Employees exposed above the action level [e.g., usually one-half the PEL] are to be included in the medical surveillance program;

(2) Physicians must perform or supervise exams;

(3) Employers must pay for exams;

(4) The employer must provide certain information about his employees and their jobs to the examining physician; and

(5) The examining physician must provide certain information to the employer with respect to the state of the employee's health;

Specification for routine work histories, routine pre-employment and periodic exams, and specific testing requirements for x-ray and pulmonary function tests have been treated similarly in past standards.

It may not be feasible in a generic medical surveillance standard to adopt more extensive or more specific mandatory provisions beyond those items listed above, for broad application. Additional data must be obtained to further address this question.

(e) Categorization

Since there are over 400 substances in tables Z-1, Z-2, and Z-3, OSHA will have to determine whether it is possible to group the substances by some common feature. One common feature may be by chemical type. That is, if we categorize the substances as acids, alkalies, gases, dusts, metals and metalloids, plastics and solvents, and determine that the major health effects within each group of substances are similar, it may be possible to assign appropriate medical surveillance for each chemical group. To illustrate, exposure to phosphoric acid may cause skin burns, eye irritation and eye burns, nose and throat irritation or skin irritation. Likewise sulfuric acid may cause eye, nose, and throat irritation, eye and skin burns. Additionally, prolonged exposure to these acids may cause dental erosion and inflammation of the bronchial tubes. As shown above, these two acids have similar major health effects. Medical surveillance for both may include examination of the respiratory system, and examination of the nose, throat, teeth and skin.

Another possibility may be grouping by health effect. If we find that many substances have similar major health effects, it may be possible to prescribe specific medical surveillance for those groups of health effects. For example, for the substances that produce eye, nose, throat, and skin irritation (acetaldehyde, acetic acid, ammonia, antimony, benzyl cholride, magnesium, phosphoric acid, sulfuric acid, xylene (etc)), medical surveillance may include an examination of the respiratory system, eyes, nose, throat, and skin.

OSHA is interested in receiving data and comment on the concept of categorizing and generically apply medical requirements to substances by health effects or chemical type. Specific data is solicited later in this notice.

(f) Feasibility

During this rulemaking, OSHA will develop an analysis of the feasibility of any proposed generic medical surveillance standard, as required by the Act. In addition, pursuant to Executive Order 12291, OSHA will determine whether this is a major action and if so, will prepare a Regulatory Impact Analysis. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), if a significant impact on small entities is anticipated, a Regulatory Flexibility Analysis will also be performed.

As noted below, OSHA solicits all available information on current medical surveillance programs and costs of compliance. OSHA requests that industry-wide feasibility studies and the collection of data relevant to assisting the Agency in complying with E.O. 12291, the Regulatory Flexibility Act, and the OSH Act be initiated by interested persons as soon as possible.

Requested Public Submissions

Public comment on the discussions in this Advance Notice and other relevant issues is requested for the purpose of assisting OSHA in its evaluation of the appropriateness and feasibility of developing a generic standard on

medical surveillance programs for employees.

Comment is requested, as set forth below, on issues relating to: (1) The value of workplace medical monitoring and surveillance; (2) Criteria that OSHA may use to determine when and what medical intervention is appropriate; (3) The effectiveness of medical surveillance and monitoring requirements in existing OSHA standards; (4) The scope and application of the standard; (5) Categorization and generic application by health effects or by chemical type; (6) Economic feasibility; and (7) Provisions which should be considered for inclusion in a generic medical surveillance program. OSHA also requests that interested persons submit comments and information on other issues deemed relevant that are not specifically addressed by the questions below. The data submitted in response to this notice will aid the Agency in determining whether to proceed with development of a notice of proposed rulemaking.

1. Value of Medical Surveillance and Monitoring

Medical surveillance programs can be used to achieve many objectives including (1) the prevention, detection and treatment of disease, (2) an indication of the effectiveness of an employer's hazard control program, and, (3) a measure of the effectiveness of OSHA's PELs.

(a) In what situations are medical surveillance and monitoring effective means of detecting occupational illnesses to enable the implementation of appropriate medical treatment designed to arrest progression of the disease? How should "effectiveness" be defined with regard to medical testing? Is information available on the health benefits of workplace medical testing?

(b) What information is useful to employers to determine that remedial action is necessary to reduce workplace health risks? What medical information is unnecessary? Are there certain remedial actions which should or should not be triggered by medical information?

(c) Several objectives of medical surveillance were mentioned in the preceding discussion. What data or information do you have that suggest that medical surveillance programs meet these objectives? For example, are medical surveillance programs effective tools for the protection against disease or conditions that may lead to disease? What objectives should OSHA consider incorporating into mandatory standards? For what specific objectives is medical surveillance, monitoring or screening most effective? Least effective? Would it be appropriate for OSHA to adopt mandatory generic medical surveillance provisions? Why? Why not?

(d) How should OSHA assess the costs and effectiveness of medical surveillance and monitoring as well as the balance between the two?

2. Criteria

(a) Would it be possible or beneficial to develop standardized criteria to determine when and what workplace medical testing is "appropriate" under section 6(b)(7) of the Act? Such criteria, for example, could be used to decide when mandatory medical surveillance is appropriate, the frequency of medical examinations, the suitability of particular tests, and other questions common to rulemaking. Should such criteria be developed through rulemaking or should they be developed as guidelines, perhaps by NIOSH/CDC or an expert advisory group? Do criteria or guidelines exist, perhaps in the public health arena, which would be suitable for adoption of OSHA? How should the risks inherent in the medical tests and procedures be evaluated?

(b) Which medical testing requirements in existing OSHA standards would be appropriate for the purpose of a generic standard? Why? What information is available to show that an existing substance specific medical provision would have value and be effective if adopted as a provision in the generic standard? Could the medical surveillance and monitoring requirements as set forth in existing OSHA's 6(b) standards be modified so that they would be more effective for the purposes of a generic rule?

3. Effectiveness of Existing OSHA Requirements

(a) How effective have medical testing requirements in OSHA standards been in identifying and preventing occupational disease? Is there information available about the effectiveness of specific standards? Have these requirements achieved the specific objectives which they were intended to achieve? What have been the costs?

(b) Could the medical surveillance and monitoring requirements be more effective? Could they be written so as to better complement and reinforce the other provisions of the standards? How should standards be written so as to optimize the preventive value of medical testing?

4. Scope and Application

(a) Are there groups of employees in industry that should be, but currently are not undergoing medical surveillance monitoring that is related to their activities in the workplace?

(i) How would medical surveillance benefit these employees?

(ii) What is the basis for defining those employees needing medical surveillance and those who do not, and what factors (i.e. nature of the hazard, nature of the operation, control efficacy, etc.) enter into this determination?

(iii) Do recent evaluations of general or disease-specific periodic health examinations exist that result in a better understanding of the role of medical intervention and reveal a more efficient way of targeting of medical resources? If so, how could this information be used in determining the applicability of the generic rule?

(b) Should generic medical surveillance provisions be considered only for employees exposed to substances for which OSHA has adopted PELs? If so, should medical surveillance be considered only for employees for which exposure is shown to be above either an "action level" or above the PEL? What other mechanisms or levels could be established to trigger generic medical surveillance requirements?

(c) Some of OSHA's standards (e.g., benzene and ethylene oxide) do not require medical surveillance unless workers are exposed or expected to be exposed above either the action level or PEL for a specific number of days per year. For example, the benezene standard requires that "The employer shall make available a medical surveillance program for employers who are or may be exposed to benzene at or above the action level 30 or more days per year; [and] for employees who are or may be exposed to benzene at or above the PELs 10 days or more per year * * *." These allowances are provided for in recognition of the need for a practical cut-off for who is to be included in the medical surveillance program. Should similar provisions be incorporated into the generic standard and why? If so, what should they be?

(d) If medical surveillance should be provided to employees exposed to substances for which OSHA has no PEL, what mechanism could be set forth other than exposure above a specific level such as a PEL, to trigger implementation of the medical program?

(e) If a generic standard is adopted, should it only be available for reference in future standards before being obligatory? Why or why not? If adopted, how should the generic standard relate to existing 6(b) standards?

(f) If a generic standard is adopted should it be incorporated as a paragraph in § 1910.1000 and be mandatory where overexposure to Z-table substances occurs? Why or why not?

(g) To what extent have employers voluntarily implemented occupationally related medical surveillance programs? Please provide in detail a description of what those programs consist of and the basis for their implementation.

(h) For what kinds of workplaces would a generic medical surveillance standard be appropriate and which employees should be covered in those workplaces?

5. Categorization

(a) Are there similar biological outcomes produced by large groups of substances that can be detected by specific procedures such as x-rays, pulmonary function tests, blood count, urinalysis, etc?

(b) What groups of substances cause these similar biological outcomes?

(c) Are sufficient medical data available to demonstrate that a number of substances cause similar biological changes over similar intervals of time so that generic periodicity of medical testing can be established?

(d) Are there groups of substances for which medical tests can be justified on a periodic basis as being necessary for early detection of adverse effects that may cause to progress or may be reversed upon removal from exposure?

(e) Is there a consensus in the medical community with respect to the utility of specific medical procedures in occupational medical surveillance programs?

(f) What criteria should OSHA use in determining the appropriateness of requiring specific medical tests for certain hazards and potential hazards?

(g) How can a generic standard for medical surveillance be designed so that advances in medical surveillance procedures and technology will not render OSHA's generic provisions obsolete?

6. Economic Feasibility

In order to perform an economic feasibility analysis, it is helpful to have a financial and economic profile of the industries that may be required to implement medical surveillance programs. Affected industries may include all workplaces using toxic substances, or may only include workplaces using a substance regulated by OSHA in 1910.1000. The following information is requested to aid in preparation of that profile.

(a) What are the number of employees that could conceivably be required to be provided with medical surveillance who are not now undergoing monitoring?

(b) Though OSHA has not proposed adoption of specific components to be included in a generic medical surveillance program. What costs in your industry and in your workplace can be estimated that may be incurred in conducting a typical work-related medical surveillance program? Give the costs according to the following categories: (1) The medical examination (list the components such as history, physical, and tests); (2) lost work time (include average time lost per worker); (3) transportation, and (4) recordkeeping. Were these costs based upon your company's current medical surveillance program? If so, how many employees are included in the program and what is the size of your firm?

(c) What will be the financial impact on firms/industries if OSHA required a periodic medical exam for all workers exposed above any of the PELs listed on the Z Tables? What if the exams were required for workers exposed above one-half of any of the PELs? Be as specific as possible.

7. Provisions of the Standard

(a) What mandatory provisions could be adopted that would be common to and appropriate for all occupational medical surveillance programs?

(b) Provisions typically found in 6(b) standards require that: Employees exposed above a certain level are to be provided medical surveillance, physicians must perform or supervise medical exams, employers must pay for exams and provide certain information about his employees and their jobs to the examining physician, physicians must provide information to the employer with respect to the state of an employee's health, and provision is made for routine work histories, and routine pre-employment and periodic exams. (i) Which of the generally applicable medical surveillance provisions described above should be mandated by a generic standard and why? (ii) Which should not and why? (iii) What other general provisions exist that the Agency should consider for adoption in a generic medical surveillance standard? (iv) With respect to conducting medical exams, should health professionals other than physicians, such as occupational health nurses, be permitted to supervise or conduct such exams?

(c) For each of OSHA's existing 6(b) standards, the specific content of the medical examinations (e.g., specific tests and procedures), frequency of testing, and other provisions triggered by the results of medical examination vary with each standard depending on the health effect associated with exposure to the specific substance. (i) How can a generic rule be designed to set-forth and mandate inclusion of specific medical tests and procedures as being appropriate in individual workplaces based on the chemical composition or health effects of the substances in use? (ii) What specific tests and procedures can be equated with what common chemical compositions or health effects for inclusion in medical surveillance programs? (iii) What minimum frequency of testing is appropriate for the recommended medical procedure?

(d) If a generic medical surveillance standard is adopted, should it only mandate implementation of general administrative medical provisions while recommending specific tests and examinations in an appendix that would be required to be provided if determined relevant by the examining physician?

Public Participation

Interested persons are invited to submit comment on these and other pertinent issues relating to generic medical surveillance programs for employees by December 27, 1988. Comments should be sent in quadruplicate to the Docket Officer, at the address noted above where they will be available for inspection and copying from 8:15 a.m. to 4:45 p.m., Monday through Friday. The data received in response to this Advance Notice will be carefully reviewed and will be used by OSHA to determine whether it is necessary and appropriate to pursue further regulatory activity regarding this generic standard.

Authority and Signature

This Advance Notice of Proposed Rulemaking was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655).

Signed at Washington, DC, this 20th day of September 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88-22016 Filed 9-26-88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Public Comment Period and Opportunity for Public Hearing on Proposed Amendments to Texas Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Texas permanent regulatory program (hereinafter referred to as the Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of revised regulations concerning self-bonding requirements.

This notice sets forth the times and locations that the Texas program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments relating to Texas' proposed modification of its program not received on or before 4:00 p.m. c.d.t. on October 27, 1988, will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendments will be held upon request on October 24, 1988. Any person interested in making an oral or written presentation at the public hearing should contact Mr. James H. Moncrief at the Tulsa Field Office by 4:00 p.m., c.d.t. October 12, 1988. If no one has contacted Mr. Moncrief to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Moncrief, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under "**ADDRESS**".

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135.

Copies of the Texas program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the Tulsa Field Office, OSMRE Headquarters Office, and Railroad Commission of Texas during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430

Office of Surface Mining and Reclamation and Enforcement, 1100 "L" Street NW., Room 5215, Washington, DC 20240, Telephone: (202) 343-5492

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, TX 78711, Telephone: (512) 463-6901

If a public hearing is held, its location will be:

The Federal Building, Room 557, 300 E. 8th Street, Austin, TX

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Texas program was conditionally approved effective February 16, 1980. Information regarding general background on the Texas program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of the approval of the Texas program can be found in the February 27, 1980 **Federal Register** (45 FR 12998). Subsequent actions taken with regard to Texas' program approval and approved program amendments can be found at 30 CFR 943.10, 943.15 and 943.16.

II. Submission of Amendments

In accordance with the provisions of 30 CFR 732.17(c), on February 18, 1987 [Administrative Record No. TX-390]. OSMRE notified Texas of the changes necessary to ensure that the Texas self-bonding regulations are no less stringent than SMCRA and no less effective than the Federal regulations.

By letter dated July 31, 1987 [Administrative Record No. TX-393], Texas submitted proposed changes to the self-bonding regulations along with numerous other proposed revisions. In response to comments received in the State rulemaking process, Texas requested, by letter dated November 25, 1987 [Administrative Record No. TX-403], that the proposed self-bonding regulations be withdrawn from consideration and further requested an extension of time until March 1988 to submit the proposed amendments. OSMRE approved the requested extension. OSMRE also approved subsequent requests for extensions until June 30, 1988 and August 31, 1988. By letter dated August 24, 1988 [Administrative Record No. TX-411], Texas submitted the proposed amendments to its self-bonding regulations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the amendment proposed by or Texas satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Texas program.

IV. Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

V. Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., c.d.t. October 12, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare the adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

VI. Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES**". A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: September 19, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-22076 Filed 9-26-88; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 927

Rules of Procedure Relating to Fines, Deductions, and Damages

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would increase the civil fines for mail handling irregularities on air routes extending beyond the borders of the United States. The purposes of the proposal, which would assess specific fines for specific irregularities, with a general limitation of $1,000 per violation, are to reflect the effects of inflation and to discourage, through realistic penalties, mail handling irregularities. Minor administrative and conforming changes are also included.

DATE: Comments must be received on or before October 27, 1988.

ADDRESS: Written comments should be directed to Kenneth W. McFadden, General Manager, International and Military Mail Operations Division, United States Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260-7135. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 7331, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, DC 20260.

FOR FURTHER INFORMATION CONTACT: Harold Buckley, (202) 268-4361.

SUPPLEMENTARY INFORMATION: The proposed rule revises and adds to 39 CFR Part 927 a list of specific mail handling irregularities on air routes extending beyond the borders of the United States, plus the fines associated with those irregularities, which are imposed pursuant to 39 U.S.C. 5403. The proposed level of fines is higher than and would supersede existing fines to reflect the effects of inflation and to ensure levels high enough to discourage the described irregularities. In particular, the Postal Service expects the higher level of fines to lessen the high damage rates currently experienced on military mail destined to servicemen in foreign postings. In addition, the proposal updates 39 CFR Part 927 to reflect the adoption of the Postal Service's Procurement Manual as a replacement for the former Postal Contracting Manual, and an organizational change which substitutes the International Civil and Military Mail Coordinator wherever section 927 refers to the General Manager, Logistics Division.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments of 39 CFR Part 927.

List of Subjects in 39 CFR Part 927

Administrative practice and procedure, Air carriers, Government contracts, Maritime carriers, Penalties.

For the reasons set out in the preamble, 39 CFR Part 927 is proposed to be amended as follows.

PART 927—RULES OF PROCEDURE RELATING TO FINES, DEDUCTIONS, AND DAMAGES

1. The authority citation is 39 CFR Part 927 is revised to read as follows:

Authority: 39 U.S.C. 401, 2601, 5401-5403, 5603, 5604; 49 App. U.S.C. 1375, 1471.

§ 927.1 [Amended]

2. In § 927.1, paragraph (a) is amended by removing "section 19-504, Postal Contracting Manual or"; by removing "General Manager, Logistics Division," and adding in its place "International Civil and Military Mail Coordinator"; paragraph (b) is amended by removing "General Manager, Logistics Division," and adding in its place "International Civil and Military Mail Coordinator"; and paragraph (e) is revised to read as follows:

§ 927.1 Noncontractual carriage of mail by vessel

* * * * *

(e) *Details of Administration.* For further administrative details, see Transportation Handbook T-4, International Surface Mail.

3. In § 927.2, in paragraph (b), in the first sentence, add "or their designated representatives" after "postal officials"; in the last sentence, remove "General Manager, Logistics Division," and add in its placed "International Civil and Military Mail Coordinator"; in paragraph (c), remove "General Manager, Logistics Division," wherever it appears and add "International Civil and Military Mail Coordinator" in its place; remove "The Manager" wherever it appears and add "The Coordinator" in its place; in paragraph (e), in the last sentence, remove "under the section"; and paragraph (f) is revised, and paragraphs (g) and (h) are added to read as follows:

§ 927.2 Noncontractual air service.

* * * * *

(f) *Definitions and schedule of fines.*

(1) The following are definitions of the irregularities for which fines or penalties may be assessed:

(i) *Failure to Load.* The failure for any reason other than Refusal/Removal to load mail aboard an aircraft when sufficient space and weight are available on the aircraft to transport the mail which has been tendered by the USPS/Military dispatch activity.

(ii) *Failure to Unload.* The failure to remove all mail from the aircraft at the terminal point of the flight.

(iii) *Loaded in Error.* The loading of mail aboard a flight which is not the specific flight prescribed in the dispatch documents for that mail.

(iv) *Removed in Error.* The removal of mail from a flight at a point other than the destination or transfer point shown on the billing documents for that mail.

(v) *Damage to Mail or Equipment.* Damage to pouched or outside mail or equipment, either by physical force or weather. Also included are incidents involving wet mail.

(vi) *Failure to Transfer.* The failure to transfer mail between designated flights of the same carrier or between the designated flights of two carriers.

(vii) *Failure to Protect.* The failure to protect and safeguard mail from depredation or other hazards while in the custody and control of the carrier.

(viii) *Delayed Delivery.* The failure to deliver incoming mail to the destination USPS/Military facility, postal representative, or vehicle driver within the time allowed for such delivery.

(ix) *Failure to Notify.* The failure to notify the USPS/Military postal unit of delays in excess of 30 minutes, flight cancellation, flight diversions, or emergency changes in the schedule of any flight on which mail is transported or has been tendered for transportation by the USPS/Military postal unit.

(x) *Dropped Pouch.* The dropping of a pouch or outside piece of mail from a surface vehicle at an airport, which pouch is found unattended and out of the control of the air carrier.

(xi) *Refusal/Removal.* The failure to board all priority/LC mail tendered or offered by the USPS/Military postal unit. This includes situations where all passengers' baggage has been boarded, and where lower priority cargo is carried on the flight.

(xii) *Missing AV-7.* The delivery of mail to a USPS/Military postal facility without the required dispatch document (AV-7) to indicate the total number of pieces and weights in the dispatch.

(xiii) *Missing Mail.* The delivery to a USPS/Military mail facility of less than the number of pieces of mail indicated on the AV-7.

(2) The following is the schedule of penalties and fines applicable to mail handling irregularities:

Category	Penalty/Fine
(i) Failure to Load Failure to Unload Loaded in Error Failure to Transfer Delayed Delivery Removed in Error	@ $10.00 per piece
(ii) Damage to Mail or Equipment. Refusal/Removal	@ $60.00 per piece
(iii) Failure to Protect	@ $75.00 per report
(iv) Failure to Notify Missing AV-7 Missing Mail	@ $45.00 per report
(v) Dropped Pouch	@ $45.00 per piece

(3) *General Limitations.* Fines shall not exceed $1,000 per violation. For purposes of such limitation, each piece (sack, container or outside piece) shall be considered the subject of a separate violation.

(h) *Details of Administration.* For further administrative details, forms, and other implementing materials adapted to the respective modes of transportation, see Transportation Handbook T-1, International Airmail Exchange Office Procedures, for foreign air transportation; and Transportation Handbook T-7, Handling, Dispatch, and Transportation of Military Mail, for overseas air transportation of military mail.

4. Section 927.3 is revised to read as follows:

§ 927.3 Other remedies

The procedures and other requirements of this part apply only where the U.S. Postal Service proposes to assess penalties, fines, deductions, or damages. This part does not limit other remedies available to the Postal Service, including such remedies as summary action to withhold tender of the mail to protect the public interest in the event of major irregularities such as theft, deliberate loss, damage, or abandonment of the mail, or repeated instances of any of the irrigularities listed in § 927.2(f).

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-21935 Filed 9-26-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3454-2]

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) today is proposing to grant a petition submitted by Merck & Company, Incorporated (Merck), Elkton, Virginia for a one-time exclusion of certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Part 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 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. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate and fate and transport models used to evaluate the petition. Comments will be accepted until November 14, 1988. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by October 12, 1988. The request must contain the information prescribed in 40 CFR 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 (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-MLEP-FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), 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. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9828.

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 serveral times, and is

published in 40 CFR 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 extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 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, 40 CFR 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 40 CFR 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 EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 400 CFR 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 to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers 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 any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use an organic leachate model and a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste and to determine the potential impacts of unregulated disposal of Merck's petitioned waste on human health and the environment. Specifically, the models will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste; 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. 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. 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 to its evaluation of delisting petitions. In this case, the Agency determined that, because Merck is seeking a delisting for waste managed on site, ground-water monitoring data collected from the area where the petitioned waste is contained are necessary to determine whether hazardous constituents have migrated to the underlying ground water. Ground-water monitoring data collected from Merck's monitoring wells are compared directly to the levels of regulatory concern for particular hazardous constituents detected in the ground water and will help characterize the potential impact (if any) of the unregulated disposal of Merck's waste on human health and the environment.

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 public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Merck & Company, Incorporated, Elkton, Virginia

1. Petition for Exclusion

Merck & Company, Incorporated (Merck), located in Elkton Virginia, is a pharmaceutical manufacturer. Merck petitioned the Agency to exclude its incinerator fly ash waste contained in an on-site lagoon. The fly ash is derived from and listed as EPA Hazardous Waste No. F002—"The following spent halogenated solvents: Tetrachloroethylene, methylene

chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F001, F004, or F005; and still bottoms form the recovery of these spent solvents and spent solvent mixtures". The listed constituents for EPA Hazardous Waste No. F002 are tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, *ortho-dichlorobenzene*, and trichlorofluoromethane.

The incinerator at Merck has operated since 1973. Since 1977 all fly ash waste generated by the unit has been disposed of in an on-site lagoon. The fly ash waste was subject to the EPA Hazardous Waste No. F002 listing between 1981 and August 1983 due to the presence of methylene chloride in the feed to the incinerator. After August 1983, a process was eliminated at the facility and methylene chloride was no longer input to the incinerator. Therefore, the fly ash generated by Merck has not been a listed hazardous waste since 1983; however, the materials in the lagoon are a listed hazardous waste in accordance with 40 CFR 261.3(a)(iv) (*i.e.*, the "mixture" rule). Merck claims that the fly ash generated since 1977 is the only waste that has been disposed of in the lagoon.

Merck petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Merck 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). 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 of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Merck's petition.

2. Background

Merck petitioned the Agency to exclude its incineration fly ash on July 7, 1982 and subsequently provided additional information to complete its petition. In support of its petition, Merck submitted (1) a detailed description of its manufacturing and treatment processes, including schematic diagrams;[1] (2) a list of raw materials used in the manufacturing processes; (3) results from total constituent analyses of the fly ash contained in the lagoon for methylene choloride, 1,1,1-trichloroethane, and certain other hazardous organic constituents potentially present in the waste; (4) EP toxicity test results for the EP toxic metals; (5) test results from total cyanide analyses; (6) mass balance calculations for methylene, chloride, benzene, chloroform, and xylene to provide maximum possible concentrations in the fly ash; (7) results from total oil and grease analyses; (8) test data on the hazardous waste characteristics of the fly ash; and (9) ground-water monitoring data collected from the wells monitoring the lagoon. Merck's raw material list and process data sheets submitted with the petition describe hazardous organic constitutents. (*e.g.*, those listed in 40 CFR Part 261, Appendix VIII) other than methylene chloride and 1,1,1-trichloroethane that might be found in the fly ash.

Merck's Elkton, Virginia facility produces numerous pharmaceuticals for human health care that fall into the following classes; Analgesics, anti-inflammatories, antibiotics, coccidiostats, and vitamins. Process wastewater from the manufacturing facilities is treated in an on-site wastewater treatment plant. The process wastewater passes through an equalization basin and is then pH neutralized in a subsequent tank. Next, the wastewater is treated in an activated sludge system. The wastewater then passes through two clariflocculators and final trickling filters before final clarification. The effluent from the final clarifiers is discharged to the Shenandoah River under a National Pollutant Discharge Elimination System (NPDES) permit.

The wastewater treatment sludge from the clariflocculators and the trickling filters is aerobically stabilized and then dewatered using belt filter presses. The dewatered sludge is treated in a seven hearth incinerator. The normal operating temperature is 1,500°F. The residence time of the sludge in the incinerator is approximately one hour. The incinerator's scrubber generates a wet fly ash sediment which is transported to and settles out in an adjacent lagoon.

To collect representative samples from a waste disposed of in a lagoon like Merck's, petitioners are normally requested to divide the unit into four quadrants and randomly collect five full-depth core samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples (per lagoon). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW85-003), April 1985.

Merck divided its lagoon into five transects. Grab samples were collected in 1982 and 1984 from three points along each transect. In 1982, composites were made from groups of three grab samples (5 total composites). In 1984, composites were made from groups of five grab samples (3 total composities). In 1985, the lagoon was divided into four quadrants for additional sampling. Five grab samples were randomly collected from each quadrant and one composite was made for each quadrant.

Merck claims that each of its sampling programs for the fly ash lagoon provided representative samples because no waste has ever been removed from the lagoon and there is not evidence of unequal settling. The fly ash waste currently being disposed of in the lagoon is not classified as a listed hazardous waste (due to a process change in 1983), and Merck contends that the fly ash disposed of in the lagoon prior to August 1983 is essentially the same waste. Merck does not plan to use the lagoon for the disposal of hazardous waste in the future.

Although Merck did not randomly collect full core samples from the lagoon, EPA believes that Merck's "fixed grid" sampling method (*i.e.*, collecting samples on predetermined transects of the lagoon) used in 1982 and 1984, and the random sampling method used in 1985, is capable of characterizing constitutent concentrations in the fly ash because wastewater treatment operations and subsequent incinerator operations would tend to generate well-mixed, homogeneous wastes. The Agency

[1] Merck claimed that specific details of its manufacturing processes and its list of raw materials are confidential and proprietary, therefore, the Agency is handling this information as Confidential Business Information (CBI).

accepts Merck's claim that the fly ash has settled uniformly in the lagoon.

The 1982 and 1984 composite samples were analyzed for the extraction procedure (EP) leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals. The 1985 composities were analyzed for the total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of these inorganic constitutents. All composites were analyzed for total cyanide.

The 1982 and 1984 composite samples were also analyzed for methylene chloride and certain other hazardous organic constituents potentially present in the fly ash (see below). The 1982 and 1985 composities were analyzed for 1,1,1-trichloroethane, which was used as a feed to the incinerator prior to 1981. Merck determined the total oil and grease content of the 1984 and 1985 composites, and, at the Agency's request, ten additional samples collected in March 1987 were also analyzed for total oil and grease content. To collect these ten samples, Merck divided the lagoon into eight sections and randomly collected at least one grab sample from each section. Merck analyzed eight composite samples for the characteristics of ignitability, corrosivity, and reactivity.

3. Agency Analysis

Merck used EPA Publication SW-846 Methods 8010 and 8020 (modified) to quantify the total constituent concentrations of the following organic constituents: Acrylonitrile, 2-picoline, benzene, methylene chloride, methanol, chloroform, ethyl ether, and 1,1,1-trichloroethane (1982 and 1984 sampling). Merck used soxhlet extraction/gas chromatography techniques to analyze the samples for p-nitroaniline and the National Institute for Occupational Safety and Health (NIOSH) Method P&CAM 125 to quantify formaldehyde levels. *Methods for Chemical Analysis of Water and Waste* Method 420.1 was used to quantify total phenol levels and *Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater*, Method 601 was used for 1,1,1-trichloroethane (1985 sampling). Tetrachloroethylene, trichloroethylene, chlorobenzene, 1,1,2-trichloro-1,2,2-trichlorofluoroethane, ortho-dichlorobenzene, tricklorofluoromethane, and 1,1,2-trichloroethane (the other constituents for which EPA Hazardous Waste No. F002 is listed) are not used in Merck's processes and are not likely to be formed as reaction products or by-products; these constituents are therefore not reasonably expected to be present in the fly ash. This conclusion was verified by a review of the raw materials used by Merck in its processes. The maximum reported concentrations for hazardous organics potentially present in the fly ash are reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATION OF ORGANICS POTENTIALLY PRESENT IN THE FLY ASH (PPM)

Constituents	Total constituent analyses
Total phenols	ND (0.02)
Acrylonitrile	ND (1.0)
2-Picoline	ND (1.0)
Benzene	ND (1.0)
Methylene chloride	ND (1.0)
p-Nitroaniline	ND (1.0)
Methanol	ND (1.0)
Formaldehyde	ND (1.0)
Chloroform	ND (1.0)
Ethyl ether	ND (1.0)
1,1,1-Trichloroethane	ND (1.0)

ND: Not Detected. Denotes concentration below the detection limits shown in parentheses.

Merck also submitted mass balance calculations for methylene chloride, chloroform, benzene, and xylene to further quantify the maximum possible concentrations of these constituents in the fly ash. These concentrations are presented in Table 2.

TABLE 2.—MASS BALANCE MAXIMUM CONCENTRATIONS OF ORGANIC CONSTITUENTS (PPM)

Constituents	Maximum concentrations
Methylene chloride	0.021
Chloroform	0.0006
Benzene	0.00077
Xylene	0.036

Merck used the following methods published in *Methods for Chemical Analysis of Water and Waste* to quantify the EP leachate and total constituent concentrations of the EP toxic metals and nickel, and the total constituent concentration of cyanide: Arsenic—Method 206.3, Barium—Method 208.1, Cadmium—Method 213.1, Chromium—Method 218.1, Lead—Method 239.1, Mercury—Method 245.2, Selenium—Method 270.2, Silver—Method 272.1, Nickel—Method 249.1, and Total Cyanide—Method 335.2. Maximum total constituent and EP leachate analyses for the inorganic constituents in the fly ash are presented in Table 3.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS (PPM) FLY ASH

Constituents	Total constituent analyses	EP leachate analyses
Arsenic	1.2	0.06
Barium	249	ND (5.0)
Cadmium	ND (0.35)	ND (0.01)
Chromium	58.5	ND (0.05)
Lead	12.5	0.10
Mercury	0.00115	ND (0.01)
Nickel	12	0.21
Selenium	ND (0.011)	ND (0.01)
Silver	ND (0.46)	ND (0.05)
Total Cyanide	22	[1] 1.1

ND: Not Detected. Denotes concentrations below the detection limits shown in parentheses.

[1] Calculated by assuming a dilution factor of twenty times (based on 100 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent.

The detection limits in Tables 1 and 3 represent the lowest concentrations quantifiable by Merck, when using the appropriate analytical methods 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.)

The Agency requires petitioners to modify the EP analyses in accordance with the Oily Waste EP (OWEP) methodology to determine the leachability of toxic constituents from petitioned wastes, if the oil and grease content of the waste exceeds one percent. Wastes having more then one percent total oil and grease may have significant concentrations of constituents of concern in the oil phase, and thus, their presence would not be assessed using the standard EP leachate procedure. The oil and grease content, determined using *Methods for Chemical Analysis of Water and Waste* Method 413.1, of two of four 1985 composite samples of the fly ash exceeded 1 percent (1.1 percent and 2.3 percent). Merck suggested these data were the result of a sampling or analysis error and requested to be allowed to perform additional analyses. Ten additional samples were collected in March 1987. Using *Methods for Chemical Analysis of Water and Waste* Methods 413.1 and 413.2, the oil and grease content of these samples was determined to be between 0.002 and 0.135 percent. The Agency agrees with Merck that the 1985 analysis was the result of errors; therefore, the Agency did not require Merck to use the OWEP methodology. Merck provided test data indicating that the fly ash is not ignitable below 230°C. Testing of the

waste for reactivity yielded negative results. Reactive sulfide analyses were not required because sulfides are not used by Merck. Even if sulfides were present in process wastewaters, Merck's incineration process would be expected to destroy them. The waste was also determined not to be corrosive. See 40 CFR 261.21, 261.22, and 261.33, respectively.

Merck submitted a signed certification stating that the quantity of material currently present in the lagoon is 8,300 cubic feet (approximately 310 cubic yards) and that this volume represents the total volume of fly ash that has accumulated in the lagoon since 1977. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Merck's certified estimate of 310 cubic yards of fly ash.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Merck's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has initiated a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select to visit this facility in the future for spot-check sampling.

4. Agency Evaluation

The Agency is currently developing a fate and transport model to evaluate the potential behavior of wastes managed in surface impoundments. However, this model is not ready for evaluating delisting petitions. As a result, the Agency evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model.[2] See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. As explained below, the Agency feels that the VHS model, at this time, is adequate for this delisting petition. In addition, the Agency used its Organic Leachate Model (OLM) to estimate the leachable portion of the organic constituents in the petitioned waste. See 50 FR 48953 (November 27, 1985), 51 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential impact of the organic constituents on the underlying aquifer. The Agency requests comments on the use of the OLM and VHS model as applied to the evaluation of Merk's petition.

The primary difference expected between the VHS model (used for the petitioned waste) and a surface impoundment model is the consideration (in the impoundment model) of hydraulic head, sorption and retardation, and clogging. Hydraulic head is expected to cause higher compliance-point concentrations.[3] Sorption and retardation and clogging, on the other hand, are expected to result in lower compliance-point concentrations of the contaminants.[4] To some extent, the mechanisms of sorption and retardation and clogging will counteract hydraulic head. Until the ongoing development of the surface impoundment model is completed, it is difficult to predict what impact, if any, these competing mechanisms will have on the calculation of compliance-point concentrations. EPA feels that to delay petition evaluations until such time as other analytical tools (such as the surface impoundment model discussed above) are developed would result in curtailing delisting petition processing. Delay is particularly unwarranted where, as here, it is not clear that the new analytical tool would predict different constituent concentrations and/or change EPA's conclusion.

Furthermore, EPA believes that the VHS model is currently adequate to assess the reasonable worst-case disposal scenario of wastes at surface impoundments because the VHS model is conservative in all of its assumptions. Specifically, the VHS landfill model does not account for the likely reduction in the total concentrations of hazardous constituents occurring through volatilization and degradation, thereby providing an additional margin of safety, regardless of whether the waste is disposed of in a landfill or surface impoundment. Consequently, the Agency believes that the application of the VHS model, in this case, adequately protects human heath.

In this case, the Agency used the VHS model to evaluate the mobility of the hazardous organic constituents that are potentially present in the waste. The Agency used the OLM to predict leachable concentrations of the hazardous organics for which mass balance calculations were provided. The resulting leachable concentrations and Merck's estimate of 310 cubic yards of accumulated waste were used as inputs in the VHS model in order to assess the potential impacts of these constituents upon the ground water. The calculated compliance-point concentrations for these organic constituents are presented in Table 4.

TABLE 4.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) FLY ASH

Constituents	Compliance-point concentrations	Levels of regulatory concern[1]
Methylene chloride	0.00019	0.0047
Chloroform	0.00001	0.0057
Benzene	0.00001	0.005
Xylene	0.00005	70

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

Constituent concentrations derived from mass balances provided by Merck demonstrate that methylene chloride, chloroform, benzene, and xylene levels at the compliance point are below the health-based levels used in delisting decision making. Furthermore, the concentrations of chloroform, benzene, and xylene in the fly ash, when compared directly to the Agency's regualtory levels of concern, do not exceed these levels of concern.

As discussed above in conjunction with Table 1, the Agency did not evaluate the mobility of the hazardous organic constituents listed in Table 1 (except those for which mass balance calculations were provided) because they were not detected using appropriate analytical test methods. The Agency believes that it is inappropriate

[2] When the Agency believes that the surface impoundment model is sufficiently developed for delisting decision making, it intends to describe the model's parameters and assumptions and request comments on the model. Subsequent use of the model in the evaluation of specific delisting petitions would be proposed in the Federal Register. Also, the appropriateness of the model's use for each specific petition will be considered.

[3] Hydraulic head tends to force leachate into the aquifer, displacing ground water, and resulting in potentially higher concentrations at the receptor well (*i.e.*, compliance point).

[4] Sorption and retardation of dissolved contaminants with the aquifer solids encountered through migration in the ground water tend to reduce the concentration of the contaminant in the aquifer. Clogging occurs in surface impoundments when either fine material filters out in the impoundment bottom materials, or fine material settles on the bottom of the impoundment. A potential result of clogging is the lowering of the hydraulic conductivity of the impoundment bottom material to that which approaches the hydraulic conductivity of clay, thus reducing the leakage of impoundment liquid into the aquifer.

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. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

The Agency also used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the EP extract of Merck's waste. The Agency's evaluation, using the total accumulated waste volume of 310 cubic yards and the maximum reported EP leachate concentrations for the inorganic constituents, generated the compliance-point concentrations shown in Table 5. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, barium, cadmium, chromium, mercury, selenium, and silver) from Merck's waste because they were not detected in the EP extract using the appropriate analytical methods (see Table 3). As stated previously, the Agency will not 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.

TABLE 5.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) FLY ASH

Constituents	Compliance-point concentrations	Levels of regulatory concern[1]
Arsenic	0.0019	0.05
Lead	0.003	0.05
Nickel	0.0065	0.50
Cyanide	0.034	0.7

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

Merck's waste exhibited arsenic, lead, nickel, and cyanide levels at the compliance point below the health-based levels used in delisting decision making. Because the maximum reported concentration of total cyanide in the waste is 22 ppm, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum, in the RCRA public docket. Lastly because incineration is likely to destroy any sulfides that might be present in Merck's waste, the Agency believes that the concentration of reactive sulfide in the fly ash will be below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," *supra*. The Agency concluded, therefore, that these constituents are not present in the fly ash at levels of regulatory concern.

The Agency concluded, after reviewing Merck's processes and raw materials list, that no other hazardous constituents of concern other than those tested for, are being used by Merck and that no other constituents of concern are likely to be present or formed as reaction products or by-products in Merck's waste. In addition, the Agency does not believe that Merck's waste exhibits any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

The Agency has reviewed ground-water monitoring data submitted by Merck and obtained from the Virginia Department of Waste Management for the fly ash lagoon, which encompass six rounds of ground-water monitoring data collected in compliance with 40 CFR Part 265, Subpart F monitoring requirements. One of these six rounds included analysis for the constituents listed in 40 CFR Part 264, Appendix IX. The concentrations of all constituents analyzed pursuant to Subpart F, except benzene, are below the Agency's health-based regulatory levels or acceptable detection limits. Ground-water monitoring data for benzene are presented in Table 6.

TABLE 6.—GRAND-WATER CONCENTRATIONS OF BENZENE (PPM)

	12/15/86	3/9/87	5/6/87	9/2/87	12/22/87	3/31/88
Upgradient Wells:						
MW14	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002
MW15	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002
MW16	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002
Downgradient Wells:						
MW17	<0.006	<0.003	<0.002	<0.002	<0.002	<0.002
MW18	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002
MW19	<0.005	<0.004	<0.002	<0.002	<0.002	<0.002
MW20 [1]	NR	NR	NR	<0.002	<0.002	<0.002

<: Denotes that the actual value is below the detection limit specified in the table.
NR: Not Reported.
[1] Monitoring well MW20 was installed on 8/6/87.

In the December 1986 round of ground-water monitoring, Merck reported benzene levels of 0.005 ppm and 0.006 ppm in two of the three downgradient wells. All other benzene concentrations in both upgradient and downgradient wells from the six rounds of ground-water monitoring were reported as less than the Agency's level of regulatory concern for benzene of 0.005 ppm.

The Agency believes, nevertheless, that the petitioned waste is not the source of these elevated levels of benzene. Sampling data submitted for the fly ash lagoon indicate no detectable levels of benzene in the petitioned waste. Furthermore, Merck's mass balance calculation (including an incinerator efficiency DRE of 99.99%) for benzene demonstrates that the maximum possible concentration of benzene in the fly ash is 0.00077 ppm. The Agency reviewed Merck's discussion of other potential sources of benzene and believes, especially in light of Merck's benzene mass balance demonstration, that it is likely that an unlined landfill and an unlined carbon cake pit in the vicinity of the fly ash lagoon are contributing to site-wide ground-water contamination. The Agency further believes that, based on ground-water flow patterns, the upgradient wells monitoring the fly ash lagoon do not intercept ground-water flow from the unlined landfill and carbon cake pit. (Benzene levels are not detected above levels of regulatory concern in the upgradient wells monitoring the fly ash lagoon.)

Figure 1 shows the location of the fly ash lagoon in relation to the other suspected sources of benzene. Table 7 presents benzene analyses for solid

samples collected from the carbon cake pit and ground-water samples collected from well HE-8, which is screened below the carbon cake pit. Benzene was detected in ground water collected from well HE-8 at concentrations exceeding the Agency's level of regulatory concern for benzene (0.005 ppm). Therefore, the Agency believes that Merck has shown that these units are more likely alternative sources of the December 1986 benzene contamination detected in the downgradient wells, and that the lagoon containing the petitioned waste has not contributed to ground water contamination.

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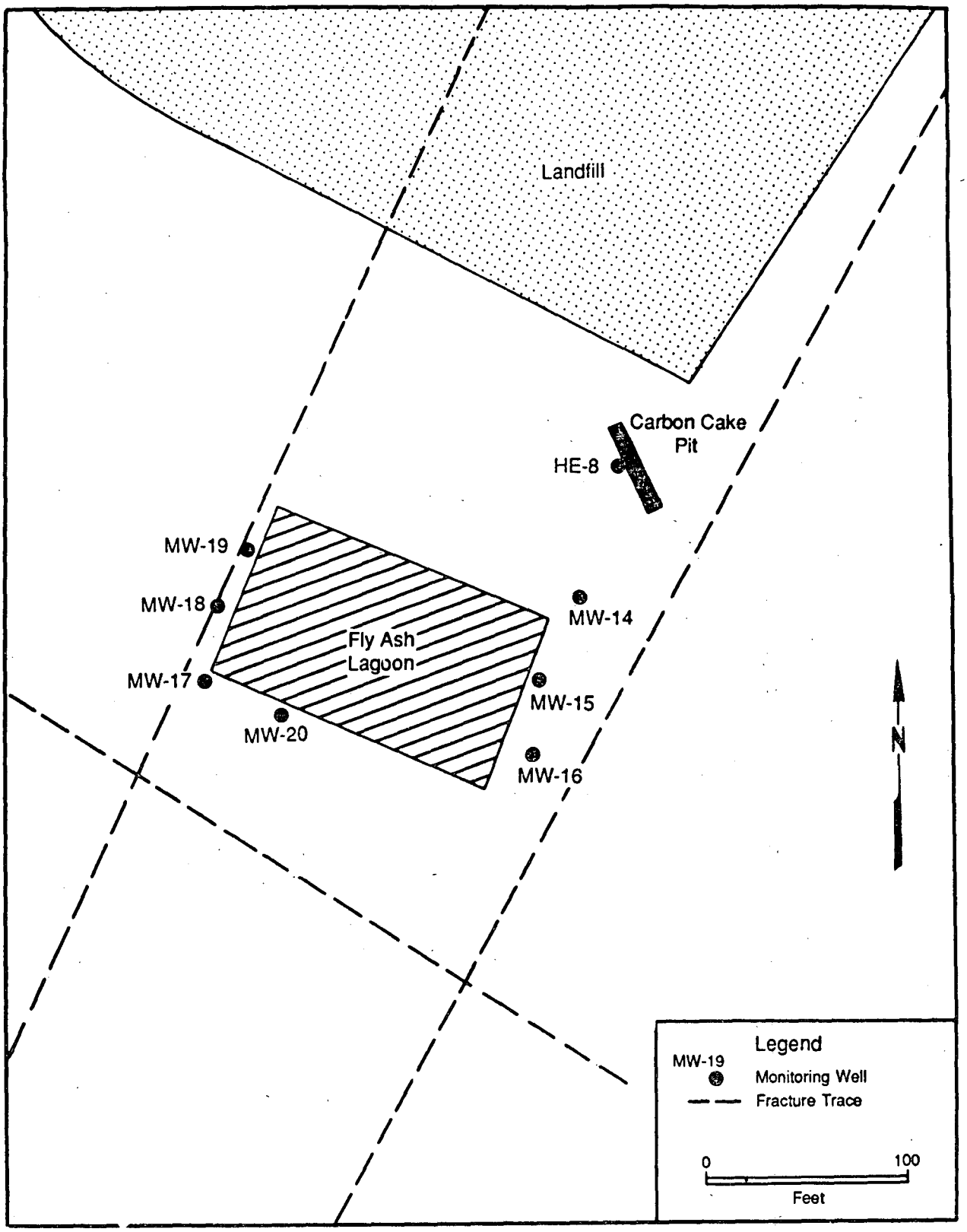

Figure 1. Location of Fly Ash Lagoon in Relation to Other Suspected Sources of Benzene

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TABLE 7.—Benzene Concentrations in Carbon Cake Pit and Well HE-8 AS REPORTED IN "GROUND-WATER MONITORING FOR THE ASH LAGOON AT THE STONEWALL PLANT, MARCH, 1987"

Carbon cake pit solid sample concentrations (mg/kg)	Ground-water Well HE-8 concentrations (mg/1)
0.22	0.218
0.12	0.12
0.006	0.05
	0.055
	0.025
	0.14
	0.11
	0.26

5. Conclusioin

The Agency believes that Merck has successfully demonstrated that the waste in its fly ash lagoon is non-hazardous. The Agency believes that the composite samples collected by Merck from the fly ash lagoon in 1982, 1984, and 1985 were not biased and adequately represent any constituent variations that may be present in the fly ash lagoon. The Agency, therefore, is proposing that Merck's waste be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant a one-time exclusion to Merck & Company, Incorporated located in Elkton, Virginia, for the incinerator fly ash contained in its lagoon, as described in its petition as EPA Hazardous Waste No. F002. If the proposed rule becomes effective, the incinerator fly ash contained in Merck's lagoon would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will apply only to the wastes covered by the original demonstration. Because this is a one-time exclusion for the fly ash lagoon, Merck may modify its manufacturing and treatment processes in the future without altering the regulatory status of the fly ash lagoon, so long as hazardous wastes are not combined with the contents of the lagoon.

Although management of the waste 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. Effective Date

This rule, if promulgated, will become effective immediately. 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 promulgated, 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 promulgation 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 promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. 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. This 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 treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. 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 avilable 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 may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, 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 and would be limited to one facility. 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.

List of Subjects in 40 CFR Part 261

Hazardous materials , Waste treatment and disposal, Recycling.

Date: September 19, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to the amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table I of Appendix IX, add the following wastestreams in aphabetical order:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Merck & Company, Inc.	Elkton, VA.....	This is a one-time exclusion for fly ash from the incineration of wastewater treatment sludges (EPA Hazardous Waste No. F002) generated from pharmaceutical production processes and stored in an on-site lagoon.
*	*	*

[FR Doc. 88–22037 Filed 9–26–88; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-436 RM-6359]

Radio Broadcasting Services; Valdosta, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Multi-Media Broadcasting, Inc. proposing the substitution of Channel 244C2 for Channel 244A at Valdosta, Georgia, and the modification of its license for Station WZLS(FM) to specify operation on the higher powered channel. Channel 244C2 can be allotted to Valdosta in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) northwest to avoid a short-spacing to Station WAIV-FM, Channel 245C, Jacksonville, North Carolina. The coordinates for this allotment are North Latitude 30-53-12 and West Longitude 83-23-36.

DATES: Comments must be filed on or before November 14, 1988, and reply comments on or before November 29, 1988.

ADDRESS: 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: Roy F. Perkins, Jr., Esq., 1724 Whitewood Lane, Herndon, Virginia 22070 (counsel to petitioner) and Multi-Media Broadcasting, Inc., Station WZLS(FM), P.O. Box 5406, Valdosta, Georgia 31603 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MM Docket No. 88-436, adopted August 18, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW Suite 140, Washington, DC 20037.

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 Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22048 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-437, RM-6367]

Radio Broadcasting Services; Harold, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Inter-Mountain Broadcasting Company, which proposed to allot Channel 285A to Harold, Kentucky, as its first FM channel at coordinates 37-30-32 and 82-31-28 with a site restriction.

DATES: Comments must be filed on or before November 14, 1988, and replay comments on or before November 29, 1988.

ADDRESS: Federal Communications Commission, Washington 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Paul R. Gearhart, P.O. Box 159, Harold, Kentucky 41635. (Consultant for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-437, adopted August 18, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washigton, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 pare* 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 Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22052 Filed 9-26-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-435, RM-6411]

Radio Broadcasting Services; Brookfield, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dwight Carver, proposing the substitution of FM Channel 245C2 for Channel 249A at Brookfield, Missouri, and modification of his license for Station KZBK, to reflect the new channel. The coordinates for Channel 245C2 at Station KZBK's current site are 39-50-26 and 93-04-51.

DATES: Comments must be filed on or before November 14, 1988, and reply comments on or before November 29, 1988.

ADDRESS: Federal Communications Commission, Washington 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Dwight Carver, KZBK Radio, 107 Main, Brookfield, Missouri 64628.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-435, adopted August 18, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do nt 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 pare* 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 Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22056 Filed 9-26-88 8:45 am]

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47 CFR Part 73

[MM Docket No. 88-438, RM-6327]

Radio Broadcasting Services; Yermo, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Robert Jason seeking the allotment of Channel 287A to Yermo, California, as that community's second local FM service. Reference coordinates utilized for this proposal are 34-54-50 and 116-48-00.

DATES: Comments must be filed on or before November 14, 1988, and reply comments on or before November 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners's counsel, as follows: Daniel F. Van Horn, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW, Washington, DC 20036-5339.

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

SUPPLEMENTARY INFORMATION: This is summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-438 adopted August 18, 1988, and released September 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-22059 Filed 9-26-88; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 209, 222, 223, 236 and 252

Department of Defense Federal Acquisition Regulation Supplement; Safety Provisions

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering the addition of new coverage to DFARS 209.104-1, 222.102-2, 236.513, 223.7200, 252.223-7004, 252.223-7005, 252.223-7006, and 252.236-7019 to implement recent regulations on hazard communication issued by the Occupational Safety and Health Administration (OSHA).

DATE: Comments on the proposed changes should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below on or before November 28, 1988, to be considered in the formation of the final rule. Please cite DAR Case 86-2 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&D) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed changes (i) add safety programs to section 209.104-1 as an example of an element which may be applicable to responsibility determinations; (ii) clarify the role of the Occupational Safety and Health Administration (OSHA) in relation to the administration and enforcement of OSHA regulations (222.102-2); (iii) require that Material Safety Data Sheets be submitted to the Government in response to solicitations, or in the case of small purchases, with the product shipped unless previously submitted and unchanged (223.7200, 252.223-7004, 252.223-7005, and 252.223-7006); and (iv) clarify the Accident Prevention responsibilities of contractors (236.513, 252.236-7015).

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the proposed changes will apply to only those small entities who want to contract with the Government to supply hazardous materials (as defined in the latest version of Federal Standard 313). It is likely that most small entities affected by the proposed changes will be distributors rather than manufacturers. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small

entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The Material Safety Data Sheets being required of bidders in the proposed DFARS changes must already be generated by them to comply with Title 29 Code of Federal Regulations, Part 1910.1200, "Hazard Communication" when selling their products within the private sector. Therefore, the time and financial resources necessary to comply with the proposed requirement will have already been invested prior to any involvment in contracting with the government.

List of Subjects in 48 CFR Parts 209, 222, 223, 236 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 209, 222, 223, 236 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 209, 222, 223, 236 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.104-1 is added to read as follows:

209.104-1 General standards.

(e) Have the necessary safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Section 222.102-2 is added to read as follows:

222.102-2 Administration.

(a)(S-70) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. Contractors or contractor employees who inquire concerning applicability or interpretation of Occupational Safety and Health Administration regulations shall be advised that ruling concerning such matters fall within the jurisdiction of the U.S. Department of Labor, and shall be given the address of the appropriate field office of the Occupational Safety and Health Administration of the U.S. Department of Labor.

PART 223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

4. A new Subpart 223.72, consisting of sections 223.7200 through 223.7203, is added to read as follows:

Subpart 223.72—Hazardous Material Identification and Material Safety Data

Secs.

223.7200 Scope of subpart.
223.7201 Definitions.
223.7202 Policy.
223.7203 Solicitation provision and contract clause.

Subpart 223.72—Hazardous Material Identification and Material Safety Data

223.7200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring deliverable items, other than ammunition and explosives, that require the furnishing of data involving hazardous materials. Agencies may prescribe special procedures for ammunition and explosives.

223.7201 Definitions.

"Hazardous material" is defined in the latest version of Federal Standard No. 313. (Federal Standards are sold to the public and Federal agencies through: General Services Administration (3FRI), Washington Navy Yard, Bldg. 197, Washington, DC 20407.)

223.7202 Policy.

(a) The Occupational Safety and Health Administration (OSHA) is reponsible for issuing and administering regulations that require Government activities to apprise their employees of—

(1) All hazards to which they may be exposed;

(2) Relative symptoms and appropriate emergency treatment; and

(3) Proper conditions and precautions for safe use and exposure.

(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, offerors are required to submit data regarding hazardous materials. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials. The Standard also prescribes Department of Labor Form OSHA 174 for use with Government contracts.

(c) Offerors shall submit hazardous material identification on the following:

(1) All items in, or ordinarily cataloged under, the Federal Supply Classes listed in Table I of Appendix A of the latest version of Federal Standard No. 313.

(2) Items having hazardous characteristics in the Federal Supply Classes listed in Table II of Appendix A of the latest version of Federal Standard No. 313.

(3) Any other material designated by the technical representative of the contracting activity as potentially hazardous and requiring safety controls. Technical personnel are required to identify items that in their professional opinion will involve exposure of Government personnel to hazardous materials in any manner (e.g., performance of work, use, handling, manufacturing, packaging, storage, inspection, disposal, or any other use) after delivery to the Government-designated destination.

(d) Offerors shall submit hazardous materials data when such data is required in the solicitation. If an offeror certifies that these data have been previously submitted to the Government, and there has been no change affecting the accuracy or applicability of the data, then resubmission is not required.

(e) The hazardous material data or the certificate required above is a deliverable item under the contract.

223.7203 Solicitation provision and contract clause.

(a) Wherever one or more of the circumstances listed in 223.7202(c) exists, the contracting officer shall insert the clause at 252.223-7004, Hazardous Material Identification and Material Safety Data, in solicitations and contracts except acquisitions subject to small purchase procedures. (See (b) below.)

(b) The Contracting Officer shall insert the clause at 252.223-7005, Hazardous Material Identification and Material Safety Data—Small Purchases, in acquisitions made using FAR Part 13 procedures, e.g., contracts resulting from unilateral purchase orders and oral quotations whenever one or more of the circumstances listed in 223.7202(c) exists.

5. A new Subpart 223.73, consisting of sections 223.7300 and 223.7301, is added to read as follows:

Subpart 223.73—Notice of Radioactive Material

Sec.
223.7300 Requirements.
223.7301 Contract clause.

Subpart 223.73—Notice of Radioactive Material

223.7300 Requirements.

(a) The clause at 252.223-7006 requires the contractor to notify the contracting officer prior to delivery of radioactive material.

(b) Upon receipt of the notice, the contracting officer shall notify receiving activities so that appropriate safeguards can be taken.

(c) The clause permits the contracting officer to waive the notification if the contractor certifies that a notification on prior deliveries is still accurate. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

223.7301 Contract clause.

The Contracting Officer shall insert the clause at 252.223-7006, Notice of Radioactive Materials, in all contracts for items, components thereof, and materials which are radioactive in which the specific activity is greater than 0.002 microcuries per gram. Such contracts include, but are not limited to, contracts for aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses and identification markers.

6. A new Subpart 223.74, consisting of sections 223.7401 and 223.7402, is added to read as follows:

SUBPART 2232.74—System Safety Program

Sec.
223.7401 Scope of subpart.
223.7402 Policy.

Subpart 223.74—System Safety Program

223.7401 Scope of subpart.

This subpart prescribes the policies and procedures for implementing the System Safety Program as required by DoD Instruction 5000.36, "System Safety Engineering and Management."

223.7402 Policy.

Identification and control of safety and health hazards to systems, facilities, personnel, or property during the acquisition process are more cost-effective than sustaining the consequences of such hazards, or instituting corrective measures after the fact. The primary objective of the Department of Defense system safety program required by DoDI 5000.36, therefore, is to provide for safety and health hazard analysis; to correct or control those hazards commensurate with mission requirements; and to facilitate the acquisition of associated personnel protective equipment and safety health training. The system safety effort considers safety and health hazards throught the entire life cycle of the system, to include operations, maintenance, repair, transportation and disposal.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

7. Section 236.513 is added to read as follows:

236.513 Accident prevention.

(S-70) When the circumstances arise for using either the Accident Prevention clause or the Alternate I prescribed at FAR 36.513, the contracting officer shall insert the clause at 252.236-7019 or its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see FAR Part 37) is contemplated and technical representatives advise that special precautions are appropriate.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 252.223-70004, 252.223-70005 and 252.223-7006 are added to read as follows:

252.223-7004 Hazardous material indentification and material safety data.

As prescribed at 223.7203(a), insert the following clause in solicitations and contracts.

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (DATE)

(a) The Offeror shall submit with its bid a Material Safety Data Sheet meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313 in effect on the date of this solicitation for all hazardous material(s) described in paragraph (b) below unless the certification in paragraph (c) below applies. Data shall be submitted on all items included in the offer, whether or not the Offeror is the actual manufacturer of these items. Failure to comply with this requirement shall result in the offer being considered nonresponsive.

(b) "Hazardous material," as used in this clause includes the following:

(1) All items in, or ordinarily cataloged under, the Federal Supply Classes listed in Table I of Appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);

(2) Items having hazardous characteristics in the Federal Supply Classes listed in Table II of Appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the terms of the contract);

(3) Any other item to be delivered under this contract which will contain hazardous material or expose Government personnel to those materials.

(c) Offeror certification.

[ ] (i) The Offeror certifies that the material to be delivered is not a hazardous material as defined in paragraph (b) above.

[ ] (ii) The Offeror certifies that a Material Safety Data Sheet(s) meeting the requirement of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313 has been previously submitted as described below, and that all data therein are current and complete.

Description of Previous Submission
Name and Address of Contracting Activity —
Contract/Solicitation Number ————
Name and/or Code of Contracting Officer —
Date of Previous Submission ————
NSN ————
FSCM ————
Part No. ————
Specification No. (if applicable) ————

(d) Prior to contract award, if there is any change in the composition of the item(s) which renders incomplete or inacurrate the data submitted under paragraph (a) or the certification submitted under paragraph (c), the Offeror shall promptly notify the Contracting Officer and resubmit the data. If the Offeror is awarded the resultant contract and, after award, there is a change in the composition of the item(s) which renders incomplete or inaccurate the data submitted under paragraph (a) or the certification submitted under paragraph (c), the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(e) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property. Nothing in this clause shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordiances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(f) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have other use, duplicate, and disclose the data for the Government for these purpose.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (f)(1) above, in precedence over any other clause of this contract providing for rights in data.

(3) That the Government is not precluded from using similar or indentical data acquired from other sources.

(4) That the data shall not be duplicated, disclosed, or released outside the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies—

"This is furnished under the United States Government Contract No. _____ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of _____. This legend shall be marked on any reproduction of this data."

(End of legend)

(5) That the Contractor shall not place the legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to the Government without limitations or (ii) should be delivered without limitations under the conditions specified in the clause at 252.227-7013, Rights in Data.

(End of clause)

252.223-7005 Hazardous material identification and material safety data—small purchases.

As prescribed at 233.7203(b), insert the following clause:

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA—SMALL PURCHASE (DATE)

(a) The Contractor shall submit with the supplies furnished under this order/contract a Material Safety Data Sheet meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313 (including revisions adopted during the term of this order/contract) for all hazardous materials described in paragraph (b) below, unless the certification in paragraph (c) below applies. Data shall be submitted on all items included in this order, whether or not the Contractor is the actual manufacturer of these items.

(b) "Hazardous material," as used in this clause, includes the following:

(1) All items in, or ordinarily cataloged under, the Federal Supply Classes listed in Table I of Appendix A of the latest version of Federal Standard No. 313 (including revisions revisions adopted during the term of the contact);

(2) Items having hazardous characteristics in the Federal Supply Classes listed in Table II or Appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the terms of the contract);

(3) Any other item to be delivered under this contract which will contain hazardous material or expose Government personnel or the public to those materials;

(c) Offeror certification.

[ ] (i) The Contractor certifies that the material to be delivered is not a hazardous material as defined in paragraph (d) above.

[ ] (ii) The Contractor certifies that a Material Safety Data Sheet(s) meeting the requirement of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313 has been previously submitted as described below, and that all data therein are current and complete.

Description of Previous Submission

Name and Address of Contracting Activity —

Contract/Solicitation Number _____

Name and/or Code of Contracting Officer —

Date of Previous Submission _____

NSN _____

FSCM _____

Part No. _____

Specification No. (if applicable) _____

(d) If there is a change in the composition of the item(s) which renders incomplete or inaccurate the data submitted under paragraph (a) above or the certification submitted under paragraph (c) above, the Contractor shall promptly notify the Contracting Officer and resubmit the data upon the delivery of the item(s).

(e) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property. Nothing in this clause shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(f) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate, and disclose and data to which this clause is applicable. The purposes of this right are to:

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (f)(1) above, in precedence over any other clause of this contract providing for rights in data.

(3) That the Government is not precluded from using similar or identical data acquired from other sources.

(4) That the data shall not be duplicated, disclosed, or released outside the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies—

"This is furnished under the United States Government Contract No. _____ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of _____. This legend shall be marked on any reproduction of this data."

(End of legend)

(5) That the Contractor shal not place the legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to the Government without limitations or (ii) should be delivered without limitations under the conditions specified in the Federal Acquisition Regulation in the clause at 52.227-18, Rights in Data—Existing Works.

(End of clause)

252.223-7006 Notice of radioactive materials.

As prescribed at 223.7301, insert the following clause in solicitations and contracts.

NOTICE OF RADIOACTIVE MATERIALS (DATE)

(a) The Contractor shall notify the Contracting Officer or designee, in writing (—*—) days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 CFR, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcurie per gram. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 0704-0193).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall (i) be submitted in writing, (ii) contain a certification that the quantity of activity, characteristics, and composition of the radioactive material has not changed, and (iii) cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcurie per gram and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD-1458 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a).

(End of clause)

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions.

9. Section 252.236-7019 is added to read as follows:

252.236-7019 Accident prevention.

As prescribed at 236.513, insert the following clause in solicitations and contracts.

ACCIDENT PREVENTION (DATE)

(a) The Contractor shall provide and maintain work environments and procedures which will safeguard the public and Government personnel, and property exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and control costs in the performance of this contract.

(b) For these purposes, on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor in writing and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the site of work, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to base any claim or request equitable adjustment of the contract price and/or performance schedule on any stop work order issued under these circumstances.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of clause)

Alternate I (DATE)

If the contract will involve (i) work of a long duration or hazardous nature, or (ii) performance on a Government facility which, on the advance of technical representatives involves hazardous materials or operations which might endanger the safety of the public and/or Government personnel or property, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall—(1) submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and (2) meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administrative of the overall safety program.

[FR Doc. 88-22012 Filed 9-26-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket Nos. 88-06; Notice 5 and 88-07; Notice 3]

RIN 2127-AC43

Federal Motor Vehicle Safety Standards; Side Impact Protection; Side Impact Anthropomorphic Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for extension of comment period.

SUMMARY: This notice denies four petitions and a letter which sought an extension of the comment period for two Notices of Proposed Rulemaking (NPRM) proposing to amend Standard No. 214, *Side Door Strength* and to establish a new side impact anthropomorphic test dummy. Because the petitioners failed to show good cause for the extension of the comment period and because an extension would not be consistent with the public interest. NHTSA has decided to deny these petitions.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366-2264.

SUPPLEMENTARY INFORMATION: On January 27, 1988, NHTSA published two notices of proposed rulemaking (NPRM). The first NPRM would amend Standard No. 214, *Side Door Strength* (53 FR 2239) to upgrade its test procedures and performance requirements for passenger cars. More specifically, this NPRM proposed to add an additional test to Standard 214, in which passenger cars would be required to protect vehicle occupants in a crash test. In this proposed crash test, the car would be struck on either side by a moving barrier simulating another vehicle. The second NPRM proposed the specifications and qualification requirements for the new anthropomorphic test dummy to be used to simulate vehicle occupants in the crash test. 53 FR 2254. The agency allowed a nine month comment period for these two NPRMs, with the comment period closing October 24, 1988. Since the agency recognized that these NPRMs raised some complex technical issues, this longer than typical comment period was intended to facilitate technical analyses and submissions from interested parties such as safety groups, manufacturers, researchers, and foreign governments.

NHTSA has received four petitions for extension of this comment period by three to six months. The petitioners are the Committee of Common Market Automobile Constructors (CCMC), the International Organization for Standardization (ISO), Renault USA, and the Automobile Importers of America, Inc. (AIA). AIA's petition also asked the agency to publish a supplemental NPRM to address any late comments that the agency may receive on these proposals. In addition, the Working Party on the Construction of Vehicles, Economic Commission for Europe (WP29) submitted a letter asking NHTSA to extend the period of time in which they may submit comments related to these NPRMs.

The reasons offered to justify extending the comment period were similar. Renault USA, the CCMC, and the AIA stated that they or their members have had difficulty obtaining in a timely fashion sufficient quantities of the NHTSA moving deformable barrier face and the side impact test dummy to perform the necessary crash tests and draft their comments within the comment period. CCMC further claimed that the supply for the barrier face and the dummy is inadequate because they are produced by only one or two manufacturers. Similarly, ISO asserted that they will not have completed their study comparing the proposed side impact test dummy with a proposed European side impact test dummy before the close of the comment period. WP29 asserted that they would not be able to furnish comments before the comment period closes, because their organization's experts group "has only two meetings per year." As a result, they reviewed the NPRMs in June 1988 but will only be able to propose comments during their December 1988 session and formulate their official comments at their March 1989 session.

Renault further stated that the current comment period does not allow the agency or the commenters to properly consider an alternative test to the test proposed by the agency or the issue of harmonization between the NHTSA and EEC proposals.

The agency notes that under 49 CFR 553.19, the filing of a petition for an extension of time to submit comments "does not automatically extend the time for petitioner's comments. Such a petition is granted only if the petition shows good cause for the extension, and if the extension is consistent with the public interest." What constitutes "good cause" in a particular case depends on a consideration of all relevant facts, including the extent to which the petitioner demonstrates that it will not be able to offer meaningful comments on the proposal without an extension, the reasons for that inability, the extent to which the petitioner demonstrates the need for the additional information in order to complete the rulemaking record, the length of the comment period, and the extent to which an extension is consistent with the public interest.

Applying these criteria to these petitions, NHTSA concludes that the petitioners have not shown good cause for extending the comment period for these NPRMs. First, none of the petitioners alleged that they could not offer meaningful comments on these proposals without an extension of the comment period. Instead, they alleged that they could offer additional information about some of the subsidiary issues. This factor militates against a finding of good cause in this case. Second, some petitioners claimed the reason that they could not comment within the comment period was that they could not get sufficient quantities of deformable barrier faces and test dummies to do all the testing they want to do. However, these petitioners can conduct some testing and use that test data to prepare meaningful comments. The fact that petitioners cannot conduct *all* of the testing they would like before preparing their comments is not sufficient to warrant a finding of good cause in this case. Third, the information the petitioners asserted they could provide if an extension were granted was primarily a comparison of the NHTSA proposals with the EEC proposals on this subject. While NHTSA is very interested in such comparisons, they are not necessary to complete the rulemaking record for these proposals. This factor, then, militates against a finding of good cause. Fourth, the comment period for these proposals was nine months. The length of this comment period militates against a finding of good cause for extending the comment period further. Fifth and finally, the public interest with respect to these proposals is best served by having the agency decide whether to promulgate a final rule concerning side impact protection in a timely manner without unnecessary additional delays. Accordingly, NHTSA has concluded that the petitioners have not shown good cause for the extension of the comment periods for these NPRMs, and those petitions are denied.

NHTSA would again like to remind the petitioners and any other interested parties that the agency will always consider, to the extent possible, comments filed after the comment closing date. Any interested parties are free to provide the agency with comments on any additional issues with which they are concerned after the comment period has closed. If these comments are received in time for the agency to consider in its determination of the next step in this rulemaking, NHTSA will consider the comments. If the comments are received too late to be considered in determining the next step in this rulemaking, the comments will be treated as suggestions for future rulemaking in this area. Therefore, this denial of the petitions to extend the comment period should not be interpreted as foreclosing any person from providing NHTSA with additional information after the close of the comment period.

After carefully considering these petitions, NHTSA has concluded that they do not show good cause for extending the comment period for the side impact rulemakings, nor would an extension of the comment period be consistent with the public interest. Therefore, the petitions are denied.

Issued on: September 21, 1988.

Diane K. Steed,

Administrator

[FR Doc. 88-22082 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 53, No. 187
Tuesday, September 27, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization And Conservation Service

1988-Crop Peanuts; National Poundage Quota for 1988-Crop Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination.

SUMMARY: This notice affirms the determination of the national poundage quota for peanuts for the 1988–89 marketing year. On December 15, 1987, the Secretary of Agriculture announced that the national poundage quota for the 1988–89 marketing year would be 1,402,200 short tons, 46,700 short tons above last year's quota. That determination was made pursuant to the statutory requirements of the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act").

EFFECTIVE DATE: December 15, 1987.

FOR FURTHER INFORMATION CONTACT: Gypsy Banks, Agricultural Economist, Agricultural Stabilization and Conservation Service, USDA, Room 3732-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5953. The final regulatory impact analysis describing the impact of implementing this determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: The determination affirmed in this notice was reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512–1 and was classified "not major." The matters under consideration 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, industries, Federal, State, or local governments or geographical regions, or (3) a significant adverse effect 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 title and number of the Federal assistance program that this final rule applies to are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this quota determination since ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to that determination.

General Information

The Secretary of Agriculture proposed, by a notice published on December 2, 1987 (52 FR 45838), that the quota for the 1988 crop of peanuts be set at 1,402,200 tons. The 1987 crop quota was 1,355,500 tons. Under section 358(p) of the Act, quota peanuts are those produced on a farm within the farm's poundage quota as established for the farm under the Act. Section 358(q)(1) of the Act provides for the 1987–1990 crops that the national quota be set at the quantity in tons the Secretary estimates will be devoted in the marketing year to "domestic edible, seed, and related uses," except that the quota may not be less than 1,100,000 tons. In addition, under that section, the quota must be announced by December 15 of the calendar year preceding the marketing year for the crop. The marketing year for the 1988-crop runs from August 1, 1988, through July 31, 1989. Quotas for the 1986–1990 crops were approved in a producer referendum held in 1986.

A total of twenty comments were received on the proposed quota. The commenters were two national producer groups, five state producer groups, two producers, three members of Congress, two processor associations, three processors, two sheller associations, and one sheller. One suggested that the quota should be the same as the 1987 crop quota. Another suggested that the quota be 1,400,000 tons. Ten supported the proposal. Eight others suggested that the quota be higher than the proposed amount. Those comments recommending quotas higher than the proposed quota suggested quotas ranging from 1,430,000 tons to 1,500,000 tons.

On December 15, 1987, the Secretary announced that the quota would be the proposed amount, 1,402,200 tons. That determination was based on the estimates of domestic edible, seed and related uses set out in the December 2, 1987, notice published in the **Federal Register**. The sources of those estimates were set out in that notice. No better figures were offered and the estimates set out in the notice of proposed determination were determined to be the most reliable available at the time of the final determination. This notice affirms the determination made and announced by the Secretary on December 15, 1987, with respect to the national poundage quota.

Determination

The amount of the national poundage quota for 1988-crop peanuts is 1,402,200 short tons.

Authority: Section 358, 55 Stat. 88, as amended (7 U.S.C. 1358).

Signed at Washington, DC on September 16, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–22001 Filed 9–26–88; 8:45 am]
BILLING CODE 3410-05-M

Soil Conservation Service

Waddington Town Beach Recreation Land Drainage RC&D Measure, New York; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact

statement is not being prepared for the Waddington Town Beach Recreation Land Drainage RC&D Measure, St. Lawrence County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423-5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan to provide for drainage of a public recreation area in the Town of Waddington. Wet conditions preclude maximum utilization of the facility and the cancellation of several planned events annually. In addition, wet, slippery conditions present a safety hazard to participants in informal sporting events. Increased utilization and elimination of the safety hazard will be assured through the installation of project measures. The planned works of improvement include the installation of a surface outlet diversion, a waterway, and subsurface drain tile.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.)

Date: August 31, 1988.

Paul A. Dodd,

State Conservationist.

[FR Doc. 88-22117 Filed 9-26-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: September 27, 1988.

FOR FURTHER INFORMATION CONTACT: Bernard T. Carreau or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with § 353.53a (a)(1), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with § 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than September 30, 1989.

	Periods to be reviewed
Antidumping Duty Proceedings and Firms	
Romania: Urea (A-485-601)	1/2/87-6/30/88
Chemicia	
Israel: Industrial Phosphoric Acid (A-508-604)	4/20/87-7/31/88
Negev Phosphates	
Haifa Chemicals	
Italy: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-475-603)	2/06/87-07/31/88
RIV-SKF	
Japan: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-588-054)	08/01/87-07/31/88
Koyo	
NSK	
Nachi-Fujikoshi	
Countervailing Duty Proceedings and Firms	
Canada: Live Swine (C-122-404)	04/01/87-03/31/88
Israel: Industrial Phosphoric Acid (C-508-605)	02/05/87-12/31/87
New Zealand: Low-Fuming Brazing Copper Rod and Wire (C-614-501)	08/01/87-07/31/88
Thailand: Pipes and Tubes (C-549-501)	01/01/87-12/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Date: September 21, 1988.

[FR Doc. 88-22098 Filed 9-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-801]

Postponement of Final Antidumping Duty Determination; Certain All-Terrain Vehicles From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received requests from respondents, Honda Motor Co., Ltd., Yamaha Motor Co., Ltd., and Suzuki Motor Co., Ltd., to postpone the final determination as permitted by section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). Based on these requests, we are postponing our final determination as to whether sales of certain all-terrain vehicles from Japan have occurred at less than fair value until not later than January 25, 1989. We are also postponing our public hearing until December 14, 1988.

EFFECTIVE DATE: September 27, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Louis Apple, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-2613 or (202) 377-1769.

SUPPLEMENTARY INFORMATION: On September 12, 1988, we published a preliminary determination of sales at less than fair value of this merchandise (53 FR 35220).

On September 8, September 9, and September 12, 1988, respectively, Suzuki Motor Co., Ltd., Yamaha Motor Co., Ltd., and Honda Motor Co., Ltd., requested a postponement of the final determination until not later than the 135th day after the publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. If exporters who account for a significant proportion of exports of the subject merchandise under investigation request a postponement of the final determination following a preliminary affirmative determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than January 25, 1989.

Public Comment

In conjunction with this postponement, a public hearing to afford interested parties an opportunity to comment on the preliminary determination, in accordance with 19 CFR 353.47, will now be held, if requested, at 10:00 a.m. on December 14, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary by December 5, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Jan. W. Mares,

Assistant Secretary for Import Administration.

September 21, 1988.

[FR Doc. 88-22099 Filed 9-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-801]

Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Argentina of certain welded carbon steel pipe and tube products (pipe and tube) as described in the "Scope of Investigations" section of this notice. The estimated net bounties or grants are specified in the "Suspension of Liquidation" section of this notice.

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of pipe and tube from Argentina which are entered, or withdrawn from warehouse, for consumption on or after July 14, 1988, and to require a cash deposit on entries of these products in an amount equal to the estimated net bounty or grant as specified in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: September 27, 1988.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determinations

Based on our investigations, we determine that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Argentina of pipe and tube. For purposes of these investigations, the following programs are found to confer bounties or grants:

- Reembolso;
- Export Payments Under Decree 176; Programa Especial de Exportaciones (PEEX);
- Pre-Export Financing Under RF-153;
- Post-Export Financing (OPRAC-1);
- Tax Deduction Under Decree 173/85.

Case History

Since the last **Federal Register** publication pertaining to these investigations (the Notice of Preliminary Determinations (53 FR 26625, July 14, 1988)), the following events have occurred. On July 15, 1988, we received a letter from USX Corporation alleging the respondents' use of three programs not covered in the petition or in our notice of initiation. Between July 18 and August 1, 1988, we conducted verification in Argentina. In response to requests made at verification, we received supplemental responses from Comatter on August 12, 17, and 22, and September 7 and 9, 1988, from Laminfer on August 15 and 25, 1988, from Acindar on August 22 and 25, 1988, and from TASA on September 8, 1988. Although no public hearing was held, initial briefs were filed by petitioners and respondents on August 24, 1988, and rebuttal briefs on August 31, 1988.

Scope of Investigations

The products covered by these investigations are certain welded carbon steel pipe and tube products from Argentina. These products constitute the following four separate "classes or kinds" of merchandise:

(1) *Standard Pipe:* Certain circular welded carbon steel pipes and tubes, 0.375 inch or more but not over 16 inches in outside diameter, generally known in the industry as standard pipe. This is a general-purpose commodity used in such applications as plumbing pipe, sprinkler systems, and fence posts. Standard pipe may be supplied with an oil coating (black pipe) or may be galvanized, and is sold in plain ends, threaded, threaded and coupled, or beveled. These products are generally produced to ASTM specifications A-120, A-53, or A-135. Imports of these products are classified under TSUSA categories 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925, and are classified under HTS categories 7306.30.1000, 7306.30.5025, 7306.30.5030, 7306.30.5040, 7306.30.5045, 7306.30.5050, 7306.30.5060,

7306.30.5065, and 7306.30.5075. Oil country tubular goods entering under TSUSA categories 610.3242, 610.3243, 610.3252, 610.3254, and 610.3258 are already covered by a countervailing duty order and are not covered by these investigations.

(2) *Line Pipe:* Certain welded carbon steel American Petroleum Institute (API) line pipe, 0.375 inch or more but not over 16 inches in outside diameter known in the industry as line pipe. Line pipe generally is produced to API specification 5L. Line pipe is used for the transportation of gas, oil, or water, generally in pipeline or utility distribution systems. API line pipe not over 16 inches in outside diameter is classified under TSUSA categories 610.3208 and 610.3209, and is classified under HTS categories 7306.10.1010 and 7306.10.1050.

(3) *Heavy-Walled Rectangular Tubing:* Certain heavy-walled carbon steel rectangular tubing having a wall thickness of 0.156 inch or greater, which is generally used for support members for construction or load-bearing purposes in construction, transportation, farm, and material-handling equipment. The product is generally produced to ASTM specification A-500, Grade B. Imports of heavy-walled rectangular tubing are classified under TSUSA category 610.3955, and are classified under HTS category 7306.60.1000.

(4) *Light-Walled Rectangular Tubing:* Certain light-walled carbon steel rectangular tubing having a wall thickness of less than 0.156 inch, which is generally employed in a variety of end uses not involving the conveyance of liquid or gas, such as agricultural equipment frames and parts, and furniture parts. The product is generally produced to ASTM specification A-513 or A-500, Grade A. Imports of light-walled rectangular tubing are classified under TSUSA category 610.4928, and are classified under HTS category 7306.60.5000.

Analysis of Programs

As stated above, these investigations cover four classes or kinds of merchandise. We received responses from virtually all producers and exporters of line pipe, standard pipe and light-walled rectangular tubing. Comatter is a producer and exporter of standard and line pipe, Acindar and TASA are producers and exporters of standard pipe, and Laminfer is a producer and exporter of light-walled rectangular tubing. We verified that Trafilam did not export the subject merchandise to the United States during the review period. As such, Trafilam does not qualify as a respondent in these investigations and is not eligible to request exclusion from these countervailing duty orders.

We received no responses from producers or exporters of heavy-walled rectangular tubing. Consequently, for all producers and exporters of heavy-walled rectangular tubing, we are applying the best information available in accordance with section 776(a) of the Act. For purposes of these investigations, we consider the best information available to be the highest rate for each of the programs as discussed below.

For purposes of these final determinations, the period for which we are measuring bounties or grants (the review period) is calendar year 1987. As is common under our method of analysis, if the companies under investigation have different fiscal years, which is the case in these investigations, our review period is the most recently completed calendar year.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and written comments from respondents, petitioners, and interested parties, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Argentina of pipe and tube under the following programs:

A. Reembolso

The Reembolso program was established in 1971. It authorized a cash refund, upon export, of taxes "that bear directly or indirectly" on exported products and/or their component raw materials for the purpose of promoting exports. In October 1986, the Government of Argentina, through Decree 1555/86, revised the Reembolso program making it "exclusively a refund of indirect taxes physically included in the incorporated costs of the exported goods," independent of other "macro-economic functions." Article 1 of Decree 1555/86 also states that the purpose of the Reembolso is to rebate import duties.

Under Decree 1555/86, three broad rebate levels were established to replace the separate rebate rates for each product or industry sector that has existed under the previous program. The rates are ten percent for level I, 12.5 percent for level II, and 15 percent for level III. Pipe and tube producers are eligible for level II benefits.

To determine whether an indirect tax rebate system which incorporates rebates of import duties confers a bounty or grant, we perform the following analysis. First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government properly ascertained the level of the rebate. This requires an analysis of the calculation and supporting documentation of the indirect tax incidence of inputs which are physically incorporated in the exported product. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of actual duties and indirect taxes paid. (*See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails From Thailand* (52 FR 36987, October 2, 1987).)

When the rebate program meets the three tests identified above, the Department will consider that the system does not confer a bounty or grant if the rebate does not exceed the amount of duties, final stage taxes, and indirect taxes on physically incorporated inputs. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs at prior stages, we find that a bounty or grant exists to the extent that the rebate exceeds the indirect tax and duty incidence on physically incorporated inputs at prior stages. Based on these tests, we determine the following.

As the language of Decree 1555/86 discussed above clearly shows, the purpose of the Reembolso is to refund indirect taxes and import duties on the physically incorporated inputs of exported products. Thus, we determine that the program is intended to operate as a rebate of indirect taxes and import duties and, therefore, meets our first test.

The next step in our analysis is to examine whether the government properly ascertained the level of the rebate. The indirect tax incidence study upon which the Reembolso is based for pipe and tube producers in Argentina was done by Comatter. The government considered Comatter representative of the pipe and tube industry in Argentina.

The government checked the accuracy of the Comatter study by comparing certain values shown for the prior stage of production, such as the total tax incidence and the ratio of indirect taxes on physically incorporated inputs to total taxes, to the corresponding values found in a separate indirect tax incidence study done by the prior stage producer. Although we were given the

summary sheet of this study, we were unable to review any supporting documentation at verification.

Government officials explained that the details of the indirect tax incidence on physically incorporated inputs at all prior stages of production could be verified at Comatter. At Comatter, we verified the cost structure of pipe production and the final stage taxes paid by Comatter. The primary cost of producing pipe is the cost of hot-rolled steel coil. The final stage indirect taxes which we verified were the foreign currency transfer tax, the commercial fleet national fund tax, the dock administration tax, the stamp tax, and certain taxes on freight insurance.

With respect to the cost structures and tax incidences at prior stages of production, Comatter presented an independent cost study of the immediate prior stage of production. This study consisted of an analysis of the cost of production for hot-rolled steel coil, the product of the immediate prior stage of production. Comatter used this study to construct the cost structure of hot-rolled steel coil in its indirect tax incidence study. However, many of the values taken from the independent study were adjusted or completely changed by Comatter, and the company could not provide any documentation at verification supporting the adjustments or changes. The cost structures of earlier stages of production also could not be verified. Consequently, we were not able to verify the level of rebate attributable to all prior stages of production.

We were, however, able to verify the cost of hot-rolled steel coil, and of paint and varnish (used to paint the pipe), the products of the immediate prior stage of production, relative to the FOB price of pipe. We also verified that all sales are subject to certain indirect taxes. Therefore, we are allowing those taxes incurred on the products of the immediate prior stage of production that we were able to verify. These were the turnover tax, the stamp tax, the bank debit tax, and the municipal tax on hot-rolled steel coil, and paint and varnish.

To calculate the incidence of the taxes incurred at the immediate prior stage of production, we multiplied the percentage that hot-rolled steel coil and paint and varnish represent of the final FOB price of the pipe by the turnover, stamp, bank debit, and minicipal tax rates. On this basis, we calculate an indirect tax incidence of 3.23 percent for the immediate prior stage of production.

In addition, we verified the level of final stage tax incidence. Based on our analysis of the final stage taxes noted above, we determine that the amount of allowable taxes at the final stage is 3.61 percent. Adding this amount to the indirect tax incidence at the immediate prior stage, we determine that the total amount of allowable indirect taxes rebatable to pipe and tube producers is 6.34 percent *ad valorem*. We find this percentage to reflect the amount of actual indirect taxes paid.

Comparing this amount to the Reembolso rate, we find that the rebate on pipe and tube is excessive and, therefore, countervailable. Subtracting the allowable percentage of indirect tax incidence from the Reembolso rate for pipe and tube, we calculate an estimated net bounty or grant of 5.66 percent *ad valorem* for all producers and exporters of standard pipe, line pipe, light-walled rectangular tubing, and heavy-walled rectangular tubing in Argentina.

B. Export Payments Under Decree 176; Program Especial de Exportaciones (PEEX)

In February 1986, the government established Decree 176 to provide "special incentives to producer and exporter companies of promotional goods and services" as a means of increasing export earnings. The PEEX program provides two forms of benefits. The first is a payment of 15 percent of the increase in a company's exports above a base amount. The second is an additional benefit of five percent of the increase in a company's exports if the exports are made to a new or previously lost market.

In order to qualify for PEEX benefits, a company must sign a contract with the government in which the company makes a commitment to increase annual exports over two to five years above a base amount representative of the company's exports in the year before it entered the program. This commitment is approved through the issuance of a government resolution stating the terms and conditions of the company's participation in the program.

The committed increase in exports is divided into calendar quarters. When a company meets 50 percent of its quarterly export commitment above the base amount, it accrues 65 percent of 15 percent of the f.o.b. value of its increase in exports. If at the end of the year a company has increased its exports by at least 90 percent of its yearly commitment, it accrues the balance of the 15 percent of the f.o.b. value of the total increase in exports. If at the end of the year a company has increased its exports by 50-90 percent of its yearly commitment, it accrues a prorated amount of the 15 percent benefit, but not less than 65 percent. If at the end of the year a company has increased its exports by less than 50 percent of its yearly commitment, all accrued benefits are cancelled.

With respect to the producers and exporters of standard pipe and line pipe, the government response to our questionnaire stated that "[t]he companies under investigation in the line pipe and standard pipe industries do not participate in Decree 176 for exports to the United States of the subject merchandise." The questionnaire responses of the standard and line pipe companies made no statement concerning participation in the PEEX program, or accrual or receipt of PEEX benefits.

We verified that two companies in the standard pipe industry, Acindar and TASA, did not accrue or receive PEEX benefits during or after the review period. However, during verification we were informed that Comatter, a producer of line and standard pipe, had participated in the PEEX program. However, we verified that Comatter did not receive PEEX benefits during the review period.

On June 9, 1988, Comatter sent a letter to the government stating Comatter's intention to renounce PEEX benefits on all U.S. shipments of the subject merchandise and return all benefits received up to that date on such shipments. We verified that on July 5 and 18, 1988, Comatter deposited the total amount of PEEX payments received to-date on U.S. shipments of the subject merchandise, plus interest on that amount between June 9, 1988, and the date of the deposit, into an escrow account controlled by a notary public for later transfer to the government's account.

On July 28, 1988, the government issued a resoulution in which it agreed to exclude from PEEX benefits Comatter's exports of pipe and tube to the United States shipped after December 31, 1987. As part of this resolution, the government also agreed to accept the return of benefits received by Comatter on exports of the subject merchandise to the United States taking place before December 31, 1987. This resolution further requires Comatter to append to all future applications for PEEX benefits on non-U.S. export sales the purchase order or invoice to identify the destination of the exported product.

With respect to the producers and exporters of heavy- and light-walled rectangular tubing, the government response to our questionnaire stated that "[w]ith regard to the light and heavy-walled rectangular tube industries, benefits have been

renounced on shipments of the investigated products exported after June 1, 1988." At verification, we received a letter dated June 9, 1988, from ILFA Industrias Metalurgicas S.A. (ILFA) to the government renouncing PEEX benefits on exports of the subject merchandise to the United States as of June 1, 1988. (According to the government response, ILFA, a non-responding company, is a producer and exporter of heavy-walled rectangular tubing). We did not receive a resolution from the government recognizing ILFA's renunciation.

Laminfer, a producer and exporter of light-walled rectangular tubing, provided information regarding its participation in PEEX in its response to our supplemental questionnaire. We verified that Laminfer did not receive PEEX payments during the review period. On June 9, 1988, Laminfer sent a letter to the government in which it renounced all PEEX benefits on exports of the subject merchandise to the United States shipped after June 1, 1988. On July 27, 1988, Laminfer sent a second letter to the government confirming its earlier renunciation and requesting that the government exclude the concerned products from the PEEX program.

After verification, we received a government resolution, dated August 12, 1988, which declares Laminfer's exports of the subject merchandise ineligible for PEEX benefits as of June 1, 1988. This resolution requires Laminfer to append to all future applications for PEEX benefits on non-U.S. export sales the purchase order or invoice to identify the destination of the exported product.

After verification, the government issued a decree formally repealing the PEEX program. However, this decree permits companies with outstanding PEEX contracts to continue collecting PEEX benefits until the expiration of their contracts. Companies with applications being considered at the time of the repeal may also be eligible.

Because the PEEX program provides payments contingent upon export performance, we determine that it confers a bounty or grant. As discussed above, the amount of the payment received under the program depends on a company's year-end export performance. Therefore, our calculation of the estimated net bounty or grant for the review period is based on the amount of benefits received during the review period. This is consistent with our practice of considering the benefit to occur at the time that a company knows the extent of its benefit. However, we verified that no payments were received by Comatter and Laminfer during the review period on exports of the subject merchandise to the United States and that TASA and Acindar did not participate in the program. Therefore, we determine that with respect to producers and exporters of line pipe, standard pipe, and light-walled rectangular tubing in Argentina, the estimated net bounty or grant is zero.

Since no producer of heavy-walled rectangular tubing responded to our questionnaire, as the best information available, we are assuming that the producers of this product received the full nominal amount of benefits under PEEX for increased exports. Therefore, the estimated net bounty or grant for all producers of heavy-walled rectangular is 15.00 percent *ad valorem*.

C. Pre-Export Financing Under FR–153

Under Circular FR–153 of the Central Bank of Argentina, exporters may receive pre-export financing through austral-denominated loans. The amount of the loan can equal up to 65 percent of the f.o.b. export value if the merchandise to be exported is produced solely from domestically-produced inputs. If the exporter uses imported materials, the level of financing is reduced according to the import content of the merchandise to be exported. Loans under this program are paid out to individual corporate borrowers by commercial banks which are reimbursed by the Central Bank. The loans are extended for a maximum period of 180 days.

The loan principal and interest payments under this program are indexed to the austral/dollar exchange rate. The loans are given in australes but are tied to a fixed dollar amount based on the exchange rate prevailing on the date of the loan. At the time of repayment, the fixed dollar amount is reconverted to australes based on the exchange rate prevailing on that date, and the borrower must repay the new austral amount. In addition, the borrower must make quarterly interest payments in australes applying a one percent annual interest rate to the fixed dollar amount reconverted to australes at the exchange rate prevailing at the end of each quarter.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at an interest rate below the national average commercial interest rate or the most comparable, predominant rate on short-term financing. This is consistent with our past practice as described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, Aptil 26, 1984).

To find the appropriate benchmark interest rate, we examined the short-term financing mechanisms in Agrentina. In Argentina there were both regulated and unregulated short-term intertest rates. Because Argentina has a hyperinflationary economy, loans are generally extended for 30 days or less and rolled over as necessary. In 1986, we found that the average short-term monthly interest rates did not vary significantly during the year. Therefore, for 1986, consistent with our general practice, we are using an average annual rate for our benchmark. However, during 1987, the average short-term monthly interest rate varied significantly between the first and second half of the year. Although we generally use an average annual rate for our benchmark, we are using as our benchmark in these investigations, for 1987, semi-annual averages of the prevailing average monthly interest rates in 1987 based on information collected on verification. We have done this because: (1) The terms of the loans in each of these investigations are almost exclusively clustered within either the first or the second half of 1987; (2) FR–153 loans are generally extended for 180 days or less; and (3) an average annual rate would have been distortive due to the impact of compounding very high monthly interest rates which varied widely between the first and second half of the year.

We calculated the weighted-average of the regulated and unregulated monthly interest rates (published by the Central Bank of Argentina) on short-term loans for each month based on the proportion of loans given at each rate. (We were unable to obtain information regarding the percentages of loans at regulated and unregulated interest rates for certain months in the latter half of 1987. For these months, we used a simple average) We then calculated the simple average of the monthly interest rates for each six-month period under consideration (*i.e.*, January-June 1987 and July-December 1987). Based on the six-month period within which each loan was predominately outstanding, we have compounded the appropriate average monthly interest according to the term of each loan.

Using these benchmarks, we calculated the amount of interest that would have been paid at the benchmark rate on loans related to sales to the United States of each of the classes or kinds of merchandise on which interest was paid during the review period. We compared the result with the amount

paid under the RF-153 loans, treating the increase in the principal due to indexation as part of the company's interest obligation. We found that the effective amount of interest paid on all but one of these loans was less than the amount of interest calculated at the benchmark rate. Therefore, we determine that pre-export financing under this program confers a bounty or grant.

We verified that of the responding companies, only Comatter and Laminfer received RF-153 loans on which interest was paid during the review period. To derive the benefit for each of the companies under investigation, we divided the interest payment difference described above by the total sales to the United States of the respective class or kind of merchandise by each of the companies under investigation.

On this basis, we calculate an estimated net bounty or grant of 0.11 percent *ad valorem* for all producers and exporters of standard pipe, of 1.69 percent *ad valorem* for all producers and exporters of line pipe, and of 3.59 percent *ad valorem* for all producers and exporters of light-walled rectangular tubing. Since no producers or exporters of heavy-walled rectangular tubing responded to our questionnaire, as the best information available, we have assigned to them the highest of the rates calculated for the other three classes or kinds of merchandise under investigation. We therefore calculated an estimated net bounty or grant of 3.59 percent *ad valorem* for all producers and exporters of heavy-walled rectangular tubing.

D. Tax Deduction Under Decree 173/85

Decree 173/85 was established in February 1985. It permits exporters of certain products to deduct ten percent of the f.o.b. value of their exports from their taxable income. We verified that Acindar, Laminfer, and TASA claimed this deduction in the tax return filed during the review period. Furthermore, we verified that where use of this deduction and other deductions resulted in a tax loss for the year, the companies can carry the loss, adjusted for inflation, forward and deduct it from the next year's net taxable income.

Because this program is contingent upon export performance, we determine that it is countervailable. For countervailable tax programs, we calculate the benefit by subtracting the amount of tax the company paid on its tax return filed during the review period, from the amount of tax the company would have paid absent the countervailable tax program. We verified that none of the respondent companies paid income taxes during the review period. Even without the use of the deduction under Decree 173/85, one of the respondent companies would have paid income taxes during the review period. Therefore, the estimated net bounty or grant is zero for all producers and exporters of pipe and tube in Argentina.

E. Post-Export Financing (OPRAC-1)

Under OPRAC-1, loans are granted for up to 30 percent of the foreign currency amounts received by exporters of certain products. The government and company responses to our questionnaire stated that there were no loans outstanding to the companies under investigation during the review period. We verified that, with respect to exports to the United States of the subject merchandise, Acindar had one loan under this program outstanding for less than one month during the review period.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential interest rates. We are using the same benchmark as that described above under "Pre-Export Financing Under RF-153." Comparing this interest rate to the rate charged on the OPRAC post-export financing loan, we find that the rate on the OPRAC loan is preferential. Therefore, we determine the post-export financing under this program to be countervailable.

To derive the benefit for Acindar, we calculated the amount of interest that would have been paid at the benchmark rate on the loan related to sales of the subject merchandise to the United States on which interest was paid during the review period. We subtracted from this the amount of interest that was actually paid and divided this difference by Acindar's total exports of the subject merchandise to the United States.

On this basis, we calculate an estimated net bounty or grant of less than 0.001 percent *ad valorem* for all producers and exporters of standard pipe in Argentina. For all producers and exporters of line pipe, light-walled rectangular tubing, and heavy-walled rectangular tubing in Argentina, the estimated net bounty or grant is zero.

II. Program Determined Not to Confer a Bounty or Grant

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Argentina of pipe and tube under the following program:

Communique A-946 and Debt Renegotiation

Shortly before verification an interested party alleged that Acindar was able to restructure its foreign currency debt, through government intervention, on terms inconsistent with commercial considerations.

The original debt of Acindar was covered by a governmental exchange rate insurance program. Under this program, the government agreed to pay the difference between the insured rate and the current rate of exchange as loan payments became due. Under Communique A-946, the government agreed to pay the creditor the difference between the insured rate and free rate in advance of the due dates of the loan payments.

As part of the restructuring of its debt, Acindar utilized the procedures under Communique A-946. We verified that these procedures were *de jure* available to all companies with exchange rate insurance. We also verified that the procedures under Communique A-946 were *de facto* used by hundreds of companies in the following industries: petrochemicals, aluminum, fishing, cereals, diesel engines, foodstuffs, paper, wire, tubes, and pharmaceuticals. Thus, we determine that Communique A-946 procedures are not limited to a specific enterprise or industry, or group of enterprises or industries and therefore, are not countervailable.

The restructuring of Acindar's debt also involved the refinancing of that portion of the original debt not covered by exchange rate insurance. We verified that the government neither mandated nor influenced the terms and conditions of this refinancing. We further verified that the government did not guarantee the refinanced debt. Therefore, we determine that the debt restructuring did not confer a bounty or grant to Acindar.

III. Programs Determined Not To Be Used

Based on verified information, we determine that manufacturers, producers, or exporters of pipe and tube in Argentina did not apply for, claim, or receive benefits during the review period for exports of pipe and tube to the United States under the programs listed below. Programs not described below are fully described in the notice of preliminary determinations in these investigations (53 FR 26625, July 14, 1988).

A. Financing of Investments for Export (FIDEX)

This program was examined pursuant to allegations made by an interested party shortly before verification.

FIDEX was established in 1987 by Communique A-980. This communique guarantees that external funds used to finance investment projects designed to increase exports will be repaid directly with export earnings generated by the investment project. Under this program, approved exporters do not have to sell their export earnings to the Central Bank, which is the normal legal requirement. Instead, they can use the export earnings to repay directly their external financing.

To be eligible an exporter must present a proposal for a new investment project or expansion of current capacity which will generate additional exports. The minimum investment required is $1 million. We verified that this program was not used.

B. Corrientes Regional Tax Incentives
C. Industrial Parks
D. Low Cost Loans for Projects Outside Buenos Aires
E. Discounts of Foreign Currency Accounts Receivable Under Circular RF-21 (Export Financing Under C.886)
F. Exemption from Stamp Tax Under Decree 186/76
G. Government Trade Promotion Programs

Interested Party Comments

Comment 1: Petitioners state that the Annex to the Subsidies Code makes a distinction between indirect taxes and import charges and argue that the rebate of import charges is not permissible. Furthermore, petitioners argue that the Department generally examines whether the rebate system is intended to operate as a rebate of both indirect taxes and import duties and claim that the only purpose of the Reembolso is to rebate indirect taxes on physically incorporated inputs. Therefore, petitioners argue, the Department should not assume that the purpose of the Reembolso is also to rebate import duties or final stage taxes paid on export

Comatter argues that the Department has in countless cases involving similar programs treated the rebate of indirect taxes and import duties as charges which may be legitimately rebated if borne by physically incorporated inputs. Comatter explains that Decree 1555/86 explicitly provides for the rebate of internal indirect taxes as well as any charges associated with importing raw materials used to produce a final export product.

DOC Position: The rebate of import charges or customs duties is explicitly provided for in Annex I.3 of part 355 of the Department's regulations and item (i) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code). The rebate of indirect taxes on the final stage of production is also explicitly provided for in Annex I.2 of part 355 of the Department's regulations and item (g) of the Illustrative List. As respondent points out, Article 1 of Decree 1555/86 includes import charges in the amount that can be rebated under Reembolso.

Comment 2: Petitioners contend that only iron ore, ferromanganese, scrap, paint, varnish, packing materials, and possibly zinc are physically incorporated in pipe and tube. Petitioners argue that taxes on gas, electricity, fuel, lubricants, tires and equipment do not qualify because these inputs are not physically incorporated in the final product and do not enhance the product's value. Finally, petitioners argue that the transfer of foreign currency tax, the bank debit tax, the proof of destiny tax, the statistics right tax, and the dock administration tax do not qualify as rebatable indirect taxes because they do not meet the definition of indirect taxes in the Subsidies Code, or because they are taxes on items which are not physically incorporated in the exported product.

Comatter argues that all indirect taxes at the final stage are by definition borne by the product receiving the rebate and should be legitimately rebated. Comatter also contends that every authoritative source in the steel industry worldwide recognizes that coke is an "essential" input to steel and is physically incorporated as carbon in the steel.

In addition, Comatter argues that the following taxes and charges all meet the definition of indirect taxes or import charges levied on physically incorporated inputs established by the Department: turnover tax, stamp tax, transfer of foreign currency tax, bank debit tax, import duties, import-related fiscal charges, taxes on freight and insurance, and municipal taxes.

Laminfer and Acindar argue that, as taxes assessed in respect to a transaction on a physically incorporated input or final stage product, the turnover tax, bank debit tax, freight taxes, insurance taxes, and municipal taxes are rebatable under U.S. countervailing duty law.

DOC Position: The turnover, stamp municipal and bank debit taxes incurred on the sale of hot-rolled steel coil were the only prior stage taxes accepted by the Department (see the *Reembolso* program description). Therefore, we do not reach the questions concerning which prior stage inputs of pipe and tube are physically incorporated into the final product and which import charges are properly rebatable.

We disagree with petitioners that the transfer of foreign currency, bank debit, and dock administration taxes are not rebatable indirect taxes. We verified that these taxes were paid upon the exportation of pipe and are, therefore, rebatable (See *DOC Position* on *Comment 1*).

Comment 3: Petitioners argue that the precentage of hot-rolled steel coil in pipe as presented by Comatter is improbable because it is based on a yield factor so far out of line from any other domestic or foreign pipe producer's experience that its validity must be questioned. Petitioners recommend that the Department reject Comatter's claimed yield factor and consult with its own steel experts to arrive at a reasonable yield factor or use a net yield figure of two percent, based on petitioners' experience, as the best information available.

Comatter contends that the experience of the U.S. industry is irrelevant to the facts established by verified documents.

DOC Position: We verified the cost of hot-rolled steel coil, and of paint and varnish, as a precentage of the final FOB selling price of exported pipe. It is not appropriate for the Department to speculate on the differences in the costs of production between U.S. and Argentine producers given that we were able to verify the relevant information used in these determinations.

Comment 4: Petitioners state that, with respect to scrap, only indirect taxes on purchased scrap may be considered rebatable under the Reembolso because any indirect taxes incurred on scrap that was internally generated by the integrated producer have already been accounted for by the other inputs.

Comatter argues that the scrap used in the production of hot-rolled steel coil is purchased and that the Department should, therefore, consider those taxes to be rebatable.

DOC Position: We do not reach the question of the indirect tax incidence on scrap at prior stages of production because we could not verify the tax incidence at earlier stages of production (See the *Reembolso* program description).

Comment 5: Petitioners argue that the Department should reject Comatter's cost study because the government did

not perform a detailed verification of the study. Furthermore, petitioners point out that Comatter used estimates and supplied no supporting source documentation for a number of areas in the study. Therefore, petitioners argue that the Department should reject the study and rely on the best information available.

Comatter claims that the government properly confirmed that the level of tax incidence rebated to the pipe and tube industry was correct, based on reasonable procedures and criteria. Specifically, Comatter states that the accuracy of prior stage data was checked by the government through an examination of another study done by the immediate prior stage producer. Moreover, Comatter argues that an indirect tax incidence study by a final stage producer must of necessity contain estimates rather than precise figures with respect to the prior stages of production. In addition, in its rebuttal brief, Comatter provided letters and other documents from several prior stage suppliers confirming the cost structures included in Comatter's study.

DOC Position: We did not accept the total indirect tax incidence at earlier stages of production as represented in the study done by Comatter because we could not verify the prior stage taxes at either the company or the government. When verifying an indirect tax incidence study we must be able to examine supporting documentation at either the company or the government.

We disagree with Comatter's claims that the government properly established the accuracy of all prior stage taxes in the study. Although the government provided a summary sheet of the immediate prior stage producer's indirect tax incidence study, we were not able to examine the study itself, nor was any documentation provided to demonstrate that this study was well-supported. Furthermore, no documentation was provided by the government which specifically supported the study by Comatter. Under Annex I.2 of the Department's regulations, the rebate of indirect taxes on an "exported product and its components will not be treated as a subsidy if the government has reasonably calculated and *documented* the actual tax experience of the product under investigation" (emphasis added). In this investigation, we have received little documentation supporting the indirect tax incidence at certain prior stages of production.

We also disagree with Comatter's contention that the government has reasonable procedures in place to assure itself that the level of indirect tax incidence is correctly calculated in any given tax incidence study. It appears from the verification in these investigations that the government does not require a significant amount of documentation supporting the primary conclusions of submitted studies and has no established procedures to review the reasonableness of the studies it receives. For example, in these investigations the government was not able to supply the supporting documentation for the indirect tax incidence studies it presented to the Department's verifiers. Furthermore, there does not appear to be a system of regularized checks which each study must undergo, in the form of either actual spot-checking of reported values or comparing the submitted information to other sources of information maintained by the government (*i.e.*, tax receipt records, industry-specific cost structures or input-output studies).

We understand that a final stage producer may have difficulty obtaining information concerning prior stages of production. However, the Department is obligated to examine supporting documentation, at either the government or the company, which reasonably supports the tax incidence at prior stages of production.

With respect to the fact that Comatter submitted certain documents with its rebuttal briefs, the Department considers this information unverified and, therefore, not usable for purposes of these determinations.

Comment 6: USX Corporation cites an article in *Siderurgia Latinoamericana* in support of its contention that Argentine pipe producers are being rebated taxes which were never collected.

DOC Position: We verified that the USX allegation related to a temporary admission program. Companies participating in this program can import goods without the requisite payment of import charges, provided the company makes a commitment to incorporate the imported good in a product which is eventually exported. We verified that if a company participates in this program, the value of the imported good is deducted from the value of the exported product for purposes of calculating the Reembolso rebate. Therefore, any import charges not paid would not be rebated. Furthermore, we verified that the final stage indirect taxes used in our calculations of the indirect tax incidence were paid by the producers of pipe and tube.

Comment 7: Comatter argues that its return of PEEX benefits, on exports to the United States of the subject merchandise, to the government operated as a retroactive termination to day one of Comatter's PEEX contract and puts Comatter on identical terms with any other company which never participated in the PEEX program with respect to the subject merchandise. Comatter states that it is, therefore, not a participant in the PEEX program with respect to sales to the United States of the subject merchandise. Furthermore, Comatter maintains that it cannot negotiate a new contract for PEEX benefits since no new beneficiaries are entitled to contract for benefits in accordance with Decree 963. Finally, Comatter contends that this is a case of first impression for the Department and that, since Comatter on its own initiative has accomplished the purpose of the countervailing duty law by eliminating any potential subsidy, no countervailing duties should be assessed against Comatter if the PEEX program is found countervailable.

Petitioners contend that respondents made it appear that Comatter had never participated in the Decree 176 program. Petitioners oppose any Departmental practice which would allow respondents to supply incomplete and misleading information for the preliminary determination with no adverse consequences for the final determination. Petitioners also argue that the Department should discourage non-responsiveness in the future by adopting the policy of not accepting any information favorable to respondents that has been first provided at verification. Under such a policy, the Department should accept the information that Comatter had received PEEX benefits, but refuse to accept information regarding Comatter's renunciation of those benefits.

USX argues that, contrary to Comatter's statement, this is not a case of first impression for the Department and cites *Certain Textile Mill Products and Apparel from Peru* (50 FR 9871, March 12, 1985). USX explains that in this case, since the changes are company-specific, reinstatement of Comatter could easily be effected through a minor amendment to the existing contract between Comatter and the government or through the negotiation of a new contract. USX alleges that respondents attempted to conceal the fact that benefits had been paid to Comatter under Decree 176 and that, for this reason, it is mandatory that the Department monitor this program.

DOC Position: Decree 176 (*i.e.*, PEEX) was one of the programs upon which the Department initiated these investigations. We asked specific questions in the government and company questionnaires concerning the

receipt of PEEX benefits. We believe that, with respect to its participation in the PEEX program, Comatter was not responsive in its questionnaire responses. Furthermore, it is the Department's practice to obtain all the relevant information concerning a company's participation in an alleged subsidy program *prior* to verification through the questionnaire process. The submission to the Department of completely new and critical information during verification is simply unacceptable.

We note that the actions, procedures, and methodologies of the Department are intended to be transparent. This enables all interested parties to be able to fully participate in, and comment upon, all aspects of the Department's investigations. When requested information is not submitted in the questionnaire responses and completely new and critical information is presented during verification for the first time with respect to a properly alleged program, the petitioner and other interested parties not at verification are denied meaningful participation in the investigation. This is antithetical to the Department's procedures.

However, as explained above in the program description of PEEX, the receipt of PEEX benefits is contingent upon a company's year-end export performance. Therefore, the appropriate calculation methodology is to examine the benefits received during the review period. We verified that no benefits were received during the review period. Thus, the net estimated bounty or grant is zero. The receipt of any PEEX benefits after the review period will be examined in an administrative review, if one is requested.

Comment 8: Petitioners argue that even if the Department does not consider PEEX an export subsidy, a countervailable benefit still remains during the period of investigation since Comatter had full use of the funds for several months. Petitioners argue that the amount received should be considered an interest-free loan until it was paid back.

Comatter states that it repaid the value of certain uncashed PEEX certificates, thereby repaying more than it actually received. In addition, Comatter states that it repaid the amounts received which were greater than the amounts accrued.

DOC Position: We verified that Comatter did not receive any PEEX benefits during the review period (See the *PEEX* program description). Consequently, any benefit from an interest-free loan would not have occurred until after the review period. The receipt of any such benefits will be examined in an administrative review, if one is requested.

Comment 9: Petitioners state that the Department has not adequately determined the normal "commercial considerations" applied to the interest rate on loans in Argentina. Petitioners argue that since the regulated interest rates did not exceed the inflation rate, the Department should consider them on their face to be "inconsistent with commercial considerations" and should, therefore, not use the regulated rates in its calculation of the benchmark rate.

Laminfer and Acindar submit that petitioners' proposal constitutes a radical change in Departmental precedent for selecting an appropriate benchmark in investigations involving Argentina and that the Department has sufficient information to formulate the appropriate benchmark.

Comatter argues that there is no evidence on the record which would support a change in practice by the Department regarding the benchmark and that the Central Bank of Argentina confirmed that regulated loans were available in significant amounts in Argentina during 1986 and 1987.

DOC Position: The appropriate benchmark for short-term export financing is the national average short-term rate or the most comparable, predominant interest rate for short-term financing. The standard of "inconsistent with commercial considerations" is applicable only to non-export related financing. At verification, officials from the Central Bank of Argentina stated that regulated rates of interest were available to all borrowers, including exporters. Thus, we believe that the regulated rates should be included in the calculation of the national average short-term rate. Therefore, consistent with the Department's practice in past investigations involving Argentina and based on information gathered on verification, we have used a weighted-average of the regulated and unregulated rates.

Comment 10: Petitioners contend that if the Department does decide to include the regulated rates in its calculation of the benchmark rate, it should use a weighted-average of the regulated and unregulated rates.

Comatter argues that since information on the record in this case establishes that borrowings at the regulated and free rates were approximately equal in 1986 and 1987, the Department should follow the methodology established in its preliminary determinations of using a simple average of these rates in its benchmark calculation.

DOC Position: We consider the weighted-average of the regulated and unregulated interest rates to be a more accurate reflection of the predominant interest rate for short-term financing.

We calculated a simple average for the preliminary determinations because we lacked the information to do a weighted-average. Having obtained the needed information for 1986 and the first six months of 1987 at verification, we can now calculate a weighted-average. As stated in the *Pre-Export Financing Under RF-153* program description, we still were unable to obtain information regarding the percentages of loans at the regulated and unregulated rates for certain months in the latter half of 1987. Thus, for these months we continue to use a simple average.

Comment 11: Petitioners state that, although they had raised the issue, there is no mention in the verification reports of the use of compensating balances.

DOC Position: We verified that any additional bank charges or compensating balance requirements under both government and non-government loan programs is dependent upon the individual borrower and lender. We saw no evidence that respondents were required to maintain compensating balances in order to obtain commercial or government financing (See also *DOC Position* on *Comment 14*).

Comment 12: Comatter argues that the Department should compound its benchmark interest rate for no more than three periods so as to reflect the quarterly payment of interest on RF-153 loans. Comatter states that the Department's failure to account for these quarterly interest payments in its final calculations would constitute "capricious agency behavior."

Petitioners cite *Oil Country Tubular Goods from Argentina* (52 FR 846848, January 9, 1987) in which the Department rejected the above argument made by respondent by stating that "[t]o compound the benchmark rate quarterly infers that we consider quarterly payments of interest to be a normal commercial practice in Argentina. We do not. Instead, we have found that most short-term commercial loans in Argentina are granted for 30 days and rolled over." *Id.* Petitioners argue that the Department's monthly compounding of the benchmark interest accurately measures the benefit conferred on Comatter.

DOC Position: We agree with petitioners. As in past cases involving Argentina, we found at verification that most short-term commercial loans in Agentina are extended for 30 days or

less and rolled over as necessary. To calculate the benchmark, we have compounded the average monthly interest rate for the duration of each loan in question.

Comment 13: Laminfer argues that it is the Department's established policy to take into account program-wide changes that occur before the preliminary determination in setting the duty deposit rate.

Laminfer states that, despite the fact that the interest rate on RF–153 loans increased form one percent to five percent prior to the date of the preliminary determinations, the Department did not utilize the increased rate in setting the duty deposit rate in its preliminary determinations. Laminfer argues that since this increase in the interest rate was verified by the Department officials, the Department should follow its established precedent in this case and apply the five percent interest rate to the loans on which interest was paid during the review period in calculating the duty deposit rate.

In addition to the above increase, Comatter argues that the Department should adjust the duty deposit rate to account for a second increase in the interest rates to eight percent, effective August 3, 1988, so as to estimate more accurately the actual level of subsidy on current entries of the subject merchandise.

DOC Position: The Department's policy is to take into account program-wide changes which occur before the preliminary determination, which we can verify and which result in a measurable change in the level of benefits. Here, however, the Department cannot measure the change in the level of benefits which may occur because: (1) The new interest charge of eight percent constitutes only a small part of the total interest cost and the remaining portion of the interest cost is based on the variation in the exchange rate; (2) the Department has no basis for determining the number of RF–153 loans that will be taken out in the future; and (3) the Department was not provided with information on the commercial benchmark in 1988. Therefore, it is not possible for the Department to take into account the change in the RF–153 loan program.

Comment 14: Comatter agrues that, in accordance with the Department's established practice of assessing the full cost of borrowing under an allegedly subsidized program as compared with the costs of a benchmark loan, the Department should include certain fees charged on Comatter's RF–153 loans in its calculation of any potential subsidy.

DOC Position: We disagree. At verification we found no evidence of any fees or charges on RF–153 loans which were not also incurred on other loans. The Department would only consider such adjustments for fees and charges on short-term loans under investigation which are not incurred on comparable commercial loans.

Comment 15: Comatter argues that the Department ignored an interest payment on one of Comatter's RF–153 loans in its preliminary determinations. Comatter explains that the Department must capture all interest payments during the life of each loan, including the interest payment in question, since the Department has imputed an interest cost based on the full life of each loan.

DOC Position: We disagree. The Department did not ignore the interest payment in question, rather, Comatter failed to report it. This payment was not included in the tables provided in Comatter's June 13, 1988, response or in the revised tables provided in Comatter's June 30, 1988, supplemental response. In addition, Comatter provided no information regarding this interest payment on verification. Since the interest payment in question appeared for the first time in Comatter's post-verification submission of August 12, 1988, the Department must consider the alleged payment unverified and must, therefore, exclude this payment from its final calculations.

Comment 16: Petitioners state that, since the deduction of ten percent of the FOB value of exports from a company's profit tax calculation is limited solely to export sales, it is countervailable to the extent that it is used to offset a producer's profits during the year in which they are incurred. In addition, petitioners argue that, since it is the Department's policy to calculate benefits received from a tax program by taking into consideration the benefits received during the review period, any tax loss benefits carried forward from earlier years to a tax return filed within the review period are also countervailable.

Acindar and Laminfer contend that under the Department's policy with respect to the calculation of benefits received from a tax program, as stated above by petitioners, no benefit will be considered by the Department to have been received until and unless the benefit reduces an actual tax liability. Acindar and Laminfer argue that there is no benefit to be calculated in this case since a zero tax liability is not affected by the deduction of certain amounts earned with respect to exports.

DOC Position: We verified that use of the tax deduction under Decree 173/85 did not result in a reduction of tax liability. However, as noted, the deduction was used to increase carry-forward losses. We will examine in any administrative review, if requested, whether or not any of the companies make use of that portion of the carry-forward loss attributable to the deduction under Decree 173/85.

Comment 17: Petitioners contend that the deduction of the Reembolso receipts from taxable income constitutes an additional countervailable subsidy.

Acindar and Laminfer cite the Department's decision in *Carbon Steel Wire Rod from Argentina; Suspension of Investigation,* 47 FR 42393 (September 27, 1982) (*Wire Rod*) in which the Department stated that, since it had separately determined the full benefit from an overrebate under the Reembolso, to consider that a countervailable benefit was conferred by the exemption of the Reembolso receipts from taxable income would be double-counting, and that the Department "has consistently taken the position that it will not examine the income tax consequences of non-income tax subsidy programs" (*Wire Rod*).

DOC Position: We continue to follow our reasoning explained in *Wire Rod.*

Comment 18: Petitioners state that, although Acindar's debt renegotiation under Communique A–946 appears to be a generally available subsidy under *PPG* v. *United States,* 662 F. Supp. 258 (CIT 1987), section 1312 of the Omnibus Trade and Competitiveness Act of 1988 will require that benefits under this program be found countervailable in the first 751 review of the countervailing duty orders in these investigations.

Acindar argues that the legislative history of section 1312 explains that the provision referred to by petitioners requires the Department to "base its determination on whether a particular subsidy is *in fact* bestowed upon a specific industry or group of industries, or instead is bestowed upon industries in general." H.R. (Conf.) Rpt. 576, 100th Cong., 2d Sess. 587 (1988). Acindar contends that the Department has already verified that Communication A–946 has been generally available in law and in fact.

DOC Position: This provision of the Omnibus Trade and Competitiveness Act of 1988 does not apply to these investigations. Therefore, this issue is moot.

Verification

Except where noted, we verified the information used in making our final determinations in accordance with section 776(b) of the Act. We used

standard verification procedures including meetings with government and company officials and examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation on all entries of pipe and tube from Argentina which are entered, or withdrawn from warehouse, for consumption on or after July 14, 1988. In accordance with section 706(a) of the Act (19 U.S.C. 1671e), as of the date of publication of this notice in the **Federal Register**, the Customs Service shall require a cash deposit in the amounts indicated below:

Manufacturers/producers/exporters rate	Estimated net bounty or grant (percent)
Standard Pipe: All companies	5.77
Line Pipe: All companies	7.35
Heavy-walled Rectangular Tubing: All companies	24.25
Light-walled Rectangular Tubing: All companies	9.25

This suspension of liquidation will remain in effect until further notice.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

September 20, 1988.

[FR Doc. 88-22100 Filed 9-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended export trade certificate of review, application # 84-3A012.

SUMMARY: The Department of Commerce has issued an amendment to the export trade certificate of review of Northwest Fruit Exporters granted on June 11, 1984 (49 FR 24581, June 14, 1984). The amendment was deemed submitted on June 23, 1988, and a summary of the application was published in the **Federal Register** on July 6, 1988 (53 FR 25362). This notice summarizes the revisions made to the certificate.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b) which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 84-00012, issued on June 11, 1984, and amended on May 2, 1988 (53 FR 16306), is further amended by revising the list of "Members" under the caption "Definitions" by adding the name of the following company:

Underwood Fruit and Warehouse Company, White Salmon, WA

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: September 22, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-22047 Filed 9-26-88; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review; Ferrous Scrap Export Association

AGENCY: Department of Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by an person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should reference the application number provided in the application summary. The following is a summary of the application.

Summary of Application

Applicant: The Ferrous Scrap Export Association ("FSEA"), Contact: James R. Atwood, legal counsel, Telephone: 202/662-6000.

Application #: 88-00015.

Date Deemed Submitted: September 12, 1988.

Members: Camden Iron & Metal, Inc., Camden, JJ; Hugo Neu & Sons, Inc., New York, NY: LMC Metals, A Division of SIMSMETAL USA Corp., Richmond, CA (controlling entity: SIMSMETAL Ltd., Sydney, Australia); Michael Schiavone & Sons, Inc., North Haven, CT; Naporano Iron & Metal Co., Newark, NY; NIMCO Shredding Co., Newark, NJ; Proler International Corp., Houston, TX; Schiavone-Bonomo Corporation, Jersey City, NY; Southern Scrap Material Co., Ltd., New Orleans, LA (controlling

entity: Southern Holdings, Inc., New Orleans, LA); Schnitzer Steel Products Co., Portland, OR; and Witte-Chase Corporation, Port Newark, NJ.

A. *Export Trade*

Carbon steel and iron scrap (currently identified at U.S. Department of Commerce Schedule B numbers 607.0810 through 607.0846) ("products"); and consulting, management, international market research, marketing and trade promotion, sales of goods and services, insurance, legal assistance, inspection services, quality surveys, draft surveys, packing, transportation, wharfing and handling, steamship agency services, trade documentation, freight forwarding, storage, foreign exchange, taking title to goods, financing, and customs clearance ("export trade facilitation services").

B. *Export Markets*

Worldwide.

C. *Export Trade Activities and Methods of Operation*

FSEA seeks certification for the following joint activities when conducted in connection with export sales or markets:

1. FSEA and/or its members may exchange information on common problems in the export of products, on economic and business conditions in export markets, on U.S. and foreign legislation affecting the sales of products in export markets, and on FSEA's organization, governance, financial condition, and membership.

2. FSEA and/or its members may established and operate jointly owned subsidiaries or other joint-venture entities owned exclusively by FSEA and/or its members for the purpose of purchasing, processing and exporting products to export markets and providing export trade facilitation services to members.

3. FSEA and/or its members may jointly offer, negotiate for the sale of, and sell products and allocate sales resulting from such arrangements; establish export prices and terms of sale; allocate markets and/or customers; refuse to quote prices for, to market, or to sell products; on a country-by-country basis, establish and/or negotiate with purchasers regarding specifications for grades of products; negotiate for and purchase products or raw materials for products for export from either members or non-member suppliers; and provide and/or negotiate with suppliers for export trade facilitation services.

4. FSEA and/or its members may jointly establish, arrange for, or agree to act as exclusive or non-exclusive export intermediaries in export markets. Any such exclusive export intermediary may agree not to represent any other supplier of products in the relevant country or market. Members may agree that they will export to the relevant country or market only through other members or a designated export intermediary.

5. FSEA and/or its members may cooperate in responding to attempted boycotts, refusals to deal, or other unfair trade practices in export markets directed against any member, including cooperation in seeking relief in United States and foreign courts and/or administraive agencies.

6. FSEA and/or its members may agree that any information obtained pursuant to the proposed certificate from another member shall not be provided to any other supplier of products without the prior consent of the member in question.

7. FSEA and/or its members may prescribe conditions with respect to voting rights, membership in, and withdrawal and explusion from, FSEA. The conditions prescribed with respect to membership in FSEA may require the approval of two-thirds of existing members and unanimous approval of members conducting export operations in the same or adjacent customs clearance districts as a condition to the admission of new members.

Date: September 20, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-21992 Filed 9-26-88; 8:45 am]

BILLING CODE 3510-DR-M

National Technical Information Service

Intent To Grant Exclusive Patent License; MITSUI

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant a MITSUI & Co. Ltd., having a place of business in Tokyo, Japan, an exclusive right in Japan to practice the invention embodied in International Patent Application Number PCT/US87/01472, "Temperature Adaptable Textile Fibers and Method of Preparing Same"; provided, however, such right shall not exclude companies domiciled in the United States. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and agrument which establishes that the grant of the intended license would not serve the public interest.

The Notice cancels an earlier published Notice (FR Doc. 88-18115) concerning the same invention published on August 10, 1988, **Federal Register**, Vol. 53, No. 154.

Inquiries, comments and other materials relating to the Intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-22011 Filed 9-26-88; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision/amendment of a currently approved information collection requirement concerning Government Furnished Property—an amendment concerning special tooling.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523-3775.

SUPPLEMENTARY INFORMATION:

a. Purpose

When Government-furnished or contractor-acquired property is provided under federal contracts, Government

policy requires the contractor to notify the contracting officer—

(a) When the property is delivered, verification of quantity, condition, and acknowledge receipt in writing;

(b) If Government-furnished property is received in a condition not suitable for the intended use;

(c) Upon loss or destruction of or damage to the property, the time and origin of the loss, destruction or damage, all known interests in commingled property is a part and the insurance, if any, covering any part of or interest in such commingled property;

(d) By clear and convincing evidence that such loss, destruction, or damage (1) did not result from the contractor's failure to maintain an approved program or system, or (2) occurred while an approved program or system was maintained by the contractor; and

(e) Upon the completion of the contract, inventory schedules covering all items of Government property not consumed in the performance of the contract or delivered to the Government.

The contractor shall establish and maintain a system to control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract. This responsibility and accountability extends to the contractor's subcontractors.

The contractor's property control records shall constitute the Government's official property records and shall be used to:

(a) Provide financial accounts for Government-owned facilities in the contractor's possession or control;

(b) Identify all Government property (to include a complete, current, auditable record of all transactions);

(c) Record special tooling and special test equipment fabricated from Government property materials; and

(d) Locate any item of Government property within a reasonable period of time and more.

Justification for this amendment

FAR Section 45.306 and the clause of 52.245-17, Special Tooling, contain policy and contractual language on furnishing special tooling to contractors or allowing contractors to acquire special tooling on fixed-price contracts.

The clause requires contractors to maintain and report certain identification and use information on special tooling. Under the proposed revision to the Special Tooling clause, the types of information which contractors must keep in their property control systems is delineated, and the periodic reporting of this information to the Government is also defined. The clause revision adds four new elements of information contractors must maintain (i.e., tool part number, storage code, estimated weight and estimated volume), and deletes four elements of information the contractor previously maintained (i.e., description, quantity, disposition, and posting reference).

This identification and use information is used by the contractor in performing its contract and then it is used by the Government buying offices and logistics offices to determine whether any of the special tooling can be used by the Government or contractors subsequent to its use during production by the Government to direct retention or disposition of the special tooling following its use in major systems, components, and parts.

b. Annual reporting burden

The annual reporting burden is estimated to continue to be as follows: Respondents, *6,000;* responses per respondent, *3.33;* total annual responses, *20,000;* preparation hour per response, *.25;* and total response burden hours, *5,000.*

c. Annual recordkeeping burden

The annual recordkeeping burden is estimated to continue to be as follows: Recordkeepers, *6,000;* hours per recordkeeper, *4;* and total recordkeeping burden hours, *24,000.*

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0075, Government Furnished Property—an amendment concerning special tooling.

Dated: September 15, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88-21922 Filed 9-26-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Unescorted Entry Authorization Certificate; AF Form 2586; OMB Control Number 0701-0042.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 3 minutes.

Frequency of Response: On occasion.

Number of Respondents: 120,000.

Annual Burden Hours: 6,000.

Annual Responses: 120,000.

Needs and Uses: The Air Force uses the information collected on AF Form 2586 to identify individuals who require entry into controlled or restricted areas on Air Force installations.

Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OPMB Desk Officer: Dr. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 21, 1988.

[FR Doc. 88-22005 Filed 9-26-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Armament Sector Analysis; No Form; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes per Response: 4 hours.

Frequency of Response: Annual.

Number of Respondents: 574.

Annual Burden Hours: 2,296.

Annual Responses: 574.

Needs and Uses: The Air Force will use the information collected through this survey to make a detailed analysis of the defense industrial base's capacity to meet and sustain high production rates for certain munitions during periods of national emergency. The Air Force needs this information to illuminate potential production shortfalls and provide viable solutions.

Affected Public: Businesses or Other for Profit.

Frequency: Continuing.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 21, 1988.

[FR Doc. 88-22006 Filed 9-26-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force ROTC Four-Year Scholarship Application, AF Form 113, OMB No. 0701-0101.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 42 minutes.

Frequency of Response: On occasion.

Number of Respondents: 12,000.

Annual Burden Hours: 8,400.

Annual Responses: 12,000.

Needs and Uses: The Air Force uses the information submitted on AF Form 113 to evaluate applicants for four-year Air Force Reserve Officers' Training Corps college scholarships. The Air Force needs this information to ensure that all candidates are considered on an equitable basis, and that only the best qualified applicants with a proven potential for success are awarded scholarships.

Affected Public: Individuals or households.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 21, 1988.

[FR Doc. 88-22007 Filed 9-26-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, 17 October and Friday, 18 October 1988.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II § 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 21, 1988.

[FR Doc. 88-22003 Filed 9-26-88; 8:45 am]

BILLING CODE 3810-01-M

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, 13 October and Friday, 14 October 1988.

ADDRESS: The meeting will be held at the Naval Training Center, Bldg. 2091, Orlando, Florida.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified programs details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II § 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 21, 1988.

[FR Doc. 88-22004 Filed 9-26-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 20, 1988.

The USAF Scientific Advisory Board panel on Superconductors for Aerospace Applications will meet on 13 October 1988 from 8:00 a.m. to 4:30 p.m. and on 14 October 1988 from 8:00 a.m. to 1:30 p.m. in the AFSPACECOM Headquarters Building at Peterson AFB, Colorado.

The purpose of this meeting is to identify and evaluate those Air Force space missions that may be enhanced by applications of high-temperature superconductors.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-22010 Filed 9-26-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Military Traffic Management Command, Directorate of Personal Property; Commercial Boat Haulers, etc.

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Invitation for commercial boat haulers, other common carriers, and freight forwarders to perform transportation of Department of Defense (DOD) and United States Coast Guard (USCG) uniformed servicemembers' boats.

SUMMARY: A recent action by the Per Diem Travel and Transportation Allowance Committee allows uniformed servicemembers to ship their personal boats as part of their household goods entitlement. MTMC is inviting interested commercial boat haulers and other common carriers and freight forwarders to participate in the transportation of these boats, which may or may not be on their own trailers and are comprised of a large variety of configurations.

Interested carriers will be required to submit copies of certificates or permits (interstate, intrastate, or international operating rights), financial statements for the past two taxable years, insurance certificates, and understand that at a later date, will be required to sign an approved tender of service that is currently in the process of being developed. These documents will be reviewed by the Military Traffic Management Command, and only carriers meeting the requirements will be approved to participate in this program.

Each shipment will be offered to carriers on a one-time-only bid basis.

This invitation applies only in connection with the one-time-only movements, by personal property government bill of lading, of boats that are related to permanent change of station movements of uniformed DOD and USCG servicemembers.

Carriers interested in Military Traffic Management Command's boat transportation program should contact:

Ms. Rosemarie Guzzardo (for domestic approval), 703-756-1190.

Ms. Janet Phillips and/or Ms. Diane Coleman (for domestic boat moves), 703-756-2577/8.

Ms. Rose Sharpe (for international boat moves and international approvals), 703-756-1190.

Headquarters, Military Traffic Management Command, ATTN: MT-PPC (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041-5050.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88-22013 Filed 9-26-88; 8:45 am]

BILLING CODE 3710-08-M

Army Corps of Engineers

Meeting; Environmental Advisory Board

AGENCY: Department of the Army, Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is open to the public.

DATE: The meeting will be held from 8:00 a.m., Thursday October 6, to 10:30 a.m., Saturday, October 8, 1988.

ADDRESS: The meeting will be held at the Holiday Inn Denver Downtown, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Dr. William Burris, Office of Environmental Policy, Office of the Chief of Engineers, Washington, DC 20314-1000, (202) 272-0120.

SUPPLEMENTARY INFORMATION: The schedule and summary agenda of the 44th Meeting of the EAB, "Environmental Needs to Support the Inland Navigation System", is:

Thursday, 6 October 1988

0800 Introduction, Swearing in New Members, Welcome, Charge to Board
0930 Overview
1115 Identifying Major Environmental Issues and Perspectives Associated with Waterway Use
1700 Adjourn

Friday, 7 October 1988

0800 Measuring and Evaluating Impacts of Commercial Navigation Traffic on Riverine Resources
1415 Mitigating and Managing Impacts of Commercial Navigation Traffic
1700 Adjourn

Saturday, 8 October 1988

0800 Report to Chief and Response
1000 Comments from Public
1030 Adjourn

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88-22118 Filed 9-23-88; 10:30 am]

BILLING CODE 3710-92-M

Department of the Navy

Navy Resale Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Navy Resale System Advisory Committee will meet in two sessions from 8:00 a.m. to 8:15 a.m. October 8, 1988 in the Board Room, the National Clarion Hotel, 300 Army Navy Drive, Arlington, Virginia 22202 and from 1:30 p.m. to 3:00 p.m. on October 13, 1988 in the Hotel Playa de la Luz, Rota, Spain. The purpose of the meetings is to examine policies, operations, and organizations of the Navy Resale System and to submit recommendations to the Secretary of the Navy. The agenda will include discussions of the organization of the Resale System, planning, financial management, merchandising, field support, and industrial relations.

The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting be closed to the public

because it will involve discussions of information pertaining solely to trade secrets and confidential commercial or financial information. These matters fall within the exemptions listed in subsections 552b(c)(2)(4), and (9)(B) of WR 18 April 86 title 45, United States Code. Therefore, the second session will be closed to the public.

FOR FURTHER INFORMATION (concerning this meeting) **CONTACT:** Commander W.T. Kaloupek, SC, USN, Naval Supply Systems Command, NAVSUP 09B, Room 606 Crystal Mall, Building No. 3 Arlington, Virginia 22202. Telephone Number: (202) 695-5457.

Date: September 23, 1988

Jane M. Virga,

Lieutenant, JAGC, USNR Federal Register Liaison Officer.

[FR Doc. 88-22247 Filed 9-26-88; 9:25 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF85-588-002, et al.]

GWF Power Systems Co., Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. GWF Power Systems Company, Inc.

[Docket No. QF85-588-002 et al.]

September 20, 1988.

On August 1, 1988 GWF Power Systems Company, Inc. (Applicant) of 17780 Fitch Street, Irvine, California 92714 submitted for filing 5 applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that any of the submittals constitute a complete filing.

The docket numbers and locations of the 5 small power production facilities are listed below. Each facility will consist of a fluidized bed combustion system providing steam to a turbine-generator. Applicant states that the primary energy source of the facilities will be waste in the form of petroleum coke. The maximum net electric power production capacity of each facility will be 17.365 MW.

Docket No.	Location
QF86-588-002	Antioch, Contra Costa County, CA.
QF86-141-002	Antioch, Contra Costa County, CA.
QF86-142-002	Pittsburgh, Contra Costa County, CA.
QF86-143-002	Pittsburgh, Contra Costa County, CA.
QF86-144-002	Pittsburgh, Contra Costa County, CA.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Colorado

[Docket No. ER88-548-001]

September 21, 1988.

Take notice that on September 13, 1988, Public Service Company of Colorado (Public Service) tendered for filing a proposed change in its Power Purchase and Interchange Agreement (Agreement) with Colorado-Ute Electric Association, Inc. (Colorado-Ute). Public Service states that the proposed change is a Supplement to Public Service's Agreement with Colorado-Ute, dated April 30, 1982, on file with the Commission under Public Service's FERC Rate Schedule No. 37.

Public Service states that the Supplement to the Agreement with Colorado-Ute provides for various increases and reductions in load at various delivery points.

Public Service states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

Comment date: October 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Montana-Dakota Utilities Company

[Docket No. ER88-476-002]

September 21, 1988.

Take notice that on August 29, 1988, Montana-Dakota Utilities Company (Montana-Dakota), a Division of MDU Resources Group, Inc., tendered for filing an amendment to its request for authority to replace Rate Schedule FPC No. 6, the contract with the United States Department of Energy, Western Area Power Administration (Western).

The amendment changes Article 23 of the Agreement which denotes that the rate shall not be less than Montana-Dakota's incremental cost of producing or acquiring the energy and may also include an adder which shall not exceed 14.7 mills/kwh. Western has agreed to this amendment.

Montana-Dakota requests waiver of the notice requirement in § 35.3 of the Commission's Regulations and that the amended contract be made effective as of June 30, 1988.

Comment date: October 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

Niagara Mohawk Power Corporation

[Docket No. ER88-604-000]

September 21, 1988.

Take notice that on September 12, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and the United Illuminating Company dated August 25, 1988.

The August 25, 1988 agreement is to provide for the sale by Niagara Mohawk Power Corporation of peaking capacity and related energy to the United Illuminating Company. The terms of this agreement and the period during which the purchase of peaking capacity can occur shall commence on May 1, 1989 and shall continue until April 30, 1994.

Copies of this filing were served upon the United Illuminating Company and the New York State Public Service Commission.

Comment date: October 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

Southern California Edison Company

[Docket No. ER88-583-000]

September 21, 1988.

Take notice that on September 14, 1988, Southern California Edison Company (Edison) tendered for filing a change of rates for transmission service as embodied in Edison's agreements with the following entities which reflects a reduction in rate of return from 11.24 percent to 10.75 percent and changes to depreciation rates authorized by the California Public Utilities Commission (CPUC) to be made effective January 1, 1988.

	Rate schedule FERC No.
1. Arizona Electric Power Cooperative.	131, 161
2. Arizona Public Service Company	185
3. City of Burbank	166
4. California Department of Water Resources.	38, 112, 113, 181
5. City of Los Angeles Department of Water and Power.	102, 118, 140, 141, 163, 188
6. City of Glendale	143
7. M-S-R Public Power Agency	153
8. Pacific Gas and Electric Company	117, 147
9. City of Pasadena	158

	Rate schedule FERC No.
10. San Diego Gas & Electric Company.	151
11. Western Area Power Authority	120

Edison requests waiver of the Commission's prior notice requirement and an effective date for these rate changes of January 1, 1988.

In addition Edison tendered for filing a corrected Exhibit F of Attachment D under ER87-517-000 which corrects a typographical error in the presently effective rate for PG&E, Rate Schedule FERC No. 147. Edison requests waiver of the Commission's prior notice requirement and an effective date for this correction as of July 1, 1987.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 6, 1988, in accordance with Standard Paragraph E at the end of this document.

6. Carolina Power & Light Company

[Docket No. ER88-609-000]

September 21, 1988.

Take notice that on September 16, 1988, Carolina Power & Light Company tendered for filing similar amendments to two different Interchange Agreements. One Amendment, dated August 5, 1988 amends the Interchange Agreement between Virginia Electric and Power Company (Virginia Power) and Carolina Power & Light Company (CP&L) dated July 9, 1970 and subsequent Amendments dated January 1, 1974, July 9, 1979, and August 10, 1980. The Interchange Agreement and the Amendments are filed with the Federal Energy Regulatory Commission (Commission) and designated Virginia Electric and Power Company FPC Rate Schedule No. 95 and Carolina Power & Light Company FPC Rate Schedule No. 96. The other Amendment, dated September 13, 1988, amends the Interchange Agreement between CP&L and South Carolina Public Service Authority (SCPSA), dated January 5, 1973 and subsequent Amendments dated April 1, 1979 and August 10, 1980. The Interchange Agreement and the Amendments are filed with the Commission as Carolina Power & Light Company EPC Rate Schedule No. 104. The proposed Amendments to the Interchange Agreements provide that the demand rates and transmission use rates for limited term, short term, spinning reserve, and other energy will be calculated by both parties in each Amendment on an annual basis as set forth in the appendices and exhibits to the Amendments. The primary purpose of the proposed Amendments is to update the rates for transactions under the Interchange Agreements to reflect current costs. In addition, the proposed Amendments establish a mechanism for "ceiling rates" under which the parties may do business with greater flexibility. The rates calculated under the appendices will be "ceiling rates"; and although the parties may agree on a rate below a "ceiling rate" for a particular transaction, the rate for any such transaction will not exceed the "ceiling rate." The parties to each Amendment mutually agree to recalculate the "ceiling rates" each year to determine if the costs have changed sufficiently to warrant a change in the "ceiling rates." The Amendments further provide that for deliveries form a third-party system, the delivering party will charge the receiving party the demand rate equal to the demand rate charged by the third party.

It is proposed that both Amendments be effective no later that sixty (60) days after tendered for filing with the Commission or 12:01 a.m., November 14, 1988.

Copies of this filing were served on Virginia Power, SCPSA, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: October 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22039 Filed 9-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9022-002]

Lake Frances; Availability of Environmental Assessment

September 21, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for the minor license for the proposed Lake Frances Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22041 Filed 9-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3572-001]

North Stratford Equipment Corp; Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings

September 21, 1988.

The staff of the Federal Energy Regulatory Commission (staff) has determined that issuance of a license for the construction and operation of the proposed Livermore Falls Hydroelectric Project No. 3572-001, on the Pemigewasset River in Grafton County, New Hampshire, would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the proposed project in accordance with the National Environmental Policy Act. The staff's EIS will consider both site specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

The scoping process will provide public forums to determine the scope and the significant issues that should be analyzed in depth in the EIS. The Times and locations of these scoping meetings and public hearings will be announced in a subsequent public notice.

For further information, please contact the FERC EIS Coordinator, Jim Haimes at (202) 376-9479.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22042 Filed 9-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6596-002—Maryland]

American Hydro Power Co.; Surrender of Exemption

September 21, 1988.

Take notice that American Hydro Power Company, exemptee for the proposed Rocky Gorge Hydroelectric Project No. 6596 has requested that its exemption be terminated. The exemption was issued on December 23, 1982, and on November 21, 1986, the deadline for the completion of construction was extended to January 1, 1989. The project would have been located on the Patuxent River in the City of Laurel, Prince George's and Howard Counties, Maryland. No on-site construction activities have occurred. The exemptee states that due to additional costs associated with the Part 12 report, it is not economically feasible to develop the project.

The exemptee filed its request on June 23, 1988, and the exemption for Project No. 6596 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22040 Filed 9-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-809-000, et al.]

Texas Eastern Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP88-809-000]

September 21, 1988.

Take notice that on September 14, 1988, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP88-809-000 and application pursuant to section 7(b) of the Natural Gas Act for permission and approval authorizing the abandonment by Texas Eastern of a 900-horsepower compressor unit and appurtenant facilities located in the Main Pass Area, Block 6 Field, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to abandon its 900-horsepower compressor and certain appurtenant facilities which are located on the "A" Central Facility Platform in the Block 6 Field. It is stated that the subject facilities were installed in 1982 under budget-type field compression authorization issued in Docket No. CP82-234 in order to continue to receive gas supplies purchased from Mobil Oil Exploration & Producing Southeast Inc. (MOEPSI), Cities Service Oil and Gas Corporation and Getty Oil Company.

It is further stated that MOEPSI, the operator of the facilities in the Block 6 Field, has exercised its rights under FERC Order No. 451 and terminated its gas purchase contract with Texas Eastern covering its interests in the Block 6 Field effective April 1, 1988. It is further stated that subsequent to such termination, MOEPSI informed Texas Eastern that its plans to install its own compression facilities with greater capacity on the "A" platform sometime between November 1988 and March 1989. Texas Eastern advises that in order to make room for MOEPSI's facilities, it is proposing to abandon its compressor unit and remove it from the platform.

Texas Eastern states that the remaining gas supplies dedicated to Texas Eastern in the Block 6 Field would be compressed by MOEPSI's facilities when installed. It is stated that there would be no reduction in the gas supplies available to Texas Eastern from this field as a result of the removal of the compressor unit.

Comment date: October 12, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP88-781-000]

September 21, 1988.

Take notice that on September 9, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP88-781-000, a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to realign certain volumes of contract demand and seasonal service to accommodate future deliveries of natural gas to Minnegasco, Inc. (Minnegasco) and to construct one delivery point and appurtenant facilities to accommodate natural gas deliveries to the community of Avon, Minnesota, to be served by Minnegasco under Northern's blanket certificate issued in Docket No. CP82-401-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, by letter dated June 9, 1988, it is stated that Minnegasco has advised Northern that it wishes to realign certain volumes purchased under Northern's Rate Schedules CD-1 and SS-1 between the existing delivery points noted below and the proposed Avon delivery point. Northern proposes herein, in accordance with Minnegasco's request, to realign volumes as follows:

Entitlement Delivery Point	Volumes (Mcf per day)			
	Existing Authority		Proposed	
	CD-1	SS-1	CD-1	SS-1
Minneapolis	231,563	105,437	231,513	103,395
Paynesville	757	50	757	550
Cold Spring	485	50	485	950
Richmond	282	20	282	48
Rockville	89	30	89	102
Avon (new)	0	0	50	542
Total	233,176	105,587	233,176	105,587

Northern also requests authority to construct, operate, and maintain a measurement station to accommodate deliveries of gas to the community of Avon, Minnesota to be served by Minnegasco. It is stated that the estimated peak day and annual volumes to be delivered to Minnegasco at the Avon delivery point in the fifth year of service will be 1,537 Mcf and 85,989 Mcf, respectively, and are to be used for residential and commercial use. The Avon delivery point is estimated to cost $100,000 which will be financed from funds on hand.

Comment date: November 7, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP88-793-000]

September 21, 1988.

Take notice that on September 12, 1988, Panhandle Eastern Pipe Line Company, (Panhandle) P.O. Box 1642, Houston, Texas, 77251-1642 filed in Docket No. CP88-793-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of GasTrak Corporation (GasTrak), under its blanket authorization issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for GasTrak, a marketer of natural gas, pursuant to a transportation ageement Rate Schedule PT dated June 16, 1988. The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days' prior notice to the other party. Panhandle proposes to transport on a peak day up to 13,800 dekatherm equivalent; on an average day up to 13,800 dekatherm equivalent; and on an annual basis 5,037,000 dekatherm equivalent of natural gas for purchase by Ohio Valley Gas Corporation (Ohio Valley). Panhandle proposes to receive the subject gas from various exiting points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, Illinois, Louisiana, offshore Texas, offshore Louisiana and Canada. Panhandle would then transport and redeliver such volumes, less 5.2 percent fuel used and unaccounted for line loss to Ohio Valley in Randolph County, Indiana. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on August 1, 1988, as reported in Docket No. ST88-5233-000.

Comment date: November 7, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP88-791-000]

September 21, 1988

Take notice that on September 12, 1988, Panhandle Eastern Pipe Line Company, (Panhandle) P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP88-791-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Panhandle Trading Company (PTC), under its blanket authorization issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for PTC, a marketer of natural gas, pursuant to a transportation agreement Rate Schedule PT dated June 13, 1988. The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either part upon at least 30 days's prior notice to the other party. Panhandle proposes to transport on a peak day up to 100,000 dekatherm equivalent; on an average day up to 20,699 dekatherm equivalent; and on an annual basis 7,555,135 dekatherm equivalent of natural gas for PTC. Panhandle proposes to receive the subject gas from various exiting points of recipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, Illinois, Louisiana, offshore Texas, offshore Louisiana and Canada. Panhandle would then transport and redeliver such volumes, less 5.2 percent fuel used and unaccounted for line loss to Columbia Gas Transmission Company in Darke and Lucas Counties, Ohio. It is stated that the subject gas would ultimately be redelivered and purchased by various end users, local distribution companies, and intrastate pipelines. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on August 1, 1988, as reported in Docket No. ST88-5203-000.

Comment date: November 7, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP88-795-000]

September 21, 1988.

Take notice that on September 12, 1988, Panhandle Eastern Pipe Line Company, (Panhandle) P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP88-795-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Entrade Corporation (EnTrade), under its blanket authorization issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Entrade, a marketer of natural gas, pursuant to a transportation agreement Rate Schedule PT dated June 23, 1988. The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days' prior notice to the other party. Panhandle proposes to transport on a peak day up to 50,000 dekatherm equivalent; on a average day to to 10,000 dekatherm equivalent; and on an annual basis 3,650,000 dekatherm equivalent of natural gas for Entrade. Panhandle proposes to receive the subject gas from various exiting points of receipt on its system in Texas, Oklahoma, Kansas Colorado, Wyoming, Illinois, Louisiana, offshore Texas, offshore Louisiana and Canada. Panhandle would then transport and redeliver such volumes, less 4.7 percent fule used and unaccounted for line loss for redeliver to

various existing points of redelivery in Illinois. It is stated that the subject gas is would be purchased by various end-users. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on August 1, 1988, as reported in Docket No. ST88-5234-000.

Comment date: November 7, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP88-794-000]

September 21, 1988.

Take notice that on September 12, 1988, Panhandle Eastern Pipe Line Company, (Panhandle) P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP88-794-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Natural Gas Clearinghouse, Inc., (NGC), under its blanket authorization issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for MGC, a marketer of natural gas, pursuant to a transportation agreement Rate Schedule PT dated July 28, 1988. The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days' prior notice to the other party. Panhandle proposes to transport on a peak day up to 100,000 dekatherm equivalent; on a average day to to 5,000 dekatherm equivalent; and on an annual basis 1,825,000 dekatherm equivalent of natural gas for NGC. Panhandle proposes to receive the subject gas from various exiting points of receipt on its system in Texas, Oklahoma, Kansas Colorado, Wyoming, Illinois, Louisiana, offshore Texas, offshore Louisiana and Canada. Panhandle would then transport and redeliver such volumes, less 2.8 percent fuel used and unaccounted for line loss to Northern Natural Gas Company, in Kiowa County, Kansas. It is stated that the subject gas would be purchased by various end-users and local distribution companies. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on August 2, 1988, as reported in Docket No. ST88-5237-000.

Comment date: November 7, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP88-792-000]

September 21, 1988.

Take notice that on September 12, 1988, Panhandle Eastern Pipe Line Company, (Panhandle) P.O. Box 1642 Houston, Texas 77251-1642, filed in Docket No. CP88-792-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Central Soya Company, Inc. (Central), under its blanket authorization issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Central, an end-user of natural gas, pursuant to a transportation agreement Rate Schedule PT dated July 27, 1988. The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days' prior notice to the other party. Panhandle proposes to transport on a peak day up to 6,100 dekatherm equivalent; on an average day up to 2,600 dekatherm equivalent; and on an annual basis 949,000 dekatherm equivalent of natural gas for Cental. Panhandle proposes to receive the subject gas from various exisiting points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, Illinois, Louisiana, offshore Texas, offshore Louisiana and Canada. Panhandle would then transport and redeliver such volumes, less 2.8 percent fuel used and unaccounted for line loss to Natural Gas Pipeline Company in Clark County, Kansas. It is stated that Central is the purchaser and end-user of the subject gas. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on August 1, 1988, as reported in Docket No. ST88-5235-000.

Comment date: November 7, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP88-729-000]

September 22, 1988.

Take notice that on August 29, 1988, Panhandle Eastern Pipe Line Company, (Panhandle) P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-729-000 a request under section 7(b) of the Commission's Regulations under the Natural Gas Act for a certificate permitting and approving a partial abandonment of jurisdictional sales service provided to Central Illinois Public Service Company (Central Illinois) an existing jurisdictional sales customer of Panhandle, all as more fully set forth in the request with the Commission and open to public inspection.

Panhandle states that it has entered into an interim contract with Central Illinois dated August 26, 1988 (Interim Contract). This Interim Contract consists of a Part A and a Part B which govern the volumes to be sold and purchased thereunder. It is stated that the volumes specified under Part A of the Interim Contract are the same volumes currently delivered to Central Illinois but that the volumes specified under Part B of the Interim Contract represent a reduction in the sales service provided to Central Illinois as required by Central Illinois for continued gas service. In the instant application, Panhandle requests that effective November 1, 1988 its sales CD obligation to Central Illinois be reduced from the existing level to the new contract demand level shown in Column 2 of the table below:

Month	Existing contract demand (Mcf) (1)	Interim contract demand (Mcf) (2)	Amount of reduction (Mcf) (3)
January	161,500	150,000	11,500
February	161,500	150,000	11,500
March	161,500	150,000	11,500
April	110,000	102,000	8,000
May	80,000	75,000	5,000
June	45,000	42,000	3,000
July	35,000	33,000	2,000
August	35,000	33,000	2,000
September	56,000	52,000	4,000
October	110,000	102,000	8,000
November	161,500	150,000	11,500
December	161,500	150,000	11,500

Comment date: October 13, 1988, in accordance with Standard Paragraph F at the end of this notice.

9. Algonquin Gas Transmission Company

[Docket No. CP88-806-000]

September 22, 1988.

Take notice that on September 14, 1988, Algonquin Gas Transmission Company, (Algonquin), Soldiers Field Road, Boston, Massachusetts 01235, filed in Docket No. CP88-806-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Algonquin to provide a firm transportation service for Ocean State Power (Ocean State) and to construct and operate certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, Algonquin states that the proposed service would involve the receipt, firm transportation, and delivery of up to 50,000 dekatherms per day of natural gas for a primary term of twenty years starting upon the commencement date which is contemplated to be November 1, 1989. Algonquin proposes to transport the volumes from a point of interconnection with Tennessee Gas Pipeline Company (Tennessee) at Mendon, Massachusetts to a new metering station and delivery point near Burrillville, Rhode Island at the proposed site of the Ocean Statepower plant. It is stated that Ocean State would take delivery of the natural gas to fuel its proposed electric generating plant.

Algonquin proposes to provide this service through a backhaul transportation arrangement. To effect this backhaul, Algonquin proposes to acquire approximately five acres near its existing interconnection with Tennessee at Mendon, Massachusetts and install a 1,300 horsepower centrifugal compressor. Algonquin states that the proposed compression would enable Algonquin to deliver the gas received from Tennessee at Mendon, Massachusetts into its pipeline system from which an equivalent quantity of gas would be delivered to Ocean State from either Algonquin's existing 24-inch mainline or its 30-inch mainline loop. Algonquin further proposes to construct and operate a meter station at the proposed Ocean State site at Burrillville, Rhode Island. It is stated that the proposed facilities would be constructed during the summer of 1989 for an in-service date of November 1, 1989, at an estimated cost of $4.6 million.

Algonquin states that its proposed service for Ocean State was originally proposed on March 27, 1987, in response to a data request form the Commission Staff regarding Docket No. CP87-132-000, Tennessee's proposal to provide a firm transportation service for Ocean State. Algonquin contends that its proposal (called "the Algonquin Alternative") is superior to Tennessee's proposal submitted in Docket Nos. CP87-131 and CP87-132 in terms of efficiency and environmental consequence. Alonquin explains that its facilities are favorably located to provide the transportation service with the addition of a single compressor station compared with Tennessee's proposed constuction of approximately 11.0 miles of 20-inch pipeline.

Algonquin states that the service would be designated as Rate Schedule X-38 and would be contained in Algonquin's FERC Gas Tariff Original Volume No. 2. It is stated that deliveries would be subject to fuel reimbursement in accordance with the provisions of section 29 of the General Terms and Conditions of Algonquin's FERC Gas Tariff Second Revised Volume No. 1. Algonquin proposes to charge Ocean State a firm demand charge to recover Algonquin's investment in the related facilities proposed by Algonquin herein.

Comment date: October 13, 1988, in accordance with Standard Paragraph F at the end of this notice.

10. Tennessee Gas Pipeline Company

[Docket No. CP88-777-000]

September 22, 1988.

Take notice that on September 8, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-777-000 a request, as supplemented September 13, 1988, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Enron Gas Marketing, Inc. (Enron), a marketer, under its blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 200,000 Dt of natural gas per day for Enron on an interruptible basis pursuant to a transportation agreement dated July 22, 1988 between Tennessee and Enron. Tennessee states that it would receive the gas for Enron's account in offshore Texas, offshore Louisiana and the states of Louisiana, Mississippi, and Texas. Tennessee indicates that it woud redeliver natural gas for the account of Enron to delivery points off Tennessee's system in multiple states.

Tennessee states that the estimated average daily quantity would be 99 Dt and that the annual quantities would be 36, 135 Dt. It is further stated that service under § 284.223(a) commenced August 6, 1988, as reported in Docket No. ST88-5415. Tennessee indicates that the service would have a term of ten years and continue on a monthly basis thereafter. Tennessee proposes to charge Enron a rate pursuant to Tennessee's currently effective Rate Schedule IT. No new facilities are proposed herein.

Comment date: November 7, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP88-727-000]

September 22, 1988.

Take notice that on August 29, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-727-000 a request under sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act for a certificate permitting and approving a partial abandonment and authorizing the modification of jurisdictional sales service provided to Citizens Gas Company (Citizens), an existing jurisdictional sales customer of panhandle, all as more fully set forth in the request with the Commission and open to public inspection.

In its application, Panhandle requests a certificate authorizing it to implement an interim gas sales contract dated August 26, 1988 under Rate Schedule LS-1 (interim Contract) which provides for a levelized monthly firm sales contract demand of 100,000 Mcf of natural gas per day; but only in the event that the Commission approves the application of Texas Gas Transmission

Corporation (Texas Gas) in Docket No. CP87-205-000. It is further stated this interim service, if effectuated, is intended to replace the current service which Panhandle provides to Citizens under Rate Schedule G-1. Panhandle requests authority to reduce the firm level of sales service which it currently provides to the interim contract demand level as shown in Column 2 of the table below:

Month	Existing contract demand (Mcf)	Interim contract demand (Mcf)	Amount of reduction (Mcf)
	(1)	(2)	(3)
January	240,000	100,000	140,000
February	240,000	100,000	140,000
March	240,000	100,000	140,000
April	135,000	100,000	35,000
May	124,000	100,000	24,000
June	106,000	100,000	6,000
July	99,000	100,000	—
August	102,000	100,000	2,000
September	117,000	100,000	17,000
October	127,000	100,000	27,000
November	240,000	100,000	140,000
December	240,000	100,000	140,000

Comment dated: October 13, 1988, in accordance with Standard Paragraph F at the end of this notice.

12. Panhandle Eastern Pipe Line Company

[Docket No. CP88-726-000]

September 22, 1988.

Take notice that on August 29, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-726-000 a request under sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act for a certificate permitting and approving a partial abandonment and authorizing the modification of jurisdictional sales service provided to Battle Creek Gas Company (Battle Creek), an existing jurisdictional sales customer of Panhandle, all as more fully set forth in the request with the Commission and open to public inspection.

In its application, Panhandle requests a certificate authorizing it to provide a modification of service to Battle Creek. It is stated that Panhandle and Battle Creek entered into an interim gas sales contract under Rate Schedule LS-1 dated August 26, 1988 (Interim Contract) which provides for a levelized monthly firm sales contract demand of 5,300 Mcf of natural gas per day. Panhandle and Battle Creek intend for this service to replace the current service which Panhandle provides to Battle Creek under Rate Schedule G-1. The table below shows the existing firm sales contract demand, the level of firm sales contract demand under the Interim Contract requested by Panhandle and the level of reduced sales contract demand. Specifically, Panhandle requests that effective November 1, 1988, it be granted a certificate authorizing it to convert the sales service that it provides to Battle Creek from Rate Schedule G-1 to Rate Schedule LS-1 and to reduce the level of contract demand as shown below:

Month	Existing contract demand (Mcf)	Interim contract demand (Mcf)	Amount of reduction (McF)
	(1)	(2)	(3)
January	48,000	5,300	42,700
February	48,000	5,000	42,700
March	48,000	5,300	42,700
April	37,000	5,300	31,700
May	30,000	5,300	24,700
June	25,000	5,300	19,700
July	25,000	5,300	19,700
August	25,000	5,300	19,700
September	30,000	5,300	24,700
October	38,000	5,300	33,700
November	48,000	5,300	42,700
December	48,000	5,300	42,700

Comment date: October 13, 1988, in accordance with Standard Paragraph F at the end of his notice.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP88-78-000]

September 22, 1988.

Take notice that on August 29, 1988, Phanhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed on Docket No. CP88-728-000 a request under section 7(b) of the Commission's Regulations under the Natural Gas Act for a certificate permitting and approving a partial abandonment of jurisdictional sales service provided to Illinois Power Company (Illinois Power), an existing jurisdictional sales customer of Panhandle, all as more fully set forth in the request with the Commission and open to public inspection.

In its application, Panhandle requests that the Commission issue an order permitting and approving partial abandonment of its firm sales obligation to Illinois Power under an interim contract between the parties which provides for a reduced level of service. It is stated in the application that the volumes specified under the interim contract represent the level of service required by Illinois Power for continued gas service. The table below shows the existing contract demand, interim contract demand and amoun. of reduction requested:

Month	Existing contract demand (Mcf)	Interim contract demand (Mcf)	Amount of reduction (Mcf)
	(1)	(2)	(3)
January	230,000	115,000	115,000
February	230,000	115,000	115,000
March	230,000	115,000	115,000
April	136,000	45,000	91,000
May	106,000	30,000	76,000
June	68,000	20,000	48,000
July	62,000	20,000	42,000
August	62,000	20,000	42,000
September	86,000	30,000	56,000
October	138,000	65,000	73,000
November	230,000	115,000	115,000
December	230,000	115,000	115,000

Comment date: October 13, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22043 Filed 9-26-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140101; FRL-3454-7]

Access to Confidential Business Information; Labat-Anderson, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Labat-Anderson, Incorporated (LAI) of Arlington, VA, for access to information which has been submitted to EPA under secion 5 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than October 11, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7 and 8 of TSCA. Certain existing chemical substances intended to be exported to foreign countries are required to be reported to EPA under section 12 of TSCA. New and existing chemical substances intended to be imported into the United States are evaluated by EPA under section 13 of TSCA. Petitions received by EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under sections 4, 6, or 8 or an order under section 5(e) or 6(b)(2) are evaluated by EPA under section 21 of TSCA.

Under contract no. 68-01-7352, contractor LAI, 1111 19th Street North, Suite 600, Arlington, VA will assist the Office of Toxic Substances' Information Management Division in performing literature searches to support the review of Premanufacture Notifications under section 5 of TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract No. 68-01-7352, LAI will require access to CBI submitted to EPA under TSCA to perform successfully the duties specified under the contract. LAI personnel will be given access to information submitted under section 5 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under section 5 of TSCA that EPA may provide LAI access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1989.

LAI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: September 16, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-22032 Filed 9-26-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS—140102; FRL-3454-6]

Contractor and Subcontractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized several contractors and subcontractors for access to information which has been submitted to EPA under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI). EPA is issuing this notice to inform submitters of changes in the TSCA CBI access status under these contracts.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA. Certain existing chemical substances intended to be exported to foreign countries are required to be reported to EPA under section 12 of TSCA. New and existing chemical substances intended to be imported into the United States are evaluated by EPA under section 13 of TSCA. Petitions received by EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 or an order under section 5(e) or 6(b)(2) are evaluated by EPA under section 21 of TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that the following contractors and subcontractors will require access to CBI submitted to EPA under TSCA to perform sucessfully work specified under their contracts.

Access to CBI by the contractors and subcontractors shown in the chart below was announced in earlier **Federal Register** notices. EPA is issuing this notice to inform submitters of changes in the TSCA CBI access status under these contracts.

BILLING CODE 6560-50-M

CONTRACT NUMBER	CONTRACTOR NAME	ADDRESS	AUTHORIZED SECTIONS OF TSCA	SITE INFORMATION	FR PUBLICATION DATE/CITE	EXTENDED EXPIRATION DATE
68-01-7380	Chemical Abstracts Service	2540 Olentangy River Road, Columbus, OH	5 & 8	Contractor Site	52 FR 42037 (11/2/87)	Sept. 30, 1989
68-02-4289	Technical Resources, Inc.	3202 Monroe St. Rockville, MD	5 & 8	EPA Headquarters	52 FR 38515 (10/16/87)	Sept. 30, 1990
68-02-4236	Maxima Corporation	2101 E. Jefferson St. at Executive Blvd. Rockville, MD	ALL	EPA Headquarters	52 FR 42037 (11/2/87)	Dec. 31, 1988
68-01-7176	InterAmerica Research Corp.	7926 Jones Branch Dr. McLean, VA	4, 5, 6, 8, 12 & 13	EPA Headquarters	53 FR 15596 (5/2/88)	Sept. 30, 1989
68-01-7437	Unisys Corporation	7925 Westpart Drive McLean, VA	ALL	EPA Headquarters & RTP Facilities	52 FR 44633 (11/20/87)	Sept. 30, 1992
68-02-4296	Dynamac Corporation	11140 Rockville Pike Rockville, MD	4, 5, 6, 8 & 21	EPA Headquarters & Contractor Site	52 FR 43251 (11/10/87)	Sept. 30, 1989

CONTRACT NUMBER	CONTRACTOR NAME	ADDRESS	AUTHORIZED SECTIONS OF TSCA	SITE INFORMATION	FR PUBLICATION DATE/CITE	EXTENDED EXPIRATION DATE
68-02-3056	Research Triangle Institute	Research Triangle Park, NC	8	Contractor Site	52 FR 1241 (1/12/87)	Oct. 12, 1990
68-02-4379	Midwest Research Institute	401 Harrison Oaks Blvd., Cary, NC	6 & 8	RTP Facilities & Contractor Site	52 FR 44221 (11/18/87)	Sept. 30, 1989
68-01-7361	Planning Research Corp., Government Information Syst.	1500 Planning Research Dr. McLean, VA	ALL	EPA Headquarters	52 FR 37008 (10/2/87)	Sept. 30, 1991
68-01-7176	CRC Systems, Inc.	4020 Williamsburg Ct. Fairfax, VA	ALL	EPA Headquarters	52 FR 42037 (11/2/87)	Dec. 31, 1988

BILLING CODE 6560-50-C

The contractors and subcontractors listed above that are authorized to transfer CBI materials from EPA Headquarters to their facilities will, upon completing review of the CBI materials, return them to EPA. Contractors and subcontractors requiring access to TSCA CBI at their facilities will be authorized for such access under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has received their security plans and will perform the required inspections of their facilities before CBI access at the sites will be allowed. Contractor and subcontractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: September 16, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-22033 Filed 9-26-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140100; FRL-3454-5]

Access to Confidential Business Information by Research and Evaluation Associates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Research and Evaluation Associates (REA) of Chapel Hill, NC, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CRI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than October 11, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA. Certain existing chemical substances intended to be exported to foreign countries are required to be reported to EPA under section 12 of TSCA. New and existing chemical substances intended to be imported into the United States are evaluated by EPA under section 13 of TSCA. Petitions received by EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 or an order under section 5(e) or 6(b)(2) are evaluated by EPA under section 21 of TSCA.

Under contract no. 68-D8-0018, contractor REA, 100 Europa Drive, Suite 590, Chapel Hill, NC will assist the Office of Air Quality Planning and Standards (OAQPS) in designing and implementing a system for the handling, tracking, and safeguarding of CBI gathered under TSCA, the Resource Conservation and Recovery Act, and the Clean Air Act and used by OAQPS in pursuit of air pollution control projects.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract No. 68-D8-0018, REA will require access to CBI submitted to EPA under TSCA to perform successfully the duties specified under the contract. REA personnel will be given access to information submitted under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide REA access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA's Research Triangle Park facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1989.

REA personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: September 16, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-22034 Filed 9-26-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3454-1]

Simpson Road Drum Site; Notice of Proposed Settlement; Sherwin-Williams Co.

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Simpson Road Drum Site, Atlanta, Georgia, with the Sherwin-Williams Company. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Tex Ann Reid, Environmental Specialist, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404-347-5059.

Written comments may be submitted to the person above by (30) days from date of publication.

Date: September 16, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-22035 Filed 9-26-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44516; FRL-3454-3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on ortho-cresol (CAS No. 95-48-7) and hexafluoropropene (CAS No. 116-15-4) submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 402 M St., SW., Washington, DC 20460, (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for ortho-cresol was submitted by the Chemical Manufacturers Association Cresol Program Panel pursuant to a test rule a 40 CFR 799.1250. It was received by EPA on September 6, 1988. The submission describes a mutagenicity test on ortho-cresol in the *in vitro* transformation of BALB/C-3T3 cells assay in the presence of a rat liver cell activation system. Mutagenicity testing is required by this test rule.

Cresols are used as wire enamel solvents, automotive cleaners, and organic intermediates in manufacturing phenolic resins and phosphate esters. Additional uses of either individual isomers or mixtures are: In the production of several herbicides and disinfectants; as cleaning compounds, degreasers and antioxidants, and in ore flotation.

Test data for hexafluoropropene was submitted by E.I. Du Pont de Nemours and Company, Inc., pursuant to a test rule at 40 CFR 799.1700. It was received by EPA on September 2, 1988. The submission is an addendum to the final report, mutagenicity evaluation of hexafluoropropene in the CHO/HPRT assay, submitted to EPA on May 16, 1988. Mutagenicity testing is required by this test rule.

Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to their completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44516). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: September 20, 1988.

Frank D. Kover,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-22036 Filed 9-26-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR): Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition Policy and Regulations (VP), GSA.

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0227, Termination Liability Schedule General Services Administration Acquistion Regulation Part 549. This regulation enables GSA to obtain communication servies in accordance with the specified terms and conditions of the applicable tariffs, which normally include Termination Liability (TL) provisions, and through the competitive acquisition process, which, also, normally includes TL provisions.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 60; responses, 1 per year; average hours per response, 2.5; burden hours, 150.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, 202/566-1224.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7691.

Dated: September 20, 1988.

Mary Cunningham,

Acting Director, Information Management Division (CAI).

[FR Doc. 88-22046 Filed 9-26-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 824]

National Institute for Occupational Safety and Health; Cooperative Agreement To Implement Asbestos Controls During Brake Shoe Replacement; Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of funds for Fiscal Year 1988 for a cooperative agreement to support the Ohio Technology Transfer Organization (OTTO) in the development of innovative approaches for disseminating information about the control of occupational safety and health hazards to small businesses. No other applications are solicited or will be accepted.

Authority

This program is authorized under section 22(e)(7) of the Occupational Safety and Health Act of 1970 and section 301(a) of the Public Health Service Act. The Catalog of Federal Domestic Assistance number is 13.283.

Purpose

The objectives of this program are:

1. To develop a demonstration program for dissemination of control technology to small businesses, by using State sponsored business assistance programs;
2. To increase the acceptance and awareness of specific health and safety controls;
3. To develop a generic model for disseminating control technology to small businesses.

Availability of Funds

It is expected that the cooperative agreement will be for a 3-year project period beginning on or about September 30, 1988. The estimated cost of this project is $35,000 for the first year and approximately $30,000 for each of the remaining 2 years. The second year and the subsequent year are subject to the availability of funds and satisfactory progress of the applicant in meeting the objectives of the cooperative agreement.

Single Source Justification

The project will develop useful information for small businesses based upon NIOSH control technology

research and will explore the utility of using small business assistance programs to disseminate this information about occupational safety and health controls. Small business assistance programs exist in most State governments but are unused for communicating occupational safety and health messages. Through this project a model will be developed that can be used by NIOSH to encourage the implementation of control technology in other States and industries by developing the appropriate materials and cost effective strategies to reach those at risk from the asbestos dust.

The State of Ohio has specialized resources that uniquely qualify it to develop a model dissemination program for brake shoe controls. It has linked these resources through the State's Transportation Research Center and the Ohio Technology Transfer Organization (OTTO). OTTO has agents located throughout the State's urban and rural areas so that the differences in gaining acceptance to controls between urban and rural settings can be addressed in the model. OTTO is characterized by an active network whose agents interact continuously with each other and commonly use the resources of the State's university system to find solutions to technical problems facing small business. Therefore, the Transportation Research Center, directed by the Ohio State University, is the natural connection for technical assistance in developing this model program.

The Transportation Research Center has facilities for testing braking systems that are unique in the United States. The staff of the Center has unrivaled expertise in the engineering performance of braking systems. This expertise, combined with the outreach and communications abilities of the OTTO agents and the technical evaluation of the controls completed by NIOSH staff, creates a unique situation with high probability of success. The Transportation Research Center as part of the Engineering Experiment Station at the Ohio State University will provide the technical support for developing materials to train those at risk to control exposure to asbestos dust during brake shoe replacement. These materials will be based upon the information developed by NIOSH about brake shoe controls. Without the unique capabilities of the Transportation Research Center, the development of the model could not be attempted.

The network linkage between OTTO and the Transportation Research Center already exists. Ohio State University (OSU), through its OSU/OTTO office, provides the principal technical support for OTTO. The Director of OSU/OTTO is also affiliated with the Engineering Experiment Station. OTTO is a nationally recognized leader in technology transfer to small businesses. It is geographically diverse with 34 agents located in the various public universities and community technical colleges throughout Ohio. Twenty community colleges and universities affiliated with OTTO have automative technology or automotive engineering programs. Because of its agent's physical location at the Ohio technical community colleges, OTTO representatives have close ties to the community. The ability of the agents to gain access to small businesses and to gain acceptance of the engineering control is necessary for the performing organization.

OTTO has a well motivated and experienced staff interested in developing this communication model. There is no other State that has the combination of facilities, expertise, and experience in providing new technologies to small businesses along with the geographic diversity inherent in the community college base agent network. The 10 years of OTTO's existence has stimulated similar programs in other States. However, these emerging programs have not yet developed the networks necessary for proficiency in technology transfer, nor do they have the necessary technical support to develop a model demonstration program to disseminate control technology to small businesses. The State of Ohio is attractive because it provides a wide variety of small business settings ranging from the highly industrialized to the rural. OTTO is experienced in dealing with small businesses in all these settings.

Cooperative Activities

A. Recipient (OTTO) Activities

1. Development of a strategy for disseminating occupational safety and health controls to small businesses.
2. identification of the appropriate information about the chosen engineering controls to be disseminated.
3. Development of a protocol that describes the process used to disseminate occupational safety and health control information to the target population including a timetable for the development and implementation of the project.
4. Submission of the proposed protocol and timetable to NIOSH for review. The recipient will implement the proposed dissemination strategy.
5. Development of program descriptions, guidelines, and documentation of procedures and techniques that can be used by others to disseminate occupational safety and health controls to small businesses.
6. Collaboration in the evaluation of all activities undertaken pursuant to the development and implementation of the proposed dissemination program. This evaluation will focus on the efficacy of the identification of the groups who can best reach the target audience and the acceptance of the controls proposed by the target audience.

B. CDC Activities

1. Collaborate in assessing the completeness of the definition of the audience to which the control information is directed.
2. Collaborate in assessing the adequacy and extent of the networks identified to disseminate the occuptational safety and health information.
3. Assess the methodology for disseminating the control information. Both NIOSH and the recipient will work together in exploring and developing new dissemination methods and determining their feasibility.
4. Provide the necessary information and support about recommended engineering control practices and procedures, and disposal methods associated with introducing asbestos controls for the brake shoe replacement or other targeted industries.
5. Collaborate as necessary in the interim or final evaluation of the proposed dissemination activities.
6. Collaborate in the exchange of information related to other potential occupational safety and health problems identified in the small businesses visited.

Review and Evaluation Criteria

The application will be reviewed in accordance with PHS Grants Administration Manual, Part 134, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the merit of the application. The application will be reviewed and evaluated based on the following:

A. Understanding of the problem and the purpose of this cooperative agreement.

B. Ability to provide the staff, knowledge, and other resources to perform the responsibilities in this project, and the approach to be used in carrying out those responsibilities.

C. Steps to be taken in planning this project.

D. Schedule for accomplishing the initial planning and organizational phase of this project.

E. Qualifications and time allocations of the professional staff to be assigned to this project and the facilities, space, and equipment available for this project.

F. How the project will be administered, and the qualifications of the individual who will be responsible for its day-to-day administration.

Grantee Financial Participation

There are no grantee cost participation requirements for this program.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Application Submission and Deadline

The originial and two unbound copies of the application (PHS 5161-1, revised 3/86) must be received on or before September 29, 1988 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, PGO, Centers for Disease Control, 255 E. Paces Ferry Rd., NE., Room 300, MS E14, Atlanta, Georgia 30305, Telephone (404) 842-6575.

Where To Obtain Additional Information

Information may be obtained from: Nealean K. Austin, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Rd., NE., Room 300, MS E-14, Atlanta, Georgia 30305, Telephone (404) 842-6575.

Technical assistance may be obtained from: Theodore F. Schoenborn, Division of Physical Sciences and Engineering (DPSE), National Institute of Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 43226, Telephone (513) 841-4305.

Dated: September 21, 1988.

Larry W. Sparks,

Acting Director National Institute for Occupational Safety and Health.

[FR Doc. 88-22019 Filed 9-26-88; 8:45 am]

BILLING CODE 4160-18-M

National Institute for Occupational Safety and Health; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

Name: Peer Review of NIOSH Low Back Injury Assessment Protocol

Date: October 4, 1988

Place: Division of Safety Research, Room 138B, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888

Time: 9:00 a.m.-3:30 p.m.

Status: Open to the public, limited only by space available.

Purpose: To conduct a peer review of a research protocol for a study to evaluate the validity of the NIOSH Low Back Atlas (LBA) of Standardized Tests/Measures.

Additional information may be obtained from: Roger M. Nelson, Ph.D., Division of Safety Research, NIOSH, Mail Stop S109, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888, Telephone: Commercial: (304) 291-4810, FTS: 923-4810.

Dated: September 22, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-22179 Filed 9-26-88; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Cardiovascular and Renal Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on August 27, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: September 19, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-21995 Filed 9-26-88; 8:45 am]

BILLING CODE 4160-01-M

Endocrinologic and Metabolic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Endocrinologic and Metabolic Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on August 27, 1990, unless the Secretary formally determines that renewal is in the public interest.

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

Dated: September 19, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-21996 Filed 9-26-88; 8:45 am]

BILLING CODE 4160-01-M

Oncologic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Oncologic Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463), 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on September 1, 1990, unless the Secretary formally determines that renewal is in the public interest.

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

Dated: September 19, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-21997 Filed 9-26-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0310]

Hoechst-Celanese, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that Hoechst-Celanese, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of glyceryl esters of oxidatively refined montan wax acids as lubricants in the production of food-contact articles prepared for polyvinyl chloride and/or vinyl chloride copolymers.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat, 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4108) has been filed by Hoechst-Celanese, Inc., c/o 1150 17th St. NW., Washington, DC 20036, proposing that § 178.3770 *Polyhydric alcohol diesters of oxidatively refined (Gersthoffen process) montan wax acids* (21 CFR 178.3770) of the food additive regulations be amended to provide for the safe use of glyceryl esters of oxidatively refined (Gersthoffen process) montan wax acids as lubricants in the production of food-contact articles prepared from polyvinyl chloride and/or vinyl chloride copolymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 16, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-22022 Filed 9-26-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0331]

Drug Export; M.V.C. 9+3® Multivitamin Concentrate

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that LyphoMed, Inc., has filed an application requesting approval for the export of the human drug M.V.C. 9+3® Multivitamin Concentrate to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that LyphoMed, Inc., 2020 Ruby St., Melrose Park Il 60160, has filed an application requesting approval for the export of the human drug M.V.C. 9+3® Multivitamin Concentrate, to Canada. This formulation is indicated as daily multivitamin maintenance dosage for adults and children aged 11 and above receiving parenteral nutrition. The application was received and filed in the Center for Drug Evaluation and Research on September 12, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by October 7, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: September 20, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-22021 Filed 9-26-88; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: MINNEAPOLIS DISTRICT OFFICE, chaired by John Feldman, District Director. The topics to be discussed are vitamin and mineral supplements and fat and cholesterol labeling.

DATE: Wednesday, October 5, 1988, 1 p.m. to 3 p.m.

ADDRESS: Whitney Senior Center, 1125 Northway Dr., St. Cloud, MN 56301.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Jr., Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: September 21, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-21994 Filed 9-26-88; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Advisory Committees; Meetings; October

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made

of the following National Advisory bodies scheduled to meet during the month of October 1988:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: October 13–14, 1988, 8:30 a.m.

Place: Holiday Inn—Crowne Plaza, Parklawn Room, 1750 Rockville Pike, Rockville, Maryland.

Open October 13, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing to do analysis of data derived from experiments and demonstrations designed to test the cost-effectiveness or efficiency of particular methods of health services delivery and financing, for the research grants program administered by the National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting of October 13 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Gerald E. Calderone, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Name: Health Services Research Review Subcommittee.

Date and Time: October 6–7, 1988, 8:00 a.m.

Place: Holiday Inn—Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland.

Open October 6, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting on October 6 from 8:00 a.m. to 9:00 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. B. William Lohr, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Name: Health Care Technology Study Section.

Date and Time: October 24–25, 1988, 8:30 a.m.

Place: Days Inn—Congressional Park, Montrose Room, 1775 Rockville Pike, Rockville, Maryland.

Open October 24, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the effects of health care technologies and procedures, including those in the area of information sciences, as well as those addressing the process of diffusion and adoption of new technologies and procedures.

Agenda: The open session from 8:30 a.m. to 9:30 a.m. on October 24 will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. The closed sessions of the meeting will be devoted to a review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Date: September 20, 1988.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 88–22094 Filed 9–26–88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-030-08-4410-08]

Resource Management Plans, etc.; Great Divide Resource Area, NY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Proposed Resource Management Plan Final Environmental Impact Statement for the Great Divide Resource Area (formerly Medicine Bow and Divide Resource Areas).

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the proposed Resource Management Plan (RMP) Final Environmental Impact Statement (EIS) for the Great Divide Resource Area, including the proposed designation of five Areas of Critical Environmental Concern (ACEC). The proposed RMP describes the future management direction for approximately 4.0 million acres of public land and 5.0 million acres of federal mineral estate in the Great Divide Resource Area, which encompasses Laramie and Albany counties, in addition to portions of Carbon and Sweetwater counties in southeast and south central Wyoming. Wilderness recommendations are not included in this document. A final

wilderness EIS will be prepared at a later date.

DATES: Protests on the proposed RMP/final EIS must be postmarked on or before October 27, 1988.

EFFECTIVE DATE: .

ADDRESSES: Protests or comments on the proposed RMP/final EIS should be sent to Director (760), Bureau of Land Management, 18th & C Streets NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Bud Holbrook, Great Divide Area Manager, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, 307/324-4841.

SUPPLEMENTARY INFORMATION: The final EIS for the proposed Great Divide RMP has been prepared in an abbreviated format. The document includes a complete description of the proposed RMP and the resulting environmental effects. The alternatives considered in the draft RMP/EIS, and the environmental effects of these alternatives, have not been reprinted in the proposed RMP/final EIS. It is necessary, therefore, to use both the draft and final documents for a complete review of the EIS.

Copies of the draft RMP/EIS and the proposed RMP/Final EIS can be obtained from the Great Divide Resource Area Manager at the above address.

The proposed Great Divide RMP is a comprehensive management proposal. It is a refinement of the preferred alternative presented in the draft RMP/EIS. Comments from the public, review by BLM staff, and new information developed since the distribution of the draft have prompted some changes in the preferred alternative. The environmental effects of the proposed RMP are not substantively different from those of the preferred alternative. Aside from minor additions and corrections, the modifications include the following:

1. Coal development potential does not exist at this time in the Northeast Cow Creek and Wild Horse Draw coal areas due to economic conditions and low public interest. These areas were, therefore, removed from further leasing consideration.

2. Jep Canyon, a 13,320 acre portion of the Baggs Crucial Elk Winter Range, would be designated an Area of Critical Environmental Concern (ACEC).

3. The Gibbens Beardtongue area would be closed to surface entry and mineral location.

4. A map has been added to clarify the extent of the proposed designation of 'open to off-road vehicle (ORV) use' for the Dune Ponds area. The proposed ORV designation for an area west of Seminoe Reservoir has been changed to travel limited to designated roads and trails. This area is also shown on a map.

5. Emphasis would be placed on maintaining habitat quality in areas of overlapping big game crucial winter habitat.

In addition to Jep Canyon, the Seminoe and Shamrock Hills raptor concentration areas, 36,600 acres collectively, would be designated ACECs. These three areas would be managed to maintain the productivity of nesting raptor pairs while allowing for development of coal and oil and gas. The Como Bluff area, 1,760 acres, would be designated an ACEC and managed to maintain the integrity of important paleontological resources and historical values. The Sands Hills area, 8,300 acres, would be designated an ACEC and managed to maintain wildlife habitat, minimize soil erosion, and promote recreational opportunities. Standard mitigation guidelines would be applied to surface disturbing activities occurring in the ACECs. In addition, developments, uses, and facilities would be managed temporarily and spatially to avoid certain times of the year and certain areas.

Hillary Oden,

State Director.

September 15, 1988.

[FR Doc. 88-21704 Filed 9-26-88; 8:45 am]

BILLING CODE 4310-22-M

Intent To Prepare a Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Resource Management Plan.

SUMMARY: The Bureau of Land Management, Kingman Resource Area, is starting to prepare a Resource Management Plan (RMP) and associated Environmental Impact Statement (EIS). The RMP will guide resource management actions on approximately 2,500,000 acres of public land administered by the Phoenix District Kingman Resource Area. The RMP will comply with the BLM Planning Regulations (43 CFR 1600) and Council on Environmental Quality Regulations (40 CFR 1500). The public is encouraged to participate throughout this RMP planning process.

DATE: This action is effective October 1, 1988.

ADDRESS: Comments on the action or requests for further information should be sent to: Bureau of Land Management, Kingman District Office, 2745 Beverly Avenue, Kingman, Arizona 86401.

FOR FURTHER INFORMATION CONTACT: Gordon Bentley of the BLM—Kingman Resource Area at the Kingman address given above; telephone 602/757-3161.

SUPPLEMENTARY INFORMATION: The planning area is located in northwest Arizona south of the Lake Mead National Recreation Area and Grand Canyon National Park, and southwest of the Hualapai Indian Reservation. The planning area encompasses approximately 2,500,000 acres of public land in Coconino, Mohave, and Yavapai Counties.

The purpose of the RMP is to guide management of the public lands and resources in the Kingman Resource Area for the next 15-20 years. The RMP will replace three Management Framework Plans (MFP's) in the Resource Area by incorporating valid MFP decisions and establishing suitable resource uses and combinations of uses. The approved RMP will contain appropriate mitigation measures and a monitoring plan.

Preliminary issues for RMP consideration have been identified by BLM staff. They include land uses, recreation, wildlife habitat and special status species, Areas of Critical Environmental Concern and special management areas, and minerals. These, and other issues that will be identified during public participation activities, will be evaluated for significance and incorporated into a reasonable range of alternatives.

A full range of reasonable alternatives will be addressed in the RMP. The alternatives will provide feasible management options for resolving significant issues identified in the planning process. Significant environmental impacts of implementing the alternatives will be identified and analyzed.

The Phoenix District Manager and Kingman Resource Area Manager have overall responsibility for the preparation, implementation and monitoring of the RMP. The RMP will be prepared by an interdisciplinary team of management and resource specialists representing disciplines appropriate to the values and issues of the RMP identified in the scoping process. Completion of the RMP and the requisite EIS is anticipated by 1992.

Public participation opportunities will be provided throughout the RMP/EIS process in accord with 43 CFR Part 1610 and 40 CFR Part 1506. The primary points for this participation will be the public scoping meetings, public review of the planning criteria, public review of

the draft plan and EIS, public review of the preferred plan and final EIS, and, as needed, public notice and comment on any changes resulting from protests on the plan.

Scoping meetings for the identification of issues to be addressed in the RMP will be held during October and November in Kingman, Phoenix, and other cities in Coconono, Mohave, and Yavapai Counties. Notices of the dates, times, and places for these meetings will be provided to local media sources (newspapers and radio) at least 2 weeks prior to the meetings.

Documents relating to the RMP will be maintained and available to the public at the Kingman Resource Area office, 2745 Beverly Avenue, Kingman, Arizona 86401.

Henri Bisson,

District Manager.

September 20, 1988.

[FR Doc. 88-21990 Filed 9-26-88; 8:45 am]

BILLING CODE 4410-10-M

[CA-940-08-4520-12; (Group 911)]

Plat of Survey; California

September 15, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Eldorado County

T 13 N., R. 12 E.

2. This plat representing the dependent resurvey of a portion of the south, east, and west boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of section 34, Township 13 North, Range 12 East, Mount Diablo Meridian, California, under Group No. 911 California, was accepted May 19, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Eldorado National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88-21988 Filed 9-26-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; (Group 970)

Plat of Survey; California

September 15, 1988.

1. This plat of the following described land will be officialy filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, San Bernardino County

T. 2 N., R. 7 W.

2. This plat representing the metes-and-bounds survey of Tract 37 Township 2 North, Range 7 West, San Bernardino Meridian, California, under Group No. 970 California, was accepted May 4, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Los Angeles National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief Public Information Section.

[FR Doc. 88-21989 Filed 9-26-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4220-10; CACA 16422]

Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Navy has filed an application to withdraw 47,500.89 acres of public lands for the protection of various military operations and purposes associated with the mission of the Naval Air Facility at El Centro. This notice closes the lands for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing.

DATE: Comments and requests for meeting should be received on or before December 27, 1988.

ADDRESS: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, (916) 978-4815.

SUPPLEMENTARY INFORMATION: On August 24, 1984, the U.S. Department of the Navy filed an application to withdraw the following described public lands from location and entry under the United States mining laws, subject to valid existing rights:

San Bernardino Meridian

T. 15 S., R. 10 E.,
- Sec. 1, Lots 9 to 12, inclusive, and SW¼;
- Sec. 2, S½;
- Sec. 10, E½E½;
- Secs. 11 to 14, inclusive;
- Sec. 15, E½E½;
- Sec. 22, E½E½;
- Secs. 23 and 24;
- Sec. 25, N½;
- Sec. 26, NE¼.

T. 13 S., R. 11 E.,
- Sec. 34, E½ and SW¼;
- Sec. 35.

T. 14 S., R. 11 E.,
- Secs. 1 to 3, inclusive;
- Sec. 10, N½;
- Sec. 11, E½, N½SW¼, N½SE¼SW¼, and NW¼;
- Sec. 12;
- Sec. 13, NE¼, E½NW¼, N½SW¼NW¼, and NW¼NW¼;
- Sec. 14, NE¼NE¼.

T. 15 S., R. 11 E.,
- Sec. 5, SW¼;
- Sec. 6, Lots 8 and 9, SE¼, and E½SW¼
- Secs. 7 and 8;
- Secs. 10 and 11,
- Sec. 12, S½ and W½NW¼,
- Secs. 13 to 15, inclusive;
- Secs. 17 to 20, inclusive;
- Sec. 22, NE¼;
- Sec. 23, N½ and N½S½;
- Sec. 24;
- Sec. 29, NW¼,
- Sec. 30, Lots 3 and 4, NE¼, and E½NW¼

T 13 S., R. 12 E.,
- Sec. 31, Lots 5 and 6, and E½SW¼.

T. 14 S., R. 12 E.,
- Sec. 6, Lots 5 to 9, inclusive, E½SW¼, and SE¼NW¼;
- Sec. 7, Lots 3 to 6, inclusive, SE¼, and E½W½;
- Sec. 8, S½
- Sec. 9, S½;
- Sec. 10, S½;
- Sec. 11, SW¼;
- Secs. 14, 15, and 17;
- Sec. 18, Lots 3 and 4, E½ and E½NW¼;
- Sec. 19, E½;
- Secs. 22 and 23;
- Sec. 24, W½SE¼ and NW¼;
- Sec. 25, W½E½ and W½;
- Secs. 26 and 27;
- Sec. 30, E½NE¼ and NW¼NE¼;
- Sec. 32, NE¼, NE¼SE¼, and NE¼NW¼;
- Sec. 33, N½, N½S½, and N½S½S½;
- Sec. 34, N½, N½S½, and N½S½S½;
- Sec. 35, N½, NW¼SE¼, N½S½SW¼, and N½SW¼;
- Sec. 36, W½NE¼ and NW¼.

T. 15 S., R. 12 E.,
- Sec. 7, Lots 3 and 4, SE¼, and E½SW¼;
- Sec. 8, S½;
- Secs. 17 and 18;
- Sec. 19, Lots 1 to 4, inclusive, SE¼SE¼, W½E½, and E½W½.

T. 13 S., R. 16 E.,
Sec. 1, Lots 13 and 14, Lots 18 to 23, inclusive, Lots 25 to 28, inclusive, and S½;
Sec. 2, Lots 13 to 28, inclusive, and S½;
Sec. 3, Lots 16 and 17, Lots 22 to 27, inclusive, and S½;
Sec. 10, E½, E½SW¼, NW¼SW¼, and NW¼;
Secs. 11 to 14, inclusive;
Sec. 15, NE¼, N½N½SE¼, N½NE¼SW¼, and E½NW¼.
T. 13 S., R. 17 E.,
Sec. 6, Lot 32;
Sec. 7, Lots 3 to 6, inclusive, E½SW¼, and SE¼NW¼;
Sec. 18, Lots 3 and 4, and E½NW¼.
T. 14 S., R. 17 E.,
Secs. 3 to 5, inclusive;
Sec. 6, Lots 3 to 5, inclusive, S½NE¼, SE¼, E½SW¼, and SE¼NW¼;
Sec. 7, E½ and E½W½;
Secs. 8 to 10, inclusive;
Secs. 15 and 17;
Sec. 18, E½ and E½W½;
Sec. 19, NE¼, N½SE¼, NE¼SW¼, and E½NW¼;
Sec. 20, N½ and N½S½;
Sec. 21, N½ and N½S½;
Sec. 22, N½ and N½S½.

The areas described aggregate 47,500.89 acres in Imperial County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

If a withdrawal is to be made, it will be made by an Act of Congress.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. No temporary uses will be permitted during this segregative period.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of the Navy.

Nancy J. Alex,
Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88-21991 Filed 9-26-88; 8:45 am]
BILLING CODE 4310-40-M

[CA-940-08-4520-12; Group 995]

Plat of Survey; Santa Barbara and San Luis Obispo County; CA

September 16, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Santa Barbara and San Luis Obispo County

T. 32 S., R. 17 & 18 E.

2. This plat representing the corrective dependent resurvey of the Eighth Standard Parallel South, on a portion of the south boundaries Tps. 32 South, Rs. 17 & 18 East, Mount Diablo Meridian, California under Group No. 995 California, was accepted April 20, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Los Padres National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Public Information Section.

[FR Doc. 88-22119 Filed 9-26-88; 8:45 am]
BILLING CODE 4310-40-M

National Park Service

Negotiation of Concession Contract With Golf Course Specialists, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public Notice is hereby given that the National Park Service proposes to negotiate a concession contract with Golf Course Specialists, Inc., authorizing it to continue to provide golfing facilities and services for the public at East Potomac Golf Course, National Capital Parks-Central, Washington, DC for a period of Twenty (20) years from January 1, 1989 through December 31, 2008.

EFFECTIVE DATE: November 28, 1988.

ADDRESS: Interested parties should contact the Regional Director, National Capital Region, 1100 Ohio Drive, SW., Washington, DC 20242, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: An assessment of the environmental impact for this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Regional Headquarters, National Capital Region, 1100 Ohio Drive, SW., Room 339, Washington, DC 20242.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1991, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, Paragraph 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date: July 27, 1988.

Manus J. Fish,
Regional Director, National Capital Region.

[FR Doc. 88-22080 Filed 9-26-88; 8:45 am]
BILLING CODE 4310-70-M

Negotiation of Concession Contract With Kitty Hawk Aero Tours, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposed to negotiate a concession permit with Kitty Hawk Aero Tours, Inc., authorizing it to continue to provide sightseeing flight facilities and services for the

public at Wright Brothers National Memorial, North Carolina, for a period of four (4) years from January 1, 1989, through December 31, 1992.

EFFECTIVE DATE: November 28, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date: May 17, 1988.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 88-22079 Filed 9-26-88; 8:45 am]

BILLING CODE 4310-70-M

Availability of Plan of Operations and Environmental Assessment; Trafalgar House Oil and Gas, Inc., Padre Island National Seashore Kleberg County, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36, Part 9, Subpart B, of the Code of Federal Regulations of the availability of an oil and gas Plan of Operations and Environmental Assessment submitted by Trafalgar House Oil and Gas, Inc., for the Dunn-McCampbell et al., No. 1 Exploratory Well, Padre Island National Seashore, Kleberg County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas; and the Southwest Regional Office, 1220 South St. Francis Drive, Room 346, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

Date: September 14, 1988.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 88-22077 Filed 9-26-88; 8:45 am]

BILLING CODE 4310-70-M

Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463. 86 Stat. 770, 5, U.S.C. App. 1 Sec. 10), that a meeting of the Acadia National Park Advisory Commission will be held on Tuesday, October 11, 1988.

The Commission was established pursuant to Pub. L. 99-420, section 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the Park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Winter Harbor Elementary School (gymnasium), Winter Harbor, Maine, at 1:00 p.m. to consider the following agenda:

1. Election of officers.
2. Old business:
   A. Easement located on Hogg Island in Frenchman's Bay, Town of Gouldsboro, owned by Montgomery S. Bradley.
   B. Easement located on Sutton's Island, Town of Cranberry Isles, owned by Rebecca Nussdorfer.
3. New business:
   A. Status of acquisitions.
   B. Rulison property, Bar Island.
   C. Hamilton lot, Isle au Haut.
   D. Round Pond.
4. Proposed agenda and date of next Commission meeting.

The committee meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609.

Date: September 26, 1988.

Charles P. Clapper,

Acting Regional Director.

[FR Doc. 88-22078 Filed 9-26-88; 8:45 am]

BILLING CODE 4310-70-M

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 September 17, 1988, 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 October 12, 1988.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Montezuma County

Lost Canyon Archeological District, Address Restricted, Mancos vicinity, 88001909

IOWA

Ida County

Warnock, Dr. Francis B., House, 201 Maple St., Battle Creek, 88001945

KANSAS

Harvey County

Brown, Samuel A., House, 302 W. Sixth, Newton, 88001904

Johnson County

Lanesfield School, 18745 S. Dillie Rd., Edgerton vicinity, 88001902

Montgomery County

Booth Theater, 119 W. Myrtle St., Independence, 88001903

Federal Building—US Post Office, 123 N. 8th, Independence, 88002009

Union Implement and Hardware Building—Masonic Temple, 121-123 W. Main, Independence, 88002008

Sedgwick County

Building Nine, 801 E. 37th St. North, Wichita, 88001901

Calvary Baptist Church, 601 N. Water, Wichita, 88001905

MARYLAND

Prince George's County

Goodloe, Don S.S., House, 13809 Jericho Park Rd., Bowie vicinity, 88001900

MASSACHUSETTS

Franklin County

East Main—High Street Historic District, Roughly bounded by Church, High, E. Main and Franklin Sts., Greenfield, 88002011

Main Street Historic District, Main St. between Chapman and Hope Sts., also along Bank Row, Greenfield, 88001908
Newton Street School, Shelburne Rd., Greenfield, 88001907

Hampden County

Ludlow Center Historic District, Along Center, Church and Booth Sts., Ludlow, 88001999

Middlesex County

City Hall Historic District (Boundary Increase), 165 Market St., Lowell, 88001906

MONTANA

Deer Lodge County

Tuttle Manufacturing and Supply Company and the Anaconda Copper Mining Company Foundry Department, Jefferson and 6th, Anaconda, 88002010

NEW JERSEY

Burlington County

Bead Wreck Site, Address Restricted, New Gretna vicinity, 88001899

TEXAS

Anderson County

Palestine Carnegie Library, 502 N. Queen St., Palestine, 88001944

Bee County

Medio Creek Bridge, CR 241, Normanna vicinity, 88002000

De Witt County

Bates-Sheppard House (Cuero MRA), 312 E. Broadway, Cuero, 88001948
Bell, John Y., House (Cuero MRA), 304 E. Prairie, Cuero, 88001982
Bennett, M.D., House (Cuero MRA), 208 N. Hunt, Cuero, 88001963
Billow-Thompson House (Cuero MRA), 402 E. Broadway, Cuero, 88001949
Breeden-Runge Wholesale Grocery Company Building (Cuero MRA), 108 N. Frederick William, Cuero, 88001957
Buchel, Floyd, House (Cuero MRA), 407 E. Broadway, Cuero, 88001950
Burns, Arthur, House (Cuero MRA), 130 E. Sarah, Cuero, 88001987
Burns, John W., House (Cuero MRA), 311 E. Broadway, Cuero, 88001947
Callaway-Gillette House (Cuero MRA), 306 E. Sarah, Cuero, 88001989
Chaddock, J.B., House (Cuero MRA), 202 S. Valley, Cuero, 88001995
City Water Works House (Cuero MRA), 208 S. Esplanade, Cuero, 88001956
Clement-Naqel House (Cuero MRA), 701 E. Morgan, Cuero, 88001974
Colston-Gohmert House (Cuero MRA), 309 E. Prairie, Cuero, 88001983
Cook, Charles, House (Cuero MRA), 103 E. Sarah, Cuero, 88001986
Crain, H.H., House (Cuero MRA), 508 E. Courthouse, Cuero, 88001953
Cuero Commercial Historic District (Cuero MRA), Roughly bounded by Gonzales, Main, Terrell, and Courthouse, Cuero, 88001996
Cuero Gin (Cuero MRA), 501 W. Main, Cuero, 88001970
Cuero High School (Cuero MRA), 405 E. Sarah, Cuero, 88001990
Daule, E.A., House (Cuero MRA), 201 W. Newman, Cuero, 88001981
East Main Street Residential Historic District (Cuero MRA), 400 to 800 blks. of E. Main St., Cuero, 88001998
Eicholz, William and L.F., House (Cuero MRA), 308 E. Courthouse, Cuero, 88001954
English-German School (Cuero MRA), 201 E. Newman, Cuero, 88001978
Farris, J.B., House (Cuero MRA), 502 N. Gonzales, Cuero, 88001960
First Methodist Church (Cuero MRA), 301 E. Courthouse, Cuero, 88001952
Frair, Alfred, House (Cuero MRA), 703 N. Gonzales, Cuero, 88001961
Frobese, William, Sr., House (Cuero MRA), 305 E. Newman, Cuero, 88001980
Grace Episcopal Church (Cuero MRA), 401 N. Esplanade, Cuero, 88001955
House at 1002 Stockdale (Cuero MRA), 1002 Stockdale, Cuero, 88001993
House at 404 Stockdale (Cuero MRA), 404 Stockdale, Cuero, 88001992
House at 609 East Live Oak (Cuero MRA), 609 E. Live Oak, Cuero, 88001968
Keller-Grunder House (Cuero MRA), 409 E. Morgan, Cuero, 88001973
Leinhardt, Albert and Kate, House (Cuero MRA), 818 E. Morgan, Cuero, 88001976
Leonardt, Emil, House (Cuero MRA), 804 E. Morgan, Cuero, 88001975
Leske Bar (Cuero MRA), 432 W. Main, Cuero, 88001969
Ley, Valentine, House (Cuero MRA), 206 E. Newman, Cuero, 88001979
Lynch-Probst House (Cuero MRA), 502 E. Broadway, Cuero, 88001951
Macedonia Baptist Church (Cuero MRA), 512 S. Indianola, Cuero, 88001967
Marie, Frank, House (Cuero MRA), 402 E. French, Cuero, 88001959
Meissner-Pleasants House (Cuero MRA), 108 N. Hunt, Cuero, 88001962
Mugge, Edward, House (Cuero MRA), 218 N. Terrell, Cuero, 88001994
Old Beer and Ice Warehouse (Cuero MRA), 104 SW Railroad, Cuero, 88001985
Ott, Charles J. and Alvina, House (Cuero MRA), 306 N. Hunt, Cuero, 88001965
Ott, S.I., House (Cuero MRA), 302 N. Hunt, Cuero, 88001964
Priqden, O.F. and Mary, House (Cuero MRA), 401 E. French, Cuero, 88001958
Reuss, J.N., House (Cuero MRA), 315 Stockdale, Cuero, 88001991
St. Michael's Catholic Church (Cuero MRA), 202 N. McLeod, Cuero, 88001971
Stevens, Elisha, House (Cuero MRA), 408 E. Prairie, Cuero, 88001984
Terrell-Reuss Streets Historic District (Cuero MRA), 300 to 900 blks. of Terrell, 500 to 900 blks. of Indianola, and 200 blk. of W. Reuss to 400 blk. of E. Reuss, Cuero, 88001997
Thomson, W.F., House (Cuero MRA), 608 N. McLeod, Cuero, 88001972
Wittenbert, Dane, House (Cuero MRA), 402 S. Hunt, Cuero, 88001966
Wittner, Charles, House (Cuero MRA), 110 E. Newman, Cuero, 88001977

Lamar County

Atkinson-Morris House (Paris MRA), 802 Fitzhugh, Paris, 88001914
Bailey—Ragland House (Paris MRA), 433 W. Washington, Paris, 88001917
Baldwin, Benjamin and Adelaide, House (Paris MRA), 714 Grahan, Paris, 88001925
Baty—Plummer House (Paris MRA), 708 Sherman, Paris, 88001931
Brazelton, Thomas and Bettie, House (Paris MRA), 801 W. Sherman, Paris, 88001932
Carlton—Gladden House (Paris MRA), 2120 Bonham, Paris, 88001933
Church Street Historic District (Paris MRA), Roughly bounded by E. Austin, 3rd, SE, Washington and 1st, SW Sts., Paris, 88001936
Daniel, J.M. and Emily, House (Paris MRA), 216 4th, SW, Paris, 88001921
First Church of Christ, Scientist (Paris MRA), 339 W. Kaufman, Paris, 88001912
First Presbyterian Church (Paris MRA), 410 W. Kaufman, Paris, 88001913
Gibbons, John Chisum, House (Paris MRA), 623 6th, SE, Paris, 88001923
High House (Paris MRA), 352 Washington, Paris, 88001920
House at 705 3rd Street, SE (Paris MRA), 705 3rd St., SE, Paris, 88001935
Jenkins, Edwin and Mary, House (Paris MRA), 549 5th, NW, Paris, 88001927
Johnson-McCuistion House (Paris MRA), 730 Clarksville, Paris, 88001911
Lamar County Hospital (Paris MRA), 625 W. Washington, Paris, 88001918
Latimer, William and Etta, House (Paris MRA), 707 Sherman, Paris, 88001930
McCormic-Bishop House (Paris MRA), 603 8th St., SE, Paris, 88001910
Means—Justiss House (Paris MRA), 537 6th St., SE, Paris, 88001934
Morris—Moore House (Paris MRA), 744 3rd., NW, Paris, 88001926
Paris Commercial Historic District (Paris MRA), Roughly bounded by Price, 3rd, SE, Sherman and 4th, SW, Paris, 88001937
Pine Bluff-Fitzhugh Historic District (Paris MRA), 500–900 blks of Pine Bluff and 300–600 blks of Fitzhugh, Paris, 88001938
Preston, Thaddeus and Josepha, House (Paris MRA), 731 E. Austin, Paris, 88001915
Ragland House (Paris MRA), 208 5th St., SW, Paris, 88001922
Rodguers—Wade Furniture Company (Paris MRA), 401 3rd, SW, Paris, 88001919
St. Paul's Baptist Church (Paris MRA), 454 2nd, NE, Paris, 88001928
Trigg, W. S. and Mary, House (Paris MRA), 441 12th St., SE, Paris, 88001924
Wise—Fielding House and Carriage House (Paris MRA), 418 W. Washington, Paris, 88001916
Wright, Edgar and Annie, House (Paris MRA), 857 Lamar, Paris, 88001929

UTAH

Morgan County

Mormon Flat Breastworks (Utah War Fortifications MPS), Address Restricted, Porterville vicinity, 88001943

Summit County

Echo Canyon Breastworks (Utah War Fortifications MPS), Address Restricted, Echo vicinity, 88001942

VERMONT

Chittenden County

South Union Street Historic District, S. Union St. between Howard and Main, Burlington, 88001946

WISCONSIN

Brown County

Main Hall, Third St. and College Ave., De Pere, 88002001

Dane County

Baskerville Apartment Building, 121-129 S. Hamilton St., Madison, 88002006

Iowa County

Hyde Chaptel, 1 mi. S of CTH H on CTH T, Ridgeway, 88002002

Milwaukee County

Chief Lippert Fire Station, 642 W. North Ave., Milwaukee, 88002007

Rock County

Orfordville Depot, Beliot St., Orfordville, 88002004

Sauk County

Manchester Street Bridge, Ochsner Park Baraboo, 88002005

[FR Doc. 88-22081 Filed 9-26-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-52 (Sub-No. 59X)]

The Atchison, Topeka and Santa Fe Railway Co.—Abandonment Exemption—In Los Angeles County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by The Atchison, Topeka and Santa Fe Railway Company of 2.07 miles of rail line in Los Angeles County, CA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 27, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 7, 1988, petitions to stay must be filed by October 12, 1988, and petitions for reconsideration must be filed by October 24, 1988. Request for a public use condition must be filed by October 7, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-52 (Sub-No. 59X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representative: Michael W. Blaszak, 80 East Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7691.

[TDD for hearing impaired (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: September 20, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-22000 Filed 9-26-88; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Line Aband. or Discon.—Offers of Fin. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22 1987 (52 FR 48440-48446).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; A.O. Smith Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Joint Stipulation and Order in *United States v. A. O. Smith Corporation*, Civil Action No. 87-CV-0271, was lodged with the United States District Court for the Central District of Illinois on September 9, 1988. The Complaint filed by the United States alleged violation of Section 113 of the Clean Air Act for failure by defendant to comply with applicable provisions of the Wisconsin State Implementation Plan ("SIP"), relating to emissions of volatile organic compounds ("VOCs"), at defendant's Milwaukee, Wisconsin manufacturing plant.

The proposed Joint Stipulation and Order requires defendant to pay a civil penalty of $50,000 for alleged past violations of the Clean Air Act and the SIP, also provides that the action shall be dismissed without prejudice.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *A.O. Smith Corporation*, D.J. Reference No. 90-5-2-1-1051.

The proposed Joint Stipulation and Order may be examined at the office of the United States Attorney, Eastern District of Wisconsin, 330 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the proposed Joint Stipulation and Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Joint Stipulation and Order may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-22045 Filed 9-26-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

High-Temperature Resistant Diesel Particulate Trap; Southwest Research Institute

Notice is hereby given that, on August 31, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled: "Development of a High-Temperature Resistant Diesel Particulate Trap." The notification discloses: (1) The identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below.

The parties to the project are:

1. Nissan Diesel Motor Co.
2. John Deere Company

3. The Garrett Corporation
4. Mitsubishi Motors Corporation
5. Caterpillar, Inc.
6. Hino Motors Ltd.
7. Stemco, Inc.
8. Nippon Shokubai Kagaku Kogyo Company, Ltd.
9. Fuel Tech, Inc.
10. Exxon Chemical Company
11. Isuzu Technical Center of America, Inc.
12. Navistar International Corporation
13. Fiat Research Center

The purpose of the project is to evaluate potential candidates for high-temperature resistant diesel particulate traps which candidates will include but not be limited to silicon carbide foam, mullite, and other materials as they become available. The evaluation will involve trapping efficiency, trap capacity, backpressure effects, and effects on engine operation. The selection of engines and operating cycles will be made to represent different particulate character and the best design will then be selected for durability experiments. Trap regeneration techniques will be investigated depending on the trap composition and a complete trap with regeneration system will be demonstrated on a full size truck or bus.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-22044 Filed 9-26-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-20,850]

Anchor Hocking Industrial Glass Co., Phoenix Glass Plant; Monaca, PA; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 1, 1988 in response to a worker petition which was filed by the United Plant Guard Workers Union on behalf of workers at Phoenix Glass Company, Monaca, Pennsylvania. The Phoenix Glass Plant is a manufacturing facility of Anchor Hocking Industrial Glass Company.

An active certification covering all workers of the Phoenix Glass Plant of Anchor Hocking Industrial Glass Company remains in effect (TA-W-20,605). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 19th day of September 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-22108 Filed 9-26-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,678]

Bass Enterprises Production Co., Fort Worth, TX; Negative Determination on Remand

Pursuant to the U.S. Court of International Trade remand dated June 2, 1988 in *Former Employees of Bass Enterprises Production Company* v. *Secretary of Labor* (USCIT 87-04-00584) the Department is issuing a negative determination on remand.

The Court remanded the case because the plaintiffs were not provided actual notice of the opportunity for a hearing and were prejudiced by the lack of actual notice.

On August 29, 1988, a public hearing was held in Dallas, Texas for petitioners or any other persons to furnish additional testimony and evidence of a relevant and material nature bearing upon the Department's investigation regarding petition TA-W-18,678.

On reconsideration, additional information was obtained with respect to employment at Bass. Also, a customer survey was conducted of Bass' natural gas customers. Plaintiff provided additional comments on the new material and complained about alleged inconsistencies in the Department's investigations with respect to the increased import criterion for the Santa Fe Minerals and Coseka Resources petitions compared to the petition submitted by the former workers of Bass Enterprises Production Company.

One requirement for the certification of workers for adjustment assistance is increased imports of articles like or directly competitive with the articles produced by the workers' firm or appropriate subdivision. However, in order for a worker group to become certified as eligible to apply for adjustment assistance it must also meet the other two group eligibility requirements of section 222 of the Trade Act of 1974.

Petitioners sometimes allege inconsistencies in the Department's determinations especially when the Department certifies workers of one firm and denies workers at other firms producing the same articles in the same base period. The Department's policy is that if workers are not separately identifiable by product, and the product impacted by imports represents an important portion of the production of the firm or appropriate subdivision, then all workers would be certified as eligible to apply for adjustment assistance.

Investigation findings show that Santa Fe Minerals, Coseka Resoures and Bass Enterprises produced both natural gas and crude oil and the workers were not separately identifiable by product.

In the Santa Fe case, crude oil production accounted for a major portion of total production and workers met all three group eligibility requirements for crude oil in 1986. Therefore, there was no need to survey the natural gas customers. On the other hand, in the Coseka case, natural gas production accounted for a major portion of total production. Coseka's certification was based primarily on the fact that workers producing natural gas met all three group eligibility requirements in 1985.

With respect to the Bass petition, investigation findings show that Bass was primarily a crude oil producer with natural gas accounting for an important portion of total production. Investigation findings for Bass showed increased sales and production of crude oil for 1985 and 1986. Accordingly, there is no need for a customer survey of Bass' crude oil customers since the workers could not meet all three group eligibility criteria. On reconsideration, the Department surveyed the natural gas customers of Bass Enterprises. The survey findings show that the customers with declining purchases from Bass in 1985 of 1986 did not import natural gas. As a general practice, the Department does not survey secondary customers of firms since the findings would be too remote and indirect to support the contributed importantly criterion.

Also new findings on reconsideration show that Bass Enterprises replaced geologists and geophysicists with contract employees—geological consultants—performing these servcies.

With respect to the decreased sales and/or production criterion, the Department used quantity data since it is a more reliable indicator than value to measure decreases or increases in production or sales. (See: *Former Employees of Asarco's Amarillo Copper Refinery* vs. *Secretary of Labor*, (675 F. Supp 647 (CIT 1987)).

Also, there is no purpose in viewing U.S. imports of crude oil or natural gas (by quarters) prior to the Bass workers separations beginning in September 1985

since the workers do not meet the decreased production or sales criterion for crude oil. U.S. imports of crude oil decreased in every quarter in 1985 prior to the beginning of worker separations (September 10, 1985) compared to the same quarter in 1984. Likewise, there is no purpose in viewing U.S. imports of natural gas (by quarters) just prior to the Bass workers initial separations since the import data show that U.S. imports of natural gas increased in 1985. The "contributed importantly" test of the increased import criterion, however, was not met for natural gas since Bass' customers did not shift purchases from Bass to foreign sources.

Lastly, the allegation by petitioners concerning the natural gas customers of Coseka and Bass Enterprises is merely speculation and is unsupported by the record.

Conclusion

After reconsideration on remand, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers of Bass Enterprises Production Company, Fort Worth, Texas.

Signed at Washington, DC, this 19th day of September 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-22107 Filed 9-26-88; 8:45 am]

BILLING CODE 4510-30-M

Revised Final Allotments for Program Year (PY) 1988; Basic Labor Exchange Activities Under the Wagner-Peyser Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces revised final allotments for PY 1988 basic labor exchange activities authorized under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Robert A. Schaerfl, Director, U.S. Employment Service, 200 Constitution Avenue, NW., Room N-4470, Washington, DC 20210. Telephone: (202) 535-0157.

SUPPLEMENTARY INFORMATION: Final planning estimates for PY 1988 basic labor exchange activities were announced in the **Federal Register** on April 8, 1988. Subsequently, Congress appropriated a $15,000,000 supplement, Pub. L. 100-393. Therefore, $738,029,000 will become available for distribution to States, less $14,900,000 withheld to finance postage costs associated with public employment service activities. The allocation methodology is unchanged from that used for the final PY 1988 distribution published on April 8, 1988.

Further information regarding the allocation methodology is available upon request.

Signed at Washington, DC, this 9th day of September 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINSTRATION
ADJUSTED PY 1988 WAGNER-PEYSER ALLOTMENTS TO STATES

	Final	Supplemental Appropriation	Adjusted Final
Alabama	$11,217,666	$232,769	$11,450,435
Alaska	7,700,963	159,796	7,860,759
Arizona	8,604,829	178,551	8,783,380
Arkansas	6,966,335	144,553	7,110,888
California	71,382,852	1,481,203	72,864,055
Colorado	9,712,650	201,539	9,914,189
Connecticut	7,897,474	163,874	8,061,348
Delaware	1,978,766	41,060	2,019,826
Dist of Columbia	5,197,840	107,857	5,305,697
Florida	29,748,814	617,292	30,366,106
Georgia	15,604,562	323,797	15,928,359
Hawaii	2,781,242	57,711	2,838,953
Idaho	6,416,271	133,138	6,549,409
Illinois	32,431,825	672,965	33,104,790
Indiana	14,746,229	305,987	15,052,216
Iowa	8,875,816	184,175	9,059,991
Kansas	6,271,755	130,140	6,401,895
Kentucky	10,176,296	211,160	10,387,456
Louisiana	13,543,464	281,028	13,824,492
Maine	3,815,696	79,176	3,894,872
Maryland	11,455,779	237,709	11,693,488
Massachusetts	13,822,361	286,816	14,109,177
Michigan	26,516,201	550,215	27,066,416
Minnesota	11,502,431	238,677	11,741,108
Mississippi	7,654,849	158,839	7,813,688
Missouri	13,858,444	287,565	14,146,009
Montana	5,243,411	108,801	5,352,212
Nebraska	6,301,548	130,758	6,432,306
Nevada	5,097,147	105,766	5,202,913
New Hampshire	2,525,716	52,409	2,578,125
New Jersey	18,679,745	387,607	19,067,352
New Mexico	5,884,028	122,094	6,006,122
New York	53,558,196	1,111,340	54,669,536
North Carolina	15,816,562	328,196	16,144,758
North Dakota	5,339,359	110,793	5,450,152
Ohio	29,057,612	602,949	29,660,561
Oklahoma	12,245,676	254,099	12,499,775
Oregon	8,571,463	177,859	8,749,322
Pennsylvania	29,584,945	613,892	30,198,837
Puerto Rico	8,429,565	174,915	8,604,480
Rhode Island	2,562,717	53,176	2,615,893
South Carolina	8,389,840	174,090	8,563,930
South Dakota	4,934,796	102,397	5,037,193
Tennessee	12,672,600	262,958	12,935,558
Texas	49,088,632	1,018,596	50,107,228
Utah	10,792,999	223,956	11,016,955
Vermont	2,311,742	47,969	2,359,711
Virginia	14,229,439	295,263	14,524,702
Washington	12,853,942	266,721	13,120,663
West Virginia	5,648,362	117,204	5,765,566
Wisconsin	13,171,991	273,321	13,445,312
Wyoming	3,828,653	79,446	3,908,099
FORMULA TOTAL	$706,702,096	$14,664,167	$721,366,263
Guam	331,490	6,878	338,368
Virgin Islands	1,395,414	28,955	1,424,369
Indicia Postage	14,600,000	300,000	14,900,000
NATIONAL TOTAL	$723,029,000	$15,000,000	$738,029,000

Mine Safety and Health Administration

[Docket No. M-88-171-C]

Bitter Creek Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Bitter Creek Resources, Inc., P.O. Box 800, Reliance, Wyoming 82943 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Stansburgh Mine (I.D. No. 48-01012) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that an installation housing a dry-type underground transformer station of 500-kva capacity is ventilated by neutral belt intake air that cannot be coursed directly to a return aircourse because of the configuration of the intake entries.

3. As an alternate method, petition proposes to install a low-level carbon monoxide sensor system with specific techniques and equipment as outlined in the petition.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 27, 1988. Copies of the petition are available for inspection at that address.

Dated: September 21, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-22111 Filed 9-26-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-177-C]

EMCO Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

EMCO Coal Company, HC 66, Box 1012, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-14577) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor would be equipped with a handheld continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 27, 1988. Copies of the petition are available for inspection at that address.

Dated: September 21, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-22112 Filed 9-26-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-175-C]

F.S. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

F.S. Coal Company, 840 Mahoney Street, Trevorton, Pennsylvania 17881 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its Slope No. 1 (I.D. No. 36-07702) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when conventional roof support is used.

2. As an alternate method, petitioner requests a modification of the standard to allow the roof in openings in excess of 20 feet in width be supported with conventional supports set on 5-foot centers in every direction, or be supported by employing the full-box method.

3. In support of this request, petitioner states that in anthracite mines all roadways are restricted to 12 feet in width. The breasts, on the other hand, where mobile equipment is not used, are driven up to 30 feet in width. These breasts are supported by conventional

supports placed on 5-foot centers in every direction, hence no span of roof is left unsupported. In mines pitched 60 degrees or more, the breasts are driven full. In the full-box method, manways are timbered 30-inches wide and loose coal supports the roof between the manway timbers.

4. Petitioner further states that roof bolts would create a hazard in steeply pitched mines, because they would have to be installed from 30 degrees to as little as 2 degrees from horizontal. This would result in shearing of the bolts.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4915 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 27, 1988. Copies of the petition are available for inspection at that address.

Dated: September 21, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-22113 Filed 9-26-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-180-C]

The Helen Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

The Helen Mining Company, R.D. No. 2, Box 2110, Homer City, Pennsylvania 15748-9558 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Homer City Mine (I.D. No. 36-00926) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to clean out an plug oil and gas wells using specific techniques and procedures as outlined in the petition.

3. In addition, petitioner proposes to mine through the plugged oil or gas well. Prior to mining through, the petitioner would confer with the MSHA District Manager for approval of the specific mining procedures, and appropriate officials would be allowed to observe the process and all mining would be under the direct supervision of a certified official. In addition:

(a) Drivage sites would be installed; firefighting equipment, roof support and ventilated materials would be available;

(b) The quantity of air would be not less than 9000 cubic feet per minute to ventilate the face;

(c) Equipment would be checked for permissibility and serviced prior to mining through the well. The working place would be free from accumulations of coal dust and coal spillages, and rock-dusted to within 20 feet of the face;

(d) Methane monitors would be calibrated prior to the shift and tests would be made during mining approximately every 10 minutes; and

(e) When the wellbore is intersected, all equipment would be deenergized and safety checks would be made before mining would continue inby the well a sufficient distance to permit adequate ventilation around the area of the wellbore.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 27, 1988. Copies of the petition are available for inspection at that address.

Dated: September 21, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-22114 Filed 9-26-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-178-C]

Lawson Bend Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Lawson Bend Coal Company, Route 2, Box 70A, Rockholds, Kentucky 40759 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-15068) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous miners, longwall face equipment and loading machines The monitor is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office

of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 27, 1988. Copies of the petition are available for inspection at that address.

Date: September 21, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-22115 Filed 9-26-88; 8:45 am]

BILLING CODE 4510-43-M

Wage and Hour Division

Child Labor Adivsory Committee Meeting

A meeting of the Child Labor Advisory Committee (the Committee) will be held on October 19, 1988, from 9:00 a.m. to 5:00 p.m., and on October 20, 1988, from 9:00 a.m. to 5:00 p.m. This meeting will be held in Room N-3437 A,B,C, Frances Perkins Building, Department of Labor, 200, Constitution Avenue, NW., Washington, DC.

The agenda items to be considered by the Committee include the following:

October 19

Call to Order
Approval of Minutes from March meeting
Old Business—Subcommittee Reports and Discussions.

1. Subcommittee Report on Hazardous Occupations Order No. 2, Motor Vehicle Driver Occupations, concerning occasional and incidental driving, the application of the exemptions to 16 year old drivers, the requirement that vehicles not exceed 6,000 lbs. gross vehicle weight, the definition of outside helper, whether other exemptions should be added to the Order, and 16- and 17-year-old school bus drivers.

2. Subcommittee Report on Hazardous Occupations Order No. 10, Occupations involving slaughtering, meat packing or processing or rendering; concerning whether power-driven meat slicers used in retail establishments are covered by the order.

3. Subcommittee Report on Child Labor Regulation No. 3, concerning the hours of work for 14- and 15-year-old minors.

New Business—Reports and Subcommittee Discussions.

1. Committee discussion of the U.S. General Accounting Office Report. (GAO/HRD-88-54).

2. The Subcommittee on Child Labor Regulation No. 3 will consider door-to-door candy sales and cooking and baking by 14- and 15-year-olds in eating establishments.

3. The Subcommittee on Hazardous occupations Order No. 10 will consider whether specific machinery used to process meat should be covered by this Order; whether certain activities associated with prohibited machinery should also be prohibited such as assembly and disassembly; and whether to prohibit the operation of certain machines when used on products other than meat. This Subcommittee will also consider whether to provide an exception from the Order for certain power-driven machines which are equipped with protective guards or certain other safety features. In addition, this Subcommittee will consider whether to include and how to define poultry, seafood, fish, vegetables, dairy products, and small game animal industries under the scope of HO 10; definitions of the terms "particularly hazardous" and "processing"; and whether to rewrite the title of this Hazardous Order.

4. The Subcommittee on Hazardous Occupations Order No. 11, will consider whether specific bakery machinery should be covered by this Order; whether cleaning of certain machine parts should be permitted for 16- and 17-year-olds if the machine is disassembled and reassembled by someone 18 years of age or older; and whether certain power—driven machines should be prohibited when used on products other than bakery goods, such as to mix vegetables. This Subcommittee will also consider whether to provide an exception from the Order for certain power-driven machines which are provided with protective guards, have certain safety features, or incorporate design characteristics which remove hazards.

5. Subcommittee Meetings.

October 20

Subcommittee Meetings
Subcommittee Preliminary Reports
Adjournment

Members of the public are invited to attend the proceedings. Written data, reviews, or arguments pertaining to the business before the Committee must be received by the Committee Coordinator by October 5, 1988. Twenty-six copies are needed for distribution to the members and for inclusion in the meeting minutes.

Telephone inquiries concerning this meeting should be directed to Ms. Nila Stoval, Coordinator for the Child Labor Advisory Committee, Room S-3028, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: area code (202) 523-7640.

Signed at Washington, DC, this 21st day of September 1988.

Paula V. Smith,

Administrator.

[FR Doc. 88-22109 Filed 9-26-88; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Fedeal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Advancement Section) to the National Council on the Arts will be held on October 14, 1988, from 9:00 a.m.—5:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9) (B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

September 21, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-22014 Filed 9-26-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-282 and 50-306]

Northern States Power Co., Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Northern States Power Company (the licensee) for the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

Environmental Assessment

Identification of Proposed Action

The licensee requested an exemption from Paragraph III.A.3 of 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." In 1973, Appendix J was issued to establish requirements for primary containment leakage testing and incorporated, by reference, ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage calculations be performed by using either the Point-to-Point method or the Total Time method. The Total Time method was used the most by the nuclear industry until about 1976.

At this time, licensees who wish to use the Mass-Point method of calculating containment integrated leakage must submit an application for exemption from the Appendix J requirement that containment integrated leak rate tests will confirm to ANSI N45.4. The exemption proposed by the licensee would be granted until pending changes to Appendix J are promulgated. In the Mass-Point method, the mass of air in containment is calculated and plotted as of function of time, and leakage is calculated from the slope of the linear least squares.

With the present developments in technology, the Mass-Point method has gained increasing recognition.

The superiority of the Mass-Point method becomes apparent when it is compared with the two other methods. In the Total Time method, a series of leakage rates are calculated on the basis of air mass differences between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilibrium, ingassing or outgassing) the initial data point is not accurate, the results of the test will be affected. In the Point-to-Point method, the leak rates are based on the mass difference between each pair of consecutive points which are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as percentage of the containment air mass. It follows from the above that the Point-to-Point method ignores any mass readings during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

The licensee's request and bases for exemption are contained in a letter dated August 1, 1988, as supplemented by letter dated August 23, 1988. The exemption would permit the licensee to use the Mass-Point method for calculating containment leakage rates as an acceptable alternative to the Point-to-Point and Total Time methods currently specified in Appendix J.

The Need for the Proposed Action

The proposed exemption is needed to allow use of the Mass-Point analysis method at Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, and for improved analysis of the test results.

Environmental Impacts of the Proposed Action

The erraticism of the Total Time method creates a higher probability of unnecessarily failing a containment integrated leakage rate test (note that the calculational procedure is independent of containment tightness) possibly resulting in increased test frequency, critical path outage time, and exposure to test personnel.

Radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or have any other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

The Commission has concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation, which have been considered by the Commission in the Final Environmental Statements for the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for the exemption dated August 1, 1988, as supplemented by letter dated August 23, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 21st day of September 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Director, Projects Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–22024 Filed 9–26–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) to permit operation of the facility at 2772 MW(t) for Cycle 6. Specifically, the proposed amendment would modify the following TS sections.

2.0 Safety Limits and Limiting Safety System Setting
3/4.1 Reactivity Control Systems
3/4.2 Power Distribution Limits
3/4.3 Instrumentation
3/4.4 Reactor Coolant System
3/4.5 Emergency Core Cooling Systems
5.0 Design Feature.

In addition, TS Basis 3/4.1, Reactivity Control Systems, and 3/4.5, Emergency Core Cooling Systems, also would be modified.

The Need for the Proposed Action

The proposed changes are needed to support the loading of 64 fresh fuel assemblies (FA's) and 64 burnable poison rod assemblies (BPRA's), the shuffling of 16 FA's and control rod assemblies (CRA's), the reinsertion of one previously used FA, and the replacement of eight black axial power shaping rods (APSR's) with grey APSR's. In addition, other TS changes proposed would permit a reduced physics testing program, the removal of two regenerative neutron sources, revised quadrant power tilt limits, reduced borated water supply requirements, increased power level for comparison of in and ex core detector offsets, and increased thermal power limit for three-pump operation.

Environmental Impacts of the Proposed Action

The Commission has evaluated the safety of the proposed amendment and has determined that neither the probability of accidents nor the post-accident radiological releases would be greater than previously determined. The proposed amendment does not otherwise affect radiological plant effluents during normal operation. In addition, the proposed amendment does not have any influence upon occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 29, 1988 (53 FR 24535). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal of greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would only result in requiring a revised core reload design to operate within the present TS requirements.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated May 18, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 22nd day of September 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-22025 Filed 9-26-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-7455]

Finding of No Significant Impact; Renewal of Source Material License No. SMA-1018; Whittaker Corp., Greenville, PA

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Source Material License No. SMA-1018 for the continued storage of contaminated material at the Whittaker Corporation site in Greenville, Pennsylvania. The contaminated material resulted from operations to produce ferro-columbium and ferro-nickel alloys. Operations were terminated in 1974.

Summary of the Environmental Assessment

The Proposed Action

The proposed action is renewal of License No. SMA-1018. The renewal will authorize Whittaker to continue storing contaminated material containing thorium and uranium.

Need for the Proposed Action

Renewal of the license has the effect of continuing the licensee's surveillance and control of the material to assure its security and maintenance until the ultimate disposition of the slag is determined.

Alternatives to the Proposed Action

Denial of the license renewal for the continued storage of the contaminated material would require that the material be transported to a facility licensed to accept it. A possible alternative may be to transfer the material to the Pennsylvania compact site for disposal when the site becomes available or some other licensed site. However, these options would require time to arrange, and in the interim, the material must remain onsite under license. At this time, onsite storage is the only viable option.

Environmental Impacts of the Proposed Action

The current monitoring consists of quarterly ground water sampling, visual inspections for erosion, surfacte water and sediment sampling of the Shenango River, and direct radiation measurements. Monitoring results have not shown any significant migration offsite. The surface water and sediment samples from the Shenango do not contain concentrations differing from baseline levels. Inspections have not shown any visible evidence of surface erosion. Ground water results in the past have shown slightly elevated levels (a few pCi/1) from wells on the slag site, generally in an area in the central part of the site (wells W8, W11A, W14). Occasionally, the gross alpha concentrations have exceeded the EPA Primary Drinking Water Standard of 15 pCi/1; however, the Ra-226 and Ra-228 were less than 5 pCi/1. Leaching studies performed by Oak Ridge Associated Universities (ORAU) show that under

conditions encountered in nature, the slags are not going to leach out to any significant degree. The information gathered over the years does not indicate that there is any identifiable amount of radioactive material migrating from the site into the general environment.

Whittaker has proposed a reduction in the monitoring program frequency to biennial for all sampling and measurements with a semiannual visual inspection. Staff agrees that a reduction in the monitoring program frequency is justified on the basis of past monitoring results and the fact that no activities occur on the site. However, a biennial program is not adequate since there could be major changes in the site over a 2-year period that could go unnoticed. It is recommended that an annual program be implemented with semiannual visual inspections. The data results do justify the discontinuance of the surface water and sediment sampling of the Shenango River. If during the inspection there are signs of significant site erosion, sampling of the surface water and sediment should be performed. This reduced monitoring program will detect any migration offsite. Continued onsite storage of the contaminated materials is expected to have negligible impact on the environment.

Conclusion

The environmental impacts associated with the proposed license renewal for continued storage are expected to be insignificant. The monitoring program will provide necessary information on possible material migration from the site. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Agencies and Persons Consulted

The Commission's staff reviewed the applicant's request of April 5, 1988, additional information of May 31, 1988, and reports of September 22, 1986, February 11, 1987, and May 31, 1988. The ORAU survey dated July 1988 was also reviewed.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the renewal of Source Material License No. SMA-1018. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying, for a fee, at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492-3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 20th day of September 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88-22026 Filed 9-26-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-324]

Carolina Power & Light Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 153 to Facility Operating License No. DPR-62, issued to Carolina Power & Light Company, which revised the Technical Specifications (TS) for the operation of the Brunswick Steam Electric Plant, Unit 2 (BSEP-2), located in Brunswick County, North Carolina. The amendment is effective as of the date of issuance.

The amendment changes the TS to delete the footnote which was added in Amendment 149, restricting the average fuel bundle burnup to 33,000 MWD/MT, and allows extended fuel burnup to 60,000 MWD/MT. The staff completed its review of the environmental effects of the fuel handling accident and transportation of fuel with burnups beyond 33,000 MWD/MT and concludes that extending fuel burnup to 60,000 MWD/MT is acceptable.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 27, 1988 (53 FR 2310). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statment. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (53 FR 34357).

For further details with respect to the action see (1) the application for amendment dated September 4, 1988, as supplemented October 2, 1988, (2) Amendment No. 153 to License No. DPR-62, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. Colleage Road, Wilmington, North Carolina. A copy of items (2) and (3) may be obtained upon request, addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 20th day of September 1988.

For the Nuclear Regulatory Commission.

Lester L. Kintner,

Acting Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-22027 Filed 9-26-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DRP-20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

In accordance with the licensee's application for amendment dated September 1, 1988, the amendment would revise the provisions in the Technical Specifications relating to peaking factors and linear heat rate (LHR) limits. The radial peaking factor limits would increase 3.5 percent. The

radial peaking factor limits for the "peak rod" and "narrow gap rod" would be deleted since they are bounded by the more limiting interior rods. Finally, the LHR limits would be modified to provide only a peak rod limit to eliminate the exposure dependence of the LHR limit.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 1, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49201.

Dated at Rockville, Maryland, this 19th day of September 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Director, Project Directorate III-1, Division on Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-22028 Filed 9-26-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co.; Withdrawal of Application for Amendments to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the withdrawal of an application dated July 10, 1986, filed by Indiana Michigan Power Company (the licensee). The application requested amendments to Facility Operating Licenses Nos. DPR-58 and DPR-74 for operation of the Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, located in Berrien County, Michigan.

The proposed amendment addressed the control room habitability concerns of NUREG-0737, Item III.D.3.4, and the requirements of Generic Letter 83-37. The Commission issued a Notice of Consideration of Issuance of Amendment which was published in the **Federal Register** on August 13, 1986 (51 FR 29000). By letter dated April 29, 1988, the licensee withdrew the application for the proposed amendment. The Commission has considered the licensee's April 29, 1988, letter and has determined that permission to withdraw the July 10, 1986, application for amendment should be granted.

For further details with respect to this action, see: (1) The application for amendment dated July 10, 1986, and (2)

the licensee's letter dated April 29, 1988 withdrawing the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 20th day of September 1988.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-22029 Filed 9-26-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on August 23, 1988 (53 FR 32132). Individual authorities eatablished or revoked under Schedule A, B, or C between Agust 1, 1988, and August 31, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A authorities were established or revoked during August.

Schedule B

No Schedule B authorities were established or revoked during August.

Schedule C

Department of Agriculture

One Staff Assistant to the Secretary. Effective August 12, 1988.

One Executive Assistant to the Administrator. Effective August 18, 1988.

One Private Secretary to the Deputy Under Secretary for International Affairs and Commodity Programs. Effective August 18, 1988.

One Private Secretary to the Deputy Assistant Secretary for Marketing and Inspection Services. Effective August 31, 1988.

Department of Commerce

One Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective August 3, 1988.

One Confidential Assistant to the Director, Executive Programs. Effective August 4, 1988.

One Director, Office of Consumer Affairs to the Director, Office of Public Affairs. Effective August 12, 1988.

One Confidential Assistant to the Depty Assistant Secretary for U.S. and Foreign Commercial Service. Effective August 16, 1988.

One Condidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective August 18, 1088.

One Executive Assistant to the Assistant Secretary for Trade Development. Effective August 18, 1988.

One Executive Assistant to the Under Secretary. Effective August 18, 1988.

One Special Assistant to the Chief Scientist, National Oceanic and Atmospheric Administration. Effective August 19, 1988.

One Confidential Assistant to the Director-General, U.S. Foreign Commercial Service. Effective August 22, 1988.

One Deputy Director, Office of Public Affairs to the Director, Office of Public Affairs. Effective August 29, 1988.

One Confidential Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective August 29, 1988.

Department of Defense

One Executive Assistant, National Defense Stockpile to the Special Assistant to the Assistant Secretary of Defense. Effective August 9, 1988.

Department of Education

One Secretary's Regional Representative to the Deputy Under Secretary, Intergovernmental and Interagency Affairs. Effective August 1, 1988.

One Speical Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs. Effective August 2, 1988.

One Special Assistant to the Director, Legislative Liaison Staff. Effective August 3, 1988.

One Special Assistant to the Secretary. Effective August 3, 1988.

One Speical Assistant to the Chief of Staff/Counselor to the Secretary. Effective August 8, 1988.

One Secretary's Regional Representative Region IV to the Deputy Under Secretary, Intergovernmental/ Interagency Affairs. Effective August 8, 1988.

One Confidential Assistant to the Secretary's Special Assistant for Scheduling and Briefing and Private Sector Initiatives. Effective August 10, 1988.

One Special Assistant to the Deputy Under Secretary, Intergovernmental/ Interagency Affairs. Effective August 15, 1988.

One Special Assistant to the Deputy Under Secretary for Management. Effective August 19, 1988.

One Special Assistant to the Executive Secretary. Effective August 23, 1988.

One Confidential Assistant to the Secretary's Senior Special Assistant. Effective August 26, 1988.

Department of Energy

One Staff Assistant to the Director, Division of Public Liaison. Effective August 3, 1988.

One Director, Division of Consumer Affairs to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs. Effective August 25, 1988.

Department of Health and Human Services

One Confidential Staff Assistant to the Commissioner of Social Security. Effective August 12, 1988.

One Special Assistant for Judicial Activities to the Administrator, Family Support Administration. Effective August 19, 1988.

One Confidential Assistant to the Director, Office of Community Services. Effective August 23, 1988.

Department of Housing and Urban Development

One Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs. Effective August 9, 1988.

One Special Assistant to the Assistant Secretary for Housing. Effective August 19, 1988.

One Special Assistant to the Under Secretary. Effective August 23, 1988.

One Executive Assistant to the Regional Administrator. Effective August 26, 1988.

One Executive Assistant to the Deputy Under Secretary for Field Coordination. Effective August 30, 1988.

Department of the Interior

One Public Affairs Specialist to the Assistant to the Secretary and Director, Office of Public Affairs. Effective August 4, 1988.

One Staff Assistant to the Deputy Assistant Secretary for Policy and Analysis. Effective August 10, 1988.

Department of Justice

One Senior Liaison Officer to the Director, Office of Liaison Services. Effective August 3, 1988.

One Confidential Assistant to the Director, Office of Public Affairs. Effective August 8, 1988.

One Special Assistant to the Director, Communications Relations Service. Effective August 12, 1988.

One Confidential Assistant to the Director, Executive Office for U.S. Attorneys. Effective August 24, 1988.

Department of Labor

One Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective August 18, 1988.

One Secretary's Representative to the Associate Deputy Assistant Secretary for Public and Intergovernmental Affairs. Effective August 25, 1988.

Department of State

One Protocol Officer (Visits) to the Chief of Protocol. Effective August 5, 1988.

One Protocol Officer (Visits) to the Chief of Protocol. Effective August 8, 1988.

One Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs. Effective August 18, 1988.

Department of Transportation

One Congressional Liaison Specialist to the Director of Congressional Affairs. Effective August 3, 1988.

One Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective August 3, 1988.

One Staff Assistant to the Director of Intergovernmental and Consumer Affairs. Effective August 18, 1988.

Department of the Treasury

One Public Affairs Specialist to the Treasurer of the United States. Effective August 3, 1988.

One Special Assistant to the Assistant Secretary (Management). Effective August 17, 1988.

Agency for International Development

One Special Assistant to the Program Manager, Office of Private and Voluntary Cooperation. Effective August 12, 1988.

Commodity Futures Trading Commission

One Administrative Assistant to the Chairman. Effective August 23, 1988.

Federal Home Loan Bank Board

One Secretary (Typing) to the Deputy to the Executive Director, Federal Savings and Loan Insurance Corporation. Effective August 12, 1988.

One Congressional Lobbying Specialist to the Executive Director for Public Affairs. Effective August 16, 1988.

One Assistant to the Deputy Executive Director for Asset Management. Effective August 16, 1988.

Federal Maritime Commission

One Special Assistant to the Chairman. Effective August 19, 1988.

Federal Trade Commission

One Deputy Director to Director for Office of Congressional Relations. Effective August 31, 1988.

One Director to the Chairman for the Office of Public Affairs. Effective August 31, 1988.

General Services Administration

One Special Assistant to the Deputy Administrator. Effective August 10, 1988.

Government Printing Office

One Administrative Assistant to the Public Printer. Effective August 30, 1988.

International Trade Commission

One Staff Assistant to the Commissioner. Effective August 10, 1988.

Interstate Commerce Commission

One Staff Advisor (Transportation) to a Commissioner. Effective August 22, 1988.

Office of Management and Budget

One Executive Assistant to the Associate Director for Economics and Government. Effective August 1, 1988.

One Confidential Assistant to the General Counsel. Effective August 4, 1988.

Securities and Exchange Commission

One Secretary to the Chief Accountant. Effective August 12, 1988.

United States Tax Court

Two Trial Clerks to a Judge. Effective August 18, 1988.

United States Information Agency

One Confidential Assistant to the Director, Voice of America. Effective August 8, 1988.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

[FR Doc. 88–21744 Filed 9–12–88; 8:45 am]

BILLING CODE 6325-01-M

Commission on Executive, Legislative and Judicial Salaries; Meeting

Notice is hereby given, pursuant to Pub. L. 92–463, that the Commission on Executive Legislative and Judicial Salaries will hold their first meeting for Fiscal Year 1989 on Tuesday, October 11, 1988, from 10:00 a.m. to 1:00 p.m. at 736 Jackson Place, NW., Washington, DC 20006.

The Commission on Executive, Legislative and Judicial Salaries was established by Pub. L. 90–206 approved December 16, 1967, as amended, and conducts every fourth year a review of the rates of pay for Members of Congress, Federal Judges and members of the top levels of the Executive Branch of the Federal Government. This will be an open organizational meeting with background briefings and the course the Commission will take during Fiscal Year 1989. The Commission's report is due to the President no later than December 15, 1988.

Persons interested in submitting written statements should submit their statements by Friday, October 7, 1988 to the Commission's Office at 736 Jackson Place, NW., Washington, 20006.

For further information, contact Polly Gault, the Commission's Executive Director-Designate, 736 Jackson Place, NW., Washington, DC 20006. Telephones: (202) 275–8031.

Constance Horner,

Director, Office of Personnel Management.

[FR Doc. 88–22171 Filed 9–26–88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-18775]

Application and Opportunity for Hearing; Piedmont Aviation, Inc.

September 22, 1988.

Notice is hereby given that Piedmont Aviation, Inc. (the "Company") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture

Act of 1939 as amended (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Meridian Trust Company (the "Bank") under seven indentures between the Company and the Bank, four dated as of September 15, 1988 (the "September Indentures") which have been submitted for qualification under the Act and three dated as of March 1, 1988 (the "March Indentures") which were heretofore qualified under the Act (collectively, the "Indentures"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any one of such Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest, or resign. Subsection (1) of such section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the September Indentures, the Company will issue $89,600,000 aggregate principal amount of its Equipment Trust Certificates, (the "September Certificates"), Series D–G (the "September Series"), respectively. Each Series will be issued, each under a September Indenture, in the principal amount of $22,400,000. The September Certificates will be registered under the Securities Act of 1933 (the "1933 Act") and the September Indentures will be qualified under the Act.

(2) Pursuant to the March Indentures, the Company has issued $58,851,000 aggregate principal amount of its Equipment Trust Certificates (the "March Certificates"), Series A–C (the "March Series"). A Series has been issued under each March Indenture. Each of Series A, B and C was issued in the principal amount of $19,617,000. The March Certificates were registered under the 1933 Act and the March Indentures were qualified under the Act.

(3) There is no default under any of the Indentures.

(4) The Company's obligations with respect to each Series of Certificates are and will be secured under separate Indentures by separate security interests in separate and distinct property.

(5) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of the Indentures.

The Company waives notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed account of the matters of fact and law asserted, all persons are referred to the application which is on filed in the Offices of the Commission's Public Reference Section, File Number 22–18775, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than October 18, 1988, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he disires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–22091 Filed 9–26–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24719]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 22, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 17, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Middle South Utilities, Inc., et al. (70–6913)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its wholly owned subsidiary, System Energy Resources, Inc. ("SERI"), P.O. Box 23070, Jackson, Mississippi 39225 and Middle South's electric utility subsidiaries, Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39215 and New Orleans Public Service Inc. 317 Baronne Street, New Orleans, Louisiana 70112, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12 of the Act and Rule 43 thereunder.

By Commission order dated December 28, 1983 (HCAR No. 23185), among other things, SERI was authorized to enter into an installment sale agreement with Claiborne County, Mississippi in connection with the issuance and sale of $49.5 million of Series A pollution control revenue bonds ("Bonds"). In order to obtain favorable ratings on the Bonds, a letter of credit issued by Citibank, N.A., in the amount of $56,368,125 due to expire on December 11, 1988, was obtained to secure the Bonds.

SERI proposes to obtain a new letter of credit ("New LOC") from a different bank for a period of one year from December 11, 1988 and to extend the initial one-year term of the New LOC for up to two additional years. SERI will not pay in excess of ¾ of 1% per annum of the face amount of the New LOC. In

order to collateralize its reimbursement obligation under the New LOC, SERI proposes to use cash up to the face amount of the New LOC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-22092 Filed 9-26-88; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-68]

Initiation of Section 301 Investigation; Argentina's Failure To Provide Adequate and Effective Intellectual Property Protection for Pharmaceuticals

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of decision to initiate an investigation under section 301.

SUMMARY: Pursuant to 19 U.S.C. 2412, the U.S. Trade Representative has determined to initiate an investigation of Argentiana's policies and practices with respect to providing adequate and effective intellectual property protection for pharmaceutcals.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Jon Huenemann, Director Southern Cone Affairs, (202) 395-5190 or Catherine Field, Associate General Counsel, (202) 395-3432, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On August 10, 1988, the Pharmaceutical Manufacturers Association (PMA) filed a petition under section 302 of the Trade Act of 1974, as amended, requesting USTR to initiate an investigation of Argentiana's acts, policies and practices related to denial of product patent protection for pharmaceuticals and pharmaceutical product registration practices which PMA believes discriminate against U.S. firms.

In addition to the complaint concerning Argentiana's denial of the product patent protection for pharmaceuticals, PMS's petition complains about the following matters: (1) A provision in the Argentine patent law providing that patents lapse, i.e. protection ends, if the invention is not worked in Argentian within two years after grant of the patent; (2) lack of injunctive relief for patent infringement and inadequate monetary fines; (3) failure to shift the burden of proof that a particular process does not infringe a provess patent; and (4) a combination of regulations on pharmaceutical registration that discriminate against U.S. firms that invent pharmaceuticals and permit copiers to enter to market before the inventor in some cases and market pharmaceuticals at prices that do not reflect the cost of developing and marketing the pharmaceutical.

On September 23, 1988, the U.S. Trade Representative initiated an investigation of the Argentine government's policies and practices related to providing adequate and effective protection intellectual property protection for pharmaceuticals. USTR will request consultation with the Government of Argentina as required by section 303(a) of the Omnibus Trade and Competitiveness Act of 1988.

USTR will seek information and advice from the petitioner and the appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations. Any interested person is invited to submit comments on the issues raised in the petition. Comments should be filed in accordance with the regulations at 15 CFR 2006.6 and are due no later than 5:00 p.m. on October 20, 1988. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 88-22239 Filed 9-26-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Organization, Functions, and Authority Delegations; Grand Island, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station Closure—Grand Island, Nebraska.

SUMMARY: Notice is hereby given that on October 1, 1988, the Flight Service Station at Grand Island, Nebraska, will be closed. Thereafter services to the general public will be provided by the Flight Service Station at Columbus, Nebraska. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on September 15, 1988.

William Behan,

Assistant Manager, Air Traffic Division, ACE-501.

[FR Doc. 88-21979 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-13-M

Organization, Functions, and Authority Delegations; North Platte, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station Closure—North Platte, Nebraska.

SUMMARY: Notice is hereby given that on October 1, 1988, the Flight Service Station at North Platte, Nebraska, will be closed. Thereafter services to the general public will be provided by the Flight Service Station at Columbus, Nebraska. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on September 15, 1988.

William Behan,

Assistant Manager, Air Traffic Division, ACE-501.

[FR Doc. 88-21980 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket Nos. S-833 & S-834]

Margate Shipping Co., et al.; Application for Modification of Operating-Differential Subsidy Agreements

By letter dated June 7, 1988, Keystone Shipping Co. (Keystone) as agent for Margate Shipping Company (Margate) and Chestnut Shipping Company (Chestnut) requested approval for a modification of Article I-3(a) of Margate's and Chestnut's Operating-Differential Subsidy Agreements (ODSA), Contracts MA/MSB-299 and MA/MSB-134, respectively, to incorporate the SS CHILBAR, SS GOLDEN GATE, SS EDGAR M. QUEENY, SS ENERGY INDEPENDENCE, SS FREDERICKSBURG, SS KEYSTONE, and SS VALLEY FORGE and for approval to establish an operating-differential subsidy sharing/substitution system among these vessels and the vessels currently named (CHELSEA, CHERRY VALLEY, CORONADO, CHESTNUT HILL, and KITTANNING) in the ODSAs.

Interested parties may inspect the foregoing application in the Office of the Secretary, Maritime Administration, Room 7300 Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Any person, firm, or corporation having any interest in such application and desiring to submit comments thereon must file comments in triplicate with the Secretary, Maritime Administration by close of business on October 12, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider such comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).

Dated: September 22, 1988.

By order of the Maritime Administrator.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 88-22095 Filed 9-26-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 21, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0064.

Form Number: 4029.

Type of Review: Extension.

Title: Application for Exemption From Tax on Self-Employment Income and Waiver of Benefits.

Description: Form 4029 is used by members of qualified religious groups to claim exemption under Internal Revenue Code section 1402(h) from tax on self-employment income. Data is used to approve or deny exemption from self-employment tax.

Respondents: Individuals or households.

Estimated Number of Respondents: 8,216.

Estimated Burden Hours Per Response:

Learning about the law or the form: 7 minutes

Preparing the form: 13 minutes

Copying, assembling, and sending the form to IRS: 35 minutes

Frequency of Response: Filed only once.

Estimated Total Reporting Burden: 7,477 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-22008 Filed 9-26-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 21, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0079

Form Number: ATF F 1534(5000.8).

Type of Review: Extension.

Title: Power of Attorney.

Description: ATF F 1534(5000.8) delegates the authority to a specific individual to sign documents on behalf of an applicant or principal. 26 U.S.C. 6061 authorizes that individuals signing returns, statements or other documents required to be filed by industry members, under the provisions of the Internal Revenue Code or the Federal Alcohol Administration Act are to have that authority on file with ATF.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1512-0214.

Form Number: ATF F 5110.74.

Type of Review: Reinstatement.

Title: Application and Permit Under 26 U.S.C. 5181-Alcohol Fuel Producer.

Description: This form is used by persons who wish to produce and receive spirits for the production of alcohol fuels as a business or for their own use and for State and local registration where required. The form describes the person(s) applying for the permit, location of the proposed operation, type of material used for production and amount of spirits to be produced.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1,870.

Estimated Burden Hours Per Response: 1, hour 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,366 hours.

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-22009 Filed 9-26-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 187
Tuesday, September 27, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2:30 p.m., October 14, 1988.

PLACE: Room 104–A Administration Building, U.S. Department of Agriculture, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda to be announced.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 475–5490.

Dated: September 22, 1988.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 88–22175 Filed 9–23–88; 11:57 am]

BILLING CODE 3410–05–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 36389, Monday, September 19, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Monday, September 26, 1988.

Change in the Meeting

The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: September 22, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88–22172 Filed 9–23–88; 11:57 am]

BILLING CODE 6750–06–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 26, October 3, 10, and 17, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and closed.

Matters To Be Considered

Week of September 26

There are no Commission meetings scheduled for the Week of September 26.

Week of October 3—Tentative

Wednesday, October 5

10:00 a.m.
Briefing on Status of Peach Bottom *(Public Meeting)*

Friday, October 7

10:00 a.m.
Briefing on Status of Reactor Operator Requalification Program *(Public Meeting)*
11:30 a.m.
Affirmation/Discussion and Vote *(Public Meeting)* (if needed)
2:00 p.m.
Briefing on Status of Policy Statement on Training and Qualification *(Public Meeting)*

Week of October 10—Tentative

Friday, October 14

10:00 a.m.
Briefing on Proposed Rule for Maintenance of Nuclear Power Plants *(Public Meeting)*
11:30 a.m.
Affirmation/Discussion and Vote *(Public Meeting)* (if needed)
2:00 p.m.
Discussion/Possible Vote on Pilgrim Restart *(Public Meeting)*

Week of October 17—Tentative

Wednesday, October 19

2:00 p.m
Briefing on Different Cask Designs for Shipping and Storing Nuclear Materials *(Public Meeting)*

Thursday, October 20,

2:00 p.m.
Briefing on Safety Goal Implementation Plan *(Public Meeting)*
3:00 p.m.
Affirmation/Discussion and Vote *(Public Meeting)* (if needed)

ADDITIONAL INFORMATION: Affirmation of "Commission Order on Seabrook—Partial Decision on Financial Qualification Issues" (Public Meeting) was held on September 22, 1988.

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 yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

September 23, 1988.

Jack Guttmann,

Office of the Secretary.

[FR Doc. 88–22199 Filed 9–23–88; 2:09 am]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 53, No. 187
Tuesday, September 27, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-81]

Agency Report Forms Under OMB Review

Correction

In notice document 88-21365 appearing on page 36515 in the issue of Tuesday, September 20, 1988, make the following correction:

In the first column, in the heading, the docket number was inaccurate and should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 88-034]

RIN 2115-AC81

Port Access Routes, Approach to Mobile, AL

Correction

In rule document 88-21348 beginning on page 36453 in the issue of Tuesday, September 20, 1988, make the following corrections:

1. On page 36453, in the second column, under **FOR FURTHER INFORMATION CONTACT**, the sixth line should read "Monday through Friday, except holidays.".

2. On page 36454, in the first column, in the fourth complete paragraph, in the 15th and 17th lines, "buoy" was misspelled.

3. On the same page, in the third column, in the seventh paragraph, in the first line, "consideration" was misspelled.

§ 166.200 [Corrected]

4. On the same page, in the same column, in § 166.200(d)(39)(i), in the first table, under latitude, the first line should read "30°38′46″ N".

5. On page 36455, in the first column, in § 166.200(d)(39)(i), in the second table, under longitude, the fifth line should read "88°03′24″ W".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24594; Amendment Nos. 25-66 and 121-198]
RIN: 2120-AB23

Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins

Correction

In rule document 88-19283 beginning on page 32564 in the issue of Thursday, August 25, 1988, make the following corrections:

PART 25—[AMENDED]

1. On page 32573, in the third column, in Appendix F, in the second paragraph, in the sixth line, "threated" should read "threaded".

2. On the same page, in the same column, in Appendix F, in the fifth paragraph, in the 10th line, "interest" should read "intersect".

NOTE: For a Department of Transportation correction to this document see the Rules section of this issue.

BILLING CODE 1505-01-D

federal register

Tuesday
September 27, 1988

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 38
Education Personnel; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 38

Education Personnel

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is publishing a final rule that revises existing regulations that establish requirements of employment, discharge, voluntary services and payment of teachers and other personnel in Bureau of Indian Affairs operated schools and agency education positions.

Certain sections of this rule are subject to negotiations with a properly certified union, holding national recognition.

This rule eliminates obsolete regulatory requirements and incorporates new provisions of public laws affecting Indian education.

EFFECTIVE DATE: These regulations shall become effective October 27, 1988.

FOR FURTHER INFORMATION CONTACT: George D. Scott, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets NW., Washington, DC 20240, telephone number (202) 343-4872.

SUPPLEMENTARY INFORMATION: The authority for issuing this rule is Pub. L. 95-561, the "Education Amendments of 1978" (25 U.S.C. 2011), as amended by Pub. L. 98-511 and Pub. L. 99-89. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8. The Office of the Solicitor has inserted the statutory additions required by Pub. L. 100-297. These consist of (1) inserting a new sub-paragraph (4) to the definition of education position in § 38.3 to comply with section 5112(b)(1)(b)(iv); (2) inserting "or Federal Wage System" into § 38.6 (a) and (b) and "or subchapter IV of Chapter 53" into 38.6(b) to comply with section 5114(a)(1); and (3) inserting "applicant or" into § 38.7(j) to comply with section 5112(a).

On September 2, 1987, the Bureau of Indian Affairs published a proposed rule on Education Personnel in the **Federal Register** (52 FR 33382), which established requirements for voluntary services, employment, discharge, and payment of teachers and other personnel in Bureau of Indian Affairs operated schools and agency education positions.

The public was invited to offer comments on the proposed rule on or before October 2, 1987. Nineteen commenters responded. All comments were considered. From the nineteen commenters, there were 58 comments on specific sections, and 11 comments addressing the general concerns of education. Each comment was considered by the Office of Indian Education Programs, which accepted, rejected, or adopted a modified version of each comment.

Some of the Union comments were not addressed since the Bureau of Indian Affairs negotiated those concerns with the union.

The Bureau's responses to the comments received have been organized into a general category and by specific subparts. The general comments are categorized with responses, then each specific comment is addressed in the section of the proposed rule to which it relates. Some accepted responses necessitated removing sections or sentences of the rule and adding new sections or sentences. In one instance, the change required redesignating a section. For purposes of consistency, all section numbers appearing in this part of the Preamble refer to the proposed rule as published in the **Federal Register** on September 2, 1987. Each comment is followed by the Bureau's response.

General Comments

Eleven comments addressed under this section are those concerned with the general areas of Bureau personnel operations rather than specific sections in the proposed rule.

Comment: One commenter expressed satisfaction with the prorated pay over a 12 month period. The same commenter expressed dissatisfaction with the payroll system and its ability to pay employees correctly and on time. The system's inability to make correct deductions (bonds, rent, etc.), high teacher turnover, methods of instruction, and staff needs were also points of dissatisfaction.

Response: Since the comments are not relative to the proposed rule, we will not respond. However, the dissatisfaction and complaints will be forwarded to the appropriate officers.

Comment: One commenter suggested that we consider merit raises for those who improve their education and/or performance after they reach the $24,000 level.

Response: We believe that § 38.6(c), Adjusting employee basic compensation rates, addresses the commenter's suggestion. This subsection provides for additional raises based on contract renewal, performance, and education.

Comment: Five commenters requested that the Bureau reassess its teacher salaries and increase salaries to make them competitive with surrounding states and/or school districts. Another commenter suggested that pay should be averaged within each individual state and not with all other states. Another commenter said that employees should be compensated for working in geographically isolated areas based on miles traveled and that work hours should be comparable to the local schools.

Response: The Bureau agrees that a reassessment of teacher salaries is needed. However, the original legislation requires that the salaries be comparable to the general salary schedule. Pub. L. 100-297 provides for one of two options for teachers and counselors, to become effective in FY 1991.

Comment: One commenter suggested that Agency Superintendents for Education (ASE's) should be required to meet state administrative requirements.

Response: The position of ASE's is exempted by statute.

Comment: One commenter said that the 30-day comment period was insufficient for him to make any comments.

Response: The proposed rule was published on September 2, 1987, and copies were distributed to the Area and Agencies by September 4, 1987. Copies should have been made available to all school staff by September 15, which would have allowed two weeks of comment time.

The following section responds to specific comments received from the public.

Comments and Responses

Comment: Definitions § 38.3. One commenter recommended that we expand and clarify the term "Area Education Programs Administrator".

Response: We agree. The definition has been rewritten to clarify "Area Education Programs Administrator".

Comment: Definitions § 38.3 Education Position. In one commenter's opinion, the term "Education position" should also apply to business technicians, secretarial-type positions, and registrars.

Response: The positions of business technicians, secretarial-type positions, and registrars are included in the term "Educational position".

Add: The term "probationary period" was added under the Definitions section for clarity.

Comment: Definitions § 38.3. Two commenters recommended that "school term" be defined.

Response: We agree, and "school term" was added to the Definitions section.

Comment: Identification of Qualified Individuals § 38.5(c). One commenter proposed that a pre-employment screening procedure be added that would incorporate a temporary contract not to exceed 120 days; that the applicant should be found suitable for employment within this period of time; and, if documented cause is shown that the applicant is unsuitable, that the contract may be terminated without appeal or grievance rights to the employee.

Response: The proposal was not accepted. The additional procedure does not improve the current screening procedure. The proposal would double the current paper workload and could delay the payment of salaries and the filling of positions.

Comment: Identification of Qualified Individuals § 38.5(c). One commenter requested that we include a provision whereby an applicant who does not accept a position when offered by location indicated on the SF-171 will be deleted from the applicant supply file.

Response: The request was not accepted since this is a procedure and not a regulation. Also, this process is established in the Bureau of Indian Affairs' Manual (BIAM) at 62 BIAM 11.2, Appendix A.

Comment: Adjusting Employee Basic Compensation Rate § 38.6(c)(i). One commenter suggested that the contract renewal incentives be tied to the position rather than the individual.

Response: We believe that the contract renewal incentives must be tied to both the position and individual. This is addressed in the regulations and no changes will be made in the regulations.

Comment: Special Additions to Basic Compensation § 38.6(d)(1). One commenter said the 25 per centum staffing differential was inadequate when recruiting some specialized positions relating to special education.

Response: The Bureau agrees that the staffing differential may be inadequate. However, current statute requires that the staffing differential be tied to the general salary schedule. No change was made.

Comment: Prorating of Pay § 38.6(e)(3). One commenter suggested a longer notification time for employees who wish to change their election of a particular payment plan.

Response: We have considered the recommendation for a longer notification time but feel that 30 days is an adequate time.

Comment: Payment of Compensation to Educators § 38.6(e)(4). One commenter stated that it is unlikely that very many employees will elect a stipend in lieu of overtime or compensatory time because they can earn more through overtime pay. Therefore, any stipend established must be attractive enough to replace the overtime option.

Response: The option is provided by statute. However, we believe that when the stipends are established in 62 BIAM, the stipends and overtime pay will be comparable. No change was made.

Comment: Stipends for Extracurricular Activities § 38.6(e)(4). Two commenters remarked that stipends should equal those established locally and would require local input and considerations before they are set. Another commenter suggested that the final stipend payment be withheld until coaches have checked in all uniforms, equipment, and supplies. The commenter also suggested that stipends should not be in lieu of overtime or compensatory time but should be the only compensation offered.

Response: Subsection 38.6(e)(4)(i) provides for local input with comparable rates to other school districts in or near the area. As for the second comment, we do not believe that withholding of final stipend payments for coaches, and not including other professional fields, would be appropriate. Therefore the suggestion was not accepted. Pub. L. 98-511 section 1142(a) requires that "the Secretary shall provide a stipend in lieu of overtime premium pay or compensatory time off." No changes were made.

Comment: Stipends for Extracurricular Activities § 38.6(e)(4). One commenter asked, "Once an employee elects to be paid a stipend for extracurricular activities, can that employee turn around and demand overtime/compensatory time instead? Why would an employee elect to be paid a stipend if he/she can also demand hour-for-hour overtime/compensatory time? Some restrictions should be made."

Response: The employee may elect to be paid a stipend or overtime/compensatory time, but not both. Why an employee would elect one type of payment over another would be subject to individual preference.

Comment: Appointment of Educators § 38.7. One commenter said that no reference is made to post audit responsibilities of the local Area Personnel Office. Without this procedure, strict adherence to established personnel policies, rules, regulations and procedures, which not only includes the Pub. L. 95-561 contract system but also the Office of Personnel Management regulations, could be seriously jeopardized or compromised.

Response: The reference to post audit responsibilities of the local Area Personnel Office is addressed in the Bureau education personnel manual.

Comment: Appointment of Educators § 38.7. One commenter suggested that we add a subpart called "Temporary Contracts" that would offer a temporary contract for a period not to exceed one year that may be extended for up to one additional year with school board approval.

Response: The suggestion was accepted and a new part has been written retitled "Temporary Contracts". Subsections (i) Waiver of Indian preference, (j) Prohibited reappointments, and (k) Contract renewals have been redesignated as sections (j), (k), and (l) respectively.

Comment: Local School Employees § 38.7(a)(b)(c). One commenter recommended that the school board should be required to state its reasons for disapproving an appointment at the same time they take the action.

Response: As in the current regulation, school boards are governed under such uniform procedures as they may adopt. There was no change with the proposed rule and the recommendation was not accepted.

Comment: Appointment of Educators § 38.7(b)(c). One commenter requested that provisions (b) and (c) should require the Director to respond within the same timeframe (10 days) as required by the Agency Superintendent for Education and Area Education Programs Administrators under the provisions in subpart (a).

Response: The reason that the Director's office response time is longer is due to the time it takes for the mail to reach the Director's office. The ten-day response time is not reasonable. The request was not accepted.

Comment: Employment Contracts § 38.7(d). Two commenters recommended that an additional clause be written into employment contracts whereby a person would be penalized a specified dollar amount for breaking a contract and a specified higher amount if a contract were broken at a late date.

Response: The Bureau does not have the authority or legislation to penalize a person a dollar amount for breaking a contract. No change was made.

Comment: Employment Contracts § 38.7(d). One commenter suggested that the teaching staff should be given tenure rather than the year-to-year contract as provided in the rule.

Response: The statute requires year-to-year contracts; therefore, no change was made.

Comment: Provisional Contracts § 38.7(f). One commenter requested that quarter hours be included in the definition of satisfactory progress, that less than eight semester/quarter hours annually could be satisfactory progress if the employee can demonstrate that less hours are needed.

Response: Since these comments are not directed at the rule, but rather the educational personnel manual, the comments will be considered when the manual is rewritten.

Comment: Provisional Contracts § 38.7(f)(4). One commenter suggested that the word "satisfactory" be defined under this subsection.

Response: The word "satisfactory" will not be defined in the regulation. No change was made.

Comment: Provisional Contracts § 38.7(f)(5). One commenter asked who determines when an employee fails to meet the requirement for making satisfactory progress toward meeting full qualification requirements.

Response: The supervisor will determine when an employee is making satisfactory progress.

Comment: Conditional Appointment § 38.7(g). One commenter recommended deleting the section on conditional appointments since they have not experienced this situation in the last seven years during which 62 BIAM 11 has been in effect.

Response: Conditional appointments are required by Pub. L. 95–561. The recommendation was not accepted.

Comment: Short-Term Contracts § 38.7(h). One commenter expressed the need for a short-term flexible contract that would accommodate employees that work irregular hours with flexible schedules.

Response: Short-term flexible contracts are already currently being utilized as intermittent contracts under 62 BIAM 11.4.2D. Such contracts provide for situations where work occurs on an irregular basis. These contracts may be of year-long or school-year duration. Any intermittent work schedule connotes a "substitute" situation.

Clarification: Clarifying language was added in § 38.7(h)(2)(ii) that reads: "* * * if the qualifications of the individual are lower than required, * * *"

Comment: Waiver of Indian Preference § 38.7(j). One commenter questioned the waiver provision under this part as referring only to "an employee" and not to a "Federal employee".

Response: By implication we read the statute to mean any Federal employee. The waiver provision applying to all Federal employees would provide school boards a wider selection of experience and expertise. No change was made.

Comment: Contract Renewals § 38.7(k). One commenter asked, under this part, "As stated, this means that if a school supervisor recommends nonrenewal and the school board determines that the contract shall be renewed, the school board's determination will prevail without opportunity for reconsideration. Is that the intent of the authors?"

Response: No. An appeal procedure has been added to allow review of a school board's determination to renew a contract not recommended for renewal by the school supervisor or an ASE or AEPA.

Clarification: Clarifying language was added to the first sentence in § 38.7(1)(2) to be consistent with subsection (a) of this section.

Comment: Nonrenewal of Contract § 38.8(a). One commenter asked if an employee is given a written notice for nonrenewal, does this mean that nonrenewal must be for cause and/or reason?

Response: Yes. The cause or reason for nonrenewal must be specified, except during probation.

Comment: Nonrenewal of Contract § 38.8(b). One commenter asked, "How and by whom is this appropriate official or body to be selected or appointed? Is such appointment limited to Federal employees?"

Response: The term "appropriate official" in § 38.8(b) means a Bureau employee. The term "body" means the appropriate tribal entity. The school board is usually elected or appointed by the tribe(s) under such uniform procedures as they may adopt. Appointment to school boards excludes Federal employees, so Federal employees cannot be appointed.

Comment: Nonrenewal of Contract § 38.8(g). One commenter suggested that we should place subsection (g) before subsection (a) since subsection (g) identifies what employees are eligible for in the procedures of sections (a), (b), (c), (d), (e), and (f). The same commenter also questioned the meaning of the phrase "* * * 36 months of continuous service * * *"

Response: The Bureau agreed with the commenter, and subsection (g) was rewritten and moved to the introductory part of this section. The "36 months" was changed to read: "* * * three full continuous school terms * * *"

Comment: Nonrenewal of Contract § 38.8(g). One commenter asked if the 36 month time requirement included consecutive service or actual contract time worked?

Response: The term "36 months" has been changed to "three full continuous school terms", therefore meaning three full consecutive contract terms.

Clarification: Clarifying language was added in the first sentence in § 38.8(g) after contract appointment that reads: "* * * contract appointments, or serving a probationary period."

Deleted: The last sentence in § 38.8(k) was deleted as being superfluous.

Comment: Discharge of Educators § 38.9. One commenter suggested that we simplify the appeal process for the employee.

Response: We believe that the proposed rule cannot be further simplified without harming the due process of the employee. The suggestion was not accepted.

Comment: Discharge for Inadequate Performance § 38.9(b). One commenter suggested that we include a definition of "lack of student achievement".

Response: We believe that the definition for "lack of student achievement" must be determined locally based on the local school program. A national definition could not be applied across all school programs effectively, therefore, the suggestion was not accepted.

Comment: Discharge of Educators § 38.9(b). One commenter recommended that all Office of Indian Education Programs staff in the Central Office also be required to meet the provisions of this part regarding student achievement.

Response: Central Office employees are not educators as defined under the statute.

Comment: Conditions of Employment of Educators § 38.10. One commenter said no references are made to labor-management relations responsibilities and requirements and suggested reference to the Bureau Labor Management Relations responsibilities be included to emphasize to tribal governments and school boards that the Bureau does have a responsibility to bargaining unit employees that assures them the right to representation, even with reservation schools.

Response: No reference is made to labor relations responsibilities under this part. When this Part and a negotiated labor relations agreement conflict, the negotiated agreement governs.

Clarification: The first sentence in § 38.10(c) was rewritten to clarify the

administrative process contained in § 38.8 of this part.

Comment: Conditions of Employment of Educators § 38.10(c). One commenter suggested that an explanation should follow as to how the contract is to be terminated.

Response: The contract will be cancelled since it was never consummated.

Comment: Conditions of Employment of Educators § 38.10(e). One commenter thought the Bureau's policy of equal treatment of all employees and applicants was contrary to actual practice.

Response: There have been several laws governing Indian preference for employment in the Bureau. The first was in 1834 and last general provision was the Indian Reorganization Act of 1934 (25 U.S.C. 479). Congress extended preference in employment in the Bureau to qualified Indians and further determined that proper fulfillment of its trust required turning over to the Indians a greater control of their own destinies.

A Supreme Court decision of 1974 (*Morton* vs. *Mancari*) stated: "this preference does not constitute 'racial discrimination.' Indeed, it is not even a 'racial' preference. Rather it is an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups." The decision further stated that "The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion." The Bureau is, therefore, required by law to give preference to qualified Indians in filling positions as required in 25 CFR Part 5 (25 U.S.C. 472 and 479).

Comment: Grievance Procedures § 38.10(f). One commenter recommended that, in locations and for positions covered by an exclusive bargaining unit, the negotiated grievance procedure would be an exclusive avenue of redress for all matters within the scope of the collective bargaining agreement.

Response: We disagree. Collective bargaining is covered under a different statute and is not appropriate to be referenced under this part.

Comment: Length of the Regular School Term § 38.11. One commenter recommended that this section be omitted from this part. The commenter believes that the existence of a cooperative agreement does not automatically waive the 180 days, and Bureau schools must still seek a waiver under § 36.61.

Response: The Bureau partially agreed with the commenter. The part regarding cooperative agreements was deleted, and a provision for waiver in 25 CFR 36.61 was added.

Comment: Personal Leave § 38.12(a)(1). One commenter asked if the proposed rule supersedes the National Council of Bureau of Indian Affairs Educators and National Federation of Federal Employees negotiated agreements that specify hours of personal leave and emergency leave. Another question was whether the supervisor or the principal has the authority to grant emergency leave.

Response: The answer to the first question is no, the proposed rule does not supersede the union agreements. The answer to the second question is yes. The supervisor or principal has the authority to approve emergency leave.

Comment: Personal Leave § 38.12(a)(1)(ii). One commenter recommended that personal and emergency leave should be converted to sick leave at the end of the contract period.

Response: We do not agree with the recommendation, since this would exceed the rate of four hours for each biweekly pay period which is beyond what Congress has authorized.

Comment: Sick Leave §§ 38.12 (a)(2) and (d)(4). One commenter suggested that we include medical and dental appointments under sick leave coverage under these parts.

Response: The Bureau accepted the suggestion and medical and dental appointment are include under "Sick Leave" in §§ 38.12 (a)(2) and (d)(4).

Comment: Sick Leave § 38.12(a)(2). One commenter recommended that sick leave be given at the beginning of the school year.

Response: The Bureau disagrees with the recommendation. We believe that sick leave should be earned and, since sick leave can be accumulated indefinitely, the recommendation was not accepted.

Clarification: School Vacation Time § 38.12(a)(3). The title of this part was shortened to read "School vacation" and the word "time" was deleted. The second and third sentences were deleted and were replaced with the following sentences: "School vacations are scheduled on the annual school calendar during the instructional year and may not be scheduled before the first day of student instruction or after the last day of student instruction. School vacations are not a right of the employee and cannot be paid. * * *"

Comment: Vacation Leave § 38.12(b)(1). One commenter recommended that the 200 hours of leave for full-time year-long contract employees be comparable to the 208 hours of leave for General Schedule positions.

Response: The Bureau disagrees with the recommendation. The 200 hours of vacation leave for year-long contract employees is earned after six or more years of service compared to 208 hours of annual leave for status quo employees with more than 15 years of service. We believe that the 200 hours of vacation leave for year-long contract employees is more than appropriate. No change was made.

Comment: Vacation Leave § 38.12(b)(1). Two commenters recommended that "rather than unused leave being forfeited at separation, we would like to see employees paid hour for hour or lump sum if the leave has been prescheduled and cancelled due to an 'exigency of the public business' ".

Response: The Bureau disagrees with the recommendation. Provisions have been added for carryover of leave. If lump sum payments were made upon separation, this would place an undue burden on the school budget. No changes were made.

Change: Vacation leave hours in § 38.12(c)(1) have been changed from 60 hours to 64 hours and from 100 hours to 104 hours due to collective bargaining with the union. In § 38.12(d) the 18 hours of personal leave was changed to 20 hours and the word "emergency" was inserted between the words "personal leave", again due to collective bargaining.

Comment: Leave System for Education Personnel § 38.12(f). One commenter asked why educators serving with contracts with work weeks of 20 hours a week or less are not eligible for prorated pay.

Response: We do not believe that educators would want a smaller paycheck spread over a year when they work less than 20 hours a week. No change was made.

Comment: Status Quo Employees in Education Positions § 38.13(c)(1). One commenter recommended that "failure of the school board to act within this period of time shall have the effect of approving the conversion of status quo employees to contract positions" be added to the section.

Response: The Bureau disagrees with the recommendation since, by statute only the school board may approve an employee's conversion to a contract position. Therefore, positive action by the school board is required.

Add: A new subsection (b) was added for informational purpose to inform employees of the loss of the early-out

retirement eligibility under Pub. L. 96–135. Section (b) was redesignated as subsection (c) in the final revision.

Comment: Voluntary Services § 38.14(a). One commenter requested clarification of the term "earning credit" as a requirement for performing voluntary services. As proposed, the rule indicated that volunteer services are limited to "* * * individuals, groups, and students earning credit * * *"

Response: The Bureau accepted the request, and the phrase "* * * earning credit (i.e., student teaching)." was deleted. This sentence eliminates the limitation for volunteers that they must be earning credits while performing the volunteer services.

Comment: Voluntary Services § 38.14(b). One commenter recommended that the term "representative of the school" be changed to "a representative of the college or university".

Response: The Bureau agreed with the recommendation. However, the term "institution" was used in place of the word "school".

Comment: Voluntary Services. One comment was "that our schools have been cooperating with colleges/universities for a long time in having student teachers, so why should this now need to be covered by regulations?"

Response: Pub. L. 98–511 expands the authority of the Bureau to accept voluntary services in other than student teaching.

The Department of the Interior has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The information collection requirement contained in § 38.5 uses Standard Form 171 for collection that has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance under 3206–0012. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and 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 information collection requirement contained in § 38.14 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0116.

The principal authors of this final rulemaking are Ms. Betty Walker, Education Programs Administrator, Minneapolis Area Office; Mr. Larry Holman, Agency Superintendent for Education, Eastern Navajo Agency; Mr. Joe Jarrett, Navajo Area Personnel Officer; and Mr. George D. Scott, Office of Indian Education Programs, Washington, D.C.

List of Subjects in 25 CFR Part 38

Indians-education, Teachers.

For the reasons set out in the preamble, Title 25, Chapter I, Part 38 is revised to read as follows:

PART 38—EDUCATION PERSONNEL

Sec.
38.1 Scope.
38.2 Information collection.
38.3 Definitions.
38.4 Education positions.
38.5 Qualifications for educators.
38.6 Basic compensation for educators and education positions.
38.7 Appointment of educators.
38.8 Nonrenewal of contract.
38.9 Discharge of educators.
38.10 Conditions of employment of educators.
38.11 Length of the regular school term.
38.12 Leave system for education personnel.
38.13 Status quo employees in education positions.
38.14 Voluntary services.

Authority: Secs. 1131 and 1135 of the Act of November 1, 1978 (92 Stat. 2322 and 2327, 25 U.S.C. 2011 and 2015); Secs. 511 and 512 of Pub. L. 98–511; and secs. 8 and 9 of Pub. L. 99–89 (Indian Education Technical Amendments Act of 1985) and Title V of Pub. L. 100–297 (Indian Education Amendments of 1988).

§ 38.1 Scope.

(a) *Primary scope.* This part applies to all individuals appointed or converted to contract education positions as defined in § 38.3 in the Bureau of Indian Affairs after November 1, 1979. This part applies to elementary and secondary school positions and agency education positions.

(b) *Secondary scope.* Section 38.13 applies to employees with continuing tenure in both the competitive and excepted service who encumber education positions.

(c) *Other.* Where 25 CFR Part 38 and a negotiated labor relations agreement conflict, the negotiated agreement will govern.

§ 38.2 Information collection.

(a) The information collection requirements contained in § 38.5 use Standard Form 171 for collection, and have been approved by OMB under 25 U.S.C. 2011 and 2015 and assigned approval number 3206–0012. The sponsoring agency for the Standard Form 171, is the Office of Personnel Management. The information is being collected to determine eligibility for employment. The information will be used to rate the qualifications of applicants for employment. Response is mandatory for employment.

(b) The information collection requirement for § 38.14, Voluntary Services has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0116. The information is being collected to determine an applicants eligibility and selection for appropriate volunteer assignments. Response is voluntary.

§ 38.3 Definitions.

As used in this Part, the term:

"Agency" means the current organizational unit of the Bureau, which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

"Agency school board" as defined in section 1139(1), of Pub. L. 95–561, means a body, the members of which are appointed by the school boards of the schools located within such Agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In Agencies serving a single school, the school board of that school shall function as the Agency School Board.

"Agency Superintendent for Education" (ASE) means the Bureau official in charge of education functions at an Agency Office and to whom the school supervisor(s) and other educators under the Agency's jurisdiction, report.

"Area Education Programs Administrator" (AEPA) means the Bureau official in charge of an Area Education Office that provides services to off-reservation residential schools, peripheral dormitories or on-reservation BIA funded schools that are not served by an Agency Superintendent for Education. The AEPA may also provide education program services to tribes not having an Agency Superintendent for Education at their agency. The AEPA has no line authority over agency education programs that are under the jurisdiction of an Agency Superintendent for Education.

"Assistant Secretary" means the Assistant Secretary for Indian Affairs of the Department of the Interior.

"Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

"Consult", as used in this part and provided in section 1131(d)(1) (B) and (C) of Pub. L. 95–561, means providing pertinent information to and being available for discussion with the school board, giving the school board the opportunity to reply and giving due

consideration to the school board's response, subject to appeal rights provided in § 38.7 (a), (b) and (c), and § 38.9(e)(3).

"Director" means the Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs) in the Bureau.

"Discharge" means the separation of an employee during the term of the contract.

"Education function" means the administration and implementation of the Bureau's education programs and activities (including school operations).

"Education position", means a position in the Bureau the duties and responsibilities of which:

(a) Are performed on a school term basis principally in a Bureau elementary and secondary school which involve:

(1) Classroom or other instruction or the supervision or direction of classroom or other instruction;

(2) Any activity (other than teaching) that requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

(3) Any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(4) support services at or associated with the site of the school; or

(b) Are performed at the Agency level of the Bureau and involve the implementation of education-related Bureau programs. The position of Agency Superintendent for Education is excluded.

"Educator", as defined in section 1131(n)(2) of Pub. L. 95–561 means an individual whose services are required, or who is employed, in an education position as defined in § 38.3.

"Employment contract" means a signed agreement executed by and between the Bureau and the individual employee hired or converted under this part, that specifies the position title, period of employment, and compensation attached thereto.

"Involuntary change in position" means the release of an employee from his/her position instigated by a change in program or other occurrence beyond the control of the employee.

"Local school board", as used in this part and defined in section 1139(7) of Pub. L. 95–561, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, the body elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

"Probationary period" means the extension of the appointed process during which a person's character and ability to satisfactorily meet the requirements of the position are reviewed.

"School board" means an Agency school board or a local school board.

"School supervisor" means the Bureau official in charge of a Bureau school who reports to an Agency Superintendent for Education. In the case of an off-reservation residential school(s), and, in some cases, peripheral dormitories and on-reservation day schools, the school supervisor shall report to the Area Education Programs Administrator.

"School term" is that term which begins usually in the last summer or fall and ends in the Spring. It may be interrupted by one or more vacations.

§ 38.4 Education positions.

(a) The Director shall establish the kinds of positions required to carry out the Bureau's education function. No position will be established or continued for which:

(1) Funds are not available; or

(2) There is not a clearly demonstrable need and intent for it to carry out an education function.

(b) Positions established for regular school operations will be restricted to school term or program duration. Particular care shall be taken to insure that year-long positions are not established unless they are clearly required and involve essential 12-month assignments.

§ 38.5 Qualifications for educators.

(a) *Qualifications related to positions.* Job qualification requirements shall be at least equivalent to those established by the appropriate licensing and certification authorities of the State in which the position is located.

(b) *Qualifications related to individuals.* An applicant for an education position must establish that he/she meets the requirements of the position by submitting an application and a college transcript, as appropriate, to the local school supervisor, Agency Superintendent for Education (ASE), Area Education Programs Administrator (AEPA), or Director and appearing for an interview if requested by the official involved. The applicant's education and experience will be subject to verification by the ASE or the AEPA. Employees who falsify experience and employment history may be subject to disciplinary action or discharge from the position to which he/she is appointed.

(1) School boards may waive formal education and State certification requirements for tribal members who are hired to teach tribal culture and language.

(2) Tribal members appointed under this waiver may not have their basic pay rate set higher than the rate paid to qualified educators in teaching positions at that school.

(c) *Identification of qualified individuals.* The Director shall require each ASE, AEPA, and other appropriate local official in the education program organization to maintain lists of qualified and interviewed applicants for each of the kinds of established positions. Applications on file shall be purged annually. Applicants whose qualifications are established and who indicate an interest in working in specified locations will be included on those local applicant lists. The Director shall maintain a national list of qualified applicants for each of the kinds of positions established. Applicants whose qualifications are established and who either do not indicate an interest in a specific location or indicate an interest in working in any location will be entered on the national list. The national list is a secondary source of applicants.

(d) *Special recruitment and training for Indian educators.* The Director shall review annually the Bureau's "Recruitment of Indian Educators Program" and update as necessary. The Director will define individual training plans for trainees and subsequent promotional opportunities for advancement based upon satisfactory job performance in this program.

§ 38.6 Basic compensation for educators and education positions.

(a) *Schedule of basic compensation rates.* The Director shall establish a schedule for each pay level specified in Part 62 of the Bureau of Indian Affairs Manual (BIAM). The schedule will be revised at the same time as and be consistent with rates in effect under the General Schedule or Federal Wage System for individuals with comparable qualifications, and holding comparable positions.

(b) *Range of pay rates for positions within pay levels.* The range of basic compensation rates for positions assigned to each pay level will be consistent with the General Schedule or Federal Wage System rates that would

otherwise be applicable if the position were classified under Chapter 51 or subchapter IV of Chapter 53 of Title 5 of the United States Code (U.S.C.). The maximum pay shall not exceed step 10 of the comparable General Schedule position by more than ten percent.

(c) *Adjusting employee basic compensation rates.* (1) Adjustments in an employee's basic compensation made in connection with each contract renewal will be based on the following:

(i) Contract renewal incentive—one pay increment for each renewal, not to exceed four increments, unless the educator is covered by a negotiated labor union agreement.

(ii) Performance—employees whose performance is rated "above satisfactory"; one pay increment; employees whose performance is rated "outstanding"; two pay increments.

(2) Pay increments based on education may be awarded as outlined in 62 BIAM.

(d) *Special additions to basic compensation.* The Director is authorized to established the following special additions to rates of basic compensation:

(1) The Director may authorize payment of a staffing differential not exceeding 25 per centum of the rate of basic compensation based on a formally-documented request by an ASE or AEPA. Such a staffing differential shall only be authorized in writing when the Director determines that:

(i) It is warranted by the geographic isolation of the work site or other unusually difficult environmental working or living conditions and/or,

(ii) It is necessary as a recruitment or retention incentive. This staffing differential is to be computed on the basic schedule rate before any other additions are computed.

(2) Special rates may be established for recruitment and retention applicable only to a specific position or to specific types of positions in specific locations based on a formally documented request by an ASE or AEPA and submitted to the Director for approval.

(e) *Payment of compensation to educators.* This section applies to those individuals employed under the provisions of Section 1131(m) of Pub. L. 95–561 or Title 5 U.S.C.

(1) *Pay periods.* Educators shall be paid on the basis of a biweekly pay period during the term of the contract. Chapter 55 of Title 5 U.S.C. applies to the administration of pay for educators, except that section 1131(m) of Pub. L. 95–561 provides that 5 U.S.C. 5533 does not apply with respect to the receipt of pay by educators during summer recess under certain circumstances.

(2) *Pay for contract educators.* When an educator is appointed, payment under the contract is to begin as of the effective date of the contract. If an educator resigns or is discharged before the expiration of the term of the contract, pay ceases as of the date of resignation or discharge.

(3) *Prorating of pay.* Within 30 days prior to the beginning of the academic school term, each educator must elect whether to have the annual contractual rate or basic pay prorated over the contractual academic school term, or to have the basic pay prorated over a 12-month period.

(i) Each educator may change such election once during the academic school term, provided notice is given two weeks prior to the end of the fifth month after the beginning of the academic school term.

(ii) An educator who elects a 12-month basis of prorated pay may further elect to be paid in one lump sum at the end of the academic school term for the then remaining amount of rate of basic pay otherwise due, provided notice is given four weeks prior to the end of the academic school term.

(iii) No educator shall suffer a loss of pay or benefits because of elections made under this section.

(4) *Stipends for extracurricular activities.* An employee, if assigned to sponsor an approved extracurricular activity, may elect annually at the beginning of the contract to be paid a stipend in lieu of overtime premium pay or compensatory time when the employee performs additional activities to provide services to students or otherwise support the school's academic and social programs.

(i) The Director is authorized to establish a schedule of stipends for each Bureau Area, taking into consideration types of activities to be compensated and payments provided by public school districts in or near the Area.

(ii) The stipend shall be a supplement to the employee's base pay and is not a part of salary for retirement computation purposes.

(iii) The employee shall be paid the stipend in equal payments over the period of the extracurricular activity.

§ 38.7 Appointment of educators.

(a) *Local school employees.* Local Bureau school employees shall be appointed only by the school supervisor. Before the local school employee is employed, the school board shall be consulted. An individual's appointment may be finalized only upon receipt of a formal written determination certified by the local school board under such uniform procedures as it may adopt. Written determination by the school board should be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The local school board shall use the same written procedure to disapprove an appointment. The school supervisor may appeal to the ASE, or, where appropriate, to the AEPA, any determination by the local school board concerning an individual's appointment. A written statement of appeal describing the action and the reasons the supervisor believes such action should be overturned must be filed within 10 days of receipt of the action from the local school board. A copy of such statement shall be submitted to the school board and the board shall be afforded an opportunity to respond, not to exceed 10 calendar days, in writing, to the appeal. After reviewing such written appeal and response, the ASE or AEPA may, for cause, overturn the action of the local school board. The ASE or AEPA must transmit the determination of the appeal (in the form of a written opinion) to the board and to the supervisor identifying the reasons for overturning the action within 10 calender days. Failure to act within the 10 calendar day period shall have the effect of approving the local school board's determination.

(b) *School supervisors.* School supervisors may be appointed only by the ASE, except the AEPA shall appoint school supervisors for off-reservation boarding schools and those few other schools supervised by the AEPA. The school board shall be consulted before the school supervisor is employed. The appointment may be finalized upon receipt of a formal written determination certified by the school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The school board shall use the same procedure to disapprove an appontment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE or AEPA, as appropriate, may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the local school board and the board shall be afforded an

opportunity to respond, within 10 calendar days, in writing, to such an appeal. The Director may reverse the determination for cause set out in writing to the school board. Within 20 calendar days of the school board's response, the Director shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE or AEPA identifying the reasons for overturning the determination. Failure by the Director to act within the 20 calendar day period shall have the effect of approving the school board's determination.

(c) *Agency office education program employees.* Appointments to Agency office education positions may be made only by the ASE. The Agency school board shall be consulted before the agency education employee is employed, and the appointment may be finalized upon receipt of a formal, written determination certified by the Agency school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The Agency school board shall use the same written procedure to disapprove an appointment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the Agency school board and the board shall be afforded an opportunity to respond, within 10 calendar days, in writing, to such appeal. After reviewing the written appeal and response, the Director may, for cause, overturn the determination of the Agency school board. Within 20 days of the board's response, the Director shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE identifying the reasons for overturning the determination. Failure of the Director to act within the 20 calendar day period shall have the effect of approving the school's board's determination.

(d) *Employment contracts.* The Bureau shall issue employment contracts each year for individuals employed in contract education positions at the Agency or school levels.

(e) *Absence of local school boards.* Where a local school board has not been established in accordance with section 1139(7) Pub. L. 95–561 with respect to a Bureau school, or where a school board is not operational, and the local school board is required to be given a notice or required to be consulted by statute or these regulations, the official involved shall notify or consult with the Agency school board serving the tribe(s) to which the parents of the Indian children atending that school belong, or, in that absence, the tribal organization(s) of the tribe(s) involved.

(f) *Provisional contracts.* Provisional certification or other limited certificates from the State are not considered full certification and only a provisional contract may be issued. There may be circumstances when no individual who has met the full certification or experience requirements is available for a professional position or when a status quo employee who does not meet full certification or experience requirements desires to convert to contract. When this situation exists, a provisional contract may be issued in accordance with the following:

(1) The contract will be made only:

(i) After it is determined that an individual already meeting certification or experience requirements is not available; or

(ii) For conversion of a status quo employee who does not yet meet all established position requirements.

(2) Consultation with the appropriate school board is required prior to the contract.

(3) The contract may be of 12-month or school-term duration.

(4) The employee will be required to make satisfactory progress toward meeting full qualification requirements.

(5) If the employee fails to meet the requirements established under § 38.7(f)(4), the contract will be terminated. Such termination cannot be grieved or appealed.

(g) *Conditional appointment.* As provided in section 1131(d)(4), Pub. L. 95–561, if an individual who has applied at both the national and local levels is appointed from a local list of applicants, the appointment shall be conditional for 90 days. During that period, the individual's application and background shall be examined to determine if there is a more qualified individual for the position. Removal during this period is not subject to discharge, hearing or grievance procedures.

(h) *Short-term contracts.* (1) There may be circumstances where immediate action is necessary and it is impossible to consult with the local school board. When this situation exists short-term contracts may be made by the school supervisor in accordance with the following:

(i) The length of the contract will not exceed 60 days, or the next regularly scheduled school board meeting, whichever comes first.

(ii) If the board meets and does not take action on the individual in question, the short-term contract may be extended for the duration of the school year.

(iii) It shall be the responsibility of the school supervisor to fully inform the local school board of all such short-term contracts. Failure to do so may be cited as reason to discharge the school supervisor if so requested by the board.

(2) The local school board may authorize the school supervisor to make an emergency short-term contract to classroom, dormitory and other positions directly related to the health and safety of students. When this situation exists, short-term contracts may be made in accordance with the following:

(i) If local and agency lists of qualified applicants are exhausted, short-term contracts may be made without regard to qualifications for the position;

(ii) The pay level will be based on the qualifications of the individual employed rather than the requirements of the position, if the qualifications of the individual are lower than required;

(iii) The short-term contract may not exceed the school term and may not be renewed or extended;

(iv) Every 60 days the school supervisor will determine if qualified individuals have been placed on the local or agency lists. If a qualified individual on the list accepts employment, the school supervisor must terminate the emergency appointment at the time the qualified individual is appointed.

(i) *Temporary contracts.* There may be circumstances where a specific position is needed for a period of one year or less. Under these conditions a position may be advertised as a temporary position and be filled under a temporary contract. Such contract requires the same school board approval as a school year contract. If required for the completion of the activities specified in the original announcement, the position, may with school board approval be extended for up to one additional year. Temporary contracts may be terminated at any time and this action is not subject to approval or grievance procedures.

(j) *Waiver of Indian preference.* Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel

action within the purview of this section respecting an application or employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization, except that this shall in no way relieve the Bureau of its responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if it is intended to fill a vacancy (no matter how such vacancy is created). When a waiver is granted, it shall apply only to that particular position and as long as the employee remains in that position.

(k) *Prohibited reappointment.* An educator who voluntarily terminates employment before the end of the school term may not be appointed to another Bureau education position before the beginning of the following school term. An educator will not be deemed to have voluntarily terminated employment if transferred elsewhere with the consent of the local school or Agency boards.

(l) *Contract renewals.* The appropriate school board shall be notified in writing by the school supervisor and/or ASE or AEPA not less than 90 days before the end of the school term whether or not an individual's contract is recommended for renewal.

(1) If the school board disagrees with the school supervisor's or ASE's or AEPA's recommendations, the board will submit a formal, written certification of its determinations to the school supervisor or ASE or AEPA within 25 days. If the board's determinations are not received within the 25 days, the school supervisor or ASE or AEPA shall issue the 60 day notification of renewal or nonrenawal to the individual as required under § 38.8.

(2) When the school board submits its determination within the 25 days and determines that a contract will be renewed, or nonrenewed, the appropriate official shall issue the required renewal notice, or nonrenawal, or appeal the determination of the school board to the appropriate official who will make a determination in accordance with the appeal procedure is § 38.7(a) of this part. After the probationary period, if the determination is that the contract will not be renewed, the procedures specified in § 38.8 shall apply.

§ 38.8 Nonrenewal of contract.

Where the determination is made that an employee's contract shall not be renewed for the following year, the following procedure will apply to those employees who have completed three full continuous school terms of service under consecutive contract appointments and satisfactory performance in the same or comparable education positions.

(a) The employee will be given a written notice of the action and the reasons thereof not less than 60 days before the end of the school term.

(b) The employee will be given 10 calendar days to request an informal hearing before the appropriate official or body. Upon request, the employee may be given official time, not to exceed eight hours, to prepare a written response to the reason(s).

(c) If so requested, an informal hearing shall be held within 30 calendar days of receipt of the request.

(d) The appropriate official or body will render a written determination within seven calendar days after the informal hearing.

(e) The employee has a right to request an administrative review by the ASE or AEPA of the determination within 10 calendar days of that determination. The ASE or AEPA then has 20 calendar days to render a final decision. Where the employee is the supervisor of the school or an agency education employee, any appeal of the ASE or AEPA would be addressed to the Director for a decision. If the Director or ASE's or AEPA's decision overturns the appropriate official or bodies determination, the appropriate official or body will be notified of the reasons in writing. Failure by the Director or ASE or AEPA to act within the 20 days will sustain the determination. This completes the administrative appeal process.

(f) Failure of any of the parties to meet the requirements of the above procedures will serve to negate the particular action sought by the negligent party.

(g) Those employees with less than three full continuous school terms of consecutive contract appointments are serving a probationary period. Nonrenewal of his/her contract will be considered a continuation of the examining process. This action cannot be appealed or grieved.

(h) Independent of the procedures outlined in this section, the school supervisor or ASE or AEPA, for applicable positions, shall be required to submit to the ASE or AEPA or appropriate higher authority all nonrenewal actions. Within 60 days, the ASE or AEPA shall review the nonrenewal actions and may overturn the determination of nonrenewal. In the event that the ASE or AEPA makes a decision to overturn the school board determination, the ASE or AEPA shall notify the school board in writing of his/her reasons for doing so.

(i) No more than the substantial standard of evidence shall be required to sustain the nonrenewal.

(j) A procedural error shall not be grounds for overturning a determination of nonrenewal unless the employee shows harmful error in the application of the Agency's procedures in arriving at such a decision. For purposes of this section, "harmful error" means error by the Agency in the application of its procedures which, in the absence or cure of the error, might have caused the Agency to reach a conclusion different than the one reached. The burden is upon the appellant to show that based upon the record as a whole, the error was harmful. i.e., caused substantial harm or prejudice to his/her rights.

(k) Nonrenewal of a contract is not discharge and will not follow the discharge procedures.

§ 38.9 Discharge of educators.

(a) *Discharge for cause.* Educators covered under the provision of this section are excluded from coverage under 5 U.S.C. 7511 and 4303. In order to provide due process for educators, the Director shall publish in 62 BIAM representative conditions that could result in the discharge of educators for cause and procedures to be followed in discharge cases.

(b) *Discharge for inadequate performance.* Action to remove educators for inadequate performance will be taken for failure to meet performance standards established under 5 U.S.C. 4302. Performance standards for all educators will include, among others, lack of student achievement. Willful failure to exercise properly assigned supervisory responsibilities by supervisors shall also be cause for discharge.

(c) *Other discharge.* The Director shall publish in 62 BIAM a description of the budgetary and programmatic conditions that may result in the discharge of educators for other than cause during the school term. The individual's personnel record will clearly reflect that the action taken is based upon budgetary or programmatic restraints and is not a reflection on the employee's performance.

(d) *Procedures for discharge for cause.* The Director shall publish in 62 BIAM the procedural steps to be followed by school supervisors, ASE's, and AEPA's in discharge for cause cases. These procedures shall provide (among other things) for the following:

(1) The educator to be discharged shall receive a written notice of the proposal, specifying the causes or complaints upon which the proposal is based, not less than 30 calendar days before the discharge. However, this shall not prohibit the exclusion of the individual from the education facility in cases where exclusion is required for the safety of the students or the orderly operation of the facility.

(2) A reasonable time, but not less than 10 calendar days, will be allotted for the individual to make written and/or oral responses to the charge.

(3) An opportunity will be afforded the individual to review the material relied upon to support the charge.

(4) Official time, not to exceed eight hours, will be provided to the individual to prepare a response to the charge.

(5) The educator may elect to have a representative and shall furnish the identity of any representative to the ASE or AEPA. The ASE or AEPA may disallow, as an employee representative, any individual whose activities as a representative would cause a conflict of interest or position, or an employee whose release from his or her official position would give rise to unreasonable costs to the Government, or when priority work assignment precludes his or her release from official duties. The terms of any applicable collective bargaining agreement and 5 U.S.C. 7114(a)(5) shall govern representation of employees in an exclusive bargaining unit.

(6) The individual has a right to a final decision made by the appropriate level of supervision.

(7) The individual has a right to appeal the final decision and have the merits of the case reviewed by a Departmental official not previously involved in the case. This right includes entitlement to a hearing upon request under procedures in accordance with the requirements of due process under section 1131(e)(1)(B) of Pub. L. 95-561.

(e) *School board action.* (1) The appropriate school board shall be notified as soon as possible, but in no case later than 10 calendar days from the date of issue of the notice of intent to discharge.

(2) The appropriate school board, under any uniform procedure as it may adopt, may issue a formal written certification to the school supervisor, ASE, or AEPA either approving or disapproving the discharge before the expiration of the notice period and before actual discharge. Failure to respond before the expiration of the notice period will have the effect of approving the discharge.

(3) The school supervisor initiating a discharge action may appeal the board's determination to the ASE or AEPA within 10 calendar days of receipt of the board's notice. The ASE or AEPA initiating a discharge may appeal the board's determination to the Director within 10 calendar days of receipt of the board's notice. Within 20 calendar days following the receipt of an appeal, the reviewing official may, for good cause, reverse the school board's determination by a notice in writing to the board. Failure to act within 20 calendar days shall have the effect of approving the board's determination.

(f) *School board recommendations for discharge.* School boards may recommend in writing to school supervisors, ASE's, or AEPA's, and the Director that individuals in the education program be discharged. These written recommendations may follow any procedures formally established internally by the school board or tribal government. However, the written recommendations must contain specific causes or complaints that may be verified or established by investigation of factual situations. The official receiving a board recommendation for discharge of an individual shall acknowledge the recommendation in writing within 10 calendar days of receipt and proceed with a fact finding investigation. The official who finally disposes of the recommendation shall notify the school board of the disposition in writing within 60 calendar days of initiation of the fact finding investigation.

§ 38.10 Conditions of employment of educators.

(a) *Supervision not delegated to school boards.* School boards may not direct, control, or interrupt the day-to-day activities of BIA employees carrying out Bureau-operated education programs.

(b) *Employee handbook.* Employee handbook and recruiting guides shall be developed by each local school or agency to provide specific information regarding:

(1) The working and hiring conditions for various tribal jurisdictions and Bureau locations;

(2) The need for all education personnel to adapt to local situations; and

(3) The requirement of all education personnel to comply with and support duly adopted school board policies, including those relating to tribal culture or language.

(c) *Contract renewal notification.* Employees will be notified 60 calendar days before the end of the school term of the intent to renew or not renew their contract. If an individual's contract is to be renewed, the individual must agree in writing to serve for the next school term. This agreement must be received within 14 calendar days of the date of the notice in order to complete the contract renewal. If this agreement is not received by the fourteenth day, the employee has voluntarily forfeited his or her right to continuing employment. If an individual agrees to serve for the next school term and fails to report for duty at the beginning of the next school term, the contract will be terminated and the individual's future appointment will be subject to the restriction in § 38.7(k) of this part.

(d) *Dual compensation.* An employee accepting a renewal of a school term contract may be appointed to another Federal position during the school recess period without regard to the dual compensation regulations in 5 U.S.C. 5533.

(e) *Discrimination complaints.* Equal Employment Opportunity (EEO) procedures established under 29 CFR Part 1613 are applicable to contract employees under this part. It is the policy of the BIA that all employees and applicants for employment shall be treated equally when considered for employment or benefits of employment, regardless of race, color, sex, religion, national origin, age, or mental or physical health (handicap), within the parameters of Indian preference.

(f) *Grievance procedures.* The Director shall publish in 62 BIAM procedures for the rapid and equitable resolution of grievances. In locations and for positions covered by an exclusive bargaining agreement, the negotiated grievance procedure is the exclusive avenue of redress for all matters within the scope of the negotiated grievance procedure.

(g) *Performance evaluation.* The minimum number of times a supervisor shall meet with an employee to discuss performance and suggest improvements shall be once every three months for the educator's first year at a school or Agency, and twice annually thereafter during the school term.

§ 38.11 Length of the regular school term.

The length of the regular school term shall be at least 180 student instructional days, unless a waiver has been granted under the provisions of 25 CFR 36.61.

§ 38.12 Leave system for education personnel.

(a) *Full-time school-term employees.* Employees on a full-time school-term

contract are authorized the following types of leave:

(1) *Personal leave.* A school-term employee will receive 28 hours of personal leave to be used for personal reasons and 12 hours of emergeny leave. This leave only accrues provided the length of the contract exceeds 24 weeks.

(i) The school-term employee will request the use of this leave in advance when it is for personal use or personal business (e.g., going to the bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known, if possible, by the employee and before leave is taken or as soon as the supervisor reports to work on the official work day.

(ii) Final approval rests with the supervisor. This leave shall be taken only during the school term. No compensation for or carryover of unused leave is authorized.

(2) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations. Medical and dental appointments may be included under this part. However, whenever possible, medical and dental appointments should be scheduled after instructional time.

(i) Sick leave shall accrue at the rate of four hours each biweekly pay period in pay status during the term of the contract; and no precredit or advance of sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(3) *School vacation.* School term employees may receive up to 136 hours of school vacation time for use when school is not in session. School vacations are scheduled on the annual school calendar during the instructional year and may not be scheduled before the first day of student instruction or after the last day of student instruction. School vacations are not a right of the employee and cannot be paid for or carried over if the employee is required to work during the school vacation time or if the program will not permit school term employees to take such vacation time.

(b) *Leave for full-time, year-long employees.* Employees who are on a full-time, year-long contract are authorized the following types of leave:

(1) *Vacation leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—120 hours; years 3–5 of employment—160 hours; 6 or more years—200 hours. The supervisor will determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment, provided the length of the contract exceeds 24 weeks. An employee may carry into succeeding years up to 200 hours of vacation leave. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave accumulation and use is authorized on the same basis as for school term employees under § 38.12(a)(2) of this part.

(c) *Leave for part-time year-long employees.* Employees who are on part-time year-long contracts exceeding 20 hours per week are authorized the following types of leave:

(1) *Vacation leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—64 hours; years 3–5 of employment—80 hours; 6 or more years—104 hours. The supervisor shall determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment provided the length of the contract exceeds 24 weeks and may not be accumulated in excess of 104 hours from year to year. An employee may carry over up to 104 hours from one contract year to the next. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave is accumulated on the basis of three hours each biweekly pay period in pay status; no precredit or advance of sick leave is authorized. Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(d) *Leave for school term employees on a part-time work schedule in excess of 20 hours per week.* (1) Employees on a part-time work schedule in excess of 20 hours per week may receive a maximum of 102 hours of school vacation time; 20 hours of personal/emergency leave; and 63 hours of sick leave accrued at three hours per pay period for the first 21 pay periods of their contracts. Personal/emergency leave only accrues provided the length of the contract exceeds 24 weeks.

(2) The part-time employee will request the use of this leave in writing in advance when it is for personal use or personal business (e.g., going to the bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known, if possible, by the employee and before leave is taken or as soon as the supervisor reports to work on the official work day.

(3) Final approval rests with the supervisor. This leave shall be taken only during the school year. No compensation for or carryover of unused leave is authorized.

(4) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations. Medical and dental appointments may be included under this part. However, whenever possible, medical and dental appointments should be scheduled after instructional time.

(i) Sick leave shall accrue at the rate of three hours each biweekly pay period in pay status for the first 21 pay periods of their contract; no precredit or advance for sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(5) *School vacation time.* Part-time employees may receive up to 102 hours of school vacation time for use when school is not in session. Approval for the use of this time will be administratively determined by the school supervisor, ASE or AEPA, and this time may not be scheduled before the start of school or after the end of school.

(i) All school vacation time for part-time employees will be approved at the convenience of the program and not as a right of the employee.

(ii) Vacation time cannot be paid for or carried over for a part-time employee if the employee is required to work during the school vacation time or if the program will not permit part-time employees to take such vacation time.

(e) *Accountable absences for all contract employees.* The following are considered accountable absences:

(1) *Approved absence.* If prescheduled and approved by the school supervisor, ASE or AEPA, as appropriate, an employee may be on leave without pay.

(2) *Absence without leave.* Any absence is not prescheduled or

approved in advance or excused by the supervisor is considered absence without leave.

(3) *Court and military leave.* Employees are entitled to paid absence for jury or witness service and military duty as a member of the National Guard or Reserve under the same terms or conditions as outlined in Sections 6322 and 6323 of Title 5 U.S.C., and corresponding provisions of the Federal Personnel Manual, when the absence occurs during the regular contract period. Employees may be requested to schedule their military leave at times other than when school is in session.

(4) *Administrative leave.* Administrative leave is an excused absence from duty administratively authorized without loss of pay or without charge to leave. This leave is not a substitute for other paid or unpaid leave categories. Administrative leave usually is authorized on an individual basis except when a school is closed or a group of employees are excused from work for a particular purpose. The school supervisor, ASE or AEPA will grant administrative leave. A school closing must be approved by the ASE or AEPA.

(f) Educators serving with contracts with work weeks of 20 hours a week or less are not eligible for any type of paid leave.

(g) For school term educators, no paid leave is earned nor may accumulated leave be used during any period of employment with the Bureau between school terms.

(h) Employees issued contracts for intermittent work are not eligible for any type of paid leave.

(i) *Leave transferred in.* Annual leave credited to an employee's accrued leave balance immediately before conversion to a contract education position or appointment under this part will be carried over and made available to the employee. Sick leave credited to an employee's accrued sick leave balance immediately before conversion to a contract education position or appointment under this part shall be credited to the employee's sick leave account under the system in § 38.12(a)(2) and (b)(2).

§ 38.13 Status quo employees in education positions.

(a) *Status quo employees.* Individuals who were Bureau employees on October 31, 1979, with an appointment in either the competitive or excepted service without time limitation, and who are serving in an education position, shall be continued in their positions under the terms and conditions of that appointment with no change in their status or positions. Such employees are entitled to receive any changes in compensation attached to the position. Although such employees occupy "education positions" as defined in this part, the terms and conditions of their appointment, status, and entitlements are determined by competitive service regulations and procedures. Under applicable procedures, these employees are eligible for consideration for movement to other positions that are defined as "contract education" positions. Such movement shall change the terms and conditions of their appointment to the terms and conditions of employment established under this part.

(b) If the tribe or school board waives the Indian preference law, the employee loses the early-out retirement eligibility under Pub. L. 96–135, "early-out for non-Indians," if they are entitled to the early-out retirement. A memorandum for the record on BIA letterhead shall be signed by the employee and placed on the permanent side of his/her Official Personnel Folder, along with the tribal resolution, if the tribe/school board has waived the Indian preference law to employ the non-Indian."

(c) *Conversion of status quo employees to contract positions.* Status quo employees may request in writing to the school supervisor, ASE or AEPA, as applicable, that their position be converted to contract. The appropriate school board will be consulted and a determination made by such school board whether such individual should be converted to a contract employee.

(1) Written determination by the school board should be received within a reasonable period, but not to exceed 30 days from receipt of the request. Failure of the school board to act within this period shall have the effect of disapproving the proposed conversion.

(2) With school board approval, an involuntary change in position shall not affect the current status of status quo education employees.

§ 38.14 Voluntary services.

(a) *Scope.* An ASE or AEPA may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau schools from the private sector, including individuals, groups, or students. Voluntary service shall be for all non-hazardous activities where public services, special projects, or school operations are improved and enhanced. Volunteer service is limited to personal services received without compensation (salary or wages) by the Bureau from individuals, groups, and students. Nothing in this section shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees.

(b) *Volunteer service agreement.* An agreement is a written document, jointly completed by the volunteer, the Bureau school supervisor, and the school board, that outlines the responsibilities of each. In the case of students receiving credit for their work (i.e., student teaching) from an education institution, the agreement will be jointly completed by the student, a representative of the institution, and the Bureau school supervisor. In the case of volunteer groups, the agreement shall be signed by an official of the volunteering organization, the Bureau school supervisor, and the school board and a list of signatures and emergency telephone numbers of all participants shall be attached.

(c) *Eligibility.* Although no minimum age requirement exists for volunteers, schools shall comply with appropriate Federal and State laws and standards on using the services of minors. All volunteers under the age of 18 must obtain written permission from their parents or guardians to perform volunteer activities.

(d) *Status.* Volunteers participating under this part are not considered Federal employees for any purpose other than:

(1) Title 5 U.S.C. Chapter 81, dealing with compensation for injuries sustained during the performance of work assignments.

(2) Federal tort claims provisions published in 28 U.S.C. Chapter 171.

(3) Department of the Interior Regulations Governing Responsibilities and Conduct.

(e) *Travel and other expenses.* The decision to reimburse travel and other incidental expenses, as well as the amount of reimbursement, shall be made by the school supervisor, ASE, AEPA, and the respective school board. Payment is made in the same manner as for regular employees. Payment of travel

and per diem expenses to a volunteer on a particular assignment must be supported by a specific travel authorization and cannot exceed the cost of employing a temporary employee of comparable qualification at the school for which a travel authorization is considered.

(f) *Annual report.* School supervisors shall submit reports on volunteers to the ASE or AEPA by October 31 of each year for the preceding year.

W.P. Ragsdale,

Acting Assistant Secretary, Indian Affairs,

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Airborne Low-Altitude Windshear Equipment and Training Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 19110; Amdt. Nos. 121-199, 135-27]

Airborne Low-Altitude Windshear Equipment and Training Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA amends Part 121 to require airborne low-altitude windshear warning and flight guidance equipment in airplanes and Parts 121 and 135 to require windshear training for flight crewmembers. The National Transportation Safety Board investigations show that low-altitude windshear has been a prime cause of air carrier accidents. This rule is expected to reduce windshear related accidents by training pilots in avoidance and escape techniques and by providing a low-altitude windshear warning system with flight guidance equipment in certain airplanes to increase the margin of safety if windshear is inadvertently encountered.

DATES: *Effective Date:* January 2, 1989.

Compliance Dates: 1. Training requirements in §§ 121.409, 121.419, 121.424, and 121.427; §§ 135.345 and 135.351. January 2, 1991.

2. Equipment requirements in § 121.358(a): January 2, 1991, unless certificate holder obtains an extension in accordance with § 121.358(b).

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1987 (52 FR 20560), the FAA published Notice of Proposed Rulemaking (NPRM) 79-11A proposing airborne low-altitude windshear equipment and training requirements. The NPRM was preceded by Advance Notice of Proposed Rulemaking (ANPRM) 79-11 (44 FR 25867, May 3, 1979). The ANPRM invited public participation in addressing low-altidude windshear in the following ways: (1) By placing windshear detection equipment on the ground and transmitting information to the pilot; and (2) by installing equipment aboard the aircraft that would provide the pilot with windshear information in "real time."

The ANPRM and NPRM were actions in the FAA's continuing efforts to combat the windshear problem. A full discussion of studies, Advisory Circulars, accident/incident data, and NTSB recommendations on windshear appeared in the preamble to NPRM 79-11A. The following information briefly summarizes FAA efforts since 1975.

- In 1975, the National Aeronautics and Space Administartion (NASA), in cooperation with the FAA, instituted the Aviation Safety Reporting System (ASRS) whereby safety-related incidents involving aircraft operation are submitted voluntarily and treated anonymously to identify safety problems. Windshear is among the problems identified by reports submitted under this system.
- In 1977, the FAA conducted a study of NTSB reports on aircraft accidents and incidents related to low-altitude windshear that had occurred from 1964 through 1975.
- In May 1977, the FAA amended Part 121 of the Federal Aviation Regulations (FAR) to require air carriers to adopt an approved system for obtaining forecasts and reports of adverse weather conditions, including low-altitude windshear, that could affect the safety of flights on the routes to be flown and at airports to be used.
- The FAA issued Advisory Circular (AC) No. 00-50A, Low Level Wind Shear, to provide guidance in recognizing meteorological conditions that produce windshear phenomena and to recommend certain pilot techniques to minimize the effects of windshear when encountered during takeoff or landing.
- The FAA established a research and development program to examine the hazards associated with low-altitude windshear, develop solutions to the windshear problem, and integrate those solutions into the National Airspace System.
- At 90 major airports within the United States, the FAA installed a ground-based Low-Level Windshear Alert System (LLWAS) capable of detecting the presence of hazardous windshear in the vicinity of the airport at the surface. The FAA intends to install an additional 20 LLWAS's at airports across the nation. In addition, the FAA is working on enhancements to the LLWAS and is cooperating with the National Center for Atmospheric Research on an operational evaluation of a Doppler radar windshear forecasting and alerting system.
- Before issuing ANPRM 79-11, the FAA, through a series of simulator experiments, investigated the effectiveness of airborne low-altitude windshear systems designed to warn pilots of the existence of windshears and to assist them in transiting or avoiding such shears.
- In November 1983, the FAA issued AC No. 120-41, Criteria For Operational Approval of Airborne Windshear Alerting and Flight Guidance Systems, to provide industry with an acceptable means of obtaining operational approval for the use of various airborne windshear systems on air carrier aircraft.
- In 1983, in response to Public Law 97-369, the FAA contracted with the National Academy of Sciences (NAS) to study "the state of knowledge, alternative approaches and the consequences of windshear alert and severe weather conditions relating to takeoff and landing clearances for commercial and general aviation aircraft." The NAS Report, "Low-Altitude Windshear and Its Hazard to Aviation," was published in late 1983.
- In 1986, the FAA contracted with a consortium of aviation specialists from The Boeing Company, United Airlines, McDonnell Douglas, Lockheed-California, Aviation Weather Associates, and Helliwell, Inc., to produce the Windshear Training Aid document and windshear training videos. The Windshear Training Aid, published and distributed to industry by the FAA, provides guidance on developing flight crew windshear training curricula.

In accordance with FAA research findings and the National Transportation Safety Board (NTSB) recommendations that were based on accident investigations, the FAA proposed in NPRM 79-11A windshear training and airborne equipment requirements as part of a "systems concept" to solve the problem of low-altitude windshear. The concept includes an improved low-altitude windshear weather forecasting technique, ground-based windshear detection equipment, airborne windshear warning and flight guidance, and improved flight crew training.

The FAA has decided after thorough consideration of the comments received on the NPRM to proceed with the proposed windshear training and airborne equipment requirements with minor modifications. A detailed discussion of the major issues raised by commenters and the FAA response to the comments follows.

Discussion of Comments

Twenty-seven comments were received on the Notice of Proposed Rulemaking. The comments were submitted by air carriers, airline and pilot associations, manufacturers, individuals, and the NTSB. Most comments commended the FAA for taking action to reduce the hazards of windshear encounters. However, several commenters opposed certain proposed requirements. Specific issues that were addressed in the comments were those on applicability; airborne warning devices; flight guidance systems; training; the compliance date; and Advisory Circulars. Several comments also addressed the cost/benefit aspects of the proposed rule. A few comments recommended entirely different approaches to the windshear problem than the one the FAA proposed. Several comments were information on airborne low-altitude windshear warning and flight guidance systems. All issues and categories of comments are discussed below.

Applicability: Equipment

The proposed requirement in § 121.358 for low-altitude windshear equipment applied to any turbine-powered airplane operated under Part 121 except turbopropeller-powered airplanes. The FAA assumes that when commenters referred to "turbine-powered airplanes", they were using the term as it was defined in proposed § 121.358. The FAA did not propose windshear equipment requirements for any airplanes operated under Parts 91, 125, and 135 because accident history does not justify their inclusion.

• The Air Line Pilots Association (ALPA) objected to the exclusion of reciprocating engine powered and turbopropeller engine powered airplanes from equipment requirements in Part 121. It stated that the table provided in the NPRM showed that a sizeable percentage of the windshear accidents involved the types of airplanes that the proposed rule excluded. The comment also stated that the 1987 Annual Report by the Regional Airlines Association estimates that by 1997 61 million passengers will be carried by members of that Association. According to ALPA these airlines "traditionally use reciprocating engine and turbopropeller powered aircraft."

• The National Transportation Safety Board (NTSB) stated that the "exclusion of reciprocating engine and turbopropeller engine airplanes from this (equipment) requirement may be reasonable based upon the different performance characteristics of those airplanes." However, NTSB did "not concur with the rationale used to exclude turbine-powered airplanes operated under Parts 91, 125, and 135 from this equipment requirement." NTSB stated that it believed that "the absence of accident data to support the need for including these operations may be due to the comparatively smaller population of turbine-powered airplanes used in those operations and, in some cases, an inability to evaluate accident circumstances because of the absence of flight recorder information." The Aerospace Industries Association (AIA) also objected to the exclusion of turbine-powered airplanes operated under Part 135.

The FAA's Response: Although the table provided in the NPRM shows a number of windshear accidents involving reciprocating engine powered and turbopropeller engine powered airplanes, the airplane types involved are older airplanes that have been in service for many years and that are rapidly being retired from Part 121 operations. As pointed out in the NTSB comment, reciprocating engine powered airplanes and turbopropeller engine powered airplanes currently in operation have "different performance characteristics." The FAA agrees with the NTSB that the performance characteristics of these airplanes generally make them less vulnerable in the event of inadvertent entrance into windshear conditions.

Turbine-powered airplanes that are operated under Parts 91, 125, and 135 are excluded from the equipment requirements for several reasons. Presently no accident/incident data exists to support requiring windshear equipment for these operations. The FAA recently issued a regulation (see 53 FR 26134, July 11, 1988) which requires flight and voice recorders in certain aircraft where they are not now required when those aircraft are operated under Parts 91, 121, 125, and 135. After this rule becomes effective, the FAA will be able to gather more complete data and take appropriate action.

At the present time only reciprocating engine powered and turbopropeller engine powered airplanes are being operated in commuter operations (scheduled operations) under Part 135. On-demand operations under Part 135 and operations under Parts 91 and 125 are conducted with turbine-powered airplanes, but there are fewer flights and these operations are unscheduled operations and therefore do not have the same degree of exposure to hazardous windshear conditions as do the operations covered by this final rule.

Therefore, consistent with the NPRM, the final rule excludes reciprocating engine powered and turbopropeller engine powered airplanes in § 121.358 and does not include any airplanes operated under Parts 91, 125, and 135.

In addition, the FAA has determined that a clarification of "turbopropeller-powered airplanes" as used in proposed § 121.358 is needed in the final rule and has accordingly added the words "with variable pitch propellers with constant speed controls." The addition of these words clarifies the essential design characteristic of turbopropeller-powered airplanes which makes them less vulnerable to the hazards of inadvertent entrance into windshear conditions. The FAA considers this addition necessary in the event that airplanes are manufactured in the future which may have some of the characteristics of turbopropeller-powered airplanes but not variable pitch propellers with constant speed controls. Any such future airplanes would not be excluded from the equipment requirements.

Airborne Low-Altitude Windshear Warning Devices

Sixteen comments specifically mentioned the proposed requirements for airborne warning devices. Ten favored the requirement, three opposed it, and three opposed certain aspects of the requirement. Opposition to the requirement was primarily directed at the need to retrofit existing airplanes. Concerns about the requirement for airborne warning devices were the following:

• One or more of the predictive systems now being developed could be installed on airplanes and validated for far less cost than present warning systems.

• No research has been conducted to show that a warning device system would add a significant margin of safety over training in windshear procedures.

• Airborne warning devices may be counterproductive to training since they may encourage a pilot to pursue a course that by observation alone he would conclude is dangerous.

• Conditions other than windshear may set off the warning, causing a pilot to abort a take-off or landing, thereby creating a potential hazard where none actually exists.

• Requiring installation of warning devices may slow development of predictive systems.

• Only predictive systems can provide a pilot with information early enough to allow escape.

The FAA's Response: The FAA does not agree with the overall position of these comments that requiring an airborne warning device is premature; that the FAA should wait until predictive systems are developed and in the meantime rely solely on training in windshear recognition and escape procedures. The FAA estimates that airborne windshear predictive systems will not be available for operational use for at least another ten years. In the meantime training alone is not enough. Windshear accidents have continued to occur even after windshear training has been incorporated into many certificate holders' training programs. Since windshear training alone cannot guarantee that a pilot will recognize, avoid, or escape windshear conditions, the addition of an airborne warning device will provide flightcrews with an increased margin of safety in inadvertent encounters with low-altitude windshear.

Two systems have already received FAA certification as airborne low-altitude windshear warning and flight guidance devices on various airplanes. In addition, several other manufacturers have made formal application for a Supplemental Type Certificate (STC) for other systems. Any of these systems could provide the flightcrew with enough warning and guidance to enhance the probability of successfully accomplishing the windshear escape procedure for the particular system.

One of the low-altitude windshear warning systems that has been certified and is being used has provided operational data. This data indicated that the warning system provides a significant benefit to the flight crew of the aircraft. This data also indicated that nuisance and false alerts were found to occur at an acceptably low rate to maintain flight crew confidence in the system. (For details see paper titled "Flight Experience with Windshear Detection", by Terry Zweifel presented to the SAE Aerospace Control and Guidance Systems Committee, March 9–11, 1988).

Because of the seriousness of the windshear problem, a regulatory proposal to require implementation of an available low-altitude windshear warning system that could alleviate the problem should not be delayed. The public must be given the maximum available protection from the catastrophic accidents which operating experience has demonstrated can occur.

The requirement for airborne low-altitude windshear warning systems does not mean that the FAA will reduce its commitment to other windshear equipment development. As stated in the NPRM, the FAA will continue to foster research programs to design better flight guidance and control aids which will improve a pilot's ability to avoid an accident in the event of a windshear encounter. Future FAA action will place emphasis on fostering the development of predictive technology for use in systems to detect and avoid inadvertent entrance into windshear. The FAA will continue pursuing a "systems concept" which includes an improved low-altitude windshear weather forecasting technique, ground-based windshear detection equipment, airborne windshear detection equipment, and improved pilot training.

Flight Guidance

Except for the National Transportation Safety Board and the Air Line Pilots Association, virtually all of the commenters either opposed or expressed some reservations about the proposed requirement that the approved airborne low-altitude windshear warning system be equipped "with flight guidance." The overall thrust of the opposing comments, like the comments opposed to installing warning devices, was that the cost of retrofitting present aircraft with a flight guidance system far outweighed the potential benefits. ATA on behalf of its member airlines asserted that "the resources that would be required to install guidance systems could better be used for avoidance systems when they become available—an eventuality not too far in the future, according to some."

The FAA's response: The FAA does not agree that increased safety would be achieved in a more cost effective way by eliminating the flight guidance requirement and waiting for the windshear detection systems presently in development. As previously stated, the FAA does not believe that fully functional, tested, and reliable windshear detection systems are as close at hand as do several commenters. Nor does the FAA believe that a windshear detection system, if developed, would make a windshear flight guidance system unnecessary. While the FAA agrees that windshear avoidance is the most desirable solution to the windshear problem, 100% avoidance may never be achievable so that an effective flight guidance system may still be highly desirable even if a detection system is developed. The cost/benefit aspects of the flight guidance requirement are discussed under the economic evaluation portion of this preamble. Specific comments regarding the flight guidance requirement are discussed below.

• Several commenters stated that the cost to retrofit existing aircraft with flight guidance systems is disproportionate to the safety gain, especially for aircraft that do not now have go-around or takeoff flight guidance functions in their flight director systems. Some of these commenters pointed out that the Windshear Training Aid states that the manual technique (maximum power and establish a 15 degree body angle pitch on the attitude director indicator) comes within 5–10% of the potential performance using flight guidance. One commenter concluded that "the difference between manual (no guidance) recovery and optimal (but not practical) guidance is something at or less than 5%!"

The FAA's Response: The cost/benefit aspects of the flight guidance system requirement are discussed fully under the economic evaluation portion of this preamble. As more fully explained there, the FAA believes that flight guidance systems should be required for turbine-powered airplanes operating under Part 121. The remaining life span of many airplanes already operating under Part 121 is sufficiently long to justify the retrofitting expense of providing low-altitude windshear flight guidance in the event of an inadvertent windshear encounter. The Windshear Training Aid (WTA) statement does not refute this conclusion. However, it should be noted that the conclusions drawn in the WTA with respect to comparing the performance efficiency of the manual technique with flight guidance were based on the assumption that, for the manual technique, the transfer of learning effectiveness from the classroom to the airplane is 100 percent. The conclusion was then drawn that, based on the transfer of learning assumption, the manual technique would be effective 90–95 percent of the time for those few windshears encountered. The behavior pattern resulting from windshear training using various media (e.g. classroom instruction, training devices, cockpit procedures trainers, simulators, etc.) may be degraded over time. Thus, in an actual severe low-altitude windshear encounter, an individual pilot's reaction using the manual technique most likely would not approach the 90–95% potential described in the WTA.

• There is no general industry agreement on present flight guidance algorithms (that is, on just what directions the pilot should be given).

The FAA's Response: One hundred percent agreement on existing algorithms may not exist; however, software has been developed that is

adequate to obtain FAA approval. With flight guidance provided by this software, a pilot would have a better change of taking action necessary for the aircraft to survive an inadvertent encounter with low-altitude windshear.

• Adaptation and modification of older electro-mechanical flight director systems may affect the integrity of the existing systems, thereby derogating safety.

The FAA's Response: Modification of older flight director systems should not affect the integrity of those systems. The approved airborne low-altitude windshear warning with flight guidance system to be installed must have been certificated in accordance with the appropriate sections of Part 25 of the FAR and must meet the respective airworthiness and operational approval criteria addressed in AC 25-12 and AC 120-41 or their approved equivalent. This approval process would ensure that the integrity of those systems would not be compromised.

• FAA should not require flight guidance systems until it has completed its characterization of the windshear phenomenon which is not scheduled to be completed until 1991.

The FAA's Response: Enough has been learned about the windshear hazard to permit the certification of several windshear systems. The past accident scenarios are well understood and there has been an enormous amount of data generated by the Joint Airport Weather Studies (JAWS) program. While the potential hazards will continue to be studied and further defined there is an adequate base of knowledge to design and certificate a flight guidance system.

• "Optimal" flight guidance may not be practical at this time since many of the present systems require nose down control inputs very close to the ground.

The FAA's Response: Optimal flight guidance can only be developed when there is complete knowledge of the characteristics of the air mass in front of the aircraft. Optimal flight guidance is a time dependent variable state which must consider a rapidly changing air mass, as well as special situations (i.e., altitude, speed, configuration, etc.). In the certification process the FAA will evaluate all guidance commands, including nose down commands, for appropriateness. If the optimal guidance strategy for a particular windshear situation requires nose down control inputs so close to the ground that it would cause collision with the ground, the guidance strategy would be unacceptable and would not be certificated. It should be noted that "nose down" does not mean below the horizon. It means to lower the nose from its present angle.

• While the flight guidance function provides a small increase in the magnitude of the windshear in which an aircraft can successfully operate, that increase only occurs at very high windshear values. Therefore, because of the serious turbulence what would be encountered, this small gain could easily be offset by the pilot's inability to closely follow the commands being given.

The FAA's Response: The FAA recognizes that in the worst cases of severe windshear escape may not be possible and, depending upon the cause of the windshear phenomena, flight guidance commands may not be readable because of severe turbulence. However, it is possible to have severe windshear without severe turbulence. Furthermore, for those windshears from which escape is possible, flight guidance provides an additional margin of safety. Between the moderate to severe levels of windshear, flight guidance can provide a gain in performance.

Training

Virtually all of the comments received favored the proposed training requirements. A number of comments addressed specific training requirements, particularly those requirements concerning simulator flight training. All specific comments are summarized below.

• Flight Safety International stated that helicopter operators should be excluded from the training requirements for recovery and escape procedures because not enough data exists to develop training in such procedures for helicopters.

The FAA's Response: The FAA agrees with the commenter. The FAA has decided to exclude helicopters from the escape training requirements because there are insufficient data on helicopter response to windshear encounters. Accordingly §§ 135.293(a)(7)(ii) and 135.345(b)(6)(ii) have been changed to include the words "except that rotorcraft pilots are not required to be trained in escaping from low-altitude windshear."

• Some comments showed confusion about the intended meaning of the proposed training requirements. Continental Express was concerned that the proposed rule excludes turbopropeller-powered airplanes in § 121.358 from low-altitude windshear equipment requirements without excluding them from the simulator windshear training requirements in subsequent sections of the rule. Flight Engineers' International Association stated that the proposed flight training requirements do not apply to flight engineers and that the FAA probably intended that they should apply to all cockpit crewmembers. Another commenter was concerned that the required windshear training program might have to be a separate and therefore costly training program.

The FAA's Response: As proposed, the language of § 121.409(d) requires simulator windshear flight training only if the airplane is required to be equipped with low-altitude windshear equipment under § 121.358. Therefore, flight training would not be required for pilots flying those turbopropeller powered airplanes excluded from the coverage of § 121.358.

In response to the comment from Flight Engineers' International Association, the proposed amendments to Part 121 included requirements for initial, transition, and recurrent ground training in windshear recognition, avoidance, and escape procedures for pilots and flight engineers, but proposed requirements for flight training in windshear procedures and equipment use were intended only for pilots who are at the controls of the airplane. Current § 121.425 which covers flight training for flight engineers is not being amended by this rulemaking. Windshear ground training in § 121.419 is applicable to all flight crewmembers while windshear flight training in simulators applies only to pilots operating airplanes equipped with low-altitude windshear equipment. If a certificate holder wishes to provide flight training in windshear procedures and equipment for flight engineers, it may do so, but the FAA is not requiring such training.

Finally, in response to the comment concerning windshear training as a separate program, as the FAA explained in the preamble of the proposed rule, the phrase "an approved low-altitude windshear flight training program" was used to refer to the proposed upgraded flight training requirements. The phrase was not intended to mean that there should be a separate training program for those who must provide low-altitude windshear flight training. Instead, the intention is that the approved low-altitude windshear flight training be incorporated into the certificate holder's approved training program.

• The Air Transport Association (ATA) would like to see different wording than that proposed in §§ 121.409(d) and 121.424(d) which stated that a pilot must have training and practice in "at least" and "at least all of" the windshear escape maneuvers and procedures in the operator's approved low-altitude windshear flight

training program. ATA commented that if the FAA's intent was to require that every pilot receive training in every exercise a carrier develops, carriers might be discouraged from developing multiple exercises.

The FAA's Response: One means of approval of the windshear training portion of a certificate holder's approved training program is the Windshear Training Aid developed by the FAA and the industry team led by Boeing. In July, 1987, this material was widely distributed to all Part 121 operators and to part 135 operators conducting scheduled operations and within the FAA. The FAA intends that the minimum number of windshear escape maneuvers to be performed in an approved airplane simulator for approved windshear flight training would include at least the maneuvers and procedures associated with the four basic exercises set forth in the Windshear Training Aid. These exercises have the pilot encounter a windshear situation—(1) Before achieving rotation speed on takeoff; (2) during a rotation on takeoff; (3) during an initial climb shortly after takeoff; and (4) during a precision approach. Each certificate holder should develop sufficient variation in the exercises to avoid stereotyping in the training.

In §§ 121.409(d) and 121.424(d)(2) the phrase "at least" is retained, while "all of" has been deleted from § 121.424(d)(2). These changes should make the FAA intent clear, namely that each pilot must receive training in the minimum number of windshear escape maneuvers and procedures that constitute the certificate holder's approved low-altitude windshear flight training program. The "required" training would not include all the possible exercises that an operator might develop for its approved low-altitude windshear training program.

• While logically most windshear flight training should be conducted in a simulator, some commenters wanted an "escape option" in the event that simulators were not available for training. They did not think a pilot's training should be delayed if windshear training in a simulator is temporarily not available. If the pilot could substitute such training in an airplane, at least for some of the training requirements, this would be of help.

The FAA's Response: The FAA believes that windshear flight training cannot effectively be given in an airplane because the total environment of a windshear cannot be artificially reproduced in an airplane and it would be too dangerous, in addition to being impractical, to search out actual windshear conditions. It is practice in the use of proper procedures and techniques under the extreme conditions of windshear that must be accomplished. This can be done safely only in a simulator.

To minimize the overall impact of the training requirements on simulator time, planning will be necessary. Part 121 certificate holders should plan for the downtime necessary to modify simulators and the increased training time, and should anticipate usual malfunction and maintenance downtime. With proper planning the training compliance date of two years after the effective date of the rule January 2, 1989 should allow for modification of simulators without delays in complying with current training requirements. Certificate holders should begin their planning as soon as this rule is published. They may have to begin their low-altitude windshear training as early as one year after the effective date so that they will not have to schedule special training for second-in-command pilots whose last previous recurrent training occurred less than a year earlier.

As a practical matter, most certificate holders use simulators now to meet the six-month training and proficiency check requirements for a pilot in command. The additional flight training required in windshear procedures will add approximately 15 minutes of simulator time. Approximately 80 percent of the pilots and copilots who will be subject to the windshear flight training requirments have at some time received some windshear flight training in simulators. Although certificate holders will have to revise their programs to meet the new requirements, for most pilots and co-pilots actual training time will not necessarily be significantly increased. Since current requirements for recurrent training allow for a 30-day grace period (14 CFR 121.401(b)), air carriers will have flexibility in meeting the recurrent windshear training requirements. Therefore, with proper planning, the simulator windshear flight training requirements should not significantly affect simulator use.

• Proposed § 121.409(d) stated that a certificate holder must use "an approved simulator for each airplane type * * *." Two commenters stated that if this means that each simulator must have the same windshear related avionics as the aircraft that operator is using, the requirement is too restrictive. They state there are two related problems. One, since simulator time is often leased, simulators that are now being leased by some operators may not be adapted with windshear avionics for the type of windshear equipment the operator will have installed. Thus the operator may have difficulty getting simulator time on simulators with the appropriate windshear avionics. Second, Continental Airlines stated that the "escape maneuver should be generic and not dependent on the hardware installed in the aircraft or simulators."

The FAA's Response: While the responses of most trained pilots to windshear are very similar, the performance of the aircraft and the technical characteristics of the windshear equipment differ. Therefore, a pilot needs to practice in a simulator equipped with the same windshear equipment which will be installed in airplanes the pilot will fly. This is especially important since pilot responses to windshear must be performed within seconds. Pilot understanding of equipment differences and aircraft performance differences could be critical.

The availability of simulator time on simulators with the appropriate windshear avionics is a factor that a certificate holder will need to consider and plan for before installing windshear equipment. A certificate holder that is leasing simulator time will need to determine in advance if that simulator will be updated for the appropriate windshear avionic equipment. Also a simulator owner who wants to continue leasing will need to plan for certificate holders' new windshear flight training requirements. Current rules for simulator flight training require a certificate holder to use an approved simulator for each airplane type, and most simulators are capable of being adjusted to allow training for different windshear systems. Therefore, the FAA anticipates that with proper planning and coordination the industry will be able to provide training on a simulator for each airplane type with the appropriate windshear avionics by the compliance date.

• ATA's comment maintains that mandatory windshear escape training and current approach-to-stall maneuvers required in Part 121 may be redundant. Both types of maneuvers involve high power, low speed conditions, and once clear of the windshear, the cleanup recovery from the windshear escape maneuver is identical to the approach-to-stall cleanup recovery.

The FAA's Response: The FAA does not agree that these are redundant requirements. While some similarity of maneuvers may exist, the situations and objectives are different. Windshear occurs in a highly unstable environment

while stalls can occur at any time. Approach-to-stall maneuvers are a proficiency requirement while windshear escape maneuvers and procedures do not have a proficiency objective or a performance standard. In windshear flight training the objective is to practice windshear escape procedures in a real time dynamic environment, not to train to a proficiency standard.

• One commenter supported a six-month recurrent windshear ground training requirement but recommended only an annual requirement in an airplane simulator. The commenter stated that "recovery/escape from a low level windshear is basically a mechanical maneuver" and that "as long as the pilot remembers and understands the concept of recovery the probability of success is greatly increased." Therefore, the commenter maintained that "twice annually, monthly, or weekly practice of recovery maneuvers will not ensure one hundred percent" successful recovery.

The FAA's Response: To clarify, a six-month recurrent simulator windshear flight training requirement would apply only to a pilot in command (§ 121.427(d) and § 121.443(c)(1)(iii) and (d)). A second in command would be required to have annual recurrent training (§ 121.443(c)(1)). Demonstration of proficiency in escaping windshear is not the objective of the windshear flight training requirement. Adding windshear simulator flight training to pilot recurrency requirements will provide the pilot with practice in the correct procedures for an event which from a statistical standpoint will be infrequently encountered, but to which a pilot is potentially exposed at all times. The FAA believes that practice in windshear escape procedures will prepare pilots to respond immediately and appropriately in an inadvertent windshear encounter.

Effective and Complaince Dates

Several commenters who objected to the flight guidance portion of the windshear equipment requirement stated that the two-year compliance date was unacceptable for the following reasons:

• It would require too much downtime for aircraft within a fleet.

• It would be impossible for manufacturers of windshear equipment to supply the equipment within a two-year period.

• There are not enough trained mechanics and other technicians to accomplish the required work within two years, and it would be impractical to recruit and train persons for such a peak-load project since they would likely be laid off afterwards.

• To meet the flight training requirements, simulators would have to be updated, software would have to be developed, and simulators would have considerable downtime. Considering how much simulators are used in pilot flight training and recurrent training and testing, the downtime might seriously interfere with pilot training. In addition, at least one commenter questioned whether the FAA or industry would be responsible for development of the windshear software.

• *The FAA's Response:* Because of the immediacy of the windshear problem, the FAA wants to ensure that there is no unnecessary delay in providing the traveling public with the additional margin of safety sought by these new requirements. However the FAA must allow sufficient time for the resolution of any technical problems with equipment, for production of the needed equipment, and installation and inspection on aircraft. Probably the major limiting factor, other than possible technical problems, is the availability of enough trained mechanics. The FAA recognizes that even if it were practical to train more mechanics to meet increased demand, the necessary training time would make a two-year compliance date for all airplanes impractical. Therefore, to allow time to resolve any technical problems with equipment, for equipment manufacture, order placement, delivery and installation of the equipment, the FAA is permitting a phased compliance schedule for retrofit requirements under certain conditions. The final rule (§ 121.358) requires compliance by two years after the effective date for all airborne equipment requirements unless an operator submits and obtains approval for a retrofit schedule that shows a phased compliance over a 4-year period from the effective date. A request for extension of the compliance date must be submitted no later than 18 months after the effective date. The phased retrofit compliance schedule applies only to airplanes whose date of manufacture was before the effective date of the rule. For the purpose of this section "date of manufacture" means the date the inspection acceptance records reflect that the airplane is complete and meets the FAA Approved Type Design Data. At least 50 percent of such airplanes which are listed on the certificate holder's maintenance operations specifications on the date of submission must be retrofitted within 2 years after the effective date, at least 25 percent more of those airplanes within 3 years, and all of the certificate holder's affected airplanes within 4 years. Any certificate holder that obtains a compliance date extension must comply with the retrofit schedule and submit status reports every six months until completion of the schedule.

The ground and flight training provisions of the final rule will take effect two years after the effective date of the rule. To make sure that all operators are aware of the compliance dates for the training requirements, the final rule includes new § 121.404 and revised § 135.10 that state the exact date for compliance.

For certificate holders to meet the two-year compliance date for all of their pilots, most certificate holders will want to have the new windshear training program approved one year earlier (i.e., not later than one year from the effective date). In this way the certificate holder will be able to give second in command pilots their required windshear training as part of their regularly scheduled annual recurrent training. Otherwise a certificate holder will have to schedule special training for second-in-command pilots whose last previous recurrent training occurred less than a year earlier.

In order for certificate holders to meet this kind of orderly scheduling, it is important that they begin the approval process as soon as possible so that they will not be faced with last minute training and scheduling problems.

While the final rule does not contain a specific compliance date for the necessary conversion of simulators, it can be seen from the above discussion that most simulators will need to be converted within one year after the final rule takes effect.

Although the final rule allows for phased compliance for retrofits, the FAA assumes that planning will begin at the time of publication of the rule.

Advisory Circulars

• Two commenters suggested that advisory material being developed by the FAA needs to be seen and commented on before the FAA proceeds to final rule. One stated that it was difficult to discuss the proposal without an opportunity to comment in parallel on the AC defining criteria for approving airborne low-altitude windshear equipment. The second comment stated that the AC should be part of the public record and should receive public input.

The FAA's response: Before the NPRM was issued the FAA developed and issued AC 00-50A, Low Level Windshear, AC 120-41, Criteria for Operational Approval of Airborne Windshear Alerting and Flight Guidance

Systems, and the Windshear Training Aid previously discussed in this preamble. In November 1987, the FAA issued AC 25-12, Airworthiness Criteria for the Approval of Airborne Windshear Warning Systems in Transport Category Airplanes. Thus, all of the advisory material necessary for manufacturers and certificate holders to comply with the requirements of this final rule has already been published and by the time the rule takes effect will have been available for a sufficient length of time for all interested persons to be familiar with their contents.

Beyond the Scope of NPRM

Several comments submitted were beyond the scope of this proposed rulemaking. The FAA has considered these comments as informational and is not responding to them. A summary of such comments follows:

• One comment recommended that the proposed rule be withdrawn and "in its place a requirement adopted that all transport aircraft eventually be equipped with an EFIS instrumentation system." "EFIS" stands for Electronic Flight Information System. This is a flight instrumentation system and flight guidance system that simplifies the integration of information a pilot receives from his flight instruments.

• One comment recommended that all Part 121 aircraft should operate at reduced weights by limiting the fuel, number of passengers, and baggage and cargo anytime that thunderstorms are predicted for an arrival or departure area. According to the comment this would provide the Part 121 aircraft with maneuverability closer to that of Lear jets which have had relatively few windshear accidents.

• Three comments were received which the FAA determined were primarily information about predictive or flight guidance systems that are being developed or are currently on the market. One recommended that the final rule include a requirement for a predictive system with a compliance date two years after approval of such a system.

• One commenter recommended that the FAA require a flight procedure method for transiting windshears based primarily on airspeed/groundspeed comparison.

• NTSB commended the FAA and the industry, led by the Boeing Company, for development of the Windshear Training Aid and stated that it hopes the Training Aid will be the foundation for FAA approval of training curricula implemented by air carriers in complying with the rule. It recommends that an additional training requirement be added on the use of airborne weather radar for thunderstorm and convective windshear avoidance. It considers this valuable equipment for weather detection during arrival and departure of flights.

• One commenter stated that ground training in windshear detection and escape maneuvers for Parts 125 and 135 pilots was not sufficient and that these pilots should also receive simulator training.

• TWA objected to the requirement to have 14 channels of recording capabilities on flight simulators. It stated that the FAA currently requires 8 channels for certification of flight simulators and that no benefit would be derived from having the additional capabilities. The FAA has not addressed this comment since there is nothing in this rulemaking that states the number of channels required in simulators.

Economic Summary

The following is a summary of the final cost impact and benefit assessment of a regulation to amend Part 121 of the Federal Aviation Regulations (FAR) to require that certain turbine-powered airplanes be equipped with an approved airborne system that warns a pilot of the presence of hazardous low-altitude windshear conditions and if such windshear conditions are inadvertently encountered, provides flight guidance for a missed approach procedure or an escape maneuver. In addition, the rule requires that all Part 121 operators conduct approved low-altitude windshear flight training in a simulator which has installed in it windshear equipment needed to conform to the airplane type being simulated. The rule further requires that Part 121 and 135 certificate holders' training programs be required to include training concerning flight crewmember recognition of, and escape from, inadvertently encountered hazardous low-altitude windshear conditions as part of their normal ground training.

The NTSB has determined that low-altitude windshear has been the prime cause or a contributing factor in numerous air carrier accidents in the last 20 years. The objective of these rules, therefore, is to prevent or reduce accidents attributed to inadvertent encounters with low-altitude windshear.

The methods and assumptions used to prepare the economic impact estimates for the various changes to Part 121 have been developed by the FAA. The estimates of economic impacts for the final rule revisions have been constructed from unit cost and other data obtained from air carriers, industry trade associations, and manufacturers. Information for analysis of benefits was obtained from the safety records of the NTSB and the FAA. The costs calculated for these amendments have been projected over the 16-year period of 1989 to 2004. This analysis compares these costs to benefits accruing over the 15-year span of 1990 to 2004. The purpose of this is to account for the fact that in 1989, the first year after the rule is published, no airplanes equipped with the required avionics will be in service. In 1989, however, impacted entities will incur program and planning start-up costs.

In the Notice of Proposed Rulemaking (NPRM), the FAA invited public comments concerning the technical and operational considerations and economic impact assumptions as these apply to flight guidance systems equipment modification and replacement, the frequency and duration of Part 121 certificate holder's windshear simulator flight training, and the extent to which Part 135 operators provide instruction to their pilots in procedures to recognize and escape inadvertent encounters with low-altitude windshear. Comments on the proposal were submitted by individuals, foreign and domestic air carriers, air carrier and airline pilot associations, avionics manufacturers, and the National Transportation Safety Board. The majority of comments commended the FAA for taking action to reduce the hazards of windshear encounters. A number of commenters, however, opposed certain proposed requirements and disagreed with economic impact estimates presented in the proposal. The FAA has evaluated the public comments and made the final determination regarding their impact. The comments have caused the FAA to revise its analysis and increase compliance costs.

A substantial change in the final rule is the provision of a time-phased retrofit schedule for airborne windshear equipment requirements. The final rule requires compliance by 2 years after the effective date of the final rule for all airborne equipment requirements unless an operator submits a schedule to show phased compliance over a 4-year period from the effective date of the rule. Under § 121.358(b) at least 50 percent of a certificate holder's airplanes that were manufactured before the effective date of the rule must be retrofitted within 2 years, at least 25 percent more within 3 years, and the remainder of airplanes affected within 4 years. The final rule also established that the ground and flight training provisions of the rule will take effect two years after the effective date of the rule. The time permitted for

compliance with the ground and flight training requirements will allow certificate holders sufficient time to train flight crews and convert simulators in advance of the compliance date for the required airborne windshear warning and flight guidance equipment. The FAA believes that the time allowed for training and equipment installation and modification will reduce costs and facilitate compliance.

The FAA finds that with the exception of new § 121.358 and the amendments to §§ 121.407, 121.409, 121.424, and 121.427, the amendments affecting Part 121 operators will have a negligible cost or no cost impact. The FAA has also determined the cost of compliance with the upgraded testing and training requirements of the amendments to §§ 135.293, 135.345, and 135.351 to be minimal.

New § 121.358 and the amendments §§ 121.407, 121.424, and 121.427 have been analyzed independently. For the purpose of this evaluation, however, the costs associated with these revisions have been aggregated. The reason is that these amendments are inextricably related and share the common objective of improving the skills of pilots in recognizing and escaping from inadvertently encountered low-altitude windshear conditions.

New § 121.358 will have an economic impact on the approximate 3,800 airplanes expected to be in service in 1990 and 3,200 airplanes expected to be manufactured between 1991 and 2004 because they would be required to be equipped with an FAA-approved system providing airborne windshear warning and flight guidance. The estimated cost of this amendment is $372.2 million in 1987 dollars and $218.5 million at a present worth discount rate of 10 percent over the 16-year period of 1989 to 2004.

The amendment to § 121.407 would require that air carriers install approved windshear aerodynamic data programs in their flight simulators. The estimated cost of modifying the 150 flight simulators currently in use by Part 121 certificate holders is $6.2 million in 1987 dollars.

The cost per hour of additional simulator utilization has been estimated under § 121.409 and added to the time captains and first officers would spend in a flight simulator to comply with the windshear simulator flight training requirements of §§ 121.424 and 121.427.

The FAA has determined that approximately 80 percent of the affected certificate holders already provide the windshear flight training required by §§ 121.424 and 121.427. Therefore, the amendments to these sections would impact approximately 20 percent of the active and future captains and first officers of the 149 Part 121 certificate holders affected by the rule. The estimated cost of compliance with the initial, transition, and upgrade windshear flight simulator training requirements of § 121.424 would be $13.4 million in 1987 dollars and $7.1 million when discounted at 10 percent over the 15-year span between 1989 and 2004. The estimated cost of requiring the affected captains and first officers to undergo windshear simulator flight training pursuant to the recurrent training requirements specified in § 121.427 would be $33.8 million in 1987 dollars and $15.2 million at a present worth discount rate of 10 percent over the same time period.

This analysis indicates that the total cost of compliance with the equipment acquisition, installation, maintenance and flight training requirements contained in this rule is estimated to have a present value of $246.5 million over the 16 year-period of 1989 to 2004.

To estimate the benefits for the NPRM, the FAA examined the safety record of Part 121 air carriers for the 15-year period between 1971 and 1985. At the time, this review indicated that 15 accidents attributed to windshear phenomena occurred during this period. A more recent review, however, reveals that two more accidents attributed to windshear have been added to the safety record by the NTSB for the same 15-year period in question. Accordingly, the losses associated with the 17 accidents are the basis for the benefits of this rule. Moreover, the analysis has been advanced to reflect the more recent 15-year period of 1972 to 1986.

To arrive at a loss rate indicative of the cost of these accidents, the total financial loss of these accidents was divided into the total number of turbine-powered airplane air carrier operations for the same 15-year period of 1972 to 1986. This calculation established a loss rate of $4.34 per turbine-powered air carrier operation over the 15-year period of 1972 to 1986. Similarly, to estimate the future accident prevention value of this rule, the established loss rate was multiplied by the number of operations forecast for the 15 years from 1990 to 2004. This calculation reveals that the estimated potential discounted benefit associated with the prevention of casualty loss in accidents attributed to windshear to be $451.6 million.

The FAA has been unable to quantitatively estimate the accident prevention effectiveness of these amendments. The total discounted cost of compliance of these amendments can be fully recovered if the rule is only 55 percent effective in reducing future casualty loss. The FAA believes that enactment of these amendments will significantly reduce the number of future windshear incidents and accidents and that benefits will exceed costs.

This regulatory evaluation focused on the rulemaking it supported. There are other programs which are also designed to reduce the risk of windshear accidents. These other programs are justified partially by benefits included in this analysis, and additional benefits over and above those necessary to justify the rulemaking. FAA does not believe this rulemaking would eliminate or reduce the need for other programs such as terminal Doppler weather radar and Low-Level Wind Shear Alert Systems.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a review of rules to assess their impact on small business. The required Part 121 amendments will have a significant economic impact on a substantial number of small entities. However, the FAA finds that there are no viable alternatives for small air carriers to adopt that would reduce the cost of compliance yet achieve the level of protection sought by this rulemaking. The amendments to part 135 have been determined to impose only minimal costs. Therefore, Part 135 certificate holders would not incur a significant economic impact as a result of these amendments.

International Trade Impact Statement

These amendments will have little or no impact on trade opportunities of United States firms doing business overseas or for foreign firms doing business in the United States. These amendments apply only to Part 121 and Part 135 certificate holders and assign responsibility for the provision of the required equipment and windshear training programs specified in the rule to the operating certificate holder. Because most Part 121 and Part 135 certificate holders compete domestically for passenger and cargo revenues with other U.S. operators, this rule will not cause a competitive fare disadvantage for U.S. carriers.

Federalism Implications

The regulations herein would not have substantial direct effects on the states, on the relationship between the National government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined

that these regulations do not have federalism implications requiring the preparation of a Federalism Assessment.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements contained in this final rule (§ 121.358) have been submitted to the Office of Management and Budget for review since these provisions were not included in the notice of proposed rulemaking. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, DC 20503, Attention: FAA Desk Officer (Telephone 202-395-7340). A copy should be submitted to the FAA docket.

Conclusion

The FAA has determined that this amendment is not major under Executive Order 12291 but that it is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). For the reasons discussed above, it also has been determined that the amendments to Part 121 will have a significant economic impact on a substantial number of small entities, but that the amendments to Part 135 will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 121

Air carriers, Air transportation, Aviation safety, Common carriers, Safety, Transportation, Windshear.

14 CFR Part 135

Air carriers, Air taxi, Air transportation, Aviation safety, Safety, Windshear.

The Rule

Accordingly, the Federal Aviation Administration amends Parts 121 and 135 of the Federal Aviation Regulations (14 CFR Parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. By adding a new §121.358 to read as follows:

§ 121.358 Low-altitude windshear system equipment requirements.

(a) Except as provided in paragraph (b) of this section, after January 2, 1991, no person may operate a turbine-powered airplane unless it is equipped with an approved system providing airborne windshear warning with flight guidance. For the purpose of this section, "turbine-powered airplane" includes, e.g., turbofan-, turbojet-, propfan-, and ultra-high bypass fan-powered airplanes. The definition specifically excludes turbopropeller-powered airplanes with variable pitch propellers with constant speed controls.

(b) A certificate holder may obtain an extension of the compliance date in paragraph (a) of this section for airplanes manufactured before January 2, 1989 if it obtains FAA approval of a retrofit schedule. For the purposes of this section, an airplane is considered manufactured on the date the inspection acceptance records reflect that the airplane is complete and meets the FAA Approved Type Design Data. To obtain approval of a retrofit schedule and show continued compliance with that schedule, a certificate holder must do the following:

(1) Submit a request for approval of a retrofit schedule by June 1, 1990 to the Flight Standards Division Manager in the region of the certificate holding district office. Final approval will be granted by the Director of Flight Standards (AFS-1).

(2) Show, for those airplanes subject to this section that are listed in the certificate holder's maintenance operations specifications on the date that the request for extension is submitted, that at least 50% of those airplanes manufactured before January 2, 1989 will be equipped by January 2, 1991, at least 25% more of those airplanes by January 2, 1992, and all of the certificate holder's airplanes required to be equipped in accordance with this section by January 4, 1993.

(3) Comply with its retrofit schedule and submit status reports containing information acceptable to the Administrator. The initial report must be submitted by January 2, 1991, and subsequent reports must be submitted every six months thereafter until completion of the schedule. The reports must be submitted to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder's operations.

3. By adding a new § 121.404 to read as follows:

§ 121.404 Windshear training: Compliance dates.

After January 2, 1991, no certificate holder may use a person as a flight crewmember unless that person has completed—

(a) Windshear ground training in accordance with § 121.419 of this part.

(b) Windshear flight training, if applicable, in accordance with §§ 121.409, 121.424, and 121.427 of this part.

4. By amending § 121.407 by adding a new paragraph (d) to read as follows:

§ 121.407 Training program: Approval of airplane simulators and other training devices.

* * * * *

(d) An airplane simulator approved under this section must be used instead of the airplane to satisfy the pilot flight training requirements prescribed in the certificate holder's approved low-altitude windshear flight training program set forth in § 121.409(d) of this part.

5. By amending § 121.409 by adding a new paragraph (d) to read as follows:

§ 121.409 Training courses using airplane simulators and other training devices.

* * * * *

(d) Each certificate holder required to comply with § 121.358 of this part must use an approved simulator for each airplane type in each of its pilot training courses that provides training in at least the procedures and maneuvers set forth in the certificate holder's approved low-altitude windshear flight training program. The approved low-altitude windshear flight training, if applicable, must be included in each of the pilot flight training courses prescribed in §§ 121.409(b), 121.418, 121.424, and 121.427 of this part.

6. By amending § 121.419 by revising paragraph (a)(2)(vi) to read as follows:

§ 121.419 Pilots and flight engineers: Initial, transition, and upgrade ground training.

(a) * * *

(2) * * *

(vi) Procedures for—

(A) Recognizing and avoiding severe weather situations;

(B) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear, and

(C) Operating in or near thunderstorms (including best penetrating altitudes), turbulent air (including clear air turbulence), icing, hail, and other potentially hazardous meteorological conditions;

* * * * *

7. By amending § 121.424 by revising paragraphs (a), (b), and (d) to read as follows:

§ 121.424 Pilots: Initial, transition, and upgrade flight training.

(a) Initial, transition, and upgrade training for pilots must include flight training and practice in the maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program and in Appendix E to this part, as applicable.

(b) The maneuvers and procedures required by paragraph (a) of this section must be performed inflight except—

(1) That windshear maneuvers and procedures must be performed in a simulator in which the maneuvers and procedures are specifically authorized to be accomplished; and

(2) To the extent that certain other maneuvers and procedures may be performed in an airplane simulator, an appropriate training device, or a static airplane as permitted in Appendix E to this part.

* * * * *

(d) If the certificate holder's approved training program includes a course of training utilizing an airplane simulator under § 121.409 (c) and (d) of this part, each pilot must successfully complete—

(1) With respect to § 121.409(c) of this part—

(i) Training and practice in the simulator in at least all of the maneuvers and procedures set forth in Appendix E to this part for initial flight training that are capable of being performed in an airplane simulator without a visual system; and

(ii) A flight check in the simulator or the airplane to the level of proficiency of a pilot in command or second in command, as applicable, in at least the maneuvers and procedures set forth in Appendix F to this part that are capable of being performed in an airplane simulator without a visual system.

(2) With respect to § 121.409(d) of this part, training and practice in at least the maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program that are capable of being performed in an airplane simulator in which the maneuvers and procedures are specifically authorized.

8. By amending § 121.427 by revising the introductory text of paragraph (d)(1) to read as follows:

§ 121.427 Recurrent training.

* * * * *

(d) * * *

(1) For pilots, flight training in an approved simulator in maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program and flight training in maneuvers and procedures set forth in Appendix F to this part, or in a flight training program approved by the Administrator, except as follows—

* * * * *

9. By amending § 121.433 by revising paragraph (c)(2) and adding a new paragraph (e) to read as follows:

§ 121.433 Training required.

* * * * *

(c) * * *

(2) For pilots, a proficiency check as provided in § 121.441 of this part may be substituted for the recurrent flight training required by this paragraph and the approved simulator course of training under § 121.409(b) of this part may be substituted for alternate periods of recurrent flight training required in that airplane, except as provided in paragraphs (d) and (e) of this section.

* * * * *

(e) Notwithstanding paragraphs (c)(2) and (d) of this section, a proficiency check as provided in § 121.441 of this part may not be substituted for training in those maneuvers and procedures set forth in a certificate holder's approved low-altitude windshear flight training program when that program is included in a recurrent flight training course as required by § 121.409(d) of this part.

10. By amending Part 121, Appendix E by revising the first paragraph to read as follows:

Appendix E—Flight Training Requirements

The maneuvers and procedures required by § 121.424 of this part for pilot initial, transition, and upgrade flight training are set forth in the certificate holder's approved low-altitude windshear flight training program and in this appendix and must be performed inflight except that windshear maneuvers and procedures must be performed in an airplane simulator in which the maneuvers and procedures are specifically authorized to be accomplished and except to the extent that certain other maneuvers and procedures may be performed in an airplane simulator with a visual system (visual simulator), an airplane simulator without a visual system (nonvisual simulator), a training device, or a static airplane as indicated by the appropriate symbol in the respective column opposite the maneuver or procedure.

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

11. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

12. By revising § 135.10 to read as follows:

§ 135.10 Compliance dates for certain rules.

After January 2, 1991, no certificate holder may use a person as a flight crewmember unless that person has completed the windshear ground training required by §§ 135.345(b)(6) and 135.351(b)(2) of this part.

13. By amending § 135.293 by revising paragraph (a)(7) to read as follows:

§ 135.293 Initial and recurrent pilot testing requirements.

(a) * * *

(7) Procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft pilots are not required to be tested on escaping from low-altitude windshear); and

(iii) Operating in or near thunderstorms (including best penetrating altitudes), turbulent air (including clear air turbulence), icing, hail, and other potentially hazardous meteorological conditions; and

* * * * *

14. By amending § 135.345 by revising paragraph (b)(6) to read as follows:

§ 135.345 Pilots: Initial, transition, and upgrade ground training.

* * * * *

(b) * * *

(6) Procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft pilots are not required to be trained in escaping from low-altitude windshear); and

(iii) Operating in or near thunderstorms (including best penetrating altitudes), turbulent air (including clear air turbulence), icing, hail, and other potentially hazardous meteorological conditions;

* * * * *

15. By amending § 135.351 by revising paragraph (b)(2) to read as follows:

§ 135.351 Recurrent training.

* * * * *

(b) * * *

(2) Instruction as necessary in the subjects required for initial ground training by this subpart, as appropriate, including low-altitude windshear training as prescribed in § 135.345 of this part and emergency training.

* * * * *

Issued in Washington, DC, on September 22, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-22088 Filed 9-22-88 4:58 pm]

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federal register

Tuesday
September 27, 1988

Part IV

Department of Agriculture

Commodity Credit Corporation

7 CFR Parts 1421, 1477 and 1497

Loan and Purchase Programs; Grains and Similarly Handled Commodities; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1421, 1477 and 1497

Loan and Purchase Programs; Grains and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: Public Law 100-387, the Disaster Assistance Act of 1988 (the 1988 Act), provides for the implementation of a disaster payment program for eligible producers for losses of 1988 crop production due to drought, hail, excessive moisture, or related condition in 1988. Generally, to be eligible to receive a payment for a crop of wheat, feed grains (barley, corn, grain sorghum, oats), upland and extra long staple cotton, and rice (target price commodities), peanuts, sugar, tobacco, soybeans and nonprogram crops, a producer must have suffered a loss in excess of 35 percent of a farm's expected production for that crop. This final rule sets forth regulations at 7 CFR Part 1477 which are necessary to establish the criteria to be used in making such disaster payments to eligible producers. This final rule adopts, as amended on August 30 (published at 53 FR 34004, on Sept. 1, 1988), an interim rule published on April 6 (53 FR 11239) which amended 7 CFR Part 1421 with respect to the administration of the Farmer-Owned Reserve (FOR) Program. This final rule further amends 7 CFR Part 1421 with respect to the FOR Program to implement provisions of the 1988 Act.

This final rule also amends 7 CFR Part 1497 to implement provisions of the 1988 Act which provide that, in certain instances, the maximum payment limitation provisions which are applicable to the Conservation Reserve Program will not be used with respect to certain specified agreements.

EFFECTIVE DATE: This final rule shall become effective on September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond K. Aldrich, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC. Telephone: (202) 447-6688.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "major" since the program will have an annual effect on the economy exceeding $100 million. A final regulatory impact analysis is available from the above named individual.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation with respect to the Disaster Payment Program has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The titles and numbers of the federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases—10.051; Cotton—10.052; Feed Grain—10.055; Wheat—10.058; Rice—10.065; Conservation Reserve Program—10.069; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovenmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Background

Public Law 100-387, the Disaster Assistance Act of 1988 (the 1988 Act), provides that disaster payments for prevented planting and low yield losses will be made to producers of 1988 crops of wheat, feed grains, upland and extra long staple cotton, and rice (target price commodities), peanuts, sugarcane, sugar beets, tobacco, soybeans, and nonprogram crops if there has been a loss of production for such a crop which is greater than 35 percent of the farm's expected production determined according to yields as prescribed in the 1988 Act. The disaster payment which is made is determined by multiplying the applicable payment rate by the loss of production suffered in excess of 35 percent. The 1988 Act specifies the manner in which each of these components is to be determined.

The 1988 Act also provides that any person who has qualifying gross revenues in excess of $2,000,000. annually shall not be eligible to receive any disaster payment. The 1988 Act provides that qualifying gross revenue means, if a majority of the person's annual income is received from farming, ranching, and forestry operations, the gross revenue from such operations. With respect to persons who receive less than a majority of their gross income from such operations, the gross revenue from all sources will be considered. For purposes of determining a "person", 7 CFR Part 1477 provides that the provisions of 7 CFR Part 795 shall be used.

The 1988 Act also provides with respect to any loss of production on a farm which is in an amount equal to 35 percent or less that all producers on the farm who received 1988 crop advance deficiency payments will not be required to refund that portion of such advance which would otherwise be required to be refunded if market prices increase to a level which would require repayment in accordance with section 107C of the Agricultural Act of 1949, as amended (the 1949 Act). The 1988 Act also provides that producers who did not request advance deficiency payment with respect to crops for which such advances were made available may request an advance payment. Accordingly, 7 CFR Part 1477 provides that such a request must be made by October 27, 1988.

The 1988 Act established the payment rates which will be used in making disaster payments. The payment rates are a percentage of a basic payment rate established for each crop and such rate varies depending upon the loss of production suffered by the producer. For producers who are participating in the production adjustment programs for 1988 target price commodities, the basic payment rate is the target price of the commodity.

For producers of such crops who are not enrolled in these programs, the basic payment rate is the basic county loan rate established for the commodity. With respect to peanuts, the basic payment rate is the national price support rate determined for quota peanuts or additional peanuts, as applicable. For sugar beets and sugarcane, the basic payment rate will be set at a level which is fair and reasonable in relation to the level of price support established for the 1988 crops. With respect to kinds of tobacco for which price support loans are made available, the basic payment rate is the national average loan rate. For other kinds of tobacco, soybeans, and all other crops for which payments are authorized to be made by the 1988 Act,

Commodity Credit Corporation (CCC) or the State Agricultural Stabilization and Conservation committee (STC), on behalf of CCC, shall establish the rate as the simple average price received by producers of the commodity during the marketing years for the immediately preceding five crops of the commodity, excluding the year in which the average price was the highest and the year in which the average price was the lowest. The 1988 Act provides that the Secretary shall consider as separate crops and develop separate payment rates, insofar as is practicable, for different varieties of the same commodity for which there is a significant difference in economic value. Accordingly, 7 CFR Part 1477 provides that payment rates will be established for separate varieties taking into account market factors to the extent reliable data is available.

The 1988 Act provides that the payment rate which will be used in making a disaster payment will increase if the loss of production is in excess of 75 percent. Accordingly, for losses of production which are in excess of 35 percent of the farm's expected production but which are not greater than 75 percent, the payment rate is 65 percent of the basic payment rate. For losses which are greater than 75 percent, the payment rate is 90 percent of the basic payment rate.

The disaster payment acreage for producers of 1988 target price crops who are participating in the 1988 programs is the sum of the acreage planted for harvest and the acreage prevented from being planted because of drought, hail, excessive moisture, or related condition in 1988 but not to exceed the permitted acreage established for the farm for the commodity. With respect to producers of the target price commodities on a farm not participating in the 1988 programs, the disaster payment acreage is the sum of the acreage planted for harvest and the acreage that producers were prevented from planting because of drought, hail, excessive moisture or related condition in 1988 not to exceed the greater of: (1) The 1987 planted and 1987 prevented planted acreage minus the 1988 actual planted acreage or (2) a quantity equal to the average of the 1985, 1986, and 1987 acreage planted and prevented planted acreage minus the 1988 actual planted acreage. The amount of payments made available under either method is reduced by a factor equivalent to the acreage limitation program percentage which was established for the 1988 crop.

Disaster payment acreage provisions of the 1988 Act which are applicable to peanuts, sugar beets, sugarcane, tobacco, soybeans, and nonprogram crops are similar to the provisions used to establish such acreages for producers of the 1988 target price commodities who are not participating in the 1988 programs. Variations, however, exist with respect to peanuts and tobacco to take into account increased 1988 marketing quotas which were established for these crops in accordance with the Agricultural Adjustment Act of 1938, as amended. Deficiencies in production of peanuts shall take into account whether the deficiency is in the production of quota or additional peanuts. Such deficiencies in production of quota peanuts shall also take into consideration the quantity of poundage quota transferred from the farm for the 1988 crop year. The amount of undermarketings attributable to a farm for the 1988 crop of burley or flue-cured tobacco or quota peanuts shall be reduced by the quantity for which a disaster payment is made to producers on the farm.

For all crops, adjustments in disaster payment acreages are made in order to take into account crop rotation practices.

In determining whether a producer has suffered a loss of at least 35 percent, on a farm, the 1988 farm program payment yield will be used for producers of the target price commodities. With respect to the determination of losses by producers of (1) tobacco, sugarcane and sugar beets, the county average yield is to be used; (2) peanuts, the program yield is required to be used; and (3) soybeans, the 1988 Act specifies that the yield to be used shall be the State, area, or county yield adjusted for adverse weather conditions during the previous three crop years, as determined by the Secretary. Nonprogram crop yields are based upon proven yields established from data provided by the producer with respect to at least one of the immediately preceding three crop years.

If such data does not exist, CCC shall establish such yields by using a county average yield. Accordingly, 7 CFR Part 1477 provides that these yields, to the extent possible, will be based upon statistics of the National Agricultural Statistics Service (NASS).

The Secretary may determine a de minimus yield for a crop at a level that will minimize the incentive of a producer to abandon a crop in order to receive a disaster payment. A producer who had production in an amount which is equal to or less than such yield will be considered to have zero production for purposes of making 1988 disaster payments. The Secretary has determined to implement this provision with respect to barley, corn, oats, sorghum, soybeans, rice, wheat and ELS and upland cotton since sufficient data is available in order to effectively administer this provision. Accordingly, 7 CFR Part 1477 sets forth de minimis yields for these commodities. Since such information is not readily available with respect to the other commodities, de minimis yields will not be established for such commodities.

The Secretary has determined not to exercise the discretionary authority to make additional disaster payments for reductions in quality of 1988 crops as a result of drought, hail, excessive moisture, or related condition in 1988. Accordingly, 7 CFR Part 1477 does not set forth regulations with respect to this provision.

The 1988 Act provides that the quantity on which participating producers of the target price commodities would otherwise have earned deficiency payments shall be reduced by the quantity on which a disaster payment has been received. The 1988 Act also provides that if the Secretary determines that any producer participating in a 1988 program must refund any portion of the advance deficiency payment, because of the total deficiency payment being less than the amount advanced, such refund shall not be required prior to July 31, 1989.

Producers participating in the 1988 Wheat and Feed Grain Programs who elected after March 11, 1988, to devote all or a portion of the permitted acreage to conserving uses may now elect whether to receive disaster payments in lieu of the deficiency payment which they would have received. Accordingly, 7 CFR Part 1477 provides that producers must make such an election, in writing, by October 27, 1988.

The 1988 Act provides that producers who have obtained Federal Crop or Multiperil crop insurance for the 1988 crop of a commodity shall have their disaster payment reduced by the amount by which the sum of the net crop insurance benefits (gross indemnity less premium paid) and the computed disaster payment exceeds the disaster payment acreage times the disaster yield times the applicable payment level for the commodity. The 1988 Act also provides that producers who receive benefits under this Act must agree to obtain multiperil crop insurance, under the Federal Crop Insurance Act, as amended, for the 1989 crop of the commodity for which a 1988 disaster payment is made except when: (1) The producer's loss of production is less than 65 percent; (2) crop insurance for

the commodity is not available; (3) the amount of the producer's annual premium rate is greater than 125 percent of the average premium rate for insurance on that commodity in the county in which the producer is located; (4) the amount of the producer's annual premium is greater than 25 percent of the amount of payment received under the 1988 Act; or, (5) the producer can establish, on appeal to the county Agricultural Stabilization and Conservation committee, that the purchase of crop insurance would impose an undue financial hardship.

The 1988 Act provides that for each person the sum of all 1988 disaster payments made with respect to target price crops, peanuts, sugar beets, sugar cane, tobacco, soybeans, and nonprogram crops shall not exceed $100,000. Additionally, the sum of such payments made and benefits received in accordance with Title VI of the 1949 Act which relate to 1988 livestock feed losses may not exceed $100,000. The 1988 Act also provides that no crop disaster payments are to be made to the extent that livestock emergency benefits have been made available for such loss of crop production.

Producers may elect whether to receive benefits, up to the $100,000 limit under the program and nonprogram crop provisions of the 1988 Act or, in the form of livestock emergency benefits, up to the annual $50,000 limit in accordance with Title VI of the 1949 Act. For the purpose of applying the maximum payment limitation provisions of the 1988 Act such determinations are to be made to the extent possible in accordance with the maximum payment limitation provisions of the Food Security Act of 1985. The regulations which implement the provisions of the 1985 Act for the 1988 crop year are set forth at 7 CFR Part 795.

Adverse 1988 weather conditions may affect the ability of sugar processors to physically operate sugar processing plants. Accordingly, the 1988 Act provides that a producer of the 1988 crops of sugar beets or sugarcane who is unable to process the commodity into sugar due to the inability of local processing plants to process sugar as a result of drought, hail, excessive moisture, or related condition in 1988 shall be eligible for a disaster payment for any loss in sugar production attributable to such inability. These disaster payments are required to be reduced by an amount equal to any proceeds received by the producer from the disposition of that portion of the crop on which disaster payments are made.

Accordingly, 7 CFR Part 1477 specifies the manner in which such payments shall be made. Generally, eligible losses must be directly attributable to the physical inability of the processing plant to operate due to these conditions. Such inability is limited specifically to operation of the processor's sugar extraction equipment and specifically excludes any loss of production directly or indirectly related to the condition of the sugar beets or sugarcane as the result of drought, hail, excessive moisture, or related condition. For example, any loss of sugar extraction due to excessive moisture which occurred while sugar beets were in the field or in storage are not included in this provision.

In order to assure greater accessibility to grain which is pledged as collateral for CCC farmer-owned reserve (FOR) loans, section 303(a) of the 1988 Act provides that once the market price for wheat or a feed grain which is in the FOR Program has been attained at anytime during the 1988 marketing year for such a commodity that producers may repay a FOR loan for that commodity during the remainder of the marketing year without the payment of a penalty, regardless of the then current market price. Accordingly, 7 CFR 1421.756 is added to implement this provision.

Section 303(b) of the 1988 Act also provides for greater access to FOR loan collateral by requiring that CCC allow producers to acquire through the exchange of CCC commodity certificates FOR grain which had been substituted for FOR loan collateral so long as the loan collateral has been pledged and redeemed in the same county. Accordingly, a new § 1421.756 is added to the FOR Program regulations to reflect these provisions.

On April 6, 1988, (53 FR 11239) an interim rule was published which amended 7 CFR Part 1421 to reflect amendments to the 1949 Act which related to the FOR Program. No comments were received in response to the interim rule. Subsequently, on August 30, 1988 (53 FR 34004) 7 CFR 1421.741, which had been amended by the April 6 interim rule, was further amended by a final rule. Accordingly, the April 6 interim rule is adopted without change, except as amended by the August 30 final rule.

Section 322 of the 1988 Act provides that effective beginning with the 1988 crop year with respect to Conservation Reserve Program annual rental payments, section 1234(f) of the Food Security Act of 1985, as amended, is amended to provide that the maximum payment limitation provisions of that section and section 1305(d) of the Agricultural Reconciliation Act of 1987 shall not be applicable to certain payments received by a State, political subdivision, or agency thereof. Such exempt payments are payments which are received under a special conservation reserve enhancement program carried out by that entity that has been approved by the Secretary. Accordingly, the maximum payment limitation provisions of 7 CFR Part 1497 are amended to reflect this change.

List of Subjects

7 CFR Part 1421

Grains, Loan Programs/Agriculture, Price Support Programs, Warehouses.

7 CFR Part 1477

Disaster Payment 1988 Crops.

7 CFR Part 1497

Price Support Programs.

Final Rule

Accordingly, with respect to chapter XIV of Title 7 of the Code of Federal Regulations:

PART 1421—[AMENDED]

1. The authority citation for 7 CFR Part 1421 is revised to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c; secs. 101, 201, 301, 401, 403 and 405 of the Agricultural Act of 1949, as amended, 63 stat. 1051, as amended, 1052 as amended, 1053 as amended, 1054 as amended (7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425); secs. 101A, 105C, and 107D of Pub. L. 99–198, unless otherwise noted.

2. The interim rule amending Part 1421 which was published in the **Federal Register** on April 6, 1988 (53 FR 11239) is adopted as a final rule except to the extent that 7 CFR 1421.741 was revised by the final rule published on September 1, 1988 (53 FR 34004).

3. A new § 1421.756 is added to read as follows:

§ 1421.756 Special rules for 1988 marketing years.

(a) *Release.* Once the release price for a commodity is attained during the 1988 marketing year, producers may repay a loan made in accordance with this subpart at anytime during the remainder of such year without the payment of any penalty, regardless of the then current market price. This section shall not affect in any way the manner in which storage payments and the accrual of interest are determined.

(b) *Certificate exchanges.* During the 1988 marketing year, producers may acquire commodities substituted for commodities originally pledged as collateral for FOR loans made in accordance with this subpart if the substituted commodities have been pledged as a collateral and redeemed within the same county.

4. Part 1477 is revised as follows:

PART 1477—DISASTER PAYMENT PROGRAM FOR 1988 CROPS

Sec.
1477.1 General statement.
1477.2 Administration.
1477.3 Definitions.
1477.4 Availability of disaster payments.
1477.5 Disaster benefits.
1477.6 Establishment of different payment rates and yields for the same nonprogram crop.
1477.7 Filing application for payment.
1477.8 Report of acreage, production disposition, and indemnity payments.
1477.9 Payment limitations.
1477.10 Special provisions for sugar, burley and flue-cured tobacco, and peanuts.
1477.11 Misrepresentation, scheme and device, and fraud.
1477.12 Refunds to CCC.
1477.13 Cumulative liability.
1477.14 Appeals.
1477.15 Liens.
1477.16 Other regulations.
1477.17 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: Sections 201 through 212 of the Disaster Relief Act of 1988 (Public Law 100-387); Sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 52 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c).

§ 1477.1 General statement.

This part implements a Disaster Payment Program for the 1988 crop year as provided by the Disaster Assistance Act of 1988 (Pub. L. 100-387). The purpose of the program is to make disaster payments to eligible producers on a farm that has suffered a loss of production of 1988 crops due to drought, hail, excessive moisture, or related condition in 1988.

§ 1477.2 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (State and county committees).

(b) State and county committees and representatives and employees thereof do not have the authority to modify or waive any of the provisions of this part as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct or require a county committee to correct, any action taken by such county committee which is not in accordance with this part, or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) CCC shall determine all yields and prices determined under this Part and may utilize any agency of the Department of Agriculture in making such determinations. To the extent practicable, CCC will use data provided by the National Agricultural Statistical Service (NASS) and the Farmers Home Administration (FmHA). Any reference in this PART to NASS shall not restrict CCC from using data from other sources.

(e) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1477.3 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words inparting the masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing the reconsititution of farms in Part 719 of this title or in the regulations applicable to the production adjustment programs for feed grains, rice, upland and extra long staple cotton, wheat, and related programs set forth in Part 1413 of this title.

(a) *"Target Price Commodities"* means a crop of wheat, feed grains (corn, grain sorghum, barley, and oats), upland and extra long staple (ELS) cotton, or rice.

(b) *"Actual production"* means the quantity of the crop actually harvested or which could have been harvested as determined by the county committee in accordance with instructions issued by the Deputy Administrator, State and County Operations (Deputy Administrator), Agricultural Stabilization and Conservation Service (ASCS). However, if an eligible producer has actual or appraised production equal to or less than the specified quantity for the following commodities, such production shall be considered to be zero:

(1) Barley—4 bushels per acre.
(2) Corn—7 bushels per acre.
(3) Oats—4 bushels per acre.
(4) Rice—5 hundredweight per acre.
(5) Sorghum—5 bushels per acre.
(6) Soybeans—2 bushels per acre.
(7) Wheat—3 bushels per acre.
(8) Upland and ELS cotton—8% of the farm's program payment yield.

(c) *"Nonprogram crop"* means a crop produced on a farm for sale or exchange on a commercial basis in a large enough quantity to have a substantial impact on the producer's income, as determined by the county committee in accordance with instructions issued by the Deputy Administrator, which is not a crop of a 1988 target price commodity, quota or additional peanuts, sugarcane, sugar beets, tobacco subject to marketing quotas, or soybeans.

(d) *"Disaster payment yield"* means:

(1) For 1988 target price commodities with respect to farms participating and not participating in the 1988 program, the 1988 farm program payment yield determined in accordance with Part 1413 of this title;

(2) For peanuts, the 1988 farm yield determined in accordance with Part 729 of this title;

(3) For sugarcane, sugar beets, and all kinds of tobacco the average of the 1983 through 1987 county average yield as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest;

(4) For soybeans, the average of the county average yield for the years 1985 through 1987, adjusted for adverse weather conditions, in accordance with instructions issued by the Deputy Administrator;

(5) For nonprogram crops, the average of the county average yields for the years 1983 through 1987 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest. However, eligible producers of nonprogram crops may submit production evidence of actual crop yields for any of the immediately three preceding crop years. In such cases, the yield for a farm shall be based on any actual crop yields established by the producer in accordance with instructions issued by the Deputy Administrator.

(e) *"Expected production"* means:

(1) For target price commodities on farms participating in the 1988 Acreage

Reduction Program, the disaster payment yield times the smaller of:

(i) The 1988 permitted acreage for the crop; or

(ii) The sum of the 1988 actual planted acreage and the 1988 prevented planted acreage of the crop as approved by the county committee.

(2) For target price commodities on farms not participating in the 1988 Acreage Reduction Program and for peanuts, sugarcane, sugar beets, soybeans, tobacco other than burley tobacco, and nonprogram crops, except as provided in paragraph (e) (3) through (5) of this section, the disaster payment yield times the sum of:

(i) The 1988 planted acreage of the crop, and

(ii) The 1988 prevented planted acreage credited for disaster payment purposes not to exceed the larger of:

(A) The 1987 planted and approved prevented planted acreage of the crop minus the 1988 planted acreage of the crop, or

(B) The average of the 1985, 1986, and 1987, planted and approved prevented planted acreage of the crop minus the 1988 planted acreage of the crop.

(3) For quota kinds of tobacco other than burley and flue-cured, the expected production as determined according to paragraph (e)(2) of this section shall not exceed the result of multiplying the 1988 effective farm acreage allotment times the disaster payment yield.

(4) For burley tobacco, the smaller of:

(i) The disaster payment yield times the sum of the acreage of burley tobacco:

(A) That was planted on the farm in 1988, including any failed acreage;

(B) For which prevented planted acreage credit is approved by the county committee with respect to the 1988 crop; and

(C) Determined by dividing the quantity of any unmarketed tobacco on hand from the 1987 crop by the disaster payment yield, or

(ii) The 1988 effective farm marketing quota, including the effective quota resulting from a transfer of quota after July 1 under the natural disaster transfer provisions of Part 726 of this Title.

(5) For flue-cured tobacco, the smaller of:

(i) The 1988 effective farm marketing quota, including the effective quota resulting from a transfer of quota after June 30 under the natural disaster provisions of Part 725 of this Title; or

(ii) The sum of:

(A) The quantity determined under the provisions of paragraph (e)(2) of this section,

(B) The quantity of any unmarketed tobacco on hand from the 1987 crop, and

(C) The amount by which the farm's 1988 basic quota exceeds the 1987 basic quota.

(6) With respect to crops planted in a rotation, the most recent corresponding year(s) in the rotation shall be substituted for the 1985, 1986, and 1987 crop for purposes of determining the prevented planted acreage credit.

(f) *"Eligible disaster"* means drought, hail, excessive moisture, including insect infestation or disease caused by these perils.

(g) *"Eligible Producer"* means, with respect to a crop for which an application for disaster payment has been made under this part, a person who as owner, landlord, tenant, or sharecropper is entitled to share in such crops, or the proceeds therefrom, available for marketing from the farm or would have been if such crop had been produced. However, such a person, as defined in Part 795 of this Title, who has annual gross income in excess of $2.0 million shall not be eligible to receive disaster payments under this Part. For purposes of this determination, annual gross income means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income from all sources.

§ 1477.4 Availability of disaster payments.

Disaster payments will be made available to eligible producers of 1988 target price commodities, peanuts, tobacco, sugarcane, sugar beets, soybeans, and nonprogram crops who suffered losses because of an eligible disaster in 1988 in accordance with the Disaster Assistance Act of 1988.

§ 1477.5 Disaster benefits.

(a) *Eligibility for disaster payments.* Disaster payments for prevented planting and low yield losses on 1988 crops are authorized to be made to producers if:

(1) The farm operator submits an Application for Disaster Credit (Form ASCS–574), in accordance with instructions issued by the Deputy Administrator;

(2) The farm operator submits a report of production and disposition (Form ASCS–658) is accordance with § 1477.11; and

(3) The county committee determines that because of an eligible disaster condition in 1988, producers on a farm were:

(i) Prevented from planting an eligible commodity, or

(ii) Unable to harvest at least 65 percent of the expected production, as determined in accordance with instructions issued by the Deputy Administrator.

(b) *Loss of production.* (1) The loss of production that shall be used in making a disaster payment shall be that quantity of production in excess of 35 percent of expected production of a commodity that producers on a farm were unable to harvest due to a reduced yield or the producers were prevented from planting to such crop as a result of an eligible disaster.

(2) The loss of production for peanuts shall be prorated between quota peanuts and additional peanuts. The loss of production of quota peanuts shall be determined by multiplying the total loss of production for peanuts times a factor determined by dividing the effective farm poundage quota, prior to any fall transfer, by the expected production for the farm. The loss of production for additional peanuts shall be determined by subtracting the loss of quota production from the total loss of production.

(3) If peanut quota is transferred from a farm under the fall transfer provisions in Part 729 of this title, the loss of production of quota peanuts determined in paragraph (b)(2) of this section shall be reduced to the extent of such quantity transferred. To the extent of the quantity available, the reduction shall be made from the loss of production which otherwise would have been paid at the rate based upon 90 percent of the basic payment rate for quota peanuts and any remainder of the quantity to be reduced shall be reduced from the loss of production which otherwise would have been paid at the rate based upon 65 percent of the basic payment rate for quota peanuts. If the transferred quota exceeds the loss of production of quota peanuts, no further reductions are required after the loss of production of quota peanuts has been completely voided.

(c) *Basic payment rate.* The disaster basic payment rate shall be:

(1) The established target prices for the 1988 target price commodities for producers on farms participating in the 1988 program;

(2) The basic county loan rates for the 1988 target price commodities for producers on farms not participating in the 1988 program;

(3) The 1988 National loan rates for quota and additional peanuts and quota kinds of tobacco;

(4) The applicable support price for sugar beets and sugarcane, determined by regions, for the 1988 crop.

(5) For all other eligible crops, a rate equal to the simple average price received by producers for the marketing years for the immediately preceding five crops of the commodity, excluding the highest and lowest average prices in such period.

(d) *Payment computation.* (1) Disaster payments shall be made in an amount determined by multiplying the amount of loss: (i) In excess of 35 percent and up to and including 75 percent, times 65 percent of the basic payment rate; and (ii) In excess of 75 percent, times 90 percent of the basic payment rate.

(2) With respect to eligible producers of target price commodities who are not participants in the 1988 acreage reduction programs, such computed disaster payment amount shall be reduced by a factor equal to the acreage reduction factor which was applicable for the 1988 crop of such commodities.

(e) *Division of payments.* Each eligible producer's share of a disaster payment shall be based on the eligible producer's share of the crop or the proceeds therefrom or, if no crop was produced, the share which the eligible producer would have otherwise received if the crop had been produced.

§ 1477.6 Establishment of Different Payment Rates and Yields for the Same Nonprogram Crop.

Separate payment rates and yields for the same nonprogram crop shall be established, in accordance with instructions issued by the Deputy Administrator, when there is supporting NASS data available to justify establishing such rates and yields.

§ 1477.7 Filing Application for Payment.

(a) *Place of filing.* Applications for payment shall be filed by the applicant with the county ASCS office serving the county where the producer's farm is located for administrative purposes.

(b) *Time filing.* An application for payment shall be filed as soon as practicable after the producer's eligibility has been established in accordance with 1477.5(a). Applications for payment must be filed no later than March 31, 1989.

(c) Eligible producers who did not request an advance deficiency payment for the 1988 crops of wheat, feed grains, upland cotton, or rice prior to August 11, 1988, may request such payments by making such a request in the county office by October 27, 1988.

(d) Any eligible producer who elected after March 11, 1988, to devote all or a portion of a farm's permitted wheat or permitted feed grain acreage to conservation or other uses in accordance with Part 1413 of this title may request that disaster payments be made available under this part with request to such acreage in lieu of any payment made available under Part 1413 of this title if a written request is received from the producer by the county office by October 27, 1988.

§ 1477.8 Report of acreage, production disposition, and indemnity payments.

(a)(1) Eligible producers shall report, in accordance with instructions issued by the Deputy Administrator, the acreage, production, and disposition of all commodities produced in 1988 for which an application for a disaster payment is filed;

(2) If there has been a disposition of crop production through commercial channels, the eligible producer must furnish documentary evidence of such disposition in order to verify the information provided on the report. Acceptable evidence shall include, but is not limited to, such items as the original or a copy of commercial receipts, peanut and tobacco marketing cards, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries;

(3) If there has been a disposition of crop production other than through commercial channels, the eligible producer must furnish such documentary evidence as the county committee determines to be necessary in order to verify the information provided by the producer.

(b) Eligible producers who have purchased crop insurance with respect to a crop for which a disaster payment is made must present evidence of the net amount of indemnity payment received (gross indemnity less premium paid) or to be received for each such crop in accordance with instructions issued by the Deputy Administrator.

§ 1477.9 Payment limitations.

(a) Disaster payments made to eligible producers shall be reduced as provided in this section. For the purpose of making such payment reductions, the term "producer" shall be considered to mean the term "person" as defined in Part 795 of this title. Payments for each eligible producer for each eligible commodity shall be reduced by the amount by which the sum of the disaster payment and the net amount of crop insurance indemnity payments (gross indemnity less premium) exceeds 100 percent of the expected production times:

(1) For eligible producers participating in the 1988 programs for target price commodities, the 1988 target price for the commodity;

(2) For eligible producers of target price commodities who are not participating in the 1988 programs, the basic loan rate established for the 1988 crop year;

(3) For soybeans, nonquota kinds of tobacco, and nonprogram crops, the simple average price received by producers for the marketing years for the immediately preceding five crops of the commodity, excluding the highest and lowest average prices in such period;

(4) For kinds of tobacco for which price support is available, the National price support level for the respective kind of tobacco;

(5) For peanuts, the applicable National price support level for quota and additional peanuts, as applicable. However, if both quota and additional peanuts are included in the expected production, the computation will be the sum of:

(i) The National price support level for quota peanuts times the effective quota, and

(ii) The National price support level for additional peanuts times the result of subtracting the effective quota from the expected production.

(6) For sugarcane and sugar beets, the applicable support price, determined by region, for the 1988 crop.

(b) No person shall receive payments attributable to lost production under this part to the extent that such person receives benefits on such lost production under the livestock emergency provisions of Title VI of the Agricultural Act of 1949.

(c) No person shall receive payments under this part, when combined with any benefits received under the livestock emergency provisions of the Agricultural Act of 1949, in excess of $100,000. Persons subject to the provisions of the preceding sentence may elect the provisions under which such payments or benefits shall be received by notifying the county office by March 31, 1989.

(d) For the purpose of determining the payment limitation imposed by this section, disaster payments shall be attributed to each eligible producer in accordance with §1477.5(f) of this Part. The reduction of any eligible producer's disaster payment shall not increase the disaster payment made to any other producer.

§ 1477.10 Special provisions for sugar, burley and flue-cured tobacco, and peanuts.

(a)(1) For sugarcane and sugar beets, producers of sugarcane or sugar beets who are unable to process such crop into sugar due to the inability of local processing plants to process sugar as a result of eligible disaster in 1988 shall be eligible to receive a disaster payment in accordance with § 1477.5 for crop loss of sugar production attributable to such inability. Any disaster payment made under this section shall be reduced by an amount equal to any proceeds received by the producer for the disposition of the crop in which such disaster payment is made.

(2) The inability of a processor to process a producer's crop of sugarcane or sugar beets shall be determined by the Deputy Administrator. Such inability must be directly related to the conditions specified in paragraph (a)(1) of this section and is limited to the inability to operate the sugar extraction equipment located within the processing plant. Any inability to process due to deterioration of sugarcane or sugar beets while such crop is in the field or in storage facilities operated by the producer or processor is also excluded.

(b)(1) For burley and flue-cured tobacco, the undermarketings from the 1988 crop that may be considered when determining the 1989 effective farm marketing quota shall be the 1988 actual undermarketing less the quantity of the loss of production for which a 1988 disaster payment is made for the respective kind of tobacco.

(2) If quota is leased and transferred from the farm under natural disaster provisions of Parts 725 or 726 of this title, any disaster payment that was determined before such lease and transfer was approved shall be recomputed. The farm marketing quota that is in effect such lease and transfer shall be used when recomputing the disaster payment. The amount of any overpayment that results from the recomputation shall be refunded with interest as provided in § 1477.12(b) of this part.

(c)(1) For peanuts, the undermarketings from the 1988 crop that may be claimed when determining future poundage quotas shall be the 1988 actual undermarketings less the quantity of the loss of production for which a 1988 disaster is made on the basis of the national support level for quota peanuts.

(2) If quota is transferred from the farm under the fall transfer provisions for Part 729 of this title, any disaster payment that was determined before such transfer was approved shall be recomputed according to the provisions in § 1477.5 of this part. The amount of any overpayment that results from the recomputation shall be refunded with interest as provided in § 1477.12(b) of this part.

§ 1477.11 Misrepresentations, scheme and device, and fraud.

(a) If CCC determines that any producer has erroneously represented any fact or has adopted, participated in, or benefited from, any scheme or device which has the effect of defeating, or is designed to defeat the purpose of this part, such producer shall not be eligible for disaster payments under this part and all such payments previously made to any such producer shall be refunded to CCC. The amount paid to CCC shall include any interest and other amounts as determined in accordance with this part.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing CCC to make a payment which CCC under this part otherwise would not make, all amounts paid by CCC to any such producer shall be refunded to CCC together with interest and other amounts as determined in accordance with this part, and no further disaster payments shall be made to such producer by CCC.

(c) If the county committee determines that any producer has adopted or participated in any practice which tends to defeat the purpose of the program established in accordance with this part, the county committee shall withhold or require to be refunded all or part of the payments which otherwise would be due the producer under this part.

§ 1477.12 Refunds to CCC.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, all such payments made to the producer shall be refunded to CCC, together with interest.

(b) Interest shall be charged with respect to any refund which is determined to due CCC at the rate of interest which CCC is required to pay for its borrowings from the United States Treasury as of the date of the disbursement by CCC of the moneys to be refunded. Interest shall accrue from the date of such disbursement by CCC. Upon the sending of the notification of the debt by CCC to the producer, the account shall bear late payment charges to be assessed in accordance with the provisions of, and subject to the rates prescribed in, Part 1403 of this title. If, for any reason, no late payment charges may be assessed with respect to such account under the provisions of Part 1403 of this title, additional charges on the account will accrue at the rate equal to the current rate for CCC borrowings from the United States Treasury plus three percent per annum.

(c) Producers must refund to CCC any excess payments made by CCC.

(d) In the event that the loss of production was established as a result of erroneous information provided by any person to the county ASCS office or was erroneously computed by such office, the loss of production shall be recomputed and the payment due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such recomputation shall be remitted to CCC.

§ 1477.13 Cumulative liability.

The liability of any producer for any payment or refund which is determined in accordance with this part to be due to CCC shall be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1477.14 Appeals.

Reconsideration and review of all determinations made in accordance with this part shall be made in accordance with Part 780 of this title.

§ 1477.15 Liens.

Any payment which is due any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, and the proceeds thereof, which may be asserted by any creditor, except agencies of the United States Government.

§ 1477.16 Other regulations.

The following regulations and amendments thereto shall also be applicable to this part:

(a) 7 CFR Part 12, Highly Erodible Land and Wetland Conservation;

(b) 7 CFR Part 13, Setoffs and Withholdings;

(c) 7 CFR Part 707, Payments Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent;

(d) 7 CFR Part 719, Reconstitution of Farms, Allotments, Normal Crop Acreage and Preceding Year Planted Acreage;

(e) 7 CFR Part 724, Fire-cured, dark air-cured, Virginia sun-cured, cigar-binder (types 51 and 52), cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco;

(f) 7 CFR Part 725, Flue-cured tobacco;

(g) 7 CFR Part 726, Burley tobacco;

(h) 7 CFR Part 729, Peanuts;

(i) 7 CFR Part 780, Appeal Regulations;

(j) 7 CFR Part 790, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(k) 7 CFR Part 795, Payment Limitation;

(l) 7 CFR Part 796, Denial of Program Eligibility for Controlled Substance Violation;

(m) 7 CFR Part 1403, Interest on Delinquent Debts;

(n) 7 CFR Part 1413, Feed Grain, Rice, Upland and Extra Long Staple Cotton, and Wheat; and

(o) 7 CFR Part 1470, Commodity Certificates, In-Kind Payments, and Other Forms of Payments.

§ 1477.17 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements of this part shall be submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and it is anticipated that an OMB Number will be assigned.

PART 1497—[AMENDED]

5. The authority citation for 7 CFR Part 1497 is revised to read as follows:

Authority: Sections 1001 and 1234 of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended, 99 Stat. 1511, as amended (7 U.S.C. 1308, 16 U.S.C. 3834).

6. A new paragraph (h) added to § 1497.1 reads as follows:

§ 1497.1 [Amended]

* * * * *

(h) This part is not applicable to rental payments made in accordance with a Conservation Reserve Program contract if such payments are made to a State, political subdivision, or agency thereof in connection with agreements entered into under a special conservation reserve enhancement program carried out by such State, political subdivision, or agency thereof that has been approved by the Secretary, or a designee of the Secretary.

Signed at Washington, DC, on September 22, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-22120 Filed 9-23-88; 10:21 am]

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federal register

Tuesday
September 27, 1988

Part V

General Services Administration

Changes in Federal Travel Regulations; Notice

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 29]

Changes to Federal Travel Regulations

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of changes to Federal Travel Regulations (FTR).

SUMMARY: The General Services Administration (GSA) has issued GSA Bulletin FPMR A-40, Supplement 29, transmitting changed pages to amend the Federal Travel Regulations (FTR), FPMR 101-7, to increase the standard CONUS maximum per diem rate from $60 to $66, to increase the maximum lodging allowance in certain existing per diem localities, to increase the meals and incidental expenses (M&IE) rates by $1 from $25 and $33 to $26 and $34, to add new per diem localities, and to delete a number of previously designated per diem localities because of the increased lodging amount in the standard CONUS rate.

EFFECTIVE DATE: These amendments to the FTR are effective for travel (including travel incident to a change of official station) performed on or after October 9, 1988.

FOR FURTHER INFORMATION CONTACT: Staff members, Travel and Transportation Regulations Staff (FBR), FTS 557-1253 or Commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: GSA, in consultation with the Office of Management and Budget, has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in a major significant adverse effect on the national economy. 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 cost to society.

Background information.

Pub. L. 99-234 (99 Stat. 1756), January 2, 1986, among other things, provided the Administrator of General Services with authority to establish maximum subsistence rates for domestic travel and procedures for reimbursing subsistence expenses incurred by Federal civilian employees during official travel.

Explanation of Changes

Supplement 29 amends the FTR as follows:

a. Part 1-7 is revised to make the following changes:

(1) Increase the standard CONUS maximum per diem rate from $60 to $66. This represents a $5 increase in the maximum lodging amount and a $1 increase in the M&IE rate.

(2) To change the meal allowance table in paragraph 1-7.5(b) to reflect the $1 increase in the M&IE rates.

b. Appendix 1-A is revised to make the following changes:

(1) To increase the standard CONUS rate to $66, to increase the M&IE rate by $1, to increase the maximum per diem rates in a number of existing localities, to add additional per diem localities, and to delete a number of previously designated per diem localities because of the increased maximum lodging amount in the standard CONUS rate.

c. Paragraph 2-5.4c is revised to reflect the increased standard CONUS rate applicable to the occupancy of temporary quarters within CONUS.

d. In addition to the above revisions, other clarifying and/or editorial changes have been made where indicated by change lines and highlighted in bold print.

Accordingly, the Federal Travel Regulations are amended as indicated in the changes that follow.

Dated: August 2, 1988.

John Alderson,

Acting Administrator of General Services.

For the reasons stated above, the Federal Travel Regulations are amended as follows:

Chapter 1. Travel Allowances

1. *Authority:* Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Executive Order No. 11609, July 22, 1971; 5 U.S.C. 5702; 5 U.S.C. 5707.

Part 7. Per diem Allowances

2. Paragraph 1-7.3a is revised to read as follows:

1-7.3 *Rate adjustment requests for travel within CONUS.*

a. Federal agencies may submit a request to GSA for review of the subsistence costs in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in Appendix 1-A will be surveyed on an annual basis by GSA to determine whether rates are adequate. Requests for subsistence rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Federal Supply Service, Attn: Travel and Transportation Regulations Staff (FBR), Washington, DC 20406. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA the requests from bureaus, subagencies, etc.

* * * * *

3. Paragraph 1-7.5 is amended by revising subparagraph 1-7.5a and 1-7.5a(2)(b) to read as follows:

1-7.5. * * *

a. *Maximum CONUS per diem rates (Appendix 1-A).* Maximum per diem rates prescribed under 1-7.2a for travel within CONUS are listed on appendix 1-A for certain specific localities. For all CONUS locations not specifically listed or encompassed by the defined boundaries of a listed location, a standard maximum per diem rate of $66 is prescribed. For all CONUS locations, whether or not they are specifically listed in Appendix 1-A, the standard CONUS rate applies in certain specified travel circumstances (see b(2), below) and for subsistence allowances incident to a change of official station (see Parts 2-2, 2-4, and 2-5). The following elements comprise the per diem allowance:

(1) * * *

(2) * * *

(a) * * *

(b) The M&IE rate shall be allocated as shown below when making necessary deductions from the per diem for meals furnished to the employee without charge by the Federal Government (see 1-7.4d and 1-7.7b). The total amount of deductions made on partial days shall not cause the employee to receive less than the amount allocated for incidental expenses.

M&IE rates: Total	$26	$34
Breakfast	5	7
Lunch	5	7
Dinner	14	18
Incidentals	2	2

* * * * *

Chapter 2. Relocation Allowances

Part 5. Subsistence While Occupying Temporary Quarters

4. Paragraphs 2-5.4c(1)(a), (2) * NOTE and (3)(a), (b), (c), and (d) are amended to read as follows:

2-5.4 *Allowable amount.*

a. * * *

b. * * *

c. * * *

(1) * * *

(a) For temporary quarters located in the conterminous United States, the applicable maximum per diem rate is the standard CONUS rate ($66) prescribed under 1-7.5a.

* * * *

(2) * * *

* * * * *

* NOTE. If the temporary quarters occupied are in the conterminous United States, the maximum daily rates prescribed under (a), (b), (c), and (d), above, are $66, $44, $44, and $33, respectively.

(3) * * *

(a) For an employee, or unaccompanied spouse, the daily rate shall not exceed $49.50;

(b) For an accompanying spouse, the daily rate shall not exceed $33;

(c) For each other family member 12 years of age or older, the daily rate shall not exceed $33; and

(d) For each family member under 12 years of age, the daily rate shall not exceed $24.75.

* * * * *

Appendix 1-A, Prescribed Maximum Per Diem Rates for Conus

5. Appendix 1-A of the FTR is revised to read as follows:

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APPENDIX 1-A, PRESCRIBED MAXIMUM PER DIEM RATES FOR CONUS

The maximum rates listed below are prescribed under paragraph 1-7.2 of these regulations (Federal Travel Regulations (FTR)) for reimbursement of subsistence expenses incurred during official travel within CONUS (the conterminous United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The MI&E rate shown in column (b) is a fixed amount allowed for meals and incidental expenses related to subsistence. The per diem payment calculated in accordance with Part 1-7 of the FTR for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c).

Per Diem Locality		Maximum Lodging Amount (a)	+	M&IE Rate (b)	=	Maximum Per Diem Rate (c) 4/
CONUS, Standard rate (Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, under certain specified travel circumstances and for certain relocation subsistence allowances. See Parts 1-7, 2-2, 2-4 and 2-5 of the FTR.)		$40		$26		$66
Key City 1/	County and/or other defined location 2/ 3/					
ALABAMA						
Anniston	Calhoun	41		26		67
Birmingham	Jefferson	50		26		76
Gulf Shores	Baldwin	42		26		68
Huntsville	Madison	48		26		74
Montgomery	Montgomery	43		26		69
Sheffield	Colbert	63		26		89
ARIZONA						
Chinle	Apache	44		26		70
Kayenta	Navajo	56		26		82
Page/Flagstaff	Coconino	47		26		73
Phoenix/Scottsdale	Maricopa	52		26		78
Prescott	Yavapai	48		26		74
Sierra Vista	Cochise	43		26		69
Tucson	Pima County; Davis-Monthan AFB	48		26		74
Yuma	Yuma	43		26		69
ARKANSAS						
Fort Smith	Sebastian	44		26		70
Helena	Phillips	47		26		73
Hot Springs	Garland	45		26		71
Little Rock	Pulaski	48		26		74
CALIFORNIA						
Chico	Butte	46		26		72
Death Valley	Inyo	88		34		122
El Centro	Imperial	46		26		72
Fresno	Fresno	50		26		76
Los Angeles	Los Angeles, Kern, Orange & Ventura Counties; Edwards AFB; Naval Weapons Center & Ordnance Test Station, China Lake	80		34		114
Modesto	Stanislaus	50		26		76
Monterey	Monterey	66		26		92
Oakland	Alameda, Contra Costa & Marin	64		34		98
Palm Springs	Riverside	72		34		106
Redding	Shasta	51		26		77
Sacramento	Sacramento	54		34		88
San Diego	San Diego	67		34		101
San Francisco	San Francisco	78		34		112

Per Diem Locality		Maximum Lodging Amount		M&IE Rate		Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)	=	(c) 4/
San Jose	Santa Clara	57		34		91
San Luis Obispo	San Luis Obispo	53		34		87
San Mateo	San Mateo	66		34		100
Santa Barbara	Santa Barbara	74		34		108
Santa Cruz	Santa Cruz	66		34		100
South Lake Tahoe	Dorado	52		34		86
Stockton	San Joaquin	45		26		71
Tahoe City	Placer	46		34		80
Vallejo	Solano	47		26		73
Victorville/Barstow	San Bernardino	49		26		75
Visalia	Tulare	60		26		86
West Sacramento	Yolo	49		26		75
Yosemite Nat'l Park	Mariposa	68		34		102
COLORADO						
Aspen	Pitkin	75		34		109
Boulder	Boulder	60		34		94
Colorado Springs	El Paso	49		26		75
Denver	Denver, Adams, Arapahoe & Jefferson	65		34		99
Durango	La Plata	48		26		74
Glenwood Springs	Garfield	45		26		71
Gunnison	Gunnison	43		26		69
Keystone/Silverthorne	Summit	52		34		86
Pagosa Springs	Archuleta	45		26		71
Steamboat Springs	Routt	48		26		74
Vail	Eagle	80		34		114
CONNECTICUT						
Bridgeport/Danbury	Fairfield	71		26		97
Hartford	Hartford & Middlesex	52		34		86
New Haven	New Haven	67		26		93
New London/Groton	New London	50		26		76
Putnam/Danielson	Windham	58		26		84
Salisbury	Litchfield	49		34		83
DELAWARE						
Dover	Kent	44		26		70
Lewes	Sussex	46		26		72
Wilmington	New Castle	63		26		89
DISTRICT OF COLUMBIA						
Washington, DC (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) (see also Maryland and Virginia)		87		34		121
FLORIDA						
Altamonte Springs	Seminole	62		26		88
Bradenton	Manatee	60		26		86
Cocoa Beach	Brevard	50		26		76
Daytona Beach/Ormond Beach/New Smyrna	Volusia	41		26		67
Fort Lauderdale	Broward	57		26		83
Fort Myers	Lee	58		26		84
Fort Pierce	Saint Lucie	47		26		73
Fort Walton Beach	Okaloosa	50		26		76
Gainesville	Alachua	48		26		74
Jacksonville	Duval County; Naval Station Mayport	46		26		72
Kissimmee	Osceola	46		26		72
Lakeland	Polk	41		26		67
Miami	Dade & Monroe	55		34		89
Naples	Collier	62		26		88
Orlando	Orange	54		26		80
Panama City	Bay	50		26		76
Pensacola	Escambia	44		26		70

Per Diem Locality		Maximum Lodging Amount		M&IE Rate		Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)	=	(c) 4/
Punta Gorda	Charlotte	57		26		83
Saint Augustine	Saint Johns	49		26		75
Sarasota	Sarasota	54		26		80
Stuart	Martin	62		26		88
Tallahassee	Leon	45		26		71
Tampa/St. Petersburg	Hillsborough & Pinellas	52		26		78
West Palm Beach	Palm Beach	62		34		96
GEORGIA						
Albany	Dougherty	48		26		74
Athens	Clarke	41		26		67
Atlanta	Clayton, De Kalb, Fulton & Cobb	72		34		106
Augusta	Richmond	44		26		70
Brunswick	Glynn	43		26		69
Columbus	Muscogee County	42		26		68
Lawrenceville	Gwinnett	46		26		72
Savannah	Chatham	42		26		68
St. Marys	Camden County; The Naval Submarine Base, Kings Bay	46		26		72
Waycross	Ware	43		26		69
IDAHO						
Boise	Ada	46		26		72
Coeur d'Alene	Kootenai	43		26		69
Ketchum/Sun Valley	Blaine	51		26		77
Pocatello	Bannock	45		26		71
ILLINOIS						
Alton	Madison	48		26		74
Champaign/Urbana	Champaign	43		26		69
Chicago	Du Page, Cook & Lake	83		34		117
Danville	Vermilion	43		26		69
Dixon	Lee	43		26		69
Macomb	McDonough	41		26		67
Mattoon	Coles	46		26		72
Peoria	Peoria	55		26		81
Rockford	Winnebago	48		26		74
Rock Island/Moline	Rock Island	50		26		76
Springfield	Sangamon	48		26		74
INDIANA						
Anderson	Madison	48		26		74
Bloomington	Monroe	45		26		71
Charlestown/ Jeffersonville	Clark County; Indiana Army Ammunition Plant	47		26		73
Columbus	Bartholomew	41		26		67
Elkhart	Elkhart	52		26		78
Evansville	Vanderburgh	43		26		69
Fort Wayne	Allen	54		26		80
Gary	Lake	42		26		68
Indianapolis	Marion County; Fort Benjamin Harrison	57		26		83
Jasper	Dubois	41		26		67
Lafayette	Tippecanoe	49		26		75
Muncie	Delaware	50		26		76
Nashville	Brown	52		26		78
Terre Haute	Vigo	44		26		70
South Bend	St. Joseph	50		26		76
IOWA						
Bettendorf/Davenport	Scott	44		26		70
Cedar Rapids	Linn	41		26		67
Des Moines	Polk	50		26		76
Iowa City	Johnson	41		26		67
Sioux City	Woodbury	41		26		67

Per Diem Locality		Maximum Lodging Amount		M&IE Rate		Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)	=	(c) 4/
KANSAS						
Kansas City	Johnson & Wyandotte (See also Kansas City, MO)	60		26		86
Manhattan	Riley	44		26		70
Topeka	Shawnee	43		26		69
Wichita	Sedgwick	54		26		80
KENTUCKY						
Covington	Kenton	46		26		72
Frankfort	Franklin	43		26		69
Hopkinsville	Christian County; Fort Campbell	45		26		71
Lexington	Fayette	52		26		78
Louisville	Jefferson	47		26		73
LOUISIANA						
Alexandria	Rapides Parish	43		26		69
Baton Rouge	East Baton Rouge Parish	50		26		76
Bossier City	Bossier Parish	57		26		83
Gonzales	Ascension Parish	51		26		77
Lafayette	Lafayette Parish	41		26		67
Lake Charles	Calcasieu Parish	42		26		68
Monroe	Ouachita Parish	41		26		67
New Orleans	Parishes of Jefferson, Orleans, Plaquemines & St. Bernard	52		34		86
Shreveport	Caddo Parish	51		26		77
Slidell	St. Tammany Parish	42		26		68
MAINE						
Auburn	Androscoggin	56		26		82
Augusta	Kennebec	45		26		71
Bangor	Penobscot	48		26		74
Bar Harbor	Hancock	60		26		86
Bath	Sagadahoc	64		26		90
Kittery	Portsmouth Naval Shipyard (See also Portsmouth, NH)	56		26		82
Portland	Cumberland	63		26		89
Rockport	Knox	62		26		88
Wiscasset	Lincoln	42		26		68
MARYLAND						
(For the counties of Montgomery and Prince Georges, see District of Columbia)						
Annapolis	Anne Arundel	70		34		104
Baltimore	Baltimore & Harford	59		34		93
Columbia	Howard	87		34		121
Cumberland	Allegany	45		26		71
Easton	Talbot	48		26		74
Frederick	Frederick	54		26		80
Hagerstown	Washington	48		26		74
Lexington Park/St. Inigoes/Leonardtown	St. Marys	51		26		77
Lusby	Calvert	51		26		77
Ocean City	Worcester	85		34		119
Salisbury	Wicomico	47		26		73
Waldorf	Charles	51		26		77
MASSACHUSETTS						
Andover	Essex	81		34		115
Boston	Middlesex, Norfolk & Suffolk	81		34		115
Greenfield	Franklin	51		26		77
Hyannis	Barnstable	56		26		82
Martha's Vineyard/ Nantucket	Dukes & Nantucket	96		34		130
New Bedford	Bristol	46		26		72
Northampton	Hampshire	52		26		78

Per Diem Locality		Maximum Lodging Amount		M&IE Rate		Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)	=	(c) 4/
Pittsfield	Berkshire	48		26		74
Plymouth	Plymouth	86		26		112
Springfield	Hampden	57		26		83
Worcester	Worcester	57		26		83
MICHIGAN						
Ann Arbor	Washtenaw	63		26		89
Battle Creek	Calhoun	42		26		68
Bay City	Bay	42		26		68
Boyne City	Charlevoix	62		26		88
Cadillac	Wexford	48		26		74
Detroit	Wayne	66		34		100
Gaylord	Otsego	53		26		79
Grand Rapids	Kent	48		26		74
Houghton Lake	Roscommon	54		26		80
Jackson	Jackson	49		26		75
Kalamazoo	Kalamazoo	57		26		83
Lansing/East Lansing	Ingham	48		26		74
Mackinac Island	Mackinac	54		26		80
Midland	Midland	51		26		77
Mount Pleasant	Isabella	43		26		69
Pontiac	Oakland	48		26		74
Port Huron	St. Clair	42		26		68
Saginaw	Saginaw	46		26		72
St. Joseph/Benton Harbor/Niles	Berrien	45		26		71
Traverse City	Grand Traverse	55		26		81
Warren	Macomb	43		26		69
MINNESOTA						
Bemidji	Beltrami	42		26		68
Brainerd	Crow Wing	42		26		68
Duluth	St. Louis	44		26		70
Minneapolis/St. Paul	Anoka, Hennepin, & Ramsey Counties; Fort Snelling Military Reservation & Navy Astronautics Group (Detachment BRAVO), Rosemount	54		26		80
Rochester	Olmsted	53		26		79
MISSISSIPPI						
Jackson	Hinds	50		26		76
Natchez	Adams	47		26		73
Vicksburg	Warren	41		26		67
MISSOURI						
Cape Girardeau	Cape Girardeau	43		26		69
Columbia	Boone	49		26		75
Jefferson City	Cole	46		26		72
Kansas City	Clay, Jackson & Platte (See also Kansas City, KS)	60		26		86
Osage Beach	Camden	64		26		90
Springfield	Greene	51		26		77
St. Louis	St. Charles & St. Louis	59		26		85
MONTANA						
Great Falls	Cascade	41		26		67
NEBRASKA						
Lincoln	Lancaster	41		26		67
Omaha	Douglass	50		26		76
NEVADA						
Elko	Elko	46		26		72
Las Vegas	Clark County; Nellis AFB	69		34		103
Reno	Washoe	44		26		70

Per Diem Locality		Maximum Lodging Amount		M&IE Rate		Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)	=	(c) 4/
NEW HAMPSHIRE						
Concord	Merrimack	51		26		77
Conway	Carroll	81		26		107
Durham	Strafford	67		26		93
Laconia	Belknap	64		26		90
Manchester	Hillsborough	59		26		85
Portsmouth/Newington	Rockingham County; Pease AFB (See also Kittery, ME)	56		26		82
NEW JERSEY						
Atlantic City	Atlantic	104		34		138
Belle Mead	Somerset	62		26		88
Camden	Camden	52		26		78
Dover	Morris County; Picatinny Arsenal	62		26		88
Eatontown	Monmouth County; Fort Monmouth	50		34		84
Edison	Middlesex	50		34		84
Millville	Cumberland	45		26		71
Moorestown	Burlington	68		26		94
Newark	Bergen, Essex, Hudson, Passaic & Union	78		34		112
Ocean City/Cape May	Cape May	90		34		124
Princeton/Trenton	Mercer	80		34		114
Salem	Salem	59		26		85
Tom's River	Ocean	77		26		103
NEW MEXICO						
Albuquerque	Bernalillo	59		26		85
Cloudcroft	Otero	64		34		98
Farmington	San Juan	49		26		75
Gallup	McKinley	47		26		73
Grants	Cibola	41		26		67
Las Cruces/White Sands	Dona Ana	43		26		69
Las Vegas	San Miguel	44		26		70
Los Alamos	Los Alamos	46		26		72
Raton	Colfax	52		26		78
Santa Fe	Santa Fe	64		34		98
Taos	Taos	49		26		75
Tucumcari	Quay	46		26		72
NEW YORK						
Albany	Albany	61		26		87
Batavia	Genesee	55		26		81
Binghampton	Broom	55		26		81
Buffalo	Erie	50		26		76
Canton	St. Lawrence	48		26		74
Corning	Steuben	58		26		84
Elmira	Chemung	49		26		75
Glens Falls	Warren	45		26		71
Ithaca	Tompkins	59		26		85
Jamestown	Chautauqua	41		26		67
Kingston	Ulster	56		26		82
Lake Placid	Essex	72		26		98
Monticello	Sullivan	54		34		88
New York City	The boroughs of Bronx, Brooklyn, Manhattan, Queens & Staten Island; Nassau & Suffolk Counties	107		34		141
Niagara Falls	Niagara	57		26		83
Poughkeepsie	Dutchess	68		26		94
Rochester	Monroe	63		26		89
Saratoga Springs	Saratoga	45		34		79
Schenectady	Schenectady	55		26		81
Syracuse	Onondaga	57		26		83
Troy	Rensselaer	57		26		83

Per Diem Locality		Maximum Lodging Amount		M&IE Rate		Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)	=	(c) 4/
Utica	Oneida	56		26		82
Watertown	Jefferson	49		26		75
Watkins Glen	Schuyler	72		26		98
West Point	Orange	44		26		70
White Plains	Westchester	87		34		121
NORTH CAROLINA						
Asheville	Buncombe	45		26		71
Charlotte	Mecklenburg	58		26		84
Duck	Dare	57		26		83
Elizabeth City	Pasquotank	53		26		79
Greenville	Pitt	59		26		85
Havelock	Craven	43		26		69
High Point/Greensboro	Guilford	54		26		80
Jacksonville	Onslow	42		26		68
Kinston	Lenoir	46		26		72
Morehead City	Carteret	53		26		79
Raleigh/Durham/ Chapel Hill	Wake, Durham & Orange	56		26		82
Wilmington	New Hanover	45		26		71
Winston-Salem	Forsyth	49		26		75
NORTH DAKOTA						
Bismarck	Burleigh	44		26		70
Fargo	Cass	52		26		78
Grand Forks	Grand Forks	46		26		72
Minot	Ward	48		26		74
OHIO						
Akron	Summit	54		26		80
Bellevue/Norwalk	Huron	55		26		81
Chillicothe	Ross	44		26		70
Cincinnati/Evendale	Hamilton & Warren	50		26		76
Cleveland	Cuyahoga	59		34		93
Columbus	Franklin	56		26		82
Dayton	Montgomery County; Wright-Patterson AFB	61		26		87
Defiance	Defiance	42		26		68
East Liverpool	Columbiana	47		26		73
Elyria	Lorain	51		26		77
Findlay	Hancock	43		26		69
Geneva	Ashtabula	52		26		78
Hamilton/Fairfield	Butler	47		26		73
Lancaster	Fairfield	41		26		67
Lima	Allen	43		26		69
Port Clinton	Ottawa	54		26		80
Portsmouth	Scioto	44		26		70
Sandusky	Erie	57		26		83
Springfield	Clark	43		26		69
Tinney/Fremont	Sandusky	44		26		70
Toledo	Lucas	50		26		76
Wapakoneta	Auglaize	45		26		71
OKLAHOMA						
Norman	Cleveland	44		26		70
Oklahoma City	Oklahoma	47		26		73
Stillwater	Payne	44		26		70
Tulsa/Bartlesville	Osage, Tulsa & Washington	45		26		71
OREGON						
Beaverton	Washington	46		26		72
Clackamas	Clackamas	48		26		74
Coos Bay	Coos	45		26		71
Lincoln City	Lincoln	45		26		71
Portland	Multnomah	50		26		76
Seaside	Clatsop	66		26		92
PENNSYLVANIA						
Allentown	Lehigh	50		26		76

Per Diem Locality		Maximum Lodging Amount		M&IE Rate		Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)	=	(c) 4/
Altoona	Blaire	44		26		70
Chester	Delaware	46		34		80
Du Bois	Clearfield	51		26		77
Easton	Northhampton	64		26		90
Erie	Erie	41		26		67
Gettysburg	Adams	49		26		75
Harrisburg	Dauphin	62		26		88
Johnstown	Cambria	55		26		81
King of Prussia/ Ft. Washington	Montgomery County, except Bala Cynwyd (See also Philadelphia, PA)	68		34		102
Lancaster	Lancaster	63		26		89
Lebanon	Lebanon County; Indian Town Gap Military Reservation	47		26		73
Mansfield	Tioga	49		26		75
Mercer	Mercer	54		26		80
Philadelphia	Philadelphia County; city of Bala Cynwyd in Montgomery County	77		34		111
Pittsburgh/Monroeville	Allegheny	60		26		86
Reading	Berks	49		26		75
Scranton	Lackawanna	52		26		78
Shippingport	Beaver	44		26		70
Somerset	Somerset	58		26		84
State College	Centre	46		26		72
Uniontown	Fayette	73		26		99
Valley Forge	Chester	68		34		102
Warminster	Bucks County; Naval Air Development Center	53		26		79
Wilkes-Barre	Luzerne	54		26		80
York	York	52		26		78
RHODE ISLAND						
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville	56		26		82
Newport	Newport	83		34		117
Providence	Providence	74		26		100
Quonset Point	Washington	44		26		70
SOUTH CAROLINA						
Charleston	Charleston & Berkeley	51		26		77
Columbia	Richland	48		26		74
Greenville	Greenville	42		26		68
Hilton Head	Beaufort	86		34		120
Myrtle Beach	Horry County; Myrtle Beach AFB	73		26		99
Rock Hill	York	45		26		71
Spartanburg	Spartanburg	44		26		70
SOUTH DAKOTA						
Rapid City	Pennington	51		26		77
Sioux Falls	Minnehaha	45		26		71
TENNESSEE						
Chattanooga	Hamilton	41		26		67
Columbia	Maury	49		26		75
Gatlinburg	Sevier	61		26		87
Johnson City	Washington	54		26		80
Kingsport/Bristol	Sullivan	44		26		70
Knoxville	Knox County; city of Oak Ridge	49		26		75
Memphis	Shelby	50		26		76
Nashville	Davidson	52		26		78
Shelbyville	Bedford	52		26		78
TEXAS						
Abilene	Taylor	41		26		67

Per Diem Locality		Maximum Lodging Amount		M&IE Rate		Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)	=	(c) 4/
Amarillo	Potter	46		26		72
Austin	Travis	55		26		81
Bay City	Matagorda	41		26		67
Brownsville	Cameron	41		26		67
Brownwood	Brown	42		26		68
College Station/Bryan	Brazos	43		26		69
Corpus Christi	Nueces	54		26		80
Dallas/Fort Worth	Dallas & Tarrant	74		34		108
Denton	Denton	47		26		73
El Paso	El Paso	49		26		75
Galveston	Galveston	53		26		79
Granbury	Hood	57		26		83
Houston	Harris County; L. B. Johnson Space Center & Ellington AFB	62		34		96
Lajitas	Brewster	56		26		82
Laredo	Webb	48		26		74
Longview	Gregg	42		26		68
Lubbock	Lubbock	48		26		74
McAllen	Hidalgo	49		26		75
Midland/Odessa	Ector & Midland	48		26		74
Nacogdoches	Nacogdoches	43		26		69
Plainview	Hale	45		26		71
Plano	Collin	74		26		100
San Antonio	Bexar	50		26		76
Temple	Bell	42		26		68
Waco	McLennen	45		26		71
Wichita Falls	Wichita	41		26		67
UTAH						
Bullfrog	Garfield	69		26		95
Salt Lake City/Ogden	Salt Lake, Weber, & Davis Counties; Dugway Proving Ground & Tooele Army Depot	60		26		86
VERMONT						
Burlington	Chittenden	43		26		69
Rutland	Rutland	50		26		76
White River Junction	Windsor	56		26		82
VIRGINIA						
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia)						
Blacksburg	Montgomery	57		26		83
Bristol*		45		26		71
Charlottesville*		52		26		78
Manassas/Manassas Park*	Prince William County	52		26		78
Norfolk* (also Virginia Beach, Portsmouth, Hampton, Newport News & Chesapeake*)	York County; Naval Weapons Station, Yorktown	55		26		81
Petersburg*	Fort Lee	44		26		70
Richmond*	Chesterfield & Henrico Counties; also Defense Supply Center	56		26		82
Roanoke*	Roanoke County	49		26		75
Wallops Island	Accomack	51		26		77
Williamsburg*		62		34		96
* Denotes independent cities.						
WASHINGTON						
Everett	Snohomish	55		26		81
Kelso/Longview	Cowlitz	46		26		72
Seattle	King	60		34		94
Spokane	Spokane	47		26		73
Tacoma	Pierce	41		26		67

Per Diem Locality		Maximum Lodging Amount		M&IE Rate		Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	+	(b)	=	(c) 4/
Tumwater/Olympia	Thurston	48		26		74
Vancouver	Clark	49		26		75
WEST VIRGINIA						
Beckley	Raleigh	43		26		69
Charleston	Kanawha	49		26		75
Harpers Ferry	Jefferson	48		26		74
Huntington	Cabell	43		26		69
Morgantown	Monongalia	46		26		72
Wheeling	Ohio	41		26		67
WISCONSIN						
Brookfield	Waukesha	50		26		76
Eau Claire	Eau Claire	48		26		74
Green Bay	Brown	45		26		71
Kewaunee	Kewaunee	58		26		84
La Crosse	La Crosse	48		26		74
Lake Geneva	Walworth	75		26		101
Madison	Dane	56		26		82
Milwaukee	Milwaukee	55		26		81
Minocqua/Rhinelander	Oneida	45		26		71
Mishicot	Manitowoc	55		26		81
Oshkosh	Winnebago	53		26		79
Sturgeon Bay	Door	46		26		72
Wausau	Marathon	48		26		74
Wautoma	Waushara	46		26		72
Wisconsin Dells	Columbia	45		26		71
WYOMING						
Cheyenne	Laramie	43		26		69
Cody	Park	42		26		68
Gillette	Campbell	42		26		68
Jackson	Teton	57		26		83
Thermopolis	Hot Springs	41		26		67

1/ Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."

2/ Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties."

3/ Military installations or Government-related facilities (whether or not specifically named) that are located partially within the city or county boundary shall include "all locations that are geographically part of the military installation or Government-related facility, even though part(s) of such activities may be located outside the defined per diem locality."

4/ Federal agencies may submit a request to GSA for review of the subsistence cost in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be surveyed on an annual basis by GSA to determine whether rates are adequate. Requests for subsistence rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Federal Supply Service, Attn: Travel and Transportation Regulations Staff (FBR), Washington, DC 20406. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA the requests from bureaus, subagencies, etc. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area) and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations.

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federal register

Tuesday
September 27, 1988

Part VI

The President

Proclamation 5864—German-American Day, 1988

Federal Register
Vol. 53, No. 187
Tuesday, September 27, 1988

Presidential Documents

Title 3—

The President

Proclamation 5864 of September 23, 1988

German-American Day, 1988

By the President of the United States of America

A Proclamation

Three hundred and five years ago, 13 families from the city of Krefeld on the Rhine River landed near Philadelphia. In the 3 centuries since then, more than seven million other Germans have followed them to America in search of freedom and a more prosperous future for themselves and their children. Today nearly one in every four of us can trace our ancestry to German forebears. These facts, and our recognition of everything that Americans of German descent have achieved for our Nation, give all of us ample cause to celebrate on German-American Day, 1988.

Our national character and way of life have been deeply influenced by Americans of German heritage. They have made an indelible imprint on the life, culture, progress, and prosperity of the United States in areas such as the arts, scholarship, religion, commerce and industry, science and engineering, government, sports, and entertainment. This is why Benjamin Franklin observed long years ago, "America cultivates best what Germany brought forth . . . ."

Today, German-American bonds of international friendship are stronger than ever. As partners in the NATO Alliance, the United States and the Federal Republic of Germany work side by side to maintain peace and freedom. Allied unity and resolve made possible the successful conclusion of the U.S.-U.S.S.R. INF Treaty. As two of the world's great trading nations, the United States and the Federal Republic of Germany share a common, deep-seated commitment to an open and expanding world economy. The personal ties between our nations now extend beyond immigration to include lively foreign exchange programs, booming tourism in both directions, and the presence in the Federal Republic of Germany of American military personnel and their dependents. Our mutual resolve in the common defense of Western liberty is exemplified by the great city of Berlin and its brave residents.

Chancellor Kohl's visit to Washington earlier this year visibly reaffirmed the priority our governments have long assigned to preserving and fostering German-American relations. Common traditions, shared convictions, and mutual interests commit us to strengthening cooperation at every level to meet the challenges of the future. The recently completed German-American Friendship Garden, which will be dedicated on the Mall in our Nation's Capital this autumn, symbolizes the close and friendly relations between the Federal Republic of Germany and the United States. It also reminds us of the need to cultivate our special ties so they might further prosper.

The Congress, by Public Law 100-392, has designated October 6, 1988, as "German-American Day" and authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 6, 1988, as German-American Day. I urge all Americans to learn more about the contributions of German immigrants to the life and culture of the United States and to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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