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Federal Register

Friday
May 10, 1985

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regs. 515, and 514, Admt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to the fresh market at 325,000 cartons during the period May 12–18, 1985, and increases the quanity of lemons that may be shipped to 355,000 cartons during the period May 5–11, 1985. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation (§ 910.815) becomes effective May 12, 1985, and the amendment (§ 910.814) is effective for the period May 5–11, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee publicly on May 7, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became availabe upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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. New § 910.815 is added to read as follows:

§ 910.815 Lemon Regulation 515.

The quantity of lemons grown in California and Arizona which may be handled during the period May 12, 1985, through May 18, 1985, is established at 325,000 cartons.

3. § 910.814 Lemon Regulation 514 is revised to read as follows:

§ 910.814 Lemon Regulation 514.

The quantity of lemons grown in California and Arizona which may be handled during the period May 5, 1985, through May 11, 1985, is established at 355,000 cartons.

Dated: May 8, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–11530 Filed 5–9–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–ANE–14; Amdt. No. 39–5050]

Airworthiness Directives; Allison Gas Turbine Division, General Motors Corp., Allison Model 250–C30 and –C30S Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective by individual telegrams to all known U.S. owners and operators of certain Allison Model 250–C30 and –C30S engines installed in Sikorsky Model S–76A helicopters. The AD requires replacement of the two P/N 23001915 magnetic plugs installed in the power and accessory gearboxes with two P/N 6871534 magnetic plugs within the next 50 hours time in service, but not later than May 15, 1985. The AD is needed to prevent undetected bearing wear progressing to a point where an engine inflight shutdown or turbine rotor damage could occur.

DATES: Effective May 10, 1985, to all persons except those persons to whom it was made immediately effective by telegraphic AD (TAD) T85–06–51, issued March 29, 1985, which contained this amendment.

Compliance required within the next 50 hours time in service after the effective date of this AD, but not later

than May 15, 1985, unless already accomplished.

Incorporation by Reference—Approved by the Director of the Federal Register effective on May 10, 1985.

ADDRESSES: The applicable service bulletins (SBs) may be obtained from Allison Gas Turbine Division, General Motors Corporation, P.O. Box 420, Indianapolis, Indiana 46206–0420.

A copy of each SB is contained in the Rules Docket at the Office of Regional Counsel, FAA, ATTN: Rules Docket No. 85–ANE–14, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Royace H. Prather, Chicago Aircraft Certification Office, Propulsion Branch, ACE–140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone 312–694–7132.

SUPPLEMENTARY INFORMATION: On March 29, 1985, TAD T85–06–51 was issued and made effective immediately to all known U.S. owners and operators of certain Allison Model 250–C30 and –C30S engines installed in Sikorsky Model S–76A helicopters. The TAD required replacement of the two P/N 23001915 magnetic plugs, installed in the power and accessory gearbox cover and housing assembly, with two P/N 6871534 magnetic plugs in the next 50 hours time in service after the effective date of the TAD, but not later than May 15, 1985. TAD action was necessary to prevent undetected bearing wear progresssing to a point where an engine inflight shutdown or turbine rotor damage could occur. Bearing wear on occasions has been masked by the automatic fuzz burnoff of accumulated metal by P/N 23001915 magnetic plugs to the point that no prior or sufficient advance chip light indication is provided before a bearing failure occurs. Service experience indicates a marked improvement in metal generation detection capability with Model 250–C30 and –C30S engines that incorporate non fuzz suppressing P/N 6871534 magnetic plugs. These chip detectors are announcing bearing wear well in advance of bearing failure as is intended by the on-condition overhaul concept for the Model 250–C30 and –C30S engine gearboxes.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interests, and good cause existed to make the AD effective immediately by individual telegrams issued March 29, 1985, to all known U.S. owners and operators of certain Allison Model 250–C30 and –C30S engines installed in Sikorsky S–76A helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective to all persons.

Conclusion

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 action 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 evaluation, 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). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Engines, Aircraft, Aviation safety, Incorporation by Reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Allison Gas Turbine Division, General Motors Corp. (Allison, formerly Detroit Diesel Allison): Applies to Allison Model 250–C30 and –C30S engines, which incorporate P/N 23001915 magnetic plugs in the power and accessory gearbox cover and housing assembly, installed in Sikorsky S–76A helicopters certificated in any category.

Within the next 50 hours time in service after the effective date of this AD, but not later than May 15, 1985, perform the following:

Replace the two P/N 23001915 magnetic plugs installed in the power and accessory gearbox cover and housing assembly with two P/N 6871534 magnetic plugs, which do not provide for automatic burnoff of accumulated metal fuzz, in accordance with Allison Commercial Engine Alert Bulletin 250–C30, –C30S CEB–A–72–3098, Revision 1 dated January 15, 1985, or FAA approved equivalent.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FARs) § 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Allison Gas Turbine Division, General Motors Corp., P.O. Box 420, Indianapolis, IN 46206–0420. These documents also may be examined at the Office of Regional Counsel, FAA, ATTN: Rules Docket No. 85–ANE–14, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

This amendment becomes effective May 10, 1985, to all those persons except those persons to whom it was made immediately effective by TAD T85–06–51, issued March 29, 1985, which contained this amendment.

(Secs. 313(a), 601, and 603 Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

Issued in Burlington, Massachusetts, on April 24, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 11364 Filed 5–7–85; 2:25 pm]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–ANE–23; Amdt. 39–5054]

Airworthiness Directives; Hartzell Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revocation of Airworthiness Directive.

SUMMARY: Airworthiness Directive (AD) 55–3–2 requires a 25 hour repetitive inspection and repair of certain Hartzell propellers with metal blades installed on Continental E–185, E–225 and O–470, and Lycoming O–320 and O–340 series engines that were damaged by nicks, gouges and scratches within 15 inches of the blade tip. Since this type of inspection and repair is part of routine preflight inspection and normal maintenance, the FAA has determined that there is no further need for this AD. Therefore, AD 55–3–2 is being revoked.

EFFECTIVE DATE: June 16, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Alpiser, Chicago Aircraft Certification Office, ACE-140C, FAA, 2300 East Devon Ave., Des Plaines, Illinois 60018; telephone (312)-694-7130.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FARs) to revoke AD 55-3-2 was published in the Federal Register on January 29, 1985 (50 FR 3915). The proposal resulted from a determination that the AD was no longer needed. This determination was based upon the finding that inspection of metal propeller blades for the presence of damage is part of routine preflight inspection, and repair is part of normal maintenance. Considerable information has been published on the hazards of damage to metal propeller blades and the need to inspect and repair damage prior to flight. This inspection is part of the preflight walkaround inspection and is listed on the preflight inspection checklists found in owners' manuals, pilots' handbooks, flight manuals, etc.

Propeller inspection is emphasized during initial pilot training and is also emphasized in Advisory Circulars (ACs) 61-23B (Pilots' Handbook of Aeronautical Knowledge) and 61-21A (Flight Training Handbook). When the AD was issued 30 years ago, pilots were not generally aware of the hazards of damage to metal propeller blades, but it is now reasonable to expect that pilots are fully knowledgable. The 25 hour inspection interval required by the AD was arbitrary in that a propeller blade could be damaged on the first flight after complying with the AD, thereby rendering the propeller unairworthy long before the next inspection was due. As per FAR 91.29(b), the pilot-in-command is responsible for determining that the aircraft is in condition for safe flight. Advisory Circular 43.13-1A (Aircraft Inspection and Repair) provides additional information on inspection and repair of damaged metal propeller blades.

Interested persons have been afforded an opportunity to participate in the making of this amendment. The comment period closed April 1, 1985. Two comments were received.

One commenter concurred with the proposal. A second commenter recommended that the **SUPPLEMENTARY INFORMATION** be expanded to fully justify the proposal. In response to this comment, the **SUPPLEMENTARY INFORMATION** was expanded to include additional justification to support the proposal. Therefore, in accordance with the agency's policy of eliminating unnecessary regulations when possible, this amendment will be adopted substantially as proposed with minor clarification.

Conclusion

The FAA has determined that this regulation is a relieving action which will have no cost for any aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) 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 39

Propellers, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by revoking Hartzell Propeller Products Division AD 55-3-2. This amendment becomes effective June 16, 1985.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449 January 12, 1983); 14 CFR 11.89)

Issued in Burlington, Massachusetts, on April 26, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-11319 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ANE-1; Amdt. 39-5046]

Airworthiness Directives; McCauley D3A32C90 Series Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires retirement of non-shot peened hubs on certain McCauley D3A32C90 series propellers and inspection and modification of shot peened hubs on other D3A32C90 series propellers after accumulating 1200 hours total time in service. The AD is needed to detect cracks in the propeller hub/blade which could result in failure and subsequent loss of a blade.

DATES: Effective—May 13, 1985.

Compliance schedule—As prescribed in the body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register effective on May 13, 1985.

ADDRESSES: The applicable service documents may be obtained from McCauley Accessory Division, Cessna Aircraft Company, 3535 McCauley Drive, P.O. Box 430, Vandalia, Ohio 45377.

A copy of each of the service documents is contained in the Rules Docket, Office of Regional Counsel, FAA, Attn: Rules Docket No. 85-ANE-1, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Alpiser, Chicago Aircraft Certification Office, ACE-140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7130.

SUPPLEMENTARY INFORMATION: The FAA has determined that McCauley Model D3A32C90 series propellers are susceptible to hub/blade failures and possible blade loss due to fatigue cracks. Numerous failures of the threaded retention design have occurred with at least two recent failures of the subject model. Several similar AD's have been issued on other McCauley propellers utilizing the threaded retention design. Since this condition is likely to exist or develop on other propellers of the same type design, an AD is being issued which requires replacement of hubs which are not shot peened and inspection and modification of shot peened hubs to the oil filled configuration on propellers which have accumulated 1200 hours total time in service. The oil filled configuration makes it possible to detect cracks by observing leakage of red dyed oil.

It is estimated that an average of 10 manhours per propeller will be required to comply with this AD. An additional $100 in replacement parts is anticipated to modify these propellers to the oil filled configuration. Also, a small number of hubs that are not shot peened will have to be replaced at an additional cost of $420. The cost to inspect and to modify a propeller to the oil filled hub configuration will approximate $35/hr. x 10 hrs. labor plus $100 parts = $450 per propeller. Modification of the propeller to the oil filled hub configuration is a one-time cost that eliminates the need for repetitive inspections since a crack is readily detectable by red dyed oil leak stains.

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

Conclusion

The FAA has determined that this regulation involves about 1000 aircraft at an approximate cost to each aircraft of $450 to $870. A small number will require hub replacement at an approximate cost to each aircraft of $870. Therefore, I certify that this action is not a "major rule" under Executive Order 12291, and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Propellers, Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

McCauley Accessory Division: Applies to the following Model D3A32C90 series propellers installed on, but not limited to, Bellanca 17–30, 17–30A; Cessna A185E, F, A188B, P206A, TP206A, U206A, B, C, D, E, F, TU206A, B, C, D, E, F, 207, 207A, T207; and Navion A thru H: D3A32C90, D3A32C90–A, –B, –C, –J, –K, –L, –BLM, –CLM, –JLM, –KLM, –LM, and –M.

Compliance is required as indicated unless already accomplished.

To detect propeller hub cracks and prevent possible failure, accomplish the following:

(a) Propeller models D3A32C90, D3A32C90–A, –B, –C, –J, –K, and –L: Within the next 50 hours time in service after the effective date of this AD or prior to accumulating 1200 hours total time in service, whichever occurs later, replace hubs with shot peened hubs and modify to the oil filled hub configuration in accordance with Supplement 1 to McCauley Service Manual No. 720415 dated January 7, 1977, or FAA approved equivalent.

(b) Propeller models D3A32C90–BLM, –CLM, –JLM, –KLM, –LM, and –M: Within the next 50 hours time in service after the effective date of this AD or prior to accumulating 1200 hours total time in service, whichever occurs later, inspect the hub in accordance with McCauley Service Letter 1974–3 dated March 29, 1974, or FAA approved equivalent, and modify to the oil filled hub configuration in accordance with Supplement 1 to McCauley Service Manual No. 720415 dated January 7, 1977, or FAA approved equivalent.

(c) Propellers with unknown service histories must comply with paragraphs (a) or (b), as applicable, within the next 50 hours time in service after the effective date of this AD.

(d) Modified propellers showing signs of red dyed oil leakage must be removed from service and replaced with a servicable propeller.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations 21.97 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, ACE–140C, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7130.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McCauley Accessory Division, Cessna Aircraft Company, 3535 McCauley Drive, P.O. Box 430, Vandalia, Ohio 45377. These documents also may be examined at the Office of Regional Counsel, FAA, Attn: Rules Docket No. 85–ANE–1, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except Federal holidays, between 8:00 am and 4:30 pm.

This amendment becomes effective May 13, 1985.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958 as amended (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)

Issued in Burlington, Massachusetts, on April 18, 1985.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 85–11320 Filed 5–9–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ASW–54]

Alteration of Transition Area; Brinkley, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Brinkley, AR. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Frank Federer Memorial Airport. This amendment is necessary since the final approach to the airport has been realigned to approach the airport from a different direction.

EFFECTIVE DATE: 0901 G.m.t., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW–534), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877–2625

SUPPLEMENTARY INFORMATION:

History

On January 2, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulation (14 CFR Part 71) to alter the Brinkley, AR, transition area (50 FR 93).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the transition area at Brinkley, AR, to provide controlled airspace for the protection of aircraft arriving and departing the Frank Federer Memorial Airport.

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

List of Subjects in 14 CFR Part 71

Control zones, Transition area, Aviation Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of

the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Brinkley, AR—Revised

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Frank Federer Memorial Airport (latitude 34°52'48" N., longitude 91°10'35" W.) and 3 miles each side of the 011-degree bearing of the NDB (latitude 34°52'53" N., longitude 91°10'40" W.) extending from the 5-mile radius area to 8.5 miles north of the NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Fort Worth, TX, on April 30, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85-11322 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ASW-56]

Designation of Transition Area; Mountain View, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Mountain View, AR. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Wilcox Memorial Airport. This amendment is necessary since a nonfederal nondirectional radio beacon (NDB) is being installed to serve the Wilcox Memorial Airport. Coincident with this action, the airport is changed from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 G.m.t., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-534), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2625.

SUPPLEMENTARY INFORMATION:

History

On January 2, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Mountain View, AR, transition area (50 FR 91).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a transition area for the protection of aircraft arriving and departing the Wilcox Memorial Airport.

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

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Mountain View, AR—New

That airspace extending upwards from 700 feet above the surface within a 6.5 mile radius of the Wilcox Memorial Airport (latitude 35°51'52" N., longitude 92°05'33" W.) and within 3 miles each side of the 044-degree bearing of the NDB (latitude 35°52'03" N., longitude 92°04'40" W.) extending from the 6.5-mile radius area to 8.5 northeast of the NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Fort Worth, TX, on April 30, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85-11321 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-13-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2007

Revision of Regulations Relating to the Generalized System of Preferences

AGENCY: United States Trade Representative.

ACTION: Interim Regulations.

SUMMARY: The United States Generalized System of Preferences Program was extended for a period of eight and one-half years pursuant to section 505(a) of Title V of the Trade and Tariff Act of 1984 (Pub. L. No. 98-573, October 30, 1984). In order to ensure that the administration of the GSP program conforms to the amendments included in Title V of the Trade and Tariff Act of 1984 and responds to concerns raised by members of Congress and constituent groups during the consideration of the renewal legislation, we are revising the administrative regulations governing the operation of the GSP program. In order to allow members of the public adequate opportunity to comment, the revised regulations are being issued as interim regulations.

DATE: Effective date: The interim regulations shall become effective May 10, 1985.

Comments: Before adopting the interim regulations as a final rule, consideration will be given to any written comments received on or before July 9, 1985.

ADDRESSES: Comments should be submitted to the GSP Subcommittee, Office of the United States Trade Representative, Room 316, 600 17th Street, N.W., Washington, D.C. 20506. Comments submitted will be available for public inspection in the GSP Information Center, Room 316, 600 17th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: David Shark, GSP Program Office (202-395-6971); Legal Aspects: Christine Bliss, Office of the General Counsel (202-395-6800); Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION:

Inapplicability of Notice and Delayed Effective Date Provisions

These regulations are not subject to the public notice and comment requirements of 5 U.S.C. 553 because they are procedural in nature and because they are specifically exempted

pursuant to subsection (a)(1) of section 553 as within the foreign affairs function of the United States.

Additionally, as the amendments contained in this document are necessary to conform the regulations to amendments made to Title V of the Trade Act of 1974 by Title V of the Trade and Tariff Act of 1984, it is believed that good cause exists under the provisions of 5 U.S.C. 553 (d)(1) and (d)(3) for dispensing with the normal 30 day delayed effective date requirement.

Executive Order 12291

This interim regulation is not a "major rule" as defined by section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required under Executive Order 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) pursuant to section 3 of that Act, are not applicable to this document because the regulation will not have a significant economic impact on a substantial number of small entities. Any economic impact flows directly from the GSP program as authorized by Title V of the Trade Act of 1974, as amended, and not from the implementing regulations.

Paperwork Reduction Act

The interim regulations are not subject to the Paperwork Reduction Act of 1980, (44 U.S.C. 3500 et seq.) because the regulations do not involve the collection of information within the meaning of subsection (c) of § 1320.7 of the regulations implementing the Act (5 CFR 1320.7(c)).

List of Subjects in 15 CFR Part 2007

Administrative practice and procedure, Foreign trade.

Amendments to Regulations

Part 2007, Office of the U.S. Trade Representative, Regulations (15 CFR Part 2007), is revised as set forth below.

Part 2007—Regulations of the U.S. Trade Representative pertaining to eligibility of articles for the Generalized System of Preference Program (GSP (15 CFR Part 2007)) implementing Title V of the Trade Act of 1974, as amended.

PART 2007—[AMENDED]

Sec.

Authority: 19 U.S.C. 2461–65, 88 Stat. 2066–2071, as amended by Title V of the Trade and Tariff Act of 1984, Pub. L. No. 98–573, 98 Stat. 3018–3024; Executive Order No. 11846 of March 27, 1975 (40 FR 14291); Executive Order No. 12188 of January 2, 1980 (45 FR 989).

§ 2007.0 Requests for reviews.

(a) An interested party may submit a request (1) that additional articles be designated as eligible for GSP duty-free treatment, provided that the article has not been accepted for review, within the three preceding calendar years; or (2) that that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) for a determination of whether a like or directly competitive product was produced in the United States on January 3, 1985 for the purposes of section 504(d)(1) (19 U.S.C. 2464(d)(1)); or (4) that the President exercise his waiver authority with respect to a specific article or articles pursuant to section 504(c)(3) (19 U.S.C. 2464(c)(3)); or (5) that product coverage be otherwise modified.

(b) At any time during the calendar year, including the annual product reviews conducted pursuant to the schedule set out in § 2007.3, any person may file a request to have the status of any eligible beneficiary developing country reviewed with respect to any of the mandatory designation criteria listed in section 502(b) (19 U.S.C. 2462(b)). Such requests must: (1) specify the name of the person or the group requesting the review; (2) identify the beneficiary country that would be subject to the review; (3) indicate the specific section 502(b) criteria which the requester believes warrants review; (4) provide a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information; and (5) supply any other relevant information as requested by the GSP Subcommittee.

(c) An interested party or any other person may make submissions supporting, opposing or otherwise commenting on a request submitted pursuant to either paragraph (a) or (b) of this section.

(d) For the purposes of the regulations set out under § 2010.0 et seq., an interested party is defined as a party who has a significant economic interest in the subject matter of the request, or any other party representing a significant economic interest that would be materially affected by the action requested, such as a domestic producer of a like or directly competitive article, a commercial importer or retailer of an article which is eligible for GSP or for which such eligibility is requested, or a foreign government.

(e) All requests and other submissions should be submitted in the English language in 20 copies, and should be addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street N.W., Washington, D.C. 20506. Requests by foreign governments may be made in the form of diplomatic correspondence provided that such requests comply with the requirements of § 2007.1.

(f) The Trade Policy Staff Committee (TPSC) may at any time, on its own motion, initiate any of the actions described in § 2007.0(a).

§ 2007.1 Information required of interested parties in submitting requests for modifications in the list of eligible articles.

(a) *General information required.* A request submitted pursuant to this Part, hereinafter also referred to as a petition, except requests submitted pursuant to § 2007.0(b), shall state clearly on the first page that it is a request for action with respect to the provision of duty-free treatment for an article or articles under the GSP, and must contain all information listed in this paragraph and in paragraphs (b) and (c) of this section. Petitions which do not contain the information required by this paragraph shall not be accepted for review except upon a showing that the petitioner made a good faith effort to obtain the information required. Petitions shall contain, in addition to any other information specifically requested, the following information:

(1) The name of the petitioner, the person, firm or association represented by the petitioner, and a brief description of the interest of the petitioner claiming to be affected by the operation of the GSP;

(2) An identification of the product or products of interest to the petitioner, including a detailed description of products and their uses and the identification of the pertinent item number of the Tariff Schedules of the United States;

(3) A description of the action requested, together with a statement of

the reasons therefor and any supporting information;

(4) A statement of whether to the best of the Petitioner's knowledge, the reasoning and information has been presented to the TPSC previously either by the petitioner or another party. If the Petitioner has knowledge the request has been made previously, it must include either new information which indicates changed circumstances or a rebuttal of the factors supporting the denial of the previous request. If it is a request for a product addition, the previous request must not have been formally accepted for review within the preceding three calendar year period; and

(5) A statement of the benefits anticipated by the petitioner if the request is granted, along with supporting facts or arguments.

(b) *Request to withdraw, limit or suspend eligibility with respect to designated articles.* Petitions requesting withdrawal or limitation of duty-free treatment accorded under GSP to an eligible article or articles must include the following information with respect to the relevant United States industry for the most recent three year period:

(1) The names, number and locations of the firms producing a like or directly competitive product;

(2) Actual production figures;

(3) Production capacity and capacity utilization;

(4) Employment figures, including number, type, wage rate, location, and changes in any of these elements;

(5) Sales figures in terms of quantity, value and price;

(6) Quantity and value of exports, as well as principal export markets;

(7) Profitability of firm or firms producing the like product, if possible show profit data by product line;

(8) Analysis of cost including materials, labor and overhead;

(9) A discussion of the competitive situation of the domestic industry;

(10) Identification of competitors; analysis of the effect imports receiving duty-free treatment under the GSP have on competition and the business of the interest on whose behalf the request is made;

(11) Any relevant information relating to the factors listed in sections 501 and 502(c) of Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461, 2462(c)) such as identification of tariff and non-tariff barriers to sales in foreign markets;

(12) Any other relevant information including any additional information that may be requested by the GSP Subcommittee.

This information should be submitted with the request for each article that is the subject of a request, both for the party making the request, and to the extent possible, for the industry to which the request pertains.

(c) *Requests to designate new articles.* Information to be provided in petitions requesting the designation of new articles submitted by interested parties must include for the most recent three year period the following information for the beneficiary country on whose behalf the request is being made and to the extent possible other principal beneficiary country suppliers:

(1) Identification of the principal beneficiary country suppliers expected to benefit from proposed modification;

(2) Name and location of firms;

(3) Actual production figures (and estimated increase if CSP status is granted);

(4) Actual production capacity and capacity utilization (and estimated increase if GSP status is granted);

(5) Employment figures, including numbers, type, wage rate, location and changes in any of these elements if GSP treatment is granted;

(6) Sales figures in terms of quantity, value and prices;

(7) Information on total exports including principal markets, the distribution of products, existing tariff preferences in such markets, total quantity, value and trends in exports;

(8) Information on exports to the United States in terms of quantity, value and price, as well as, considerations which affect the competitiveness of these exports relative to exports to the United States by other beneficiary countries of a like or directly competitive product. Where possible, Petitioners should provide information on the development of the industry in beneficiary countries and trends in their production and promotional activities;

(9) Profitability of firms producing the product;

(10) Information on unit prices and a statement of other considerations such as variations in quality or use that affect price competition;

(11) If the petition is submitted by a foreign government or a government controlled entity, it should include a statement of the manner in which the requested action would further the economic development of the country submitting the petition;

(12) If appropriate, an assessment of how the article would qualify under the GSP's 35 percent value-added requirements; and

(13) Any other relevant information, including any information that may be requested by the GSP Subcommittee.

Submissions made by persons in support of or opposition to a request made under this part should conform to the requirements for requests contained in § 2007.1(a) (3) and (4), and should supply such other relevant information as is available.

§ 2007.2 Action following receipt of requests for modifications in the list of eligible articles.

(a) If the request does not conform to the requirements set forth above, or if it is clear from available information that the request does not warrant further consideration, the request shall not be accepted for review. Upon written request, requests which are not accepted for review may be returned together with a written statement of the reasons why the request was not accepted.

(b) Requests which conform to the requirements set forth above or for which petitioners have demonstrated a good faith effort to obtain information in order to meet the requirements set forth above, and for which further consideration is deemed warranted, shall be accepted for review.

(c) The TPSC shall announce in the **Federal Register** those requests which will be considered for full examination in the product review and the deadlines for submissions made pursuant to the review, including the deadlines for submission of comments on the United States International Trade Commission (USITC) report in instances in which USITC advice is requested.

(d) In conducting reviews, the TPSC may hold public hearings.

(e) As appropriate, the USTR on behalf of the President will request advice from USITC.

(f) The GSP Subcommittee of the TPSC shall conduct the first level of interagency consideration under this part, and shall submit the results of its review to the TPSC.

(g) The TPSC shall review the work of the GSP Subcommittee and shall conduct, as necessary, further reviews of requests submitted and accepted under this part. Unless subject to additional review, the TPSC shall prepare recommendations for the President on any modifications to the GSP under this part. The Chairman of the TPSC shall report the results of the TPSC's review to the U.S. Trade Representatives who may convene the Trade Policy Review Group (TPRG) or the Trade Policy Committee (TPC) for further review of recommendations and other decisions as necessary. The U.S. Trade Representative, after receiving the advice of the TPSC, TPRG or TPC, shall make recommendations to the

President on any modifications to the GSP under this part, including recommendations that no modifications be made.

(h) In considering whether to recommend (1) that additional articles be designated as eligible for the GSP; (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) that product coverage be otherwise modified, the GSP Subcommittee on behalf of the TPSC, the TPRG or the TPC shall review the relevant information submitted in connection with or concerning a request under this part, together with any other information which may be available relevant to the statutory prerequisites for Presidential action contained in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465).

§ 2007.3 Timetable for reviews.

(a) *Regular product review.* Beginning in calendar year 1986, reviews of pending requests shall be conducted at least once each year, according to the following schedule unless otherwise specified by **Federal Register** notice:

(1) June 1, deadline for acceptance of petitions for review;

(2) July 15, **Federal Register** announcement of petitions accepted for review;

(3) September/October—public hearings and submission of written briefs and rebuttal materials;

(4) December/January—opportunity for public comment on USITC public reports;

(5) Results will be announced by April and will be implemented on July 1, the statutory effective date of modifications to the program. If the effective date specified is on or immediately follows a weekend or holiday, the effective date will be on the second working day following such weekend or holiday.

(b) Requests which indicate the existence of unusual circumstances warranting an immediate review may be reviewed separately. Requests for such urgent consideration should contain a justification for the urgency.

(c) *General product review.* Section 504(c)(2) of Title V of the Trade Act of 1974, as amended (19 U.S.C. 2464(c)(2)) requires that, no later than January 4, 1987, and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in section 501 and 502(c) of Title V. The initiation and scheduling of such reviews as well as the timetable for submission of comments and statements will be announced in the **Federal Register.** The first general product review was initiated on February 14, 1985 and will be completed by January 3, 1987. The initiation of the review and deadlines for submission of comments and statements were announced in the **Federal Register** on February 14, 1985 (50 FR 6294).

§ 2007.4 Publication regarding requests.

(a) Whenever a request is received which conforms to these regulations or which is accepted pursuant to § 2007.2 a statement of the fact that the request has been received, the TSUS item number or numbers and description of the article or articles covered by the request, and an invitation for all interested parties to submit views to the TPSC shall be published in the **Federal Register.**

(b) Upon the completion of a review, and publication of any Presidential action modifying the GSP, a summary of the decisions made will be published in the **Federal Register** including:

(1) A list of requests upon which action has been taken; and

(2) A list of requests which are pending.

(c) Whenever, following a review, there is to be no change in the status of an article with respect to the GSP, the party submitting a request with respect to such articles may request explanation of factors considered.

§ 2007.5 Written briefs and oral testimony.

Section 2003.2 and 2003.4 of this part shall be applicable to the submission of any written briefs or requests to present oral testimony in connection with a review under this Part.

§ 2007.6 Information open to public inspection.

With the exception of information subject to § 2007.7, an interested person may, upon request inspect at the office of the United States Trade Representative:

(a) Any written request, brief, or similar submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings which may be held pursuant to this part.

§ 2007.7 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if it is determined that the disclosure of such information is not required by law.

(b) A party requesting an exemption from public inspection for information submitted in writing shall clearly mark each page "Submitted in Confidence" at the top, and shall submit a nonconfidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

§ 2007.8 Other reviews of article eligibilities.

(a) As soon after the beginning of each calendar year as relevant trade data for the preceding year are available, modifications of the GSP in accordance with section 504(c) of the Trade Act of 1974 as amended (19 U.S.C. 2464) will be considered.

(b) *General product reviews.* Section 504(c)(2) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)(2)) requires that not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502 of Title V. The purpose of these reviews is to determine which articles from which beneficiary countries are "sufficiently competitive" to warrant a reduced competitive need limit. Those articles determined to be "sufficiently competitive" will be subject to a new lower competitive need limit set at 25 percent of the value of total U.S. imports of the article; or $25 million (this figure will be adjusted annually in accordance with nominal changes in U.S. GNP, using 1984 as the base year). Other articles, except those subject to wavier pursuant to section 504(c)(3) (19 U.S.C. 2464(c)(3)), will continue to be subject to the original competitive need limits of 50 percent or $25 million (this figure is adjusted annually using 1974 as the base year).

(1) *Scope of general reviews.* In addition to an examination the competitiveness of specific articles from particular beneficiary countries, the general review will also include consideration of requests for competitive need limit waivers pursuant to section 504(c)(3)(A) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)).

(2) *Factors to be considered.* In determining whether a beneficiary country should be subjected to the lower competitive need limits with respect to a particular article, the President shall consider the following factors contained in sections 501 and 502(c) of Title V:

(1) The effect such action will have on furthering the economic development of developing countries through expansion of their exports;

(2) The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports or products of such countries;

(3) The anticipated impact of such action on the United States producers of like or directly competitive products;

(4) The extent of the beneficiary developing country's competitiveness with respect to eligible articles;

(5) The level of economic development of such country, including its per capita gross national product, the living standard of its inhabitants and any other economic factors the President deems appropriate;

(6) Whether or not the other major developed countries are extending generalized perferential tariff treatment to such country;

(7) The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(8) The extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks and copyrights;

(9) The extent to which such country has taken action to—

(i) Reduce trade distorting investment practices and policies (including export performance requirements); and

(ii) Reduce or eliminate barriers to trade in services; and

(10) Whether or not such country has taken or is taking steps to afford workers in that country (including any designated zone in that country) internationally recognized worker rights.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85-11307 Filed 5-9-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 450

[Docket No. 84N-0327]

Antitumor Antibiotic Drugs; Deletion of LD_{50} Test for Dactinomycin, Doxorubicin Hydrochloride, and Plicamycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to delete the LD_{50} test requirement from the accepted standards for dactinomycin, doxorubicin hydrochloride, and plicamycin. FDA is taking this action because the current chemical potency assay, i.e., high-pressure liquid chromatography, can appropriately replace the LD_{50} test for toxicity determination of batches of these antitumor antibiotic drugs.

DATES: Effective June 10, 1985; comments, notice of participation, and request for hearing by June 10, 1985; data, information, and analyses to justify a hearing by July 9, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 13, 1984 (49 FR 44919), FDA proposed to amend the antibiotic drug regulations to delete the LD_{50} test requirement from the accepted standards for dactinomycin, doxorubicin hydrochloride, and plicamycin.

As discussed in the proposal, FDA has found that the high-pressure liquid chromatographic (HPLC) assay, specified as the official assay method for content (potency) determination of dactinomycin, doxorubicin hydrochloride, and plicamycin, can be used to determine the toxicity of batches of these antitumor antibiotic drugs by qualitative comparison to designated reference standards. Because the HPLC assay can verify that dactinomycin, doxorubicin hydrochloride, and plicamycin are within an acceptable level of toxicity, FDA has determined that the HPLC assay can be used in place of the LD_{50} test for toxicity determination of batches of these antitumor antibiotic drugs.

Additionally, because all classes of antibiotic drugs are exempted from batch certification, FDA has determined that the interim provisions for LD_{50} testing of dactinomycin, doxorubicin hydrochloride, and plicamycin under 21 CFR 450.1 are no longer relevant.

Interested persons were given until January 14, 1985, to submit written comments on this proposal and until December 13, 1984, to submit request for an informal conference. No requests for an informal conference were received. One comment was received in support of the proposal.

The agency has considered the economic impact of this final rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the final rule would delete a testing requirement, thus eliminating the cost of this test for the manufacturers of these antitumor antibiotic drugs. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 450

Antibiotics, Antitumor.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 450 is amended as follows:

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

The authority citation for Part 450 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

§ 450.1 [Removed].

1. By removing § 450.1 *Interim requirements for LD_{50} testing.*

2. In § 450.20, by removing paragraph (a)(1)(ii) and footnote 1 and redesignating paragraph (a)(1) (iii), (iv), (v), and (vi) as (a)(1) (ii), (iii), (iv), and (v); by revising paragraph (a)(3)(i); and by removing paragraph (b)(2) and redesignating (b) (3), (4), (5), and (6) as (b) (2), (3), (4), and (5). As revised, § 450.20(a)(3)(i) reads as follows:

§ 450.20 Dactinomycin.

(a) * * *

(3) * * *

(i) Results of tests and assays on the batch for dactinomycin content, loss on

drying, absorptivity, crystallinity, and identity.

* * * * *

3. In § 450.24, by removing paragraph (a)(1)(v) and footnote 3 and redesignating paragraph (a)(1) (vi) and (vii) as (a)(1) (v) and (vi); by revising paragraph (a)(3)(i); and by removing paragraph (b)(5) and redesignating (b) (6) and (7) as (b) (5) and (6). As revised, § 450.24(a)(3)(i) reads as follows:

§ 450.24 Doxorubicin hydrochloride.

(a) * * *

(3) * * *

(i) Results of tests and assays on the batch for doxorubicin hydrochloride content, microbiological activity, moisture, pH crystallinity, and identity.

* * * * *

4. In § 450.220, by removing the sixth sentence in paragraph (a)(1) and footnote 1; by revising paragraph (a)(3)(i)(*b*); and by removing paragraph (b)(4) and redesignating (b)–(5) and (6) as (b) (4) and (5). As revised, § 450.220(a)(3)(i)(*b*) reads as follows:

§ 450.220 Dactinomycin for injection.

(a) * * *

(3) * * *

(i) * * *

(*b*) The batch for dactinomycin content, sterility, pyrogens, loss on drying, and pH.

* * * * *

5. In § 450.224, by removing footnote 3 and by revising paragraph (a)(3)(i)(*a*) to read as follows:

§ 450.224 Doxorubicin hydrochloride for injection.

(a) * * *

(3) * * *

(i) * * *

(*a*) The doxorubicin hydrochloride used in making the batch for doxorubicin hydrochloride content, microbiological activity, moisture, pH, crystallinity, and identity.

* * * * *

6. In § 450.240, by removing the sixth sentence in paragraph (a)(1) and footnote 1; by revising paragraph (a)(3)(i)(*b*); and by removing paragraph (b)(4) and redesignating (b) (5), (6), (7), and (8) as (b) (4), (5), (6), and (7). As revised, § 450.240(a)(3)(i)(*b*) reads as follows:

§ 450.240 Plicamycin for injection.

(a) * * *

(3) * * *

(i) * * *

(*b*) The batch for plicamycin content, sterility, pyrogens, moisture, Ph, depressor substances, and identity.

* * * * *

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before June 10, 1985, a written notice of participation and request for hearing, and (2) on or before July 9, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (address above).

The procedures and requirements governing this order, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective June 10, 1985.

Dated: May 1, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11337 Filed 5-9-85; 8:45 am]

BILLING CODE 4160-01-M

PANAMA CANAL COMMISSION

35 CFR Parts 101, 107, 111, 113, and 123

Revised Rules for Arriving and Departing Vessels

AGENCY: Panama Canal Commission.

ACTION: Final rulemaking.

SUMMARY: The Panama Canal Commission is today amending the regulations in Title 35, Code of Federal Regulations, which pertain to the requirements for arriving and departing vessels and hazardous cargoes. The Canal Commission is adopting the standards set forth in various International Maritime Organization (IMO) Conventions. By way of background, the IMO was established in 1958 with headquarters in London, England. 9 UST 621, 1958 UKTS 54, 289 UNTS 3. It has, at present, 125 member nations. The Organization has been effective in drawing up a comprehensive body of internationally-accepted regulations and standards covering various aspects of shipping, including the prevention and control of pollution and navigation safety. Copies of the IMO conventions are for sale from the International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1, 7SR, England.

The amendment to Part 101 consolidates in one part the rules describing the anchorages for vessels using the Panama Canal. The amendment to Part 107 requires that officers and crews of vessels meet certain training standards recommended by the IMO or by their country of registry. Part 111 has been revised to change the flag requirements for vessels carrying toxic or radioactive commodities. Part 113 is amended to adopt new dangerous cargo rules and Part 123 is amended to change the requirements for advance radio notification by vessels carrying dangerous cargo.

EFFECTIVE DATE: June 10, 1985. The incorporations by reference in this rule were approved by the Director of the Federal Register June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone: 202–634–6441 or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011–507–52–7511.

SUPPLEMENTARY INFORMATION: On February 12, 1985, a notice of proposed rulemaking was published in the **Federal Register** (50 FR 5781) setting forth the revised rules for arriving and departing vessels for the Panama Canal. Interested parties were given the opportunity to submit comments by March 14, 1985. During that time period, a number of comments were received by the agency regarding the proposal to require that officers and crews of vessels in Canal waters meet the standards set forth in

the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). These writers noted that the ratification and implementation of the STCW has been slow and is not universal among maritime nations whose vessels transit the Panama Canal. Concern was expressed that implementation of the provision, while meeting the overall goal of improving the safety and efficiency of passage through the Canal, would, at this time, be premature.

In light of these observations, the Commission has determined that it would be in the best interest of its customers to amend §§ 101.10(b)(5) and 107.1(b). These sections have been modified to include a provision that if the nation of a vessel's registry has not implemented the STCW, then the certification of training in accordance with the standards of the nation of registry will be accepted. In addition, §§ 113.30 and 113.49 of the proposed rules, which required special training for officers and crew of oil, chemical and liquefied gas tankers are being incorporated into the general certification requirement in §§ 101.10(b)(5) and 107.1(b), and §§ 113.30 and 113.49 are deleted as unnecessary.

One further amendment is being made in answer to comments that most of the hotel staff aboard cruise or passenger ships are not responsible for the safe handling of the vessel. A sentence is added to § 101.10(b)(5) which reads, "Certification requirements apply to officers and crew responsible for the safe handling of the vessel only." Finally, the phrase "or liquefied gas in bulk" has been deleted from both §§ 101.10(b)(3) and 101.10(b)(4). The proposed rule had required Safety of Life at Sea and International Oil Pollution Prevention certificates for vessels carrying liquefied gas in bulk or dangerous cargo in bulk. Inasmuch as liquefied gas is a dangerous cargo, the reference to liquefied gas in bulk was redundant. This change is not substantive, and ships carrying liquefied gas in bulk will be required to have IOPP and SOLAS certificates available for inspection.

Following is a summary of how the rules published today will modify the rules which have been in effect concerning arriving and departing vessels and the carriage of dangerous cargo:

Part 101

Presently, the description of the anchorage areas for merchant vessels and small craft are in Part 101, while the description of the anchorage areas for vessels carrying dangerous cargoes is in Part 113. This rule removes the description of the dangerous cargo anchorage area from Part 113 and inserts it in Part 101, thereby consolidating the descriptions of all the anchorage areas in one part. In § 101.10 the list of documents which must be presented to Canal boarding inspectors has been revised to delete certain obsolete requirements and to add new requirements, in order to conform to the revisions in Part 113. Under this change vessels must submit a copy of the Hazardous Cargo Manifest for packaged dangerous cargo and a copy of the Loading Plan for dangerous cargo in bulk. Additional documents which must be made available for inspection by the boarding officer include STCW certifications of training for officers and crew or equivalent certificates issued under national standards and the International Oil Pollution Prevention certificate.

Part 107

This part deals with the manning requirements for vessels navigating the waters of the Panama Canal. Section 107.1 is amended to require that the officers and crews of vessels in Canal waters meet the training standards implemented by the International Maritime Organization or by the nation of registry, if that country has not adopted the IMO standards.

Part 111

Under current regulations all vessels carrying dangerous cargo are required to fly a red flag during daylight. This amendment requires vessels carrying a dangerous cargo to fly the red flag if the cargo is a fire or explosion hazard and the international flag "T", if the cargo is toxic or radioactive.

Part 113

The Panama Canal Commission has also revised the rules for transporting dangerous cargoes. Because of the increasing volume and number of dangerous substances passing through the Panama Canal and the complexity of the safety requirements for them, standardized identification and reporting procedures were needed. Recognizing the international character of Canal traffic, the Commission is adopting the International Maritime Organization's rules concerning dangerous cargoes. These rules have worldwide acceptance, and their adoption will cause minimum inconvenience to world shipping because most maritime nations already have adopted these or similar regulations. Many non-U.S. registered vessels using the Canal, who do not utilize U.S. ports, will find these regulations more convenient than compliance with U.S. Coast Guard Regulations, as required by current regulations. Other minor changes no directly related to the adoption of IMO standards have been made. For example, amended § 113.4 deletes the requirement that vessels communicate to Canal authorities the results of mandatory tests of alarms and safety devices. Instead, the results of the test must be noted in the ship's log. Certain Canal operating procedures are being deleted as being internal matters not required to be published in the Code of Federal Regulations. A more significant change concerns the carriage of nuclear materials. Under present rules, vessels not in compliance with the International Maritime Dangerous Goods (IMDG) Code could be permitted to enter Canal waters if a waiver of the Code regulations were granted by Canal authorities.

This amendment eliminates the waiver provision: Vessels carrying nuclear material must comply with the IMDG Code. In addition, these nuclear carriers shall be required to provide proof of financial responsibility.

Part 123

Section 123.4 requires vessels approaching the Panama Canal to provide advance notification by radio of their estimated time of arrival and of certain other matters. The notification requirements pertaining to dangerous cargoes are amended to conform to the changes in Part 113. Also, an obsolete reference to smallpox vaccinations is deleted from the notification requirement pertaining to quarantine and immigration.

This regulation is not a major rule within the meaning of Executive Order 12291, 3 CFR Part 127 (1981 comp.), and therefore a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities and is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612). The incorporations by reference in this rule were approved by the Director of the Federal Register on June 10, 1985.

List of Subjects in 35 CFR Parts 101, 107, 111, 113, and 123

Anchorages, Boarding officers, Dangerous cargo, Incorporation by reference, Manning of vessels, Radio communication.

Accordingly, it is proposed to amend 35 CFR Parts 101, 107, 111, 113 and 123 as follows.

1. The authority citations for Parts 101, 107, 111, 113, and 123 are revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3811; E.O. 12215, 45 FR 36043.

PART 101—[AMENDED]

2. Section 101.8 is revised to read as follows:

§ 101.8 Vessel Anchorage Areas.

The following areas are designated as authorized anchorages within Canal waters:

(a) *Atlantic Entrance.*—(1) *Merchant-Vessel Anchorage.* An area to the west of the Canal channel bounded as follows: Starting at a point "A", located in position 9°21'25" N., 79°55'31" W., and marked by lighted buoy No. 2, thence 900 yards 270° true to a point "B" located in position 9°21'25" N., 79°55'58" W., thence to lighted buoy "I", thence to lighted buoy "H", thence due north to a point "C" located in position 9°22'07" N., 79°56'41" W., thence 2,800 yards 59° true to a point "D" located in position 9°22'50" N., 79°55'29" W., and thence to the starting point. The line extending due west from the Cristobal Mole through lighted beacon No. 1 and lighted buoy No. 2 (9°21'25" North) marks the southern limit of the anchorage area. Except as provided by § 105.3, no vessel shall pass this line without having been passed by the boarding officer and without having a Canal pilot on board.

(2) *Outside Explosive Anchorage.* An area bounded by a line from Point A at position 9°23'53" N., 79°56'29" W., thence to Point B at position 9°24'40" N., 79°56'29" W., thence to Point C at position 9°24'40" N., 79°57'00" W., thence to Point D at position 9°23'53" N., 79°57'00" W., thence to Point A.

(3) *Inside Explosive Anchorage.* The area included in a rectangle one thousand yards wide immediately south of the West breakwater, the rectangle extending 2000 yards along the west breakwater from a point on the west breakwater one thousand yards from the west breakwater light.

(4) *Small-Craft Anchorage.* An area to the east of the Canal channel bounded as follows: Starting at buoy "A", a flashing amber buoy located in position 9°20'43" N., 79°55'10" W., thence 1075 yards 066° true, through fixed amber lighted buoy "B" to fixed amber lighted buoy "C", thence 375 yards 143° true, thence 1760 yards 233° true to the east prism of the Canal channel, thence due north 410 yards to flashing special anchorage buoy "3", thence 525 yards 023° true to the starting point at buoy "A".

(b) *Gatun Lake Anchorage.* An area immediately east of the Canal channel line, bounded by a line extending from the south end of the east wing-wall of Gatun Locks, thence 450 yards 120° true, thence 676 yards 146° true to flashing special anchorage buoy "A", thence 1,415 yards 078° true to flashing special anchorage buoy "1", thence 1,199 yards 155° true to flashing special anchorage buoy "3", thence 2,314 yards 225° true through special anchorage buoy "5" to special anchorage buoy "7", thence 901 yards 220° true to special anchorage buoy "9", thence 952 yards 205° true to the Canal channel line at flashing buoy "11", the channel prism line being the westerly boundary line of the anchorage area.

(c) *Pacific Entrance.*—(1) *Merchant-Vessel Anchorage.* An area bounded as follows: Beginning at a point in position 8°51'50" N., 79°30'00" W., marked by a lighted, whistle buoy which is painted with alternating black and white vertical stripes and which shows short-long flashing white light every 8 seconds (i.e., light 0.4 second, eclipse 0.4 second, light 1.6 seconds, eclipse 5.6 seconds), thence due east to longitude 79°28'00" W., thence due north to 8°54'31" N., thence due west toward Flamenco Island Light to a point 8°54'31" N., 79°30'46" W., thence southwestward touching the northwest corner of San Jose Rock to position 8°53'27" N., 79°31'23" W., marked by canal-entrance lighted buoy No. 2, thence southeastward to the point of beginning.

(2) *Explosive Anchorage.* An area south of Naos Island bounded on the east by a line drawn south (true) from canal-entrance lighted buoy No. 1; on the south by a line drawn east (true) from Tortolita Island, and in the north and west by the curve of 30 foot depth.

(d) If there are any discrepancies between the designated anchorage areas as described in this section and the anchorage areas described in paragraph 4 of Annex A of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 and the attachments thereto, the description in the treaty documents shall govern.

3. Section 101.10 is revised to read as follows:

§ 101.10 Same; list.

(a) *Documents for Commission Boarding Officer.* All documents listed below shall be ready for immediate delivery to the boarding officer when he boards the vessel upon each arrival of the vessel at the Canal.

Documents Required

(1) Ship's Information and Quarantine Declaration (Panama Canal Form 4398)—1 copy.

(2) Cargo Declaration (Panama Canal Form 4363)—1 copy.[1]

(3) Crew List (Panama Canal Form 1509)—2 copies.

(4) Passenger List (Panama Canal Form 20)—1 copy.

(5) Dangerous Cargo Manifest—1 copy.[2]

(6) Loading Plan—1 copy.[3]

(7) Panama Canal Tonnage Certificate—1 copy.[1]

(8) Ship's plans (general arrangement, engine room, capacity, mid-ship, etc.)—1 copy.[1]

(b) *Documents for Examination Only.* The following documents shall be available for inspection by the Commission boarding officer:

(1) Ship's log.

(2) All ship's documents pertaining to cargo, classification, construction, load lines, equipment, safety, sanitation, and tonnage.

(3) SOLAS certificate, for ships carrying dangerous cargo in bulk.

(4) An International Oil Pollution certificate, for ships carrying dangerous cargo in bulk, and

(5) Certificates showing compliance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), if the nation of registry has implemented the convention standards. If the nation of registry has not implemented the STCW convention, then certifications issued or accepted by the registry nation attesting to the qualifications of officers and crew will be accepted by the agency. Certification requirements will apply only to officers and crew responsible for the safe handling of the vessel.

(c) *Crew List.* For the purposes of additional identification of crew members, all copies of the crew list required by this section shall include for each seaman the serial number of his certificate of identification, continuous discharge book, passport or other satisfactory identifying documentation. In addition, the given name and middle initial, as well as the family name, shall be shown for all seamen.

(d) *Passenger List.* The passenger list required by this section shall be in accurate and legible form and shall be delivered to the boarding officer. The

[1] Required only if vessel transits Canal.

[2] Required only if vessel is carrying packaged, dangerous goods.

[3] Required only if vessel is carrying dangerous cargo in bulk.

list shall show passengers in alphabetical order.

(e) *Dangerous Cargo Manifest.* The dangerous cargo manifest for vessels carrying packaged dangerous goods, as defined in § 113.2(m) of this title, shall show the correct technical name, United Nations number, International Maritime Organization class, storage location, and quantity for each packaged dangerous good carried as cargo.

(f) *Loading Plan.* The loading plan for vessels carrying dangerous cargoes in bulk, as defined in § 113.2(f) of this title, shall show the location of cargo tanks or holds and the correct technical name, United Nations number, International Maritime Organization class, and quantity of dangerous cargo carried in each cargo tank or hold.

(Approved by the Office of Management and Budget under control number 3207–0001.)

PART 107—[AMENDED]

4. Section 107.1 is revised to read as follows:

§ 107.1 Vessels to be fully manned.

(a) A vessel navigating the waters of the Canal shall be sufficiently manned in officers and crew to permit safe handling of the vessel.

(b) If the nation of registry of a vessel has implemented the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), which is hereby incorporated by reference, the officers and crew shall meet the standards set forth therein. This Convention is contained in the International Maritime Organization publication number 938 78.15.E "International Conference on Training and Certification of Seafarers, 1978." In the event that the nation of registry has not adopted the STCW, the certification required for officers and crew as required by the country of vessel registry shall be met.

(c) The Canal authorities may deny transit of the Canal to any vessel which, in their opinion, is insufficiently manned as to officers and crew.

PART 111—[AMENDED]

5. Section 111.23(d) is revised to read as follows:

§ 111.23 Power-driven vessels under way (Rule 23).

* * * * *

(d) A vessel employed in the transportation or transfer of flammable, explosive, toxic, or radioactive commodities shall carry, in addition to her appropriate mooring, anchor, or navigation lights, where it can best be seen, a red light of such a character as to be visible all around the horizon at a distance of at least 2 miles. By day she shall display, where it can best be seen, a red flag if the cargo includes flammable or explosive commodities and the international single flag hoist signal "T" if the commodity is toxic or radioactive only.

6. Part 113 is revised to read as follows:

PART 113—DANGEROUS CARGOES

Subpart A—General Provisions

Subpart B—Vessels Carrying Dangerous Cargoes in Bulk

Subpart C—Vessels Carrying Dangerous Packaged Goods

Authority: Issued under authority vested in the President by 22 U.S.C. 3811; EO 12215, 45 FR 36043.

Subpart A—General Provisions

§ 113.1 Application.

This part does not apply to vessels of war or auxiliary vessels, as those terms are defined in the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (September 7, 1977). This part applies to all other vessels, regardless of character, tonnage, size, service, and whether self-propelled or not, and whether arriving or departing, under way, moored, anchored, aground, transiting or passing through Canal waters, that are carrying dangerous cargo as defined in § 113.2(e).

§ 113.2 Definitions.

For the purpose of this part, the following definitions will apply:

(a) *"Bulk Chemical Code"* means the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, including amendments thereto, which is generally applicable to ships built on or after April 12, 1972, but before July 1, 1986, and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, which is generally applicable to ships built on or after July 1, 1986.

(b) *"Certificate of Compliance"* means a certificate issued by a national government, or a society on behalf of a government, certifying that the ship is in compliance with the requirements of the Bulk Chemical Code or Gas Carrier Codes.

(c) *"Certificate of Fitness"* means a certificate issued by or on behalf of a national government in accordance with the Bulk Chemical Code or the Gas Carrier Codes, certifying that the construction and equipment of the vessel are adequate to permit the safe carriage of specified dangerous substances in the vessel.

(d) *"Combustible Liquids"* means a volatile liquid having a flashpoint at 61 °C (141 °F) or above.

(e) *"Dangerous Cargo"* means (1) any substance whether packaged or in bulk, intended for carriage or storage and having properties coming within the classes listed in the IMDG Code, and (2) any substance shipped in bulk not coming within the IMDG Code classes but which is subject to the requirements of the Bulk Chemical Code, the Gas Carrier Codes, or Appendix B of the Solid Bulk Code.

(f) *"Dangerous Cargo in Bulk"* means any dangerous substance, carried without any intermediate form of containment, in a tank or cargo space which is a structural part of a vessel or in a tank permanently fixed in or on a vessel.

(g) *"Gas Carrier Codes"* means the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after July 1, 1986, and the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after December 31, 1976, but before July 1, 1986, and the Code for Existing Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships delivered before December 31, 1976.

(h) *"IMDG"* means the International Maritime Dangerous Goods Code.

(i) *"IMO"* means the International Maritime Organization (formerly International Maritime Consultative Organization).

(j) *"IMO Class"* means the classification of a dangerous substance under the International Convention for

the Safety of Life at Sea, 1960, as amended. Under this system of classification, dangerous substances are divided into 9 classes and subdivisions based on their particular properties.

(k) *"IOPP Certificate"* means an IMO International Oil Pollution Prevention Certificate certifying that the ship has been surveyed in accordance with regulations of MARPOL 73/78.

(l) *"MARPOL 73/78"* means the IMO International Convention for the Prevention of Pollution From Ships, 1973, as modified by the Protocol of 1978 relating thereto. Any annex thereto applies to vessels in waters of the Panama Canal beginning the date on which the annex enters into force by its terms.

(m) *"Packaged Dangerous Goods"* means any dangerous cargo contained in a receptable, portable tank, freight container or vehicle. The term includes an empty receptacle, portable tank or tank vehicle which has previously been used for the carriage of a dangerous substance unless such receptacle or tank has been cleaned and dried, or when the nature of the former contents permits transport with safety.

(n) *"SOLAS"* means the International Convention for the Safety of Life at Sea, 1974, as amended.

(o) *"Solid Bulk Code"* means the International Code of Safe Practice for Solid Bulk Cargoes.

(p) Reference to codes, international agreements, or other regulations shall also be deemed to refer to any amendments or additions thereto on or after the date such amendments or additions become effective.

§ 113.3 Classifications.

(a) Dangerous cargo shall be classified in accordance with the IMO class and division. Whenever there is a doubt as to the explosive or dangerous nature of any commodity, or in case of conflict as to its classification, determination of the nature and classification of such cargoes shall be made by the Chief, Navigation Division or his designee. Dangerous cargoes shall be divided into the following classes:

(1) Class 1—Explosives.

(i) 1.1—Substances and articles which have a mass explosion hazard.

(ii) 1.2—Substances and articles which have a projection hazard but not a mass explosion hazard.

(iii) 1.3—Substances and articles which have a fire hazard and either a minor blast hazard or a minor projection hazard, or both, but not a mass explosion hazard.

(iv) 1.4—Substances and articles which present no significant hazard.

(v) 1.5—Very insensitive substances which has a mass explosion hazard.

(2) Class 2—Gases: Compressed, liquefied or dissolved under pressure.

(i) 2.1—Inflammable gases.

(ii) 2.2—Nonflammable gases.

(iii) 2.3—Poisonous gases.

(3) Class 3—Inflammable liquids.

(i) 3.1—Low flashpoint group (flashpoint below −18 °C or 0 °F).

(ii) 3.2—Intermediate flashpoint group (flashpoint between −18 °C (0 °F) and 23 °C (73 °F)).

(iii) 3.3—High flashpoint group (flashpoint between 23 °C (73 °F) and 61 °C (141 °F)).

(4) Class 4—Inflammable solids or substances.

(i) 4.1—Inflammable solids.

(ii) 4.2—Substances liable to spontaneous combustion.

(iii) 4.3—Substances emitting inflammable gases when wet.

(5) Class 5—Oxidizing substances and organic peroxides.

(i) 5.1—Oxidizing substances.

(ii) 5.2—Organic peroxides.

(6) Class 6—Poisonous and infectious substances.

(i) 6.1—Poisonous substances.

(ii) 6.2—Infectious substances.

(7) Class 7—Radioactive substances.

(8) Class 8—Corrosives.

(9) Class 9—Miscellaneous dangerous substances.

This class includes any other substance which experience has shown, or may show, to be of such a dangerous character that the application of the hazardous cargo rules are warranted. Class 9 includes a number of substances and articles which cannot be properly covered by the provisions applicable to the other classes, or which present a relatively low transportation hazard.

(b) Combustible liquids having flashpoints above 61 °C (141 °F) are not considered to be dangerous by virtue of their fire hazard.

§ 113.4 Safety and alarm systems.

(a) All dangerous cargo alarms, safety and shutdown devices, and the vessel's firefighting systems shall be tested within 24 hours prior to arrival in Canal waters by any vessel carrying dangerous cargoes. An entry shall be made in the ship's log stating that such tests were conducted and the systems found in proper working order or, if not in proper working order, a detailed listing of discrepancies shall be included.

(b) This log entry shall be available for inspection by the boarding officer. Any deviations from the "proper working order" condition shall be brought to the attention of the boarding officer.

(Approved by the Office of Management and Budget under control number 3207-0001)

§ 113.5 Inspections.

The Chief, Navigation Division or his designee may inspect vessels carrying dangerous cargoes to ensure that such vessels are in compliance with the requirements of this part.

Subpart B—Vessels Carrying Dangerous Cargoes in Bulk

§ 113.21 Application.

This subpart applies to vessels carrying dangerous gases, liquids, and solids in bulk, or tankers in ballast condition which are not gas free. It does not apply to vessels carrying combustible liquids in bulk or tankers in ballast condition when their last cargo was a combustible liquid.

§ 113.22 Advance notice.

Vessels subject to this subpart shall provide advance notice to Canal authorities by radio of the information required by the "GOLF" item in the prearrival radio message prescribed in § 123.4(a) of this subchapter.

(Approved by the Office of Management and Budget under control number 3207-0001)

§ 113.23 Anchoring requirements.

(a) Vessels subject to this subpart shall communicate with the signal stations at Flamenco Island or Christobal prior to arrival as required by § 101.1 of this title and await instructions before anchoring.

(b) Such vessels will be instructed to anchor in one of the explosive anchorage areas as described in §§ 101.8(a) (2) and (3) and 101.8(c)(2) of this title.

§ 113.24 Signals.

Vessels subject to this subpart shall display the flags and lights described in § 111.23(d) of this subchapter.

§ 113.25 Vessel requirements.

(a) Vessels subject to this subpart shall comply with the following standards set forth in IMO Conventions and Codes, which are hereby incorporated by reference:

(1) All vessels subject to this subpart shall comply with MARPOL 73/78.

(2) Vessels carrying dangerous chemicals in bulk shall comply with the Bulk Chemical Code.

(3) Bulk liquefied gas carriers shall comply with the Gas Carrier Codes.

(4) Solid bulk carriers shall comply with the Solid Bulk Code.

(b) The standards incorporated by reference in paragraph (a) are further described as follows:

(1) MARPOL 73/78 is the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto. The Convention is contained in IMO publication number 520 77.14.E "International Conference on Marine Pollution, 1973." The 1978 Protocol is contained in IMO publication number 088 78.09.E "International Conference on Tanker Safety and Pollution Prevention, 1978." The Bulk Chemical Code is in two parts: the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, which is generally applicable to ships built on or after April 12, 1972, and before July 1, 1986, and is contained in IMO publications 767 80.13.E and 770 83.13.E. (For a complete set of the Code and its most recent amendments, both of these publications must be consulted.) The other part is the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, which is generally applicable to ships built on or after July 1, 1986, and is contained in IMO publication number 100 83.11.E. The Gas Carrier Codes are the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after July 1, 1986, and which is contained in IMO publication number 104 83.12.E, the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after December 31, 1976, but before July 1, 1976, and which is contained in IMO publication number 782 83.16.E, and the Code for Existing Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships delivered before December 31, 1976, and which is contained in IMO publication number 788 76.11.E. The Solid Bulk Code is the International Code of Safe Practice for Solid Bulk Cargoes, contained in IMO publication number 258 83.18.E. These publications are for sale from the International Maritime Organization, Publications Section, 4 Albert Embankment, London, SE1 7SR, England.

§ 113.26 Transit requirements.

(a) To better assure the safe passage of vessels subject to this subpart, operating restrictions beyond those applicable to other vessels may be imposed by the Chief, Navigation Division, or his designee.

(b) Such vessels shall have safety towing pendants ready at hand, fore and aft, prior to entering the locks. Such pendants shall be rigged over the side when anchored or moored in Canal waters.

§ 113.27 Cargo requirements.

(a) The loading, handling, inspection, stowage, segregation, maintenance, and certification of dangerous bulk cargoes shall be in compliance with the IMO standards and regulations which are incorporated by reference in § 113.25.

(b) Any special requirements for carrying chemicals or liquefied gases in bulk as stated on a vessel's Certificate of Fitness or Certificate of Compliance shall be complied with.

§ 113.28 Documents.

(a) Vessels subject to this subpart shall have ready for delivery to the Canal boarding officer a loading plan, as described in § 101.10(e) of this subchapter.

(b) Such vessels shall have ready for examination, as prescribed by § 101.10(a), the following certificates:

(1) A valid MARPOL 73/78 Certificate (same as International Oil Pollution Prevention Certificate).

(2) A valid SOLAS Certificate.

(3) A valid Certificate of Fitness or Certificate of Compliance (required for bulk chemical and liquefied gas carriers only.)

(Approved by the Office of Management and Budget under control number 3207–0001)

§ 113.29 Prohibited cargoes.

(a) Unstable or explosive substances in bulk which are unduly sensitive or so reactive as to be subject to spontaneous reaction are prohibited in Canal waters.

(b) Bulk dangerous cargoes not listed in the Bulk Chemical Code, Gas Carrier Codes, or Solid Bulk Code are prohibited in Canal waters unless advance approval is given by the Chief, Navigation Division, or his designee to carry such cargoes.

(c) Bulk chemcial and liquefied gas carriers are prohibited from carrying in Canal waters dangerous cargoes that are not listed on their Certificate of Fitness or Certificate of Compliance, unless 30 days advance notice is given by the vessel and the Chief, Navigation Division, or his designee approves the carriage of such cargoes in Canal waters.

(Approved by the Office of Management and Budget under control number 3207–0001)

Subpart C—Vessels Carrying Dangerous Packaged Goods

§ 113.41 Application.

This subpart applies to vessels carrying packaged dangerous goods.

§ 113.42 Advance notice.

Vessels subject to this subpart shall provide advance notice to Canal authorities by radio of the information required in the "HOTEL" item of the radio message prescribed in § 123.4 of this subchapter, except that vessels carrying explosives shall provide the information required in the "GOLF" item of the message.

(Approved by the Office of Management and Budget under control number 3207–0001)

§ 113.43 Anchoring requirements.

(a) Vessels subject to this subpart shall communicate with the signal stations at Flamenco Island or Cristobal prior to arrival as required in § 101.1 of this subchapter and await instructions before anchoring.

(b) Such vessels will be instructed to anchor in one of the designated anchorage areas as described in §§ 101.8(a) or 101.8(c).

(c) Vessels carrying explosives or especially reactive or large amounts of dangerous materials as determined by the Chief, Navigation Division, or his designee may be instructed to anchor in one of the explosive anchorage areas described in §§ 101.8(a)(2)(3) and 101.8(c)(2) of this subchapter.

§ 113.44 Vessel requirements.

(a) Vessels subject to this subpart shall comply with the standards set forth in SOLAS and the IMDG pertaining to the construction, maintenance, inspection, certification, and classification of the vessel, its safety equipment including alarms, and its cargo stowage and handling systems, which are hereby incorporated by reference.

(b) SOLAS, which is incorporated by reference in paragraph (a), is the International Convention for the Safety of Life at Sea, 1974, together with the Protocol of 1978 relating thereto. The Convention is set forth in Treaties and Other International Acts Series number 9700 and the Protocol is set forth in number 10009 of the same series. These publications are for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Convention is also contained in IMO publication number 080 75.01.E "International Conference on Safety of Life at Sea, 1974," and the Protocol is contained in IMO publication number 088 78.09.E "International Conference on Tanker Safety and Pollution Prevention, 1978." IMDG is the International Maritime Dangerous Goods Code, which is contained in IMO publication numbers 200 81.10.E, 236 81.17.E, and 238 82.21.E.

(For current version of the IMDG, all three pubications must be consulted.) The IMO publications referred to in this paragraph are for sale from the International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, England.

§ 113.45 Transit requirements.

Normal operating restrictions will generally apply unless such vessels are carrying more than 5 tons of explosives or carrying especially more reactive or large amounts of dangerous goods as determined by the Chief, Navigation Division, or his designee, in which case, additional operating restrictions may be imposed.

§ 113.46 Cargo requirements.

The loading, packing, labeling, marking, handling, stowage, segregation, maintenance, inspection, and certification of packaged dangerous goods shall be in compliance with the IMDG Code, which is incorporated by reference. See § 113.44, Vessel Requirements.

§ 113.47 Documents.

Vessels subject to this subpart shall have ready for delivery to the Commission boarding officer a dangerous cargo manifest, as described in § 101.10(d) of this subchapter.

(Approved by the Office of Management and Budget under control number 3207–0001)

§ 113.48 Prohibited cargoes.

Packaged dangerous goods which are not carried in compliance with the IMDG Code are prohibited in Canal waters.

§ 113.49 Class 1, Explosives.

(a) Vessels carrying explosives shall comply with the IMDG Code, which is incorporated by reference. See § 113.44, Vessel Requirements, and 113.46, Cargo Requirements.

(b) Explosive cargo may be loaded and discharged only at the Mindi Dock. Explosive anchorages prescribed in § 101.8(a) (2) (3) and 101.8(c)(2), respectively, may be used upon approval of the Chief, Navigation Division, or his designee.

(c) The Chief, Navigation Division, or his designee, upon application, may permit the discharge of explosives, whether intended for civilian or military use, at Commission docks and piers within Canal waters in an emergency or when the character or packing of the explosives permits their safe discharge there.

§ 113.50 Class 7, Radioactive Substances.

(a) Vessels carrying radioactive substances shall comply with the IMDG Code, which is incorporated by reference. See § 113.44, Vessel Requirements, and 113.46, Cargo Requirements.

(b) Any cask or container containing radioactive substances, together with any attachments thereto, may not weigh more than 150 tons.

(c) For the purpose of approval of shipments and prior notification of radioactive substances under the IMDG Code, Panama Canal waters will be considered a country en route. Notification shall be given to Canal authorities 30 days in advance of the arrival of the vessel in Canal waters, in order that approval may be given by the Chief, Navigation Division, or his designee to carry such cargoes.

(d) Vessels carrying nuclear materials shall be required to provide proof of financial responsibility.

(e) Prior approval and notification is not necessary for the following substances:

(1) Low Specific Activity Substances or Low Level Solid Radioactive Substances as specified in Class 7 of the IMDG Code.

(2) Radioactive substances carried in limited quantities as specified in Class 7 of the IMDG Code.

(Approved by the Office of Management and Budget under control number 3207–0001)

7. In § 123.4(a), the items GOLF and HOTEL are revised to read as follows:

§ 123.4 Advance information required by radio from vessels approaching the Panama Canal.

* * * * *

(a) * * *

GOLF—If the vessel is carrying any explosives or dangerous cargoes in bulk, state the correct technical name, quantity (in long tons), United Nations number, and the International Maritime Organization class for each dangerous cargo carried. If the vessel is a tanker in ballast condition and not gas free, state the correct technical name, United Nations number, and International Maritime Organization class of the previously carried cargo.

HOTEL—If the vesel is carrying any packaged dangerous goods other than explosives, state the International Maritime Organization class and the total quantity (in long tons) within each class.

* * * * *

8. In § 123.4(a), the INDIA item is amended by removing subitem (5) and by redesignating subitems (6) through (11) as (5) through (10), respectively.

9. The following parenthetical text is added at the end of § 123.4:

* * * * *

(Approval by the Office of Management and Budget under control number 3207–0001)

(22 U.S.C. 3811)

Dated: April 22, 1985.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 85–11414 Filed 5–9–85; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2830–3]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: The USEPA announces final approval of several revisions to the Wisconsin State Implementation Plan (SIP) for ozone. These revisions incorporate volatile organic compound (VOC) emission limits for large petroleum dry cleaners into the ozone SIP. The revisions consist of changes to section NR 154.01, Definitions, and Section NR 154.13, Control of Organic Compound Emissions, of the Wisconsin Administrative Code (WAC). These sections are being amended to require control of VOC emissions from large petroleum dry cleaners located in southeastern Wisconsin, as part of Wisconsin's strategy to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone. USEPA's action is based on a SIP revision request that was submitted by the Wisconsin Department of Natural Resources (WDNR) on January 23, 1984. A notice of proposed rulemaking on these revisions appeared in the August 17, 1984, Federal Register (49 FR 32866).

EFFECTIVE DATE: This final rulemaking becomes effective on June 10, 1985.

ADDRESSES: Copies of this revision to the Wisconsin SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of this SIP revision and other materials related to this rulemaking are available for review at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886–6034, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401

M Street, SW., Washington, D.C. 20460
Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT:
Colleen W. Comerford (312) 886-6034.

SUPPLEMENTARY INFORMATION:

Background

Section 172 of the Clean Air Act allows USEPA to grant extensions to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its air pollution control program. The revised programs had to include additional reasonably available control technology (RACT) emission limits for various types of VOC sources located in the areas needing the extension.

Wisconsin could not demonstrate attainment of the ozone NAAQS in southeastern Wisconsin by the required date of December 31, 1982, so the State requested, and received, an extension to December 31, 1987. The extension, which was granted on May 6, 1981 (46 FR 25244), obligated the State to develop RACT regulations for those sources addressed by Group III Control Technique Guidelines (CTGs) (RACT III), and to develop RACT regulations for major sources not addressed by a CTG (major non-CTG RACT), for VOC sources in the six-county area of southeastern Wisconsin.

On October 6, 1982, USEPA released a CTG (47 FR 44155) for large dry cleaning facilities that use petroleum solvents, entitled "Control of Organic Compound Emissions from Large Petroleum Dry Cleaners." The submission of RACT III VOC regulations for this source category to USEPA by the State of Wisconsin was required by January 1, 1984. These regulations, identified as section NR 154.13(6)(c) of the Wisconsin Administrative Code (WAC), were enacted in Wisconsin by means of Natural Resources Board Order Number A-12-83, and became effective on December 1, 1983. They were submitted to USEPA as SIP revisions on January 23, 1984.

Discussion of Rules

In today's final rulemaking action, USEPA is approving several revisions to the Wisconsin SIP consisting of changes to section NR 154.01, Definitions, and section NR 154.13, Control of Organic Compound Emissions, of the WAC. The revisions amend these rules to require control of VOC emissions from large petroleum dry cleaners, a source category covered by a Group III CTG. The revisions to NR 154.01 create two new definitions and clarify one existing definition. The revisions to NR 154.13 establish organic compound emission limits and work practices representing RACT for those large, existing petroleum liquid solvent dry cleaning facilities that are located in a six-county area of southeastern Wisconsin.

There are three revisions to NR 154.01, Definitions. The first revision adds a definition for "cartridge filter" to NR 154.01 (38m). The second revision adds a definition for "solvent recovery dryer" to NR 154.01 (178m). The third revision amends an existing definition for "dry cleaning facility", identified at NR 154.01(63), by clarifying that this definition applies to facilities that clean leather as well as fabrics. All three of these definitions are consistent with the CTG, and, therefore, USEPA approves these revisions.

The revisions to NR 154.13, Control of Organic Compound Emissions, are applicable to dry cleaning facilities located in southeastern Wisconsin that emit more than 100 tons per year of VOC [NR 154.13(6)(c)]. The requirements of the regulations limit VOC emissions, provide a timetable for repairing solvent leaks, and establish compliance schedules under NR 154.13(12) of the WAC. These revisions are consistent with the CTG, and, therefore, USEPA approves these revisions.

These revisions do not include any testing and monitoring requirements, because the State places these methods in an operations handbook instead of the WAC. In the August 17, 1984, notice of proposed rulemaking (49 FR 32866), USEPA proposed to approve Wisconsin's dry cleaning regulations (RACT III) provided that the WDNR included the test method specified in the CTG in its operations handbook, and submitted this test method to USEPA as a SIP revision prior to final rulemaking. On November 2, 1984, the WDNR submitted the "Air Management Operations Handbook" to USEPA as a SIP revision. USEPA reviewed the handbook and determined that all of the testing and monitoring requirements contained in the CTG were not included in the handbook. USEPA requested that the WDNR revise the Operations Handbook and resubmit it to USEPA, which the WDNR did in a letter dated January 25, 1985. Wisconsin has thus satisfied the conditions set forth in the August 17, 1984, notice of proposed rulemaking. USEPA will act on the Operations Handbook in a separate notice.

Conclusion

USEPA has reviewed the revisions to sections NR 154.01 and NR 154.13 of the WAC, and finds that they are consistent with the guidance provided in the CTG. The complete text of these revisions can be found in the WAC. During the 30-day public comment period, USEPA received no comments on this action. Therefore, USEPA is taking final action to approve these revisions to the Wisconsin SIP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Carbon monoxide, Intergovernmental relations.

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

This notice is issued under authority of sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: April 25, 1985.

Lee M. Thomas,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Wisconsin

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

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

Authority: Sections 110, 171 to 178 and 301(a) of the Clean Air Act, as amended (42 U.S.C. §§ 7410, 7501, 7508 and 7601(a)).

2. Section 52.2570 is amended by adding new paragraph (c)(39) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(39) On January 23, 1984, the Wisconsin Department of Natural Resources submitted revisions to sections NR 154.01 and NR 154.13 of the Wisconsin Administrative Code. These revisions incorporate volatile organic compound emission limits for large

existing petroleum dry cleaners located in a six-county area of southeastern Wisconsin into the Wisconsin Ozone SIP [NR 154.13(6)(c)].

* * * * *

[FR Doc. 85-10793 Filed 5-9-85; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405 and 447

[BPO-020-F]

Medicare and Medicaid Program; Withholding the Federal Share of Payments to Recover Medicare or Medicaid Overpayments

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

ACTION: Final rule.

SUMMARY: These final regulations facilitate HCFA's recovery of Medicare and Medicaid overpayments. Some institutions or persons that participate (or have participated) in both programs have received a Medicare or Medicaid overpayment which cannot be recovered under that program. Under expanded statutory authority (Section 905 of Pub. L. 96-499 and section 2104 of Pub. L. 97-35), HCFA has authority to withhold the Federal share of Medicaid payments in order to recover Medicare overpayments and to withhold Medicare payments to recover Medicaid overpayments.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Dan Metzman, 301-594-8193.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislation

On February 10, 1983, we published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) with a 60 day comment period which proposed revisions to the regulations to implement sections 905 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) and 2104 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).

1. Withholding provisions of Pub. L. 96-499 (Withholding the Federal share of Medicaid payments to recover Medicare overpayments).

Section 905 of Pub. L. 96-499 amends sections 1902(a)(13), 1903(a)(1), 1903(j), and 1903(n) and adds a new section 1914 to the Social Security Act (the Act). This legislation broadens our authority to withhold the Federal share of Medicaid payments to States to recover Medicare overpayments to institutions or persons participating in both programs, and to withhold Federal payments when we are unable to collect the information necessary to determine the amount of Medicare overpayments made.

Under new section 1914, Federal Financial Participation (FFP) in State Medicaid expenditures may be withheld to recover Medicare overpayments to the following entities that participate in Medicaid:

(a) An institution that has a Medicare provider agreement in effect (under section 1866 of the Act), but continues to participate in the Medicare program at such a minimal level as to prevent recovery of the overpayment;

(b) An institution that no longer has a Medicare provider agreement in effect (i.e., the provider has withdrawn or been terminated from participation in the program or has refused to supply information needed to determine whether an overpayment has occurred); and

(c) A Medicaid provider that has previously accepted assignment under Medicare, but has submitted no claims or has submitted claims less than the overpayment amount.

The new provisions broaden the previous withholding authority by extending it beyond overpayments to institutions, to include overpayments to physicians and other suppliers of services, and by allowing the Secretary to require reduction of the State's payment to the overpaid institution or person. The statute also provides that, if the State reduces its payment to the institution or a person under an order from HCFA, the institution or person may not recover that amount from the State.

2. Withholding provisions of Pub. L. 97-35 (Withholding Medicare Payments to Recover Medicaid Overpayments).

Section 2104 of Pub. L. 97-35, adds section 1885 to the Act. This legislation provides new authority for us to withhold Medicare payments under both Parts A and B to recover overpayments made under Medicaid.

We may withhold Medicare payments to any institution that has in effect a provider agreement under section 1866 of the Act, and to any physician or supplier who has accepted assignment under section 1842(b)(3)(B)(ii) of the Act.

Withholding may occur when—(1) the institution or person described above has or previously had in effect an agreement with a State agency to furnish Medicaid services; and (2) the Medicaid agency has been unable to recover overpayments made to the institution or person or to collect the information necessary to enable it to determine the amount (if any) of overpayments made to that institution or person.

Finally, the State agency may not refer Medicaid overpayments to HCFA for collection from Medicare funds in order to circumvent the reporting and collection requirements of any other Federal regulation.

II. Response to Public Comments

In response to our request for comments on the NPRM published February 10, 1983, we received a total of 10 comments from 9 State agencies and one Medicare carrier. The comments and our responses are as follows:

A. Withholding the Federal Share of Medicaid Payments to Recover Medicare Overpayments

1. *Comment*: Two State agencies expressed the view that States should not be required to participate in overpayment recovery for the Medicare program. One commenter was concerned that the State could lose FFP for the State Medicaid program in the effort to recover Federal Medicare overpayments, while having no control over the Medicare program.

Reponse: Withholding of the Federal share of Medicaid payments to States in order to recover Medicare overpayments is authorized by section 1914 of the Act (enacted by section 905 of Pub. L. 96-499). These regulations merely implement the law. We intend to withhold only the Federal portion of Medicaid payments to a provider. States need only pay the State portion of a Medicaid claim from the provider. Thus, States will not lose funds. We believe that the 60-day advance notice of withholding action from HCFA, specified in § 447.30 (e) and (g), provides adequate time to allow States to revise their payment procedures. Thus, only the overpaid provider, not the State, will lose Federal funds until the Medicare overpayment is recovered.

2. *Comment:* One commenter asked that we clarity the term,"any quarter," which appears in section 1914 of the Act in regard to FFP withholding. Section 1914 of the Act provides that the Secretary may adjust FFP to a State for expenditures for medical care or services furnished in any quarter.

Response: We will apply the withholding provisions of section 1914 of the Act ot Medicaid payments otherwise due a provider for any quarter in which a Medicare overpayment is determined to be uncollectible through the Medicare program. We have specified in § 447.30(g) that withholding will become

effective no less than 60 days after the day on which the agency received notice of withholding.

3. *Comment:* One State agency commented that its State Human Resources code provides that State funds may not be used to pay a provider unless matching Federal funds are also available. Whether the State can continue to pay the overpaid Medicare provider solely from State funds, then, raises a legal issue for the State.

Response: Section 1914 of the Act is not intended to affect State payment of the State share of the otherwise allowable Medicaid payment to provider. These regulations merely require that the Medicaid agency withhold the Federal share of a Medicaid payment to a provider which has outstanding Medicare overpayments. It may be necessary for some States to amend State law in order for them to comply with Section 1914 and these regulations.

If we issue an order to a Medicaid agency to reduce payment to an overpaid provider, under the provisions of § 447.30(d), and authorized by section 1914 of the Act, the agency must not include the Federal share in its payment to that provider. We have added paragraph (3) to § 447.30(d) to clarify that we may withhold FFP from any State that does not comply with the order.

4. *Comment:* One State agency believes that the Medicare appeals process should be exhausted before we withold FFP or issue order to a State to reduce payment. Another commenter suggested that the State agency be authorized to grant a provider an extended payment schedule when the agency knows that a provider has insufficient resources to withstand the impact of withholding.

Response: Section 1914(c) of the Act requires only that no withholding of FFP from a State agency or reduction (withholding) of the Federal share of Medicaid payments to an institution or person be made until the State agency and the institution or person are given notice of the action not less than 60 days before it becomes effective. Current regulations at 42 CFR 405.1803(b) already require that we take collection action even though a provider is appealing the Medicare overpayment determination. However, our present Medicare overpayment collection procedures offer providers an opportunity to request an extended payment schedule. A provider has the obligation to request an extended repayment schedule with the fiscal intermediary or carrier when it has insufficient funds to repay an overpayment in a lump sum. We would only withhold the Federal share where a provider has not attempted to repay or has not made satisfactory efforts to meet its obligation to the Medicare program. Therefore, we do not believe that State agencies should be authorized to grant an extended payment schedule.

5. *Comment:* One commenter objected to the Federal government withholding FFP before the State has an opportunity to recover the Medicaid overpayment, when a provider has both Medicare and Medicaid overpayments.

Reponse: Because each overpayment case is unique, the HCFA Regional Offices will have discretion in determining whether to withhold FFP to recover Medicare overpayments. Shortly after these regulations are published, we will issue manual instructions to guide the Regional Offices in making their decisions. We expect those decisions to take into consideration the States' concerns, while protecting the Federal government against financial loss.

6. *Comment:* One State agency commented that its State payment system is not designed to split payments to Medicaid providers into Federal and State shares.

Response: The Federal portion of Medicaid payments is based on the Federal Medical Assistance Percentage, which is determined for each State by the formula described in section 1905(b) of the Act. Because the Federal portion of Medicaid payments is a fixed percentage for each State, it is a simple mathematical calculation to separate the State and Federal portions. This could be done manually, if the State system cannot be programmed to accommodate this change. We expect, however, that there will be a minimal number of cases referred for withholding action, and a manual calculation, if necessary, will not be burdensome.

7. *Comment:* Two State agencies objected to our use of FFP withholding in the grant award process. They suggest, instead, that the State stop the payment which would otherwise be due the provider, and then write a check to the Federal government for the amount withheld from the provider.

Response: While the suggested method appears simple, we believe that section 1914 of the Act only gives us the authority to recover Medicare overpayments by withholding the Federal share of payments to the provider. We do not have discretion under the Act to implement alternative methods.

8. *Comment:* Two State agencies recommended that the potentially higher administrative and legal costs associated with these regulations be reimbursed entirely by the Federal government.

Response: Section 1903(a)(7) of the Act provides that administrative costs under Medicaid are reimbursed at the 50 percent level. We do not have authority to raise this level to 100 percent.

9. *Comment:* One State agency asked whether it would need to place a lien on Medicaid capitation payments to contracting Health Maintenance Organizations (HMOs) which have been overpaid by Medicare. Another commenter asked how withholding would occur when an HMO has a fee-for-service billing arrangement for some beneficiaries and capitation arrangement for others. A third commenter asked that we clarify how the withholding procedure would operate when a State uses a claims payment contractor to pay HMOs. One State agency asked whether the withholding of FFP would apply to all types of Medicaid payments, such as cost settlement amounts, capitation payments, and Medicare coinsurance and deductibles.

Response: Regardless of the method used by the provider to seek payment or the method used by the State to pay providers, including HMOs, the State is required to withhold the Federal portion of Medicaid payments attributable to a particular provider to recover a Medicare overpayment to that provider. Only the Federal portion of Medicaid payments is withheld because the intent of these regulations is to recover Federal funds to which the overpaid provider is not entitled. We do not require that the State withhold the State portion of Medicaid payments.

10. *Comment:* One State agency indicated that the proposed regulations do not appear to give States the right to request a reconsideration of our decision to withhold FFP, which is provided for in section 1116(d) of the Act and regulations at 45 CFR 201.14.

Response: We agree with this comment. To make these regulations consistent with section 1116(d) of the Act, we are revising § 447.30(e) by adding a subparagraph (5) to specify that a State may appeal any disallowance of FFP resulting from the withholding decision to the Grant Appeals Board, in accordance with 45 CFR Part 16. However, the notice of withholding sent to a State which orders it to reduce (withhold) the Federal share of Medicaid payments to a provider is not appealable.

11. *Comment:* Three State agencies anticipated that some overpaid providers may take legal action against States to prevent them from withholding

the Federal portion of the Medicaid payment. One commenter asked that, to protect the State in case of litigation, the Secretary of Health and Human Services (HHS) provide a letter to the State that orders the State to reduce payment to a provider. Two others suggested that, in the event that any legal action occurs, we should terminate the withholding action so that the State will not be penalized.

Response: Regional Office and State Medicaid Manual instructions will provide that when we require a State to reduce the Federal share of a Medicaid payment to an overpaid provider, the order to the State will be in writing, and can be used as verification that we have required the reduction in payment. Should legal action occur, we would, of course, be bound by the terms of an order by a court of competent jurisdiction.

12. *Comment:* One State agency suggested that States be permitted to terminate withholding of payments from a provider when the full overpayment has been collected, rather than wait for a notice of termination from us.

Response: We agree with this comment. Section 447.30(d) is being revised to specify that the order to reduce payment to the provider will remain in effect either until the State determines that the overpayment has been completely recovered or until we terminate the order.

13. *Comment:* One commenter objected to the provision in § 447.30(k) which specifies that if FFP ultimately determined to be in excess of the Medicare overpayment is withheld, HCFA will adjust FFP to restore the excess funds withheld. The commenter, we believe, objects to the use of FFP adjustment to restore excess funds withheld.

Response: We agree with this comment, and are revising § 447.30(k) to delete the reference to adjustment of FFP. Should the amount withheld be in excess of the Medicare overpayment, the intermediary or carrier will restore the excess funds withheld to the provider. Revisions to the Medicare and Medicaid manuals will provide further instructions.

B. Withholding Medicare Payments to Recover Medicaid Overpayments

1. *Comment:* One commenter pointed out that the regulations do not provide for the assessment of interest or penalties by the State on Medicaid overpayments.

Response: Before a State requests that we take Medicare withholding action under these final regulations, we will have already recovered the Federal share of any Medicaid overpayment from the State under existing Medicaid overpayment recovery policy. Therefore, only the State share of the outstanding Medicaid overpayment remains to be recovered through the withholding of Medicare payments under these regulations. However, these regulations do not preclude a State from including an interest or penalty assessment in the amount being reported to us for collection through Medicare.

We have clarified § 405.375(a) to indicate that the amount to be withheld is determined by the State. Therefore, if the State chooses to assess interest or penalties, this should be included in the amount reported to us for collection. Additionally, we plan to study the issue of interest assessment to ensure sound financial management practices.

2. *Comment:* One State agency asked why a 30 day notice to providers is required for an intended Medicare withholding action.

Response: Section 1885 requires that the State provide adequate notice of a Medicaid overpayment determination and an opportunity to appeal that determination before we begin Medicare withholding action. We believe that 30 days notice to a provider is adequate.

3. *Comment:* One State agency suggested that we modify the text of § 447.31(b)(1)(C) to specify that, while the Medicaid overpayment determination is subject to agency appeal procedures, we may withhold Medicare payments to recover the overpayment during the period in which the provider is appealing the agency's overpayment determination.

Response: We agree with this comment, and have revised the text of § 447.31(b)(1)(c) to specify that HCFA may withhold Medicare payments while an appeal by a provider is in progress.

4. *Comment:* Two State agencies believe that too much documentation is required of States; some documentation seems unnecessary (names and addresses of provider's officials and owners; the quarter in which the overpayment is reported; and a copy of the provider agreement).

Response: Section 1885 requires that HCFA take Medicare withholding action only when a State has provided adequate notice of an overpayment determination and provided an opportunity for the provider to appeal that determination. The documentation requested by HCFA is, we believe, the minimum necessary for a State to demonstrate that it has met those requirements.

5. *Comment:* One commenter asked that we clarify who has the responsibility for establishing procedures for the restoration of any withheld amounts that are ultimately determined to be in excess of Medicaid overpayments.

Response: The Medicaid agency must establish procedures satisfactory to us to assure the return to the provider of withheld amounts that are ultimately determined to be in excess of overpayments. This is specified in § 447.31(f). Revisions to the Medicare and Medicaid Manuals will provide further instructions.

C. Comments of a General Nature Applying to Provisions in Both Sections A & B

1. *Comment:* One carrier asked numerous technical operational questions about how the details of the withholding process under both sections A & B would operate.

Response: We will address questions such as which forms are to be used for specific reporting purposes, how forms are to be revised or filled out, and similar technical issues in Medicare and Medicaid manual issuances. We intend to issue these manual revisions shortly after publication of these final regulations.

2. *Comment:* One State agency suggested that we promote the use of a memorandum of understanding between State Medicaid agencies and HCFA (or its contractors administering the Medicare program).

Response: We do not believe that a memorandum of understanding is necessary. The Medicare and Medicaid manual issuances, referred to above, will specify not only the operating procedures, but also the specific responsibilities of each component.

3. *Comment:* Two State agencies suggested that recovery of overpayments through withholding be expanded to include all Federal health programs.

Response: While there may be merit in this proposal, the legislation upon which these regulations are based applies specifically to Medicare and Medicaid. Thus, this legislation does not grant us authority to expand withholding action to other Federal health programs.

III. Technical Changes

We have modified the wording of § 447.30 where appropriate to clarify that under these regulations we will first attempt to recover Medicare overpayments by ordering States to reduce (withhold) the Federal share of Medicaid payments to the providers. If a State fails to comply with such an order and makes full payment to the provider,

we will withhold FFP from the State for the claimed expenditure. This change also eliminates the inconsistency between the title of § 447.30 and the text of that section in the NPRM.

We are also removing paragraph (2) of § 447.30(k) in the NPRM because the intermediary or carrier, not the Medicaid State agency, will be responsible for restoring any excess funds withheld under § 447.30. Revisions to the Medicare and Medicaid manuals will provide further instructions. We have also revised the word order of § 447.31(a) for clarity.

Impact Analysis

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, the Regulatory Flexibility Act (Pub. L. 96–354) requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Under both the Executive Order and the Regulatory Flexibility Act (RFA), such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost-effective.

A. Executive Order 12291

The final rules achieve the objectives set forth in Pub. L. 96–499 and 97–35 by amending Medicaid and Medicare regulations to provide for offsets against payments in one program to recover amounts due to the other. We estimate that the use of the withholding procedure will reduce costs for the Federal government because overpayments will be recovered more rapidly, and the need for litigation to recover the overpayments will often be eliminated. We also believe the administrative cost to the Federal Government will be minimal.

Therefore, we have determined that these final rules will not result in an annual economic impact that meets any of the threshold criteria of the Executive Order.

B. Regulatory Flexibility Act

As explained above, the final rule implements legislation which expands HCFA's authority to withhold the Federal share of Medicaid payments to States for provider services, and to recover Medicare overpayments and provides new authority to recover Medicaid overpayments by withholding Medicare payments. The reduction in payment may have an effect on some small health care providers who have been overpaid. While that effect may be adverse, it is appropriate for the Federal Government to recover money to which the overpaid provider is not entitled. Moreover the effect cannot be attributed to these regulations, but to legislative requirements in section 905 of Pub. L. 96–499 and section 2104 of Pub. L. 97–35. However, we believe that the effect is not significant. Accordingly, a regulatory flexibility analysis will not be required.

Therefore, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not have a significant impact on a substantial number of small entities.

Information Collection Requirements

Sections 447.30(e)(4), 447.31 (b), (c) and (d) of these regulations contain collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we submitted a copy of the NPRM, published February 10, 1983, to the Office of Management and Budget (OMB) for its review of these information collection requirements. OMB has approved the following information collection requirements: (a) Section 447.31(b), (c) and (d), control number 0938–0287; and (b) Section 447.30(e)(4), control number 0938–0067.

In accordance with OMB's regulations for controlling paperwork burdens on the public, 5 CFR Part 1320, we are displaying control numbers assigned by OMB to collections of information contained in our regulations. These control numbers are displayed in 42 CFR 400.310. We are, therefore, revising § 400.310 by adding control numbers 0938–0287 assigned to § 447.31(b), (c) and (d), and 0938–0067 assigned to § 447.30(e)(4).

List of Subjects

42 CFR Part 400

Definitions, OMB Control Numbers.

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 447

Accounting, Clinics, Contracts (Agreements), Copayments, Drugs, Grant-in-Aid program—health, Health facilities, Health professions, Hospitals, Medicaid, Nursing homes, Payments for services: general, Payments: timely claims, Reimbursement, Rural areas.

42 CFR Chapter IV is amended as set forth below.

PART 400—INTRODUCTION; DEFINITIONS

A. Part 400, Subpart C is amended as set forth below:

1. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.310 is revised as follows:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control number
403.232, 403.239–403.258	0938–0264
405.474(b)(2)(iii)	0938–0288
405.476(b), 405.476(d), 405.1042(c), 405.1627, 405.1629	0938–0308
405.481(g) (1) and (3)	0938–0285
418.47(b)	0938–0266
418.22, 418.26, 418.56, 418.58, 418.70, 418.74, 418.100	0938–0302
413.55	0938–0295
434.6–434.20, 434.23–434.27, 434.30, 434.32, 434.36, 434.50, 434.53, 434.55	0938–0326
441.302	0938–0268
441.303	0938–0272
447.31 (b), (c), (d)	0938–0287
447.30(e)(4)	0938–0067
488.56(e), 488.60(a), 488.64(a), 405.262(c)	0938–0267

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

B. Part 405, Subpart C is amended as set forth below:

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

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh and 1395pp), and 31 U.S.C. 3711.

2. The Table of Contents is amended by adding to Subpart C a new § 405.375 to read as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

* * * * *

405.375 Withholding Medicare payments to recover Medicaid overpayments.

3. Section 405.301 is amended by adding three sentences at the end as follows:

§ 405.301 Scope of subpart.

* * * * *

Section 405.374 relates to the collection and compromise of claims for overpayments. Section 405.375 relates to the withholding of Medicare payments to recover Medicaid overpayments. Section 405.376 relates to the charging and payment of interest on overpayments and underpayments to providers and suppliers, and physicians and other practitioners.

4. A new § 405.375 is added to read as follows:

§ 405.375 Withholding Medicare payments to recover Medicaid overpayments.

(a) *Basis and purpose.* This section implements section 1885 of the Act, which provides for withholding Medicare payments to certain Medicaid providers specified in paragraph (b) of this section that have not arranged to repay Medicaid overpayments as determined by the Medicaid agency or have failed to provide information necessary to determine the amount of overpayment.

(b) *When withholding may be used.* HCFA may withhold Medicare payments to recover Medicaid overpayments that a Medicaid agency has been unable to collect, if—

(1) The Medicaid agency has followed the procedure specified in § 447.31 of this chapter, and

(2) The institution or person is one described in paragraphs (c)(1) or (c)(2) of this section.

(c) *Institutions or persons affected—*(1) HCFA may withhold Medicare payments to recover Medicaid overpayments with respect to any of the following entities that has or had in effect, an agreement with a Medicaid agency to furnish services under an approved Medicaid State plan:

(i) An institutional provider that has in effect an agreement under section 1866 of the Act.

(ii) A physician or supplier who has accepted payment on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act.

(2) HCFA may withhold Medicare payment from an institution or person specified in paragraph

(c)(1) of this section that—

(i) Has not made arrangements satisfactory to the Medicaid agency to repay; or

(ii) Has not provided information to the Medicaid agency necessary to enable the agency to determine the existence or amount of Medicaid overpayment.

(d) *Amount to be withheld.*—(1) HCFA will contact the appropriate intermediary or carrier to determine the amount of Medicare payment to which the institution or person is entitled.

(2) HCFA may require the intermediary or carrier to withhold Medicare payments to the institution or person by the lesser of the following amounts:

(i) The amount of the Medicare payments to which the institution or person would otherwise be entitled.

(ii) The total Medicaid overpayment to the institution or person.

(e) *Notice of withholding.*—If HCFA intends to withhold payments under this section, HCFA will notify by certified mail, return receipt requested, the institution or person and the intermediary or carrier responsible for making Medicare payment to the institution or person of the intention to withhold Medicare payments. The notice will include:

(1) Identification of the institution or person; and

(2) The amount of Medicaid overpayment to be withheld from payments to which the institution or person would otherwise be entitled under Medicare.

(f) *Termination of withholding.* HCFA will terminate the withholding if—

(1) The Medicaid overpayment is completely recovered;

(2) The institution or person makes an agreement satisfactory to the Medicaid agency to repay the overpayment; or

(3) The Medicaid agency determines that there is no overpayment based on newly acquired evidence or a subsequent audit.

(g) *Disposition of funds withheld.* HCFA will return to the Medicaid agency amounts withheld under this section to offset the agency's Medicaid overpayment.

PART 447—PAYMENTS FOR SERVICES

The authority citation for Part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act. (42 U.S.C. 1302), unless otherwise noted.

C. Part 447 is amended as set forth below:

1. The Table of Contents for Subpart A is amended by revising the title of § 447.30 and adding a new § 447.31 as follows:

Subpart A—Payments, General Provisions

* * * * *

447.30 Withholding the Federal share of payments to Medicaid providers to recover Medicare overpayments.

447.31 Withholding Medicare payments to recover Medicaid overpayments.

* * * * *

2. Section 447.30 is retitled and revised to read as follows:

§ 447.30 Withholding the Federal share of payments to Medicaid providers to recover Medicare overpayments.

(a) *Basis and purpose.* This section implements section 1914 of the Act, which provides for withholding the Federal share of Medicaid payments to a provider if the provider has not arranged to repay Medicare overpayments or has failed to provide information to determine the amount of the overpayments. The intent of the statute and regulations is to facilitate the recovery of Medicare overpayments. The provision enables recovery of overpayments when institutions have reduced participation in Medicare or when physicians and suppliers have submitted few or no claims under Medicare, thus not receiving enough in Medicare reimbursement to permit offset of the overpayment.

(b) *When withholding occurs.* The Federal share of Medicaid payments may be withheld from any provider specified in paragraph (c) of this section to recover Medicare overpayments that HCFA has been unable to collect if the provider participates in Medicaid and—

(1) The provider has not made arrangements satisfactory to HCFA to repay the Medicare overpayment; or

(2) HCFA has been unable to collect information from the provider to determine the existence or amount of Medicare overpayment.

(c) The Federal share of Medicaid payments may be withheld with respect to the following providers:

(1) An institutional provider that has or previously had in effect a Medicare provider agreement under section 1866 of the Act; and

(2) A Medicaid provider who has previously accepted Medicare payment on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act; and during the 12 month period preceding the quarter in which the Federal share is to be withheld for a Medicare overpayment, submitted no claims under Medicare or submitted claims which total less than the amount of overpayment.

(d) *Order to reduce State payment.*

(1) HCFA may, at its discretion, issue an order to the Medicaid agency of any

State that is using the provider's services, to reduce its payment to the provider by the amount specified in paragraph (f) of this section.

(2) The order to reduce payment to the provider will remain in effect until—

(i) The Medicaid agency determines that the overpayment has been completely recovered; or

(ii) HCFA terminates the order.

(3) HCFA may withhold FFP from any State that does not comply with the order specified in paragraph (d)(1) of this section to reduce payment to the provider and claims FFP for the expenditure on its quarterly expenditure report.

(e) *Notice of withholding.* (1) Before the Federal share of payments may be withheld under this section, HCFA will notify the provider and the Medicaid agency of each State that HCFA believes may use the overpaid provider's services under Medicaid with FFP.

(2) The notice will include the instruction to reduce State payments, as provided under paragraph (d) of this section.

(3) HCFA will send the notice referred to in paragraph (e)(1) by certified mail, return receipt requested.

(4) Each Medicaid agency must identify the amount of payment due the provider under Medicaid and give that information to HCFA in the next quarterly expenditure report.

(5) The Medicaid agency may appeal any disallowance of FFP resulting from the withholding decision to the Grant Appeals Board, in accordance with 45 CFR Part 16.

(f) Amount to be withheld. HCFA may require the Medicaid agency to reduce the Federal share of its payment to the provider by the lesser of the following amounts.

(1) The Federal matching share of payments to the provider, or

(2) The total Medicare overpayment to the provider.

(g) *Effective date of withholding.* Withholding of payment will become effective no less than 60 days after the day on which the agency receives notice of withholding.

(h) *Duration of withholding.* No Federal funds are available in expenditures for services that are furnished by a provider specified in paragraph (c) of this section from the date on which the withholding becomes effective until the termination of withholding under paragraph (i) of this section.

(i) *Termination of withholding.*

(1) HCFA will terminate the order to reduce State payment if it determines that any of the following has occurred:

(i) The Medicare overpayment is completely recovered:

(ii) The institution or person makes an agreement satisfactory to HCFA to repay the overpayment; or

(iii) HCFA determines that there is no overpayment based on newly acquired evidence or a subsequent audit.

(2) HCFA will notify each State that previously received a notice ordering the withholding that the withholding has been terminated.

(j) *Procedures for restoring excess withholding.* If an amount ultimately determined to be in excess of the Medicare overpayment is withheld, HCFA will restore any excess funds withheld.

(k) *Recovery of funds from Medicaid agency.* A provider is not entitled to recover from the Medicaid agency the amount of payment withheld by the agency in accordance with a HCFA order issued under paragraph (d) of this section.

3. A new § 447.31 is added to read as follows:

§ 447.31 Withholding Medicare payments to recover Medicaid overpayments.

(a) *Basis and purpose.* Section 1885 of the Act provides authority for HCFA to withhold Medicare payments to a Medicaid provider in order to recover Medicaid overpayments to the provider. Section 405.375 of this chapter sets forth the Medicare rules implementing section 1885, and specifies under what circumstances withholding will occur and the providers that are subject to withholding. This section establishes the procedures that the Medicaid agency must follow when requesting that HCFA withhold Medicare payments.

(b) *Agency notice to providers.*—(1) Before the agency requests recovery of a Medicaid overpayment through Medicare, the agency must send either or both of the following notices, in addition to that required under paragraph (b)(2) of this section, to the provider.

(i) Notice that—

(A) There has been an overpayment;

(B) Repayment is required; and

(C) The overpayment determination is subject to agency appeal procedures, but we may withhold Medicare payments while an appeal is in progress.

(ii) Notice that—

(A) Information is needed to determine the amount of overpayment if any; and

(B) The provider has at least 30 days in which to supply the information to the agency.

(2) Notice that, 30 days or later from the date of the notice, the agency intends to refer the case to HCFA for withholding of Medicare payments.

(3) The agency must send all notices to providers by certified mail, return receipt requested.

(c) *Documentation to be submitted to HCFA.* The agency must submit the following information or documentation to HCFA (unless otherwise specified) with the request for withholding of Medicare payments.

(1) A statement of the reason that withholding is requested.

(2) The amount of overpayment, type of overpayment, date the overpayment was determined, and the closing date of the pertinent cost reporting period (if applicable).

(3) The quarter in which the overpayment was reported on the quarterly expenditure report (Form HCFA 64).

(4) As needed, and upon request from HCFA, the names and addresses of the provider's officers and owners for each period that there is an outstanding overpayment.

(5) A statement of assurance that the State agency has met the notice requirements under paragraph (b) of this section.

(6) As needed, and upon request for HCFA, copies of notices (under paragraph (b) of this section), and reports of contact or attempted contact with the provider concerning the overpayment, including any reduction or suspension of Medicaid payments made with respect to that overpayment.

(7) A copy of the provider's agreement with the agency under § 431.107 of this chapter.

(d) *Notification to terminate withholding.*—(1) If an agency has requested withholding under this section, it must notify HCFA if any of the following occurs:

(i) The Medicaid provider makes an agreement satisfactory to the agency to repay the overpayment;

(ii) The Medicaid overpayment is completely recovered; or

(iii) The agency determines that there is no overpayment, based on newly acquired evidence or subsequent audit.

(2) Upon receipt of notification from the State agency, HCFA will terminate withholding.

(e) *Accounting for returned overpayment.* The agency must treat as a recovered overpayment the amounts received from HCFA to offset Medicaid overpayments.

(f) *Procedures for restoring excess withholding.* The agency must establish procedures satisfactory to HCFA to assure the return to the provider of amounts withheld under this section

that are ultimately determined to be in excess of overpayments. Those procedures are subject to HCFA review.

(Catalog of Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance)

Dated: July 3, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: November 15, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-11005 Filed 5-9-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6603

[A-19339]

Arizona; Withdrawal of Public Land for Border Patrol Administrative Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 11 acres of public land from surface entry and mining for 20 years to be used as an Immigration and Naturalization Service border patrol station. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Mildred Kozlow, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land, which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, and reserved for the Immigration and Naturalization Service for use as a border patrol station:

Gila and Salt River Meridian

T. 13 S., R. 5 W.,
Sec. 24, SW¼SE¼SW¼,
S½SE¼SW¼SW¼ lying east of State Highway 86.

The area described contains approximately 11 acres in Pima County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. The withdrawal will expire 20 years from the effective date of this order unless as a result of a review conducted before the expiration date, pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Robert N. Broadbent,

Assistant Secretary of the Interior.

May 7, 1985.

[FR Doc. 85-11408 Filed 5-9-85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Administration

44 CFR Part 64

[Docket No. FEMA 6659]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, SW., Donohoe Building—Room 416, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553 (b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management, Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance; Floodplains.

PART 64—[AMENDED]

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

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Oklahoma, Okmulgee	Unincorporated areas	400492	Apr. 1, 1985, Emerg	Feb. 7, 1978.
New York, Cayuga	Locke, town of	360114B	Apr. 4, 1975, Emerg.; Nov. 4, 1983, Reg.; Sept. 19, 1984, Susp.; Apr. 7, 1985, Rein.	June 11, 1976 and Nov. 4, 1983.
Do	Niles, town of	360119B	July 21, 1975, Emerg.; Feb. 6, 1984, Reg.; Sept. 19, 1984, Susp.; Apr. 7, 1985, Rein.	Aug. 9, 1974, June 18, 1976 and Feb. 6, 1984.
Do	Sempronius, town of	360123B	Jan. 7, 1976, Emerg.; Nov. 4, 1983, Reg.; Sept. 19, 1984, Susp.; Apr. 7, 1985, Rein.	May 31, 1974, May 26 and Nov. 4, 1983.
North Carolina, Dare	Kitty Hawk, town of [1]	370439	Apr. 9, 1971, Emerg.; Oct. 6, 1978, Reg	
California, Lake	Clearlake, city of [2]	060714-New	Feb. 19, 1971, Emerg.; Oct. 17, 1978, Reg	
Georgia, Heard	Unincorporated areas	130105	Apr. 11, 1985, Emerg	Apr. 9, 1976.
New Jersey, Sussex	Sandyston, township of	340455a	Apr. 11, 1985, Emerg	Oct. 21, 1977.
Tennessee, Hickman	Unincorporated areas	470091A	do	Dec. 22, 1978.
Oklahoma, Grant	Pond Creek, city of	400433	Apr. 15, 1985, Emerg	Nov. 12, 1976.
Alabama, Baldwin	Orange Beach, town of [3]	015011-New	Apr. 30, 1971, Emerg.; Jan. 12, 1973, Reg	
Illinois, Grundy	Gardner, village of	170261B	Apr. 8, 1985, Emerg.; Apr. 8, 1985, Reg	Sept. 12, 1980 and Feb. 1, 1984.
Texas, Montgomery	Patton Village, city of	480486A	Apr. 15, 1985, Emerg.; Apr. 15, 1985, Reg	Aug. 13, 1976 and Aug. 1, 1984.
Pennsylvania, Chester	West Caln, township of	421497B	May 19, 1976, Emerg.; Jan. 17, 1985, Reg.; Jan. 17, 1985, Susp.; Apr. 10, 1985, Rein.	Sept. 6, 1974, Aug. 6, 1976 and Jan. 17, 1985.
Texas, Hutchinson	Borger, city of	480374A	Aug. 1, 1975, Emerg.; Apr. 15, 1985, Withdrawn	June 28, 1974 and Apr. 16, 1976.
Iowa, Guthrie	Bagley, city of	190700	Apr. 18, 1985, Emerg	Aug. 13, 1976.
Kentucky, Lawrence	Unincorporated area	210258A	Apr. 18, 1985, Emerg.; Apr. 18, 1985, Reg	Apr. 17, 1984.
Nebraska, Lancaster	Raymond, village of	310138B	Apr. 18, 1985, Emerg.; Apr. 18, 1985, Reg	Oct. 18, 1974, Dec. 12, 1975 and Aug. 3, 1981.
Colorado, Eagle	Red Cliff, town of	080260A	Apr. 18, 1985, Emerg.; Apr. 18, 1985, Reg	Sept. 19, 1975 and June 4, 1980.
Louisiana, Natchitoches Parish	Provencal, village of	220132A	June 27, 1975, Emerg.; Apr. 15, 1985, Withdrawn	May 24, 1974.
Georgia, Dawson	Unincorporated areas	130304	Apr. 29, 1985, Emerg	June 18, 1976.
Pennsylvania, Lycoming	Mifflin, township of	422590	Sept. 15, 1975, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.; Apr. 29, 1985, Rein.	Dec. 13, 1974.

[1] The Town of Kitty Hawk, (Dare County) North Carolina, is a new community eligible February 22, 1985. Was formerly participating as an unincorporated area of Dare County. The Town has adopted by reference the County's Flood Insurance Study and maps for flood insurance and floodplain management purposes.

[2] The City of Clearlake, (Lake County) California, is a new community eligible February 7, 1985. Was formerly participating as an unincorporated area of Lake County. The Town has adopted by reference the County's Flood Insurance Study and map for flood insurance and floodplain management purposes.

[3] The Town of Orange Beach, (Baldwin County) Alabama, is a new community eligible April 11, 1985. Was formerly participating as an unincorporated area of Baldwin County. The Town has adopted by reference the County's Flood Insurance Study and maps for flood insurance and floodplain management purposes.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Region I				
Maine, Cumberland	South Portland, city of	230053D	April 17, 1985, suspension withdrawn	Feb. 22, 1974, Sept. 3, 1976, July 6, 1979 and Aug. 17, 1981.
Massachusetts, Barnstable	Chatham, city of	250004C	do	May 31, 1974, Feb. 7, 1978 and Aug. 1, 1980.
Region II				
New Jersey:				
Morris	Denville, township of	345292B	do	June 25, 1971, July 1, 1974 and Dec. 5, 1975.
Middlesex	Monroe, township of	340269B	do	Mar. 8, 1974 and Jan. 7, 1977.
New York:				
Sullivan	Bloomingburg, village of	361473B	do	Nov. 15, 1974 and June 11, 1976.
Westchester	Cortlandt, town of	360906B	do	May 31, 1974 and Aug. 13, 1976.
Region IV				
Louisiana, LaFourche Parish	Unincorporated areas	225202C	do	May 8, 1971, Jan. 10, 1978 and Oct. 1, 1983.
MINIMAL CONVERSIONS				
Region II				
New York:				
Washington	Fort Ann, town of	361231	Apr. 17, 1985, suspension withdrawn	Dec. 6, 1974.
Do	Jackson, town of	361444	do	Jan. 17, 1975.
Madison	Smithfield, town of	361294A	do	Oct. 25, 1974 and June 18, 1976.
Washington	White Creek, town of	361238	do	Oct. 18, 1974 and July 23, 1976.
Region III				
Maryland:				
Worcester	Berlin, town of	240141	do	Jan. 21, 1977.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Washington	Clear Spring, town of	240072	do	Feb. 18, 1977.
Pennsylvania, Crawford	Hydetown, borough of	420350	do	May 21, 1976.
Region II				
New York:				
Oneida	Clinton, village of	360525B	May 1, 1985, suspension withdrawn	Feb. 15, 1974 and May 28, 1976.
Ulster	Kingston, city of	360858C	do	May 17, 1974, Jan. 18, 1980 and Nov. 28, 1975.
Region III				
Pennsylvania, Allegheny	Bell Acres, borough of	420008B	do	June 7, 1974 and Apr. 23, 1976.
Region V				
Ohio, Hamilton	Village of Indian Hill, city of	390221B	do	June 28, 1974 and June 4, 1976.
Region VI				
Louisiana:				
Plaquemines Parish	Unincorporated areas	220139B	do	Jan. 17, 1985.
St. Bernard Parish	do	225204B	do	Mar. 13, 1970, July 1, 1974 and Feb. 6, 1975.
Terrebonne Parish	do	225206C	do	Nov. 20, 1970, July 1, 1974, Nov. 19, 1976 and Dec. 16, 1980.
Region IX				
California:				
Kern	Bakersfield, city of	060077B	May 1, 1985, suspension withdrawn	Aug. 16, 1974 and Aug 6, 1976.
Riverside	Cathedral City, city of	060704	do	May 1, 1985.
Contra Costa	Walnut Creek, city of	065070B	do	Nov. 8, 1974 and Oct. 8, 1976.
MINIMAL CONVERSIONS				
Region II				
New York:				
Oneida	Augusta, town of	360517B	May 1, 1985, suspension withdrawn	Sept. 13, 1974 and Apr. 9, 1976.
St. Lawrence	Fine, town of	361177D	do	Jan. 10, 1975 and Jan 28, 1983.
Saratoga	Galway, town of	360716B	do	June 14, 1974, Dec. 26, 1975, Aug. 13, 1976 and Nov. 19, 1976.
Madison	Hamilton, town of	360401B	do	May 31, 1974 and May 21, 1976.
St. Lawrence	Oswegatchie, town of	360708C	do	Sept. 13, 1974, May 28, 1976 and Apr. 4, 1984.
Region III				
Maryland, Wicomico	Willards, town of	240082B	do	Jan. 21, 1977.
Pennsylvania:				
Cambria	Ashville, borough of	422266A	do	Nov. 15, 1974.
Butler	Bruin, borough of	420211A	do	July 30, 1976.
Washington	Deemston, borough of	422132B	do	Nov. 1, 1974 and Oct. 24, 1975.
Armstrong	Madison, township of	421306A	do	Nov. 27, 1974.
Do	Rural Valley, borough of	422302A	do	Jan. 24, 1975.
Do	Worthington, borough of	422306B	do	Dec. 27, 1974.
West Virginia, Jackson	Unincorporated areas	540063B	do	Jan. 17, 1975 and Oct. 23, 1981.

Issued: May 6, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-11342 Filed 5-9-85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6660]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain

management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, Southwest, FEMA—Room 416, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the Federal Register.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

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

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
		Region I			
Massachusetts, Barnstable	Harwich, town of	250008C	Dec. 10, 1973, Emerg.; Sept. 30, 1980, Reg.; May 15, 1985, Susp.	July 19, 1974, Oct. 22, 1976 and Sept. 30, 1980.	May 15, 1985.
		Region II			
New Jersey, Morris	Mount Olive, township of	340353B	June 23, 1973, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Jan. 16, 1974 and Mar. 19, 1976	Do.
		Region III			
Maryland, Talbot	Unincorporated areas	240066A	Sept. 6, 1974, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Apr. 25, 1975	May 15, 1985.
		Region V			
Ohio, Logan	do	390772C	May 21, 1976, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Feb. 3, 1978 and July 13, 1979	May 15, 1985.
		Region VI			
Louisiana, Vermilion Parish	Unincorporated areas	220221D	July 1, 1974, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	May 31, 1977, May 9, 1978 and Oct. 1, 1983.	May 15, 1985.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
		MINIMALS			
		Region II			
New York:					
Tioga	Berkshire, town of	361215B	Aug. 8, 1977, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Mar. 11, 1977	May 15, 1985.
Cortland	Cincinnatus, town of	360177B	July 7, 1975, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Apr. 5, 1974 and July 17, 1976	Do.
Do	Cuyler, town of	361386A	June 6, 1977, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Feb. 28, 1975	Do.
Lewis	Denmark, town of	360363B	July 16, 1975, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	June 28, 1974 and May 28, 1976	Do.
Warren	Hague, town of	360873	Apr. 19, 1978, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Nov. 5, 1976, Mar. 10, 1978, Dec. 21, 1979 and Dec. 11, 1981.	Do.
Columbia	Hillsdale, town of	361320A	July 5, 1974, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Jan. 3, 1975	Do.
Cortland	Marathon, town of	361327B	Aug. 23, 1976, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Nov. 29, 1974 and July 2, 1976	Do.
Essex	North Hudson, town of	361391A	July 30, 1976, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	July 11, 1975	Do.
Cortland	Preble, town of	360185B	June 19, 1975, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Feb. 15, 1974 and July 16, 1976	Do.
Tioga	Richford, town of	361216B	Aug. 10, 1976, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Dec. 20, 1974 and July 23, 1976	Do.
Essex	Schroon, town of	361158B	Jan. 27, 1976, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	do	Do.
Cortland	Scott, town of	361328B	Dec. 17, 1975, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Nov. 1, 1974 and June 25, 1976	Do.
Do	Solon, town of	361329A	Feb. 2, 1976, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	Jan. 17, 1975	Do.
Herkimer	Stark, town of	360319B	June 11, 1975, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	June 7, 1974 and July 30, 1976	Do.
Cortland	Taylor, town of	361330	May 19, 1977, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	July 14, 1978	Do.
Do	Harford, town of	360180B	June 26, 1975, Emerg.; May 15, 1985, Reg.; May 15, 1985, Susp.	June 28, 1974 and May 28, 1976	Do.

[1] Certain Federal assistance no longer available in special flood hazard areas.
Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: May 6, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-11341 Filed 5-9-85; 8:45 am]

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Proposed Rules

Federal Register
Vol. 50, No. 91
Friday, May 10, 1985

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 70, and 150

Material Balance Reports

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations concerning the submission of source material and special nuclear material inventory reports. The proposed rule would eliminate the requirement to report inventories on Form 742 for all licensees except those reporting under the US/IAEA Safeguards Agreement. The proposed rule would also eliminate the requirement to report inventories on Form 742C for all licensees except those for nuclear reactors and those reporting under the Agreement. The NRC would generate an equivalent report based on transaction data already submitted by each licensee. The proposed rule is intended to reduce the reporting burden on licensees without adversely affecting the domestic safeguards program or the ability to satisfy existing commitments.

DATE: Comment period expires July 9, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to Room 1121, 1717 H Street, NW, Washington, DC between 8:15 am and 5:00 p.m. weekdays.

Copies of the regulatory analysis, the OMB supporting statement, and any comments received on the proposed rule may be examined at the NRC Public Document Room at 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: June Robertson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 427–4004.

SUPPLEMENTARY INFORMATION:

Background

As a part of a reevaluation of the safeguards data collection and processing requirements, the NRC examined the possibility of eliminating the requirements for licensees to report inventories on Forms 742 (Material Balance Report) and 742C (Physical Inventory Listing) for most licensees. The NRC concluded that, with the exception of those licensees reporting under the US/IAEA Safeguards Agreement, the requirements for reporting inventories on Material Balance Reports can be deleted. However, the need for a composition of ending inventory to be submitted on Form 742C by nuclear reactors is necessary to the domestic inspection and enforcement function. Therefore, the requirement for submitting Form 742C would be retained for nuclear reactor licensees.

Material Balance Reports

Currently, NRC licensees who are authorized to possess 350 grams or more of special nuclear material are required to submit an inventory report for each material type on Forms 742 and 742C as of March 31 and September 30 of each year. Also, NRC and Agreement State licensees who are authorized to possess 1,000 kilograms or more of source material are required to submit a yearly statement of their source material holdings as of September 30 of each year. This information is necessary to the domestic inspection program and is needed to provide to the Australian and Canadian Governments a periodic report showing the inventory of all the materials in each U.S. facility that is subject to their respective Bilateral Agreements.

For licensees other than those reporting under the US/IAEA Safeguards Agreement, the proposed rule would eliminate the requirement to submit the Form 742. For all licensees other than nuclear reactors and those reporting under the US/IAEA Safeguards Agreement, the proposed rule would eliminate the requirement to submit the Form 742C. Instead, the NRC would computer-generate, for each licensee, an inventory report based on material transaction reports submitted to the NRC on Form 741 for special nuclear material and foreign origin source material. (In a separate rulemaking action effective July 16, 1984 (49 FR 24705; June 15, 1984), the requirement to report domestic transfers of U.S. origin source material was deleted. Only imports, exports, and domestic transfers of foreign origin source material are currently reported to the transaction data base.) This generated report would be submitted to the licensee for review and verification with the licensee's book inventory data or results of a physical inventory, as the case may be. The licensee would then submit any supplemental data necessary to reconcile any difference between the generated inventory and the licensee's inventory.

The amendment affects approximately 350 NRC and Agreement State licensees of which approximately 150 are small independent industrial manufacturers, each with an estimated annual gross income of less than $1 million and a staff of fewer than 500 people. As a result of this change, the reporting burden for each affected special nuclear material licensee would be reduced by two reports per year and the reporting burden for each affected source material licensee would be reduced by one statement per year. The process of the licensee verification of the computer-generated report will partially affect the reduction in licensee reporting, but the net burden to licensees should be less than the burden of generating and submitting the currently required reports.

Environmental Impact: Categorical Exclusion

The NRC has determined that the proposed amendments to Parts 40 and 70 are the type of action described in categorical exclusion 10 CFR 51.22(c)(3) and that the proposed amendment to Part 150 is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that

are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the draft analysis may be obtained from June Robertson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 427–4004.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

Based upon the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that, if promulgated, this rule will not have a significant economic impact upon a substantial number of small entities due to the decrease in burden for all affected licensees. The proposed rule would reduce from 350 to 250 the number of specific licensees who are required to report inventories of nuclear materials under 10 CFR 40.64, 70.53, and 150.17. Currently, approximately 190 of these licensees submit 2 reports each year to report inventories of special nuclear materials. The remaining 60 licensees submit one report each year to report holdings of source material. The economic impact on all licensees will be reduced due to the fact that approximately 100 small licensees who currently complete a report(s) will not report inventories at all, and the remaining licensees will verify and update a Commission generated statement of inventory instead of completing a report. The current burden of two hours is time needed to complete the report. The estimated time for verifying and updating the Commission generated statement of inventory is one hour.

The approximately 100 licensees who need not complete and submit an inventory report are small independent industrial licensees who currently submit one report each year. This is a reduction of 2 hrs × 100) 200 hours each year. The licensees who will verify and update a Commission generated statement of inventory consists of approximately 150 small licensees and approximately 50 other licensees.

The average small independent industrial licensee has an annual gross income of less than $1 million and employs fewer than 500 people. The cost of complying with the proposed requirement will not pose an economic impact. There will be no additional cost for any licensee.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates:

(a) The licensee's size in terms of annual income, revenue, or number of employees;

(b) How the proposed regulation would result in a significant economic burden upon the licensee as compared to that placed upon a larger licensee; and

(c) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

List of Subjects

10 CFR Part 40

Governmental contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 40, 70, and 150.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35(a)–(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.25 (c) and (d)(3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 40.64, paragraph (b) is revised to read as follows:

§ 40.64 Reports.

* * * * *

(b) Except as specified in paragraphs (d) and (e) of this section, each licensee who is authorized to posses at any one time and location more than 1,000 kilograms of uranium or thorium or any combination of uranium or thorium, shall verify and update a statement of material balance concerning source material of foreign origin received, possessed, transferred, consumed, disposed of, or lost by the licensee. The Commission shall generate the statement as of September 30 of each year and mail it to the licensee by October 15 of each year. The licensee shall verify and update the statement and, if any change is necessary, submit a statement indicating the necessary changes to the Commission by October 31. The Commission may permit a licensee to extend the time to submit an updated statement when good cause is shown.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

3. The authority citation for Part 70 is revised to read as follows:

Authority: Sections, 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 233, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22(a), (b), (d)–(k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a(a) and (d), 70.20b(c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)–(g), 70.56, 70.57(b) and (d) and 70.58(a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.20b(d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59, and 70.60(b) and (c) are issued sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 70.53, paragraph (a)(1) is revised to read as follows:

§ 70.53 Material status reports.

(a)(1) Each licensee who is authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall verify and update a statement of material balance concerning special nuclear material received, produced, possessed, transferred, consumed, disposed of, or lost by the licensee. The Commission shall generate the statement as of March 31 and September 30 of each year and mail it to the licensee by April 15 and October 15. The licensee shall verify and update the statement and, if any change is necessary, submit a statement indicating the necessary changes to the Commission by April 30 and October 31. Persons licensed to operate nuclear reactors shall continue to prepare (on DOE/NRC Form 742C, Physical Inventory Listing) a statement of the composition of the ending inventory as of March 31 and September 30 of each year and file within thirty (30) days after the end of the period covered by the report. The Commission may permit a licensee to extend the time to submit an updated statement when good cause is shown.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

5. The authority citation for Part 150 continues to read as follows:

Authority: Section 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e (2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 4444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b)(2)–(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16–150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 150.17, paragraph (b) is revised to read as follows:

§ 150.17 Submission to the Commission of source material reports.

(b) Except as specified in paragraph (d) of this section and § 150.17a, each person who is authorized to possess at any one time and location, pursuant to an Agreement State license, more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall verify and update a statement of material balance concerning source material of foreign origin received, possessed, tansferred, consumed, disposed of, or lost by the licensee. The Commission shall generate the statement as of September 30 of each year and mail it to the licensee by October 15. The licensee shall verify and update the statement and, if any change is necessary, submit a statement indicating the necessary changes to the Commission by October 31. The Commission may permit a licensee to extend the time to submit an updated statement when good cause is shown.

* * * * *

Dated at Bethesda, Maryland, this 22d day of April, 1985.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 11443 Filed 5–9–85; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9080]

Kaiser Aluminum & Chemical Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would bar an Oakland, Calif. firm, for a period of ten years from the effective date of the order, from acquiring, without prior Commission approval, any U.S. business enterprise that had been engaged in the manufacture or sale of basic refractories within the three calendar years immediately preceding the acquisition.

DATE: Comments must be received on or before July 9, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, room 136, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: John V. Lacci, FTC/L 501–7, Washington, D.C. 20580, (202) 254–8644.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Basic refractories, Trade practices.

Before Federal Trade Commission

[Docket No. 9080]

Agreement Containing Consent Order

In the matter of Kaiser Aluminum & Chemical Corporation, a corporation.

The agreement herein, by and among Kaiser Aluminum & Chemical Corporation, a corporation, by its duly authorized officer, hereinafter sometimes referred to as respondent, and its attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with Commission Rule 3.25 governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Kaiser Aluminum & Chemical Corporation is a publicly-held corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 300 Lakeside Drive, Oakland, California 94643.

2. Respondent has been served with a copy of the amended complaint issued by the Commission in this proceeding charging it with violations of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and has filed an answer to said amended complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's amended complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of the law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with related materials pursuant to Rule 3.25(f) of the Commission's Rules, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may withdraw its acceptance of this agreement and so notify respondent, in which event the Commission may take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the amended complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commisison may without further notice to respondent, (1) issue its decision containing the following order in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The amended complaint may be used in construing the terms of the order, and not agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order the following definitions shall apply:

1. "Respondent" means Kaiser Aluminum & Chemical Corporation (hereinafter "Kaiser"), a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 300 Lakeside Drive, Oakland, California 94643, and its subsidiaries, affiliates, divisions, successors and assigns. As used herein, the terms "successors" and "assigns" shall not include any person who purchases no more than two of Kaiser's four basic refractories facilities which are currently located at Moss Landing, California; Columbiana, Ohio; Gary, Indiana; and Plymouth Meeting, Pennsylvania.

2. "Basic refractories" means non-metallic insulating materials composed primarily of magnesia, magnesite, dolomite, chromite or chrome ore, or a combination thereof.

3. "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated association, or other business or legal entity.

I

It is ordered that, for a period of ten (10) years from the date of this Order becomes final, Kaiser shall not, without the prior approval of the Commission, acquire, directly or indirectly, any stock, share capital, or interest in any person engaged in, or the assets of any person used in, the manufacture of basic refractories; provided, however, nothing in this Order shall prohibit Kaiser from acquiring any stock, share capital, or interest in any foreign person that, in the calendar year of the proposed acquisition or in any of the three full calendar years immediately preceding the acquisition, has not manufactured or sold basic refractories in, or exported basic refractories to, the United States. The provisions of Paragraph I shall not require prior Commission approval of the receipt by Kaiser of any stock, share capital, or interest in a purchaser of any of the assets of Kaiser's Refractories Division as part of the consideration paid by that purchaser for these assets, provided that said purchaser was not, in the calendar year of the acquisition or in any of the three full calendar years immediately preceding the acquisition, engaged in the manufacture or sale of basic refractories.

II

It is further ordered that Kaiser shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this order.

III

It is further ordered that Kaiser shall, within sixty (60) days after service upon it of this order, and annually thereafter for a period of ten (10) years on the anniversary of the date this order becomes final, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted a proposed consent order from Kaiser Aluminum and Chemical Corporation ("Kaiser"). The order has ben placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the proposed Order.

On April 27, 1976, the Commission issued a complaint alleging that Kaiser's February 28, 1974 acquisition of two basic refractories plants and related assets of the International Minerals and Chemical Corporation's Lavino Division ("Lavino") constituted a violation of section 7 of the Clayton Act and section 5 of the FTC Act in three product markets; namely, basic refractories, basic refractory specialties and basic refractory bricks and shapes. On September 8, 1977, the complaint was amended by order of the ALJ, to add two new product markets, *i.e.*, "B.O.F. bricks and shapes" and "conventionally bonded basic bricks and shapes." After hearings before Administrative Law Judge James P. Timony, and consideration of the Judge's initial decision and proposed findings of fact, the Commission issued its Final Order and Opinion on May 17, 1979, affirming the ALJ's decision that Kaiser's acquisition of Lavino's refractories assets violated section 7 of the Clayton Act and section 5 of the FTC Act in each of five relevant lines of commerce alleged in the amended complaint, and ordered that Kaiser divest the Lavino assets.

The Commission's order was vacated in July 1981 by the United States Court of Appeals for the Seventh Circuit, which remanded the case for further proceedings consistent with the court's decision. *Kaiser Aluminum & Chemical Corporation* v. *FTC*, 652 F.2d 1324 (7th Cir. 1981). The court found that the Commission erred in finding that three types of refractory products, namely, basic refractories, basic refractory bricks and shapes, and basic refractory specialties, constituted relevant lines of commerce. The court found that, while the Commission's findings of a conventionally bonded basic bricks and shapes market and its B.O.F. bricks and shapes market were supported by substantial evidence, the Commission had not properly applied the legal standards enunciated in *United States* v. *General Dynamics Corporation*, 415 U.S. 486 (1974), in determining whether the acquisition was likely to lend to a substantial lessening of competition in those relevant lines of commerce.

In 1982, briefs were filed by the parties addressing the question of what issues remained to be addressed by the Commission on remand. Respondent Kaiser urged that the complaint be dismissed; complaint counsel contended that existing evidence was sufficient to support a finding of illegality and urged that the divestiture order be reinstated by the Commission. Since the acquisition, however, changed competitive conditions, particularly in the steel industry, which is the primary user of refractories products, have resulted in a steep decline in the demand for domestically produced steel and basic refractories products. In addition, improvements in steel production technology, such as the shift away from open hearth furnaces, the use of water-cooled panels in electric arc furnaces and the increased use of continuous casting processes, have resulted in a significant decrease in the amount of refractories utilized per ton of steel produced. Thus, the demand for the type of products manufactured in the former Lavino facilities (B.O.F. bricks and conventionally bonded bricks), has decreased dramatically in the past five years. Consequently, Kaiser has terminated operations at Lavino's Gary, Indiana facility and has ceased the production of refractory bricks at Lavino's Plymouth Meeting, Pennsylvania facility. Kaiser has offered these assets for sale over the past year without success. Due to the depressed condition of the basic refractories industry, other refractories companies have been forced to close numerous basic refractories facilities over the past few years.

In light of these recent developments, the Commission believes that continuation of the litigation to seek an order of divestiture is unlikely to result in the establishment of a new competitive force in the basic refractories industry. Therefore, the Commission's proposed Order seeks to impose a ten year prior approval provision with respect to future acquisitions by Kaiser in the basic refractories market.

Paragraph I of the Order requires that, for a ten-year period, Kaiser may not make any further acquisitions in the basic refractories industry without the prior approval of the Commission. While the Commission no longer believes that the public interest would be served by requiring divestiture of the Lavino assets, the ten year prior approval requirement for future Kaiser acquisitions is appropriate in view of the fact that Kaiser is being allowed to retain a substantial market position in an already highly concentrated industry; thus, should changed competitive conditions result in a more attractive market for basic refractories products, Kaiser may be in a position to exploit its already substantial market position in the production and sale of basic refractories. This provision assures that the Commission will have an adequate opportunity to analyze the competitive ramifications of any proposed acquisition by Kaiser in the basic refractories industry prior to consummation. This provision would not preclude the acquisition by Kaiser of a foreign refractories producer that, in the year of the proposed acquisition, or in the three years immediately preceding the acquisition, has not manufactured or sold basic refractories in, or exported basic refractories to, the United States.

Paragraph II and III of the Order contain standard compliance provisions requiring that Kaiser keep the Commission informed of any proposed corporate changes or other events which relate to compliance obligations arising under the Order.

The purpose of this analysis is to facilitate public comment on the Order and it is not intended to constitute an official interpretation of the agreement and Order or to modify in any way its terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-11394 Filed 5-9-85; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1032

Commission Involvement in Voluntary Standards Activities

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of proposed amendment.

SUMMARY: In June 1984 the Commission proposed to amend its regulations on voluntary standards activities. The proposed amendment involved Commission "recognition" of selected voluntary standards. The Commission is now withdrawing the proposal,[1] after

[1] The Commission's vote to withdraw the proposal was unanimous. Copies of Commissioners' Continued

analyzing extensive public comments, but will continue to pursue alternatives for demonstrating its support of vigorous efforts by industry to establish effective voluntary safety standards.

DATE: The withdrawal is effective on May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Douglas L. Noble, Voluntary Standards Coordinator, Office of the Executive Director, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6550.

SUPPLEMENTARY INFORMATION:

A. Background

During its 12-year existence, the Consumer Product Safety Commission (CPSC) has supported voluntary standards that effectively reduce risks of injury presented by consumer products. Under existing regulations, the Commission both monitors and participates in the development of such voluntary standards. 16 CFR Part 1032—Commission Involvement in Voluntary Standards Activities. The regulations also address, to a lesser extent, the Commission's role in the support of some voluntary standards that have been adopted and implemented. For example, the regulations state that the Commission's support of the voluntary standards programs "may include . . . [p]roviding assistance on methods of disseminating information and education about the voluntary standard or its use . . . [and] . . . [e]ncouraging state and local governments to reference or incorporate the provisions of a voluntary standard in regulations or ordinances. . . ." 16 CFR 1032.4(b).

Within the Commission and at meetings of the American National Standards Institute/Consumer Product Safety Commission Coordinating Committee, numerous discussions focused on a possible expansion of the Commission's role in supporting effective voluntary safety standards. The discussions led to the proposed amendment of the Commission's regulations that guide our involvement in voluntary standards.

B. Proposed Amendment

On June 19, 1984, the Commission proposed to amend its voluntary standards regulations by adding a new section. 49 FR 25005. The proposal concerned possible "recognition" of voluntary safety standards by the Commission.

The Commission sought public comments not only on the recognition proposal, but also on the general subject of support to voluntary standards. The preamble to the proposed amendment identified two other levels of support: "Adoption," the issuance of a voluntary standard as a mandatory standard, and "endorsement," defined as being a higher level of support than recognition.

The proposed amendment explained that the Commission's active involvement in developing voluntary standards had not been matched by the same level of activity in support of successful voluntary standards development efforts. The purposes of Commission recognition (or endorsement) were described as enhancing consumer selection of safer products and encouraging industry to adhere to effective voluntary standards.

The Commission, under the proposal, could select for recognition a limited number of voluntary safety standards that had been developed with significant CPSC staff involvement. Following recognition of voluntary standards, the Commission could issue public statements encouraging industry and consumers to use them and could undertake other activities designed to promote their use. In particular, the Commission could, where appropriate, encourage states to adopt a voluntary standard in lieu of mandating a different state or local regulation.

C. Public Comments

The Commission received 28 written comments on the proposed amendment. In addition, 13 people (two of whom also submitted written comments) presented oral testimony at a public hearing on July 18, 1984. The public commenters included five manufacturers, four standards-setting organizations, four consumer groups, 13 trade associations, five government agencies, and eight other groups or individuals.

Several standards-setting organizations and trade associations representing a broad range of voluntary standards and products under CPSC jurisdiction were opposed to the proposal. Such groups included Underwriters Laboratories, Inc., the American Society for Testing and Materials, the National Electrical Manufacturers Association, the Gas Applicance Manufacturers Association, and the Association of Home Appliance Manufacturers. Consumer organizations, manufacturers, and government agencies also expressed significant opposition. The primary reasons cited for opposition to the proposal were: Adverse effects on competition in the marketplace, discouragement of innovation in product development, complication of efforts to up-grade or change "recognized" standards, confusion of consumers, potential to involve the Commission in products liability litigation, and large administrative and resource burdens.

Among the standards-setting organizations and trade associations supporting the proposal were the National Spa and Pool Institute, the Upholstered Furniture Action Council, and the National Paint and Coatings Association. Manufacturers, government agencies, and individuals expressed additional support. Reasons cited in favor of the proposed amendment included: Encouragement of improvements in voluntary standards, decrease in likelihood that various government entities would require manufacturers to meet differing regulations for the same risk of injury, reduction in cost to consumers by reducing multiple layers of regulation, and an incentive to increase voluntary standards' level of compliance by encouraging greater participation by manufacturers to obtain government recognition.

The Commission staff evaluated every major issue raised by the 39 different commenters. The briefing package containing summaries of the public comments and the staff evaluations is available from the Office of the Secretary, CPSC, Washington, D.C. 20207, telephone (301) 492–6800.

D. Withdrawal of Proposal

The Commission listened to and questioned the commenters who testified at the public hearing, reviewed the written comments and staff evaluations, and discussed all of the major arguments raised for and against the June 1984 proposed amendment. Based on all available information, the Commission has decided to withdraw that proposal.

This decision is based on the Commission's conclusion that the problem likely to result from the proposal outweigh the anticipated benefits. The Commission nevertheless will continue its strong support of voluntary standards that effectively reduce risks of injury and will consider alternatives designed to bolster that support. However, the following drawbacks (among others) of a recognition (or endorsement) policy contributed to the Commission's decision to withdraw the proposed amendment:

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separate statements are available from the Office of the Secretary, Consumer Product Safety Commission Washington, D.C. 20207; telephone (301) 492–6800. The Commission's vote to approve this **Federal Register** document was 3–1, with Vice Chairman Armstrong voting to delete certain portions of the text.

1. Voluntary standards are constantly updated to keep pace with technological advances. Once the Commission recognized a particular standard, it would have to devote scarce resources to evaluating every revision. If it failed constantly to update recognition actions, industry might be reluctant to revise any already-recognized voluntary standard and improvements to it would be stifled.

2. Since the Commission would have resources to recognize only one or two voluntary standards each year, such action could severely lessen competition within an industry. For example, the Commission might recognize a portable electric heater standard but have insufficient time and staff even to consider recognizing a standard for kerosene heaters. Consumers might mistakenly infer a Commission determination that the electric heaters were a safer form of space heating. Although the Commission's action (and non-action) would have been based on resource—and not safety—considerations, the competitive position of kerosene heater manufacturers within the heating industry might be harmed.

3. The forced infrequency of Commission recognition actions could raise additional problems. For example, if limited resources caused the Commission to fail to recognize a potentially worthy voluntary standard, it might be seen, however incorrectly, as a rejection on the merits. Such a result could impair the cooperative relationships the Commission now enjoys with industry and the voluntary standards community.

4. Consumers could become quite confused about the meaning of the Commission's recognition of a voluntary standard. Manufacturers might well misrepresent such action as some official "seal of approval" for their products.

Even if a manufacturer's advertising and labeling made clear that the Commission had recognized only a *standard* and not any *product*, a strong potential for confusion would be present. The manufacturer would claim that its product complied with the Commission-recognized standard, and consumers could logically assume that CPSC had tested the product. Such a test would be quite *un*likely because Commission monitoring of industry's compliance with a recognized voluntary standard would be severely limited by budgetary considerations. In most cases the Commission probably could not conduct any monitoring. In any event, after an initial period, a monitoring program would involve little more than random testing of products or inspecting of manufacturers.

5. Under the program, the Commission would consider for recognition only those voluntary standards which its staff was substantially involved in developing. However, CPSC involvement may not occur unless an industry fails to address an identified risk on its own or a voluntary standard being developed by an industry needs strengthening to address a risk adequately. A recognition program could therefore encourage industries to delay development of a voluntary standard until the Commission became involved, in order to make the standard eligible for CPSC recognition. An undesirable effect could be to "reward" recalcitrant industries by recognizing their voluntary standards.

Another undesirable effect might be to "punish" industries that develop effective voluntary standards *without* Commission involvement. Since such standards would *not* be eligible for recognition, these "responsible" industries would lose that incentive for developing an effective voluntary standard quickly and avoiding the need for CPSC involvement.

E. Conclusion

As part of its interest and growing involvement in voluntary standards, the Commission has placed a high-level staff member in a new position to work full-time on voluntary standards. The position is located in the Office of the Executive Director and is currently filled by a staff member who has broad experience with voluntary standards. Although the Commission has withdrawn its proposed amendment on recognition of voluntary safety standards, it remains firmly committed to supporting such standards in a variety of ways.

Dated: May 6, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-11344 Filed 5-9-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 31

Conditions Under Which Non-Eligible Students May Attend Bureau of Indian Affairs-Funded Schools

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: It is necessary to amend the regulations to more clearly specify the conditions under which non-Indians and Indian students of less than ¼ degree blood quantum of a Federally recognized tribe may attend Bureau-funded schools. These amended regulations will provide the detail for school administrators and parents to determine more easily which students may be served what circumstances.

DATE: Comments must be received or postmarked on or before June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Acting Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 19th and C Streets, NW., Room 3512, Washington, D.C. 20245, telephone number (202) 343-2175.

SUPPLEMENTARY INFORMATION: This amended rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

For many years, the Bureau has provided, through the existing regulations, for the discretionary charging of tuition for non-eligible students who may attend Bureau schools where there are no other adequate free school facilities available (25 CFR 31.3(b)). There proposed regulations will resolve the inconsistent tuition charging practices under existing regulations and establish uniform criteria to be used in determining which non-eligible students may be served. One statute (25 U.S.C. 288) specifies that non-Indian students may be served in day schools and that the tuition charged may not exceed the rate charged in the "common" (public) schools in the State or county where the public school is situated. Another statute, (25 U.S.C. 289) allows non-Indian students to be served in boarding schools at a tuition rate to be established by the Department. In the case of Indians of less than one-fourth degree Indian blood, 25 U.S.C. 297 prohibits the expenditure of any appropriated funds where there are adequate free school facilities provided.

For the 1985–86 school year only, for purposes of an orderly transition from the previous regulations to these, adequate free school facilities will be deemed not to exist if:

(1) Public schools are overcrowded to the extent that they cannot immediately accommodate students enrolled at the beginning of the 1984–85 school year in Bureau-funded schools; and

(2) The condition of employment for a Bureau education employee can be fairly interpreted to include providing education for the employee's children in

Bureau-funded schools for the school year 1985–86.

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. Ths rule will only affect Bureau and tribally-operated schools. Since Bureau and tribally operated schools are widely dispersed throughout the country, any effect on any group, region, or level of government will not be significant. The information collection requirements contained in 25 CFR 31.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0018.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment within 30 days of publication. The primary author of this document is Ms. Elizabeth Holmgren, Office of Indian Education Programs, Bureau of Indian Affairs, 19th and C Street, NW., Washington, D.C. 20245.

List of Subject in 25 CFR Part 31

Indians—Education schools.

Accordingly, it is proposed to amend Part 31 as set forth below.

1. The authority citation for 25 CFR Part 31 reads as follows:

Authority: Section 1, 41 Stat. 410; 25 U.S.C. 282, unless otherwise noted. 34 Stat. 1018, 35 Stat. 783, 40 Stat. 564; 25 U.S.C 288, 289, 297.

2. Section 31.3 is revised to read as follows:

§ 31.3 Conditions under which non-eligible students may attend Bureau of Indian Affairs-funded schools.

Indian and non-Indian students who are not eligible for enrollment in Bureau-funded schools under § 31.1 may be enrolled in such schools under the following conditions:

(a) Indians of less than one-fourth degree blood quantum are eligible to attend Bureau-funded day schools or boarding schools on a day basis only if no adequate free school facility other than a Bureau-funded school is available and when their presence will not exclude Indian students eligible under § 31.1. An available, adequate free school facility means one which:

(1) Is within 50 miles from the student's home or does not exceed one and a half hour's bus ride;

(2) Provides or is willing to provide bus service to within one mile's walk from a student's home (1½ miles for secondary students);

(3) Meets applicable State standards.

(4) With respect to a handicapped student, even if conditions (1) through (3) exist, those facilities shall be deemed inadequate if either the distance to the bus stop, or the length of the bus ride would be detrimental to the handicapped student. Handicapped student means those as defined in 34 CFR 300.5 as handicapped children.

(b) Non-Indian students may only attend Bureau-funded day schools or boarding schools on a day basis where there are no adequate free school facilities available, when their presence will not exclude Indian students eligible under § 31.1, and when payment of tuition is made for such students in attendance. The tuition rate shall be the fee allowed or charged by the State or county for out-of-district students attending public schools where the Bureau-funded school is located. A request for such non-Indian students to attend Bureau-funded schools must be approved by the Director, Office of Indian Education Programs and must be accompanied by a written agreement stating that the tuition will be paid.

3. A new § 31.8 "Information Collection" is added to read as follows:

§ 31.8 Information collection.

The information collection requirements contained in 25 CFR 31.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0018. The information will be used to determine student eligibility. The response is required to obtain a benefit.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 11423 Filed 5–9–85; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 128

Reporting of International Capital and Foreign Currency Transactions and Holdings, Transfers of Credit, and Export of Coin and Currency

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of proposed rule making.

SUMMARY: Subpart B of Part 128, Title 31, Code of Federal Regulations, describes those forms prescribed under Part 128 for reporting of data on international capital transactions. In this Notice, we propose to add to Subpart B a new § 128.11c, which describes and thereby authorizes the issuance of Treasury International Capital (TIC) Form BL–3. TIC Form BL–3 is designed for use by a bank or other financial intermediary in the United States to notify a nonbanking customer that a foreign loan has been arranged and that the customer has an obligation to report on TIC Form CQ–1. The obligation to report on TIC Form CQ–1 applies when such borrowings from foreigners will not be reported by the bank or other financial intermediary on TIC Form BL–2.

DATE: Comments should be received on or before July 15, 1985. Copies of TIC Form BL–3 may be obtained from the agency contact identified below.

ADDRESS: Comments should be addressed to Department of the Treasury, Office of Data Management, Room 5453, 15th and Pennsylvania Avenue, N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Gary A. Lee, Manager, Treasury International Capital Reporting System, Room 5453, Department of the Treasury, 15th and Pennsylvania Avenue, N.W., Washington, D.C. 20220 (202–566–3114).

SUPPLEMENTARY INFORMATION: Part 128 of Title 31, Code of Federal Regulations, sets forth the requirements and describes the forms used for reporting international capital and foreign currency transactions and holdings. Large amounts of offshore loans to U.S. nonbank residents are not being properly reported on the TIC C–series forms prescribed in Subpart B of Part 128. Much of this under reporting results from confusion among nonbank borrowers over whether the source of

their loans is domestic or foreign. This confusion is exacerbated by the failure of U.S. intermediaries to comply with existing obligations, specified in the Form BL–2 instructions, either to report certain foreign transactions on behalf of their U.S. customers or to inform those customers of foreign ownership of claims held against them so the customers can themselves report the transactions on their own TIC forms.

New TIC Form BL–3 is designed to rectify this deficiency in the international capital reporting system. It is in the form of a mandatory notification by a bank or other financial intermediary to a nonbanking entity that a foreign loan has been arranged and that it will not be reported as a custody liability held on behalf of the nonbank customer on TIC Form BL–2, "Custody Liabilities of Reporting Banks, Brokers and Dealers to 'Foreigners', Payable in Dollars." New TIC Form BL–3 will advise the nonbanking firm of its own responsibility to report the foreign loan as a liability on TIC Form CQ–1, "Financial Liabilities to, and Claims on, Unaffiliated Foreigners." Banks and other financial intermediaries will also be required to file copies of every Form BL–3 with the Federal Reserve Bank of New York for data monitoring purposes.

Section 128.2(a)(2) of Title 31 mandates that persons subject to the jurisdiction of the United States and engaged in any transfer of credit between any person within the United States and any person outside of the United States shall furnish information concerning such transfers as required by report forms and instructions prescribed in Subpart B of Part 128. The proposed addition to Subpart B of § 128.11c, describing new TIC Form BL–3, will provide the necessary authorization for use of this form.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is intended to provide technical clarification of existing reporting requirements. The Department of the Treasury therefore has determined that it does not constitute a "major" rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required. For this reason, it is hereby certified, pursuant to the Regulatory Flexability Act (5 U.S.C. 601 *et seq.*), that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 31 CFR Part 128

Banks, banking, Currency, Federal reserve system, Foreign banking, Reporting or recordkeeping requirements.

PART 128—[AMENDED]

Therefore, it is proposed to amend Part 128, Subpart B, Chapter I of Title 31, Code of Federal Regulations as follows:

1. The authority citation for Part 128 continues to read as follows:

Authority: Sec. 8, Pub. L. 79–171, 59 Stat. 515, 22 U.S.C. 286f; Sec. 8, Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3103; E.O. 10033, 14 FR 561, 3 CFR, 1949–1953, Comp; E.O. 11961, January 9, 1977, 42 FR 4321, as amended.

2. In Part 128, it is proposed to add § 128.11c to read as follows:

§ 128.11c International Capital Form BL–3: Intermediary's notification of foreign borrowing.

On this form any intermediary in the United States (i) which arranges foreign borrowings for U.S. persons and U.S. firms (ii) which acts as the U.S. address of "foreigners" in connection with their financial transactions with persons in the United States or (iii) which services the borrowing for a foreign lender is required to notify its nonbanking customer in the United States and the Federal Reserve Bank of New York of that nonbanking customer's obligation to report borrowings from foreigners on Treasury International Capital (TIC) Form CQ–1 if they will not otherwise be reported by the intermediary on TIC Form BL–2.

Dated: May 3, 1985.

Robert A. Cornell,

Acting Assistant Secretary, International Affairs.

[FR Doc. 85–11191 Filed 5–9–85; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169a

[DoD Instruction 4100.33]

Commercial Activities Program Procedures

AGENCY: Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) is proposing to incorporate substantive changes to Part 169a required by OMB Circular A–76 "Performance of Commercial Activities," August 3, 1983. This part implements the policies established in 32 CFR Part 169 and establishes procedures and criteria for use by DoD to determine whether DoD commercial activities should be performed by DoD personnel in-house or by contract with commercial sources.

DATE: Comments must be received on or before: June 10, 1985.

ADDRESS: Office of the Assistant Secretary of Defense (Manpower, Installations and Logistics), Installation Management, Pentagon, Washington D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Doug Hansen, telephone 202–325–0537.

SUPPLEMENTARY INFORMATION: Part 169a was published in the **Federal Register** on April 4, 1980 (45 FR 22924) prescribing the procedures and criteria for use by DoD to determine whether DoD commercial activities should be performed by DoD personnel in-house or by contract with commercial sources. Comments will be available for public inspection by request. Because of the anticipated number of comments, DoD does not plan to acknowledge or respond to individual comments. However, DoD will respond to comments in the preamble of the final rule.

DoD has determined that this action is not a major rule as defined by Executive Order 12291. The part will not have an annual effect on the economy of $100 million or more; result in a major increase in the cost or prices for consumers, industries, State or local governments; or adversely affect competition, employment, investment, productivity, or innovation.

DoD has submitted a request to OMB for review and approval of the part.

This part is not subject to the provisions of the Regulatory Flexibility Act. Therefore, no Regulatory Flexibility Analysis was prepared.

List of Subjects in 32 CFR Part 169a

Armed forces, Government procurement.

For the reasons set out in the preamble, it is proposed that 32 CFR Part 169a revised to read as follows:

PART 169a—COMMERCIAL ACTIVITIES PROGRAM PROCEDURES

Subpart A—General

Subpart B—Procedures

Sec.

Authority: 5 U.S.C. 301 and 552 and Pub. L. 93-400

Subpart A—General

§ 169a.1 Purpose.

This part reissues Part 169a to accommodate substantive changes required by Part 169a and OMB circular A-76 implements the policies established in Part 169, and establishes procedures for use by the Department of Defense (DoD) to determine whether needed commercial activities should be accomplished by DoD personnel or by contract with a commercial source.

§ 169a.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense (OSD), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components").

(b) Its provisions contain DoD' procedures for commercial activities in the United States, its territories and possessions, the District of Columbia and the Commonwealth of Puerto Rico.

(c) Its provisions are not mandatory for commercial activities staffed solely with civilian personnel paid by nonappropriated funds, such as military exchanges. However, its provisions are mandatory for commercial activities when they are partially staffed with civilian personnel paid by appropriated funds, such as libraries, open messes, and other morale, welfare and recreation (MWR) activities. When total installation support is being cost compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with civilian personnel paid by nonappropriated funds.

(d) This part does not:

(1) Apply to governmental functions as defined in § 169a.3 of this part;

(2) Apply when contrary to law, Executive orders, or any treaty or international agreement;

(3) Apply in times of a declared war or military mobilization;

(4) Provide authority to enter into contracts;

(5) Apply to the conduct of research and development except for severable in-house commercial activities in support of research and development, such as those listed in Enclosure 1.

(6) Justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(7) Authorize contracts that establish an employer-employee relationship between the DoD and contractor employees as described in the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

§ 169a.3 Definitions.

Commercial activity review. The process of evaluating commercial activities for the purpose of determining whether or not a cost comparison will be conducted.

Commercial source. A business or non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

Conversion to contract. The changeover of a commercial activity from performance of DoD personnel to performance under contract by a commercial source.

Conversion to in-house. The changeover of a commercial activity from performance under contract to performance by DoD personnel.

Cost comparison. The process of developing an estimate of the cost of performance of a commercial activity by DoD employees and comparing it, in accordance with the requirements in this part to the cost to the Government for contract performance of the commerical.

Directly affected parties. DoD employees and their representative organizations and bidders or offerors on the solicitation.

Displaced DoD employee. Any DoD employee affected by conversion to contract operation (including such actions as job elimination, grade reduction or reduction in rank). It includes both employees in the function converted to contract and to employees outside the function who are adversely affected by conversion through reassignment or the exercise of bumping or retreat rights.

DoD commercial activity (CA). An activity which provides a product or service obtainable (or obtained) from a commercial source. A DoD commercial activity is not a Governmental function. A DoD commercial activity may be an organization or part of another organization. It must be a type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in Enclosure 1. DoD CA falls into one of two categories:

(a) *In-house CA.* A DoD CA operated by a DoD Component with DoD personnel.

(b) *Contract CA.* A DoD CA managed by a DoD Component operated with contractor personnel.

DoD employee. Civilian personnel of the DoD.

DoD governmental function. A function that is so intimately related to the public interest as to mandate performance by DoD personnel. These functions require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for DoD. Services or products in support of Governmental functions, such as those listed in Enclosure 3, are CAs and are normally subject to Part 169 and its implementing instructions. Governmental functions normally fall into two categories:

(a) The act of governing; i.e., the discretionary exercise of Government authority. Examples include criminal investigations, prosecutions, and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

(b) Monetary transactions and entitlements, such as tax collection and revenue disbursements; control of the treasury accounts and money supply; and the administration of public trusts.

DoD personnel. Military and civilian personnel of the DoD.

Expansion. The modernization, replacement, upgrading, or enlargement of a DoD CA involving a cost increase exceeding either 30 percent of the total capital investment of 30 percent of the annual personnel and material costs. A consolidation of two or more CAs is not an expansion unless the proposed total capital investment or annual personnel and material costs of the consolidation exceeds the total of the individual CAs by 30 percent or more.

New requirement. A new requirement is a newly established need for a

commercial product or service. A new requirement does not include interim in-house operation of essential services pending reacquisition of the services prompted by such action as the termination of an existing contract operation.

Preferential procurement programs. Preferential procurement programs are mandatory source programs such as Federal Prison Industries (FPI) and the workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act. Also included are small, minority and disadvantaged businesses, and labor surplus area set-asides and awards made under section 8(a) of the Small Business Act.

Subpart B—Procedures

§ 169a.4 Inventory and Review Schedule (Reports Control Symbol DD-M(A)1540).

(a) Information in each DoD Component's inventory shall be used to assess DoD implementation of OMB Circular A-76 and for other purposes. Each Component's inventory shall be updated at least annually to reflect changes to their review schedule and the results of reviews, cost comparisons, and direct conversions. Updated inventories for all DoD Components except National Security Agency/Central Security Service (NSA/CSS) and the Defense Intelligence Agency (DIA) shall be submitted to the Assistant Secretary of Defense (Manpower, Installations, and Logistics) (ASD(MI&L) within 90 days after the end of each fiscal year. Inventory data pertaining to NSA/CSS and DIA shall be held at that Agency for subsequent review by properly cleared personnel. Enclosure 1 provides the code and explanations for functional area and Enclosure 2 provides procedures for submitting the inventory.

(b) DoD Components review schedules should be coordinated with the DoD Component's Efficiency Review Program and the Defense Regional Interservice Support (DRIS) Program to preclude duplication of efforts and to make use of information already available.

(c) Reviews of commercial activities that provide interservice support shall be scheduled by the supplying DoD Component. Subsequent cost comparisons, when appropriate, shall be executed by the same DoD Component. All affected DoD Components shall be notified of the intent to perform a review.

§ 169a.5 Reviews: Existing in-house commercial activities.

(a) Continued performance of in-house commercial activities without a cost study is authorized only under certain conditions. (Detailed documentation will be maintained to support the decision to continue in-house performance. ASD(MI&L) will be notified within one week of any such decision. Authority to make these decisions will not be redelegated below the level of Deputy Assistant Secretary (DAS) or equivalent). These conditions are:

(1) *National defense.* In most cases, application of this criteria shall be made considering the wartime and peacetime duties of the specific positions involved rather than in terms of broad functions. Detailed documentation is required for DoD commercial activities performed by DoD personnel justified under national defense criteria.

(i) A commercial activity staffed with military personnel who are assigned to the activity, may be retained in-house for national defense reasons when:

(A) The commercial activity is essential for training or experience in required military skills;

(B) The commercial activity is needed to provide appropriate work assignments for a rotation base for overseas or sea-to-shore assignments; or

(C) The commercial activity is necessary to provide career progression to needed military skill levels.

(ii) Core Logistics Activities. Commercial activities that are necessary to maintain a logistics capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations and other emergency requirements. Those CAs considered core logistics and reported to Congress under the provisions of Public Law 98-525, Section 307, shall be retained in-house unless the Secretary of Defense grants a waiver as provided for in Section 307. Requests for waivers shall be submitted to ASD(MI&L).

(iii) If the Component has a large number of similar CAs with a small number of essential personnel in each commercial activity action shall be considered to consolidate the positions consistent with requirements so that economical performance by either DoD civilian employees or by contract can be explored for accomplishing a portion of the work.

(iv) The DoD components may propose to ASD(MI&L) other criteria for exempting CAs for national defense reasons.

(2) *No satisfactory commercial source available.* DoD commercial activity may be performed by DoD personnel when it can be demonstrated that:

(i) There is no satisfactory commercial source capable of providing the product or service that is needed. Before concluding that there is no satisfactory commercial source available, the DoD Component shall make all reasonable efforts to identify available sources.

(A) DoD Components' efforts to find satisfactory commercial sources shall include review of bidders lists and inventories of contractors, consideration of preferential procurement programs and requests for help from Government agencies such as the Small Business Administration.

(B) Where the availability of commercial sources is uncertain, the DoD Component will place at least three notices of the requirement in the *Commerce Business Daily* over a 90-day period. (Notices will be in the format specified in FAR (48 CFR Part 5)). In the case of a *bona fide* urgent requirement, the publication period in the *Commerce Business Daily* shall be reduced to two notices over a 30-day period. Specifications and requirements in the notice shall not be unduly restrictive and shall not exceed those required of Government personnel or operations.

(ii) Use of a commercial source would cause an unacceptable delay or disruption of an essential program. In-house operation of a commercial activity on the basis that use of a commercial source would cause an unacceptable delay or disrupt an essential DoD program requires a specific documented explanation.

(A) Delay or disruption must be specific as to cost, time, and performance measures.

(B) Disruption must be shown to be of a lasting or unacceptable nature. Temporary disruption caused by conversion to contract is not sufficient support for the use of this criteria.

(C) The fact that a DoD commercial activity involves a classified program, or is part of a DoD Component's basic mission, or that there is the possibility of a strike by contract employees is not an adequate reason for Government performance of that activity. Further, urgency alone is not an adequate reason to continue Government operation of a commercial activity. It must be shown that commercial sources are not able, and the Government is able, to provide the product or service when needed.

(3) *Patient care.* Commercial activities at DoD hospitals may be performed by

DoD personnel when it is determined by the head of the DoD Component, in consultation with the Component's chief medical director, that performance by DoD personnel would be in the best interests of direct patient care. Detailed documentation is required when an in-house operation is justified under this criteria.

§ 169a.6 Reviews: Contracts.

(a) When contract costs become unreasonable or performance becomes unsatisfactory, a cost comparison of a contracted commercial activity shall be performed in accordance with Part II of the Supplement to OMB Circular No. A-76 (Office of Federal Procurement Pamphlet No. 4)[1], Part III of the Supplement to OMB Circular No. A-76 (Commercial Activities (CA) Management Study Guide)[1], and Part IV of the Supplement to OMB Circular No. A-76 (Cost Comparison Handbook)[1] if:

(1) Re-competition with other satisfactory commercial sources does not result in reasonable prices; and

(2) In-house performance is feasible.

(b) Contracted commercial activities that are justified for conversion to in-house performance based on cost comparisons, national defense, or in the best interest of direct patient care will be allowed to expire (options will not be exercised) once in-home capability is established. If the required authorizations cannot be accommodated within the DoD Component's available resources, a request for adjustment will be submitted to OSD.

§ 169a.7 Expansions.

In cases where expansion of an in-house commercial activity is anticipated, a review of the entire commercial activity, including the proposed expansion, shall be conducted to determine if performance by DoD personnel is authorized for national defense reasons, because no commercial source is available, or in the best interest of direct patient care. If performance by DoD personnel is not justified under these criteria, the entire activity shall be scheduled for cost comparison. Government facilities and equipment will not normally be expanded to accommodate expansions if adequate and cost effective contractor facilities are available.

§ 169a.8 New requirements.

(a) In cases where a new requirement for a commercial product or service is anticipated, a review shall be conducted to determine if performance by DoD personnel is authorized for national defense reasons, because no commercial source is available, or in the best interest of direct patient care. If performance by DoD personnel is not justified under these criteria, then the new requirement shall normally be performed by contract.

(b) However, if there is reason to believe that commercial prices may be unreasonable, an informal preliminary cost analysis shall be conducted to determine whether it is likely that the work can be performed in-house at a cost that is less than anticipated contract performance. The appropriate conversion differentials will be added to the in-house cost before it is determined that in-house performance is likely to be more economical and a cost comparison scheduled.

(c) Government facilities and equipment will not normally be expanded to accommodate new requirements if adequate and cost effective contractor facilities are available. The requirement for Government ownership of facilities does not obviate the possibility of contract operation. If justification for in-house operation is dependent on relative cost, the cost comparison may be delayed to accommodate the lead time necessary for acquiring the facilities.

(d) Approval or disapproval of in-house performance of new requirements involving a capital investment of $500,000 or more shall not be redelegated below the level of DAS or equivalent.

(e) Approval to budget for a major capital investment associated with a new requirement shall not constitute OSD approval to perform the new requirement with DoD personnel. Government performance shall be determined in accordance with this part.

§ 169a.9 Special considerations.

(a) *Communications security.* Before making a determination that an activity involving the full maintenance of communications security (COMSEC) equipment should be subjected to a cost comparison, the DoD Component must specifically identify the risk to national security of using commercial sources. The DoD Component shall consult with the Director, National Security Agency (NSA), in reaching this finding. If the risk to national security is unacceptable, the Director, NSA, will make appropriate recommendations to ASD(MI&L) for consideration of a waiver to the provisions of Part 169 and its implementing instructions.

(b) *National Intelligence.* Before making a determination that an activity involving the collection/processing/dissemination of national intelligence should be subjected to a cost comparison, the DoD Component must specifically identify the risk to national intelligence of using commercial sources. The DoD Component shall consult with the Director, Defense Intelligence Agency (DIA), in reaching this finding. If the risk to national intelligence is unacceptable, the Director, DIA, will make appropriate recommendation to ASD(MI&L) for consideration of a waiver to the provisions of Part 169 and its implementing instructions.

(c) *Cost comparison process.* If performance of a commercial activity by DoD personnel cannot be justified under national defense, nonavailability of commercial source, or patient care criteria, then a cost comparison shall be conducted in accordance with Part II of the Supplement to OMB Circular No. A-76 (Office of Federal Procurement Pamphlet No. 4),[2] Part III of the Supplement to OMB Circular No. A-76 (Commercial Activities (CA) Management Study Guide),[2] and Part IV of the Supplement to OMB Circular No. A-76 (Cost Comparison Handbook)[2] to determine if performance by DoD employees is justified on the basis of lower cost. The conclusion that a commercial activity will be cost compared reflects a management decision that the work need not be accomplished by military personnel. Therefore, all direct personnel costs shall be estimated on the basis of civilian performance. Funds shall be budgeted to cover either the cost of the appropriate in-house operation required to accomplish the work or the estimated cost of the contract. Neither funds nor manpower authorizations will be removed from the activity's budget in anticipation of the outcome of a study.

(1) *Notification.* (i) *Congressional notification.* DoD Components shall notify Congress of the intention to do a cost comparison for each commercial activity. The DoD Component shall notify ASD(MI&L) of any such intent at least five working days prior to the congressional notification. The cost comparison process begins on the date of congressional notification.

(ii) *Commerce Business Daily*/**Federal Register** notification. DoD Components shall publish their schedules for conducting cost comparisons as soon as practicable after congressional notification, but at least annually, in the *Commerce Business Daily* (CBD) and the **Federal Register** (FR). Schedules for

[1] Copies may be obtained, if needed, from the Office of Management and Budget, Executive Office Building, Washington, DC 20503.

[2] See footnote 1 to § 169a.6(a).

cost comparisons not requiring congressional notification and decisions to convert commercial activities directly to contract shall also be published in the CBD/FR as soon as practicable after the decision. The cost comparison schedule shall include for each activity, the name, location, and date the cost comparison began or the estimated date the direct conversion will occur.

(iii) *Local notification.* It is suggested, that upon congressional notification, the installation make an announcement of the cost comparison, including a brief explanation of the cost comparison, including a brief explanation of the cost-comparison process. The installation's labor relations specialist should also be apprised to ensure appropriate notification to employees and their representatives in accordance with applicable collective bargaining agreements.

(2) *Performance Work Statement (PWSs).* (i) The PWS and Quality Assurance Plan shall be prepared in accordance with Part II of the Supplement to OMB Circular No. A–76 (Office of Federal Procurement Pamphlet No. 4)[3] The PWS must include reasonable performance standards that can be used to ensure a comparable level of performance for both government and contractor and a common basis for evaluation.

(ii) Each DoD Component shall:

(A) Identify functions where PWSs are needed;

(B) Monitor the development and use of prototype PWSs;

(C) Review and initiate action to correct disputes on PWS discrepancies;

(D) Approve prototype PWSs for Component-wide use;

(E) Coordinate these efforts with the other DoD Components to avoid duplication and to provide mutual assistance.

(iii) When developing a PWS, DoD Components shall determine whether or not Government-owned facilities, equipment, and real property will be made available to contractors. Such determinations shall be based on an informal cost-benefit analysis of what is the most cost advantageous to the Government. Generally, if Government-owned facilities, equipment, and real property are available to in-house commercial activity they will also be made available to the contractor.

(iv) If a commercial activity provides critical or sensitive services, the PWS shall include sufficient data for the in-house organization and commercial sources to prepare a plan for expansion in emergency situations.

(v) DoD Components that provide interservice support to other DoD Components or Federal agencies through interservice support agreements or other arrangements, shall coordinate their PWSs with all affected Components and agencies.

(3) *Management Study.* A management study shall be performed to completely analyze the method of operation necessary to establish the most efficient and cost-effective in-house organization (MEO) needed to accomplish the requirements in the PWS. The MEO must reflect only approved resources for which the CA has been authorized.

(i) The commercial activity management study is mandatory. Part III of the Supplement to OMB Circular No. A–76 (Commercial Activities (CA) Management Study Guide)[4] provides guidance on how to conduct the management study. The study shall identify essential functions to be performed, determine performance factors, organization structure, staffing, and operating procedures for the most efficient and cost effective in-house performance of the commercial activity. The new Government organization becomes the basis of the Government estimate for the cost comparison with potential contractors. In this context, "efficient" (or cost effective) means that the required level of workload (output, as described in the performance work statement) is accomplished with as little resource consumption (input) as possible without degradation in the required quality level of products or services.

(ii) DoD Components have formal programs and training for the performance of management studies, and those programs are appropriate for teaching how to conduct commercial activity management studies. Part III of the Supplement to OMB Circular No. A–76 (Commercial Activities (CA) Management Study Guide)[4] does not purport to replace the DoD Component's own management techniques, but merely to establish the basic criteria and the interrelationship between the management study and the PWS.

(iii) If a commercial activity provides critical or sensitive services, the management study shall include a plan for expansion in emergency situations.

(iv) Early in the management study, management should solicit the views of the employees in the commercial activity under review, and/or their representatives for their recommendations as to the most efficient and cost effective organization.

(v) The management study will be the basis on which the DoD Component certifies that the Government cost estimate is based on the most efficient and cost effective organization practicable.

(vi) Implementation of the MEO shall be initiated within one month after cancellation of the solicitation and completed within six months. DoD Components shall take action, within one month, to schedule and conduct a subsequent cost comparison when the MEO is not initiated and completed as prescribed above. Subsequent cost comparisions may be waived or delayed by the DoD Component's DAS or equivalent when situations outside the control of the DoD Component prevent timely or full implementation of the MEO. This authority may not be redelegated.

(vii) DoD Components shall establish procedures to ensure that the in-house operation, as specified in the MEO, is capable of performing in accordance with the requirements of the PWS. The procedures shall also ensure that the resources (facilities, equipment and personnel) specified in the MEO are available to the in-house operation and that in-house performance remains within the requirements and resources, specified in the PWS and MEO for the period of the cost comparison, unless documentation to support changes in workload/scope is available.

(4) *Cost comparisons.* Cost comparisons shall include all significant costs of both Government and contract performance. Common costs; i.e., costs that would be the same for either in-house or contract operation, need not be computed, but the basis of those common costs must be identified and included in the cost comparison documentation. Part IV of the Supplement to OMB Circular No. A–76 (Cost Comparison Handbook)[5] provides the basic guidance for conducting cost comparisons. The supplemental guidance contained below is intended to establish uniformity and to ensure all factors are considered when making cost comparisions. Deviation from the guidance contained in Part IV of the Supplement to OMB Circular No. A–76 (Cost Comparison Handbook)[5] will not be allowed except as provided in the following paragraphs.

(i) *In-house cost estimate.* (A) The in-house cost estimate shall be based on the most efficient and cost effective in-

[3] See footnote 1 to §169a.6(a).

[4] See Footnote 1 to § 169.a.6(a).

[5] See footnote 1 to § 169a.6(a).

house organization needed to accomplish the requirements in the PWS.

(B) Heads of DoD Components or their designees shall certify that the in-house cost estimate is based on the most efficient and cost effective operation practicable. Such certification shall be made prior to the date for receipt of bids or initial proposals.

(C) The Office of the Secretary of Defense (MI&L) will provide inflation factors for adjusting costs for the first and subsequent performance periods. These factors shall be the only acceptable factor for use in cost comparisons. Inflation factors for outyear (second and subsequent) performance periods shall not be applied to portions of the in-house estimate which are comparable with those protions of the contract estimate subject to economic price adjustment clauses.

(D) Military positions in the organization under cost comparison shall be converted to civilian positions for costing purposes. Civilian grades and series shall be based on the work described in the PWS and the MEO determined by the management study rather than on the current organization structure.

(E) All DoD Components shall use the Wholesale Stock Fund Rate of 24.5 percent and the Direct Delivery Rate of 13.4 percent for supplies and materials acquired from the DoD Component supply systems.

(F) The following guidance is applicable to the cost elements below when they are 100 percent attributable to the function under cost comparison:

(1) DoD Components shall assume for the purpose of all depreciation computations that residual value is equal to the disposal values listed in Appendix C of Part IV of the Supplement of OMB Circular No. A–76 (Cost Comparison Handbook [6]). Therefore, the basis for depreciation shall be the original cost plus the cost of capital improvements (if any) less the residual value. The original cost plus the cost of capital improvements less the residual value shall be divided by the useful life (as projected for the commercial activity cost comparison) to determine the annual depreciation.

(2) Purchase services which augment the current in-house work effort and which are included in the PWS, should be included in line 3 (other specifically attributable costs). When these purchases services are long-term and contain labor costs subject to economic price adjustment clauses, then the applicable labor portion shall not be escalated by outyear inflation factors. In addition, purchased services shall be offset for potential Federal income tax revenue by applying the appropriate rate in Appendix D of Part IV of the Supplement to OMB Circular No. A–76 (Cost Comparison Handbook [7]) to the total cost of purchased services.

(G) Overhead costs shall be computed only when such costs will not continue in the event of contract performance. This includes the cost of any position (full time, part time, or intermittent) which is dedicated to providing support to the activity(ies) under cost comparison regardless of the support organization's location. Military positions providing overhead support shall be costed using current militiary composite standard rates and applicable add-on factors for operating appropriation support and retirement. These rates are issued on a fiscal year basis by each Service.

(ii) *Cost of contract performance.* (A) The contract cost estimate shall be based on competitive bids or negotiated proposals, solicited in accordance with the Federal Acquisition Regulations (FAR) (48 CFR Chapter 1) and the DoD FAR Supplement (48 CFR Chapter 2). Existing contract prices (such as those from GSA Supply Schedules) shall not be used in a cost comparison.

(B) Standby costs are costs incurred for the upkeep of property in standby status. Such costs neither add to the value of the property nor prolong its life, but keep it in an efficient operating condition or available for use. When an in-house activity is terminated in favor of contract performance and an agency elects to hold Government equipment and facilities on standby solely to maintain performance capability, this is a management decision, and such standby costs shall not be charged to the cost of contracting.

(C) A specific waiver is required to use contract administration factors that exceed the limits established in Table 3–1 of Part IV of the Supplement of OMB Circular No. A–76 (Cost Comparison Handbook [8]). The reason for the deviation from the limits, the supporting alternative computation, and documentation supporting the alternative method, shall be provided to the DoD Component DAS or equivalent for advance approval on a case-by-case basis. This authority may not be redelegated.

(D) The following guidance pertains to one-time conversion costs:

(1) Material-related costs. The cost factors below shall be used, if more precise costs are not known, to estimate the cost associated with disposal/transfer of excess government material which result from a conversion to contract performance:

	Percentage of current replacement costs (percent)
Packing, Crating, & Handling (PCH)	3.5
Transportation	3.75

(2) Labor-related costs. If unique circumstances prevail where a strict application of the 2 percent factor for computation of severance pay results in a substantial overstatement or understatement of this cost, an alternative methodology may be employed. The reason for the deviation from this standard, the alternative computation, and documentation supporting the alternative method shall be provided to the appropriate DoD Component DAS or equivalent for advance approval. This authority may not be redelegated.

(3) Other transition costs. Except for the most unusual circumstances, Government personnel shall not be retained beyond the contract start date to assist the contractor in transition to full performance. This condition should be clearly stated in the solicitation so that contractors will be informed that they will be expected to meet full performance requirements from the first date of the contract. When circumstances require full performance on the contract start date, the solicitation shall state that the time will be made available for contractor indoctrination prior to the start date of the contract. Government personnel assistance after the contract start date (to assist in transition from in-house performance to contract performance) requires advance approval of the DoD Component DAS or equivalent. This authority may not be redelegated. This rule makes the inclusion of personnel transition costs in a cost comparison unwarranted, unless prior approval is obtained.

(4) Gain or loss on disposal/transfer of assets. The same factors for PCH and transportation costs prescribed in § 169a.9(c)(4)(D)(ii) for the costs associated with disposal/transfer of materials may be used, if more precise costs are not known, in the computation for this line entry. The estimated disposal value will be the net book

[6] See footnote 1 to § 169a.6(a).

[7] See footnote 1 to § 169a.6(a).

[8] See footnote 1 to § 169a.6(a).

value as derived from the table in Appendix C of Part IV of the Supplement to OMB Circular No. A-76 (Cost Comparison Handbook *)

§ 169a.10 Independent review

(a) The estimates of in-house and contract costs which can be computed prior to the cost comparison shall be reviewed by a qualified activity, independent of the task group preparing the cost comparison. This review shall be completed far enough in advance of the bid or proposal opening date to allow the DoD Component to correct any discrepancies found prior to sealing the in-house cost estimate.

(b) The independent review shall substantiate the currency, reasonableness, accuracy, and completeness of the cost comparison. The review shall ensure that the in-house cost estimate is based on the same required services, performance standards, and workload contained in the PWS. The reviewer shall scrutinize and attest to the adequacy and authenticity of the supporting documentation. Supporting documentation must be sufficient to require no additional interpretation.

(c) The purpose of the independent review is to ensure costs have been estimated and supported in accordance with provisions of this part. If no (or only minor) discrepancies are noted during this review, the reviewer indicates the minor discrepancies, signs, dates, and returns the cost comparison form (CCF) to the preparer. If significant discrepancies are noted during the review, the discrepancies will be reported to the preparer for recommended correction and resubmission.

§ 169a.11 Solicitation considerations.

(a) The solicitation shall not be canceled even if there are significant changes, omissions, or defects in the Government's in-house cost estimate. Such corrections shall be made before the expiration of bids or proposals and may require the extensions of bids or proposals.

(b) Bidders or offerors shall be informed that an in-house cost estimate is being developed and that a contract may or may not result.

(c) Bids or proposals shall be on at least a three-year multi-year basis (where appropriate) or shall include prepriced renewal options to cover two fiscal years after the initial period.

(d) All contracts awarded as a result of a conversion (whether or not a cost comparison was performed) shall:

(1) Comply with all requirements of the FAR (48 CFR Chapter 1 and DoD FAR Supplement (48 CFR Chapter 2).

(2) When determined to be necessary in accordance with FAR 22.101-1(e), include the clause at FAR 52.222.1, Notice of the Government of Labor Disputes, requiring the contractor to provide notice of actual and impending labor disputes.

(3) Include in contracts for critical or sensitive services a requirement for the contractor to develop a contingency plan explaining how the contractor will expand operations in emergency situations and ensure there will be no significant interruption of routine contract services due to labor disputes; and

(4) Include all applicable clauses and provisions related to the right of first refusal for employment by displaced employees, equal employment opportunities, veterans preference, and minimum wages and fringe benefits.

(e) Solicitations shall not be restricted for preferential procurement unless the DoD Component has substantial evidence that the commercial prices being offered are fair and reasonable.

(f) Contract defaults may result in temporary performance by Government personnel or other suitable means; e.g., an interim contract source. If the default occurs within the first year of contract performance, the following procedures apply:

(1) If the contract wage rates are still valid, the contracting officer will review the availability among the next lowest responsible and responsive bidders/offerors for a successor contract without resolicitation in accordance with established contracting practice. If the next low bidder/offeror is willing to accept the balance of the contract work at the price bid/offered adjusted on an appropriate prorata basis for the remainder of the contract term, the contracting officer may award to that bidder/offeror. If the Government is the next lowest bidder/offeror, the function may be returned to in-house performance, as a bid, if still feasible. If performance by DoD employees is no longer feasible, the contracting officer may elect either to award to the next lowest responsive and responsible commercial bidder/offeror if that firm is willing to perform at its bid/offered price adjusted appropriately for the remainder of the term or to resolicit as specified in the next paragraph (f)(2) of this section. A return to in-house performance under the above criteria shall be approved at the DoD Component DAS or equivalent.

(2) If the contract wage rates are no longer valid or if the contracting officer, after a review of the availability of the next lowest responsible and responsive bidders/offerors, determines that resolicitation is appropriate, the Government may submit a bid for comparison with other bids/offers from the private sector. Submission of a Government bid requires a determination by the DoD Component that performance by DoD employees is still feasible and that a likelihood exists that such performance may be more economical than performance by contract. In such cost comparisons, the conversion differentials will not be applied to the costs of either in-house or contract performance.

(g) If contract default occurs during the second or subsequent year of contract performance, the procedures of § 169a.6(a) of this part apply.

(h) Grouping of Commercial Activities.

(1) The installation commander should carefully determine which CAs should be grouped in a single solicitation. He should keep in mind that the grouping of commercial activities can influence the amount of competition (number of commercial firms that will bid) and the eventual cost to the Government.

(2) The installation commander should consider the adverse impacts that the grouping of commercial activities into a single solicitation may have on small and small disadvantaged business concerns. Particularly, actions must be taken to ensure that such contractors are not displaced merely to accomplish consolidation. Similarly, care must be taken so that nonincumbent small and small disadvantaged business contractors are not unduly handicapped or prejudiced from competing effectively at the prime contractor level.

(3) In developing solicitations for commercial activities the procurement plan should reflect an analysis of the advantages and disadvantages to the Government that might result from making more than one award. The decision to group commercial activities should reflect an analysis of all relevant factors including:

(A) The effect on competition.

(B) The duplicative management functions and costs to be eliminated through grouping.

(C) The economies of administering multi-function vs. single function contracts, including cost risks associated with the pricing structure of each.

(D) The feasibility of separating unrelated functional tasks or groupings.

(4) When the solicitation package includes totally independent functions which are clearly divisible, severable,

*See footnote 1 to § 169a.6(a).

limited in number, and not price interrelated, they will be solicited on the basis on an "any or all" bid. Commercial bidders or offerors will be permitted to submit bids or offers on one or any combination of the functions being solicited. These bids or offers will be evaluated to determine the lowest aggregate cost to the Government. This lowest aggregate cost will then be compared to the in-house cost estimate in accordance with the procedures in Part IV of the Supplement to OMB Circular No. A-76 (Cost Comparison Handbook [10]).

(5) There are instances when this approach to contracting for commercial activities may not apply; e.g., situations when physical limitations of site (where the activities are to be performed) preclude allowing more than one contractor to perform, when the function cannot be divided for purposes of performance accountability, or for other national security considerations. However, if an "all or none" solicitation is issued, the decision to do so must include a cost-analysis to reflect that the "all or none" solicitation is less costly to the Government or is otherwise in the best interest of the Government, all factors considered.

(6) It is recognized that in some cases, decisions will result in the elimination of prime contracting opportunities for small business. In such cases special measures must be taken. At a minimum, small and small disadvantaged business concerns must be given preferential consideration by all competing prime contractors in the award of subcontractors. For negotiated procurements the degree to which this is accomplished will be a weighted factor in the evaluation and source selection process leading to contract award.

(7) The contract files must be fully documented to demonstrate compliance with these procedures.

(i) In the event that no bids or proposals are received in response to a solicitation, the in-house cost estimate shall remain unopened. The contracting officer shall examine the solicitation to ascertain why no response were received. Depending on the results of this review, the contracting officer shall restructure the requirement, if feasible, and reissue it under restricted or unrestricted solicitation procedures, as appropriate.

(j) Continuation of an in-house commercial activity for lack of a satisfactory commercial source shall not be based upon lack of response to a restricted solicitation.

[10] See footnote 1 to § 169a.6(a).

§ 169a.12 Administrative appeal procedures.

(a) *Appeals of Cost Comparison Decision.* (1) Each DoD Component shall establish an administrative appeals procedure to resolve questions from directly affected parties relating to determinations resulting from cost comparisons performed in compliance with this part. The appeal procedure shall not apply to questions concerning:

(i) Award to one contractor in preference to another; or

(ii) DoD management decisions.

(2) The appeals procedure is to provide an administrative safeguard to ensure that DoD Component decisions are fair, equitable, and in accordance with procedures in this part. The procedure does not authorize an appeal outside the DoD Component or a judicial review.

(3) The appeals procedure must be independent and objective and provide for a decision on the appeal within 30 calendar days beginning the day after the end of the appeal period. The decision shall be made by an impartial official at a level organizationally higher than the official who approved the cost comparison decision. The appeal decision shall be final unless the DoD Component procedures provide for further discretionary review within the DoD Component.

(4) All detailed documentation supporting the initial cost comparison decision shall be made available to directly affected parties upon request when the initial decision is announced. The detailed documentation shall include, as a minimum: the in-house cost estimate with detailed supporting documentation (see § 169a.10(b)) of this part, the completed CCF, name of the winning contractor (if the decision is to contract), or the price of the bidder whose proposal would have been most advantageous to the Government (if the decision is to perform in-house). If the documentation is not available at that time, the appeal period shall be extended the number of days equal to the delay.

(5) To be considered eligible for review under the DoD Component appeals procedures, appeals shall:

(i) Be received by the DoD Component in writing within 15 working days after the date the supporting documentation is made available to directly affected parties. The DoD Component may extend the appeal submission period to a maximum of 30 working days if deemed appropriate by the DoD Component;

(ii) Address specific line items on the CCF and the rationale for questioning those items.

(iii) Demonstrate that the result of the appeal may change the decision.

(b) *Appeals of direct conversion.* (1) Directly affected parties may appeal justifications to convert to contract without a cost comparison. The appeal must address reasons why fair and reasonable prices will not be obtainable.

(2) Directly affected parties shall file appeals within 30 calendar days of the date of CBD and FR notification of a decision to convert a commercial activity directly to contract. Section 169a.9(b)(2) of this part applies.

(3) Appeals shall be filed with the DoD Inspector General (Auditing), Room 1201, Commonwealth Building, 1300 Wilson Boulevard, Arlington, Virginia 22209. The results of the Inspector General's administrative review shall be provided to ASD(MI&L). Appeal decisions by ASD(MI&L) shall be final.

(c) Since the appeal procedure is intended to protect the rights of all directly affected parties, the DoD Component's procedures, as well as the decision upon appeal, shall not be subject to negotiation, arbitration, or agreement.

(d) DoD Components will include administrative appeal procedures as part of their implementing documents.

Subpart C—Reporting Requirements

§ 169a.13 Reporting requirements.

(a) *Commercial Activities Management Information System (CAMIS).*

(1) The purpose of CAMIS is to maintain an accurate DoD data base of commercial activities that undergo an OMB Circular A-76 cost comparison and commercial activities that are converted directly to contract without a cost comparison. CAMIS is used to provide information to the Congress, OMB, GAO, OSD, and others as well as provide the input for the RCS DD-M(Q) 1542 report. The CAMIS is divided into two parts. Part I contains data on CAs that undergo cost comparison. Part II contains data on commercial activities converted to contract without a cost comparison.

(2) The CAMIS report shall be submitted in accordance with the procedures in Enclosure 3.

(b) *Annual Reports to Congress.* To ensure consistent application of the requirements stated in Pub. L. 96-342 as amended by Pub. L. 97-252, hereafter referred to as Section 502 (Enclosure 4), the following guidance is provided:

(1) The geographic scope of section 502 applies to the United States, its territories and possessions, the District

of Columbia, and the Commonwealth of Puerto Rico.

(2) Section 502 applies to proposed conversions of DoD CAs that on or since October 1, 1980 were being performed by more than ten DoD civilian employees.

(3) DoD Components shall notify Congress of the intention to do a cost comparison for each CA, as required by section 502(a)(2)(A). DoD Components shall notify ASD(MI&L) of any such intent at least five working days prior to the congressional notification.

(4) The DoD Components shall notify ASD(MI&L) at least five working days prior to sending the detailed summary report required by section 502(a)(2)(B) to Congress. The detailed summary of the cost will include: The amount of the offer accepted for the performance of the activity by the private contractor; the costs and expenditures that the Government will incur because of the contract; the estimated cost of performance of the activity by the most efficient Government organization; statement indicating the life of the contract; and certifications that the entire cost comparison is available, and that the Government calculation for the cost of performance of such function by DoD employees is based on an estimate of the most efficient and cost effective organization for performance of such function by DoD employees.

(5) The potential economic effect on the local community and Federal Government of contracting for performance of the function shall be included in the report to accompany the above certifications, if more than 50 total employees (including military and civilian, both permanent and temporary) are potentially affected. It is suggested that the Army Corps of Engineers' model (or equivalent) be used to generate this information. The potential economic effect on employees affected shall be included in the report regardless of the number of employees involved. Also include in the report a statement that the decision was made to convert to contractor performance, the projected date of contract award, and the projected contract start date, and the effect of contracting the function on the military mission of that function.

(6) By December 15th of each year, each DoD Component shall submit to ASD(MI&L) the data required by section 502(c). In describing the extent to which CA functions were performed by DoD contractors during the preceding fiscal year, include the estimated number of work years for the in-house operation as well as for contract operation (including percentages) by major OSD functional areas in Enclosure 1; e.g., Social Services, Health Services, Installation Services, etc. For the estimate of the percentage of commercial activities functions that will be performed in-house and those that will be performed by contract during the fiscal year during which the report is submitted, include the estimated work years for in-house commercial activities as well as for contracted commercial activities and include the rational for significant changes when compared to the previous year's data.

Enclosure 1–Codes and Definitions of Functional Areas

This list of functionasl codes and their definitions does not restrict the applicability or scope of the commercial activity program within DoD. § 169a.2 (b) defines the applicability and scope of the program. The commercial activity Program still applies to CAs not defined in this listing. These codes and definitions are a guide to assist reporting. As new functions are identified, codes will be added or existing definitions will be expanded.

Social Services

G001 Care of Remains of Deceased Personnel and/or Funeral Services. Includes commercial activities the provide mortuary services, including transportation from aerial port of embarkation (APOE) to mortuary of human remains received from overseas mortuaries, inspection, restoration, provision of uniform and insignia, dressing, flag, placement in casket, and preparation for onward shipment.

G008 Commissary Store Operation. Includes commercial activities that povide all ordering, receipt, storage, stockage, and retailing for commissaries. Excludes procurement of goods for issue or resale.

G008A: Shelf Stocking.
G008B: Check Out.
G008C: Meat Processing.
G008D: Produce Processing.
G008E: Storage and Issue.
G008F: Other.
G008G: Troop Subsistence Issue Point.

G009 Clothing Sales Store Operation. Includes commercial activities that provide ordering, receipt, storage, stockage, and retailing of clothing. Stores operated by the Army and Air Force Exchange Services, Navy Exchange Services, and Marine Corps Exchange Services are excluded.

G010 Recreational Library Services. Includes operation of libraries maintained primarily for off-duty use by military personnel and their dependents.

G011 Other Morale, Welfare, and Recreation Services. Operation of CAs maintained primarily for the off-duty use of military personnel and their dependents, including both appropriated and partially nonappropriated fund activities. The operation of clubs and messes, DoD Component community service activities, and morale support activities are included in code G011. Examples of activities performing G011 functions are arts and crafts, entertainment, sports and athletics, swimming, bowling, marina and boating, stables, youth activities, centers, and golf. (NOTE: CA procedures are not mandatory for functions staffed solely by civilian personnel paid by nonappropriated fund. This excludes Chaplain-related activities).

G900 Chaplains. Includes commercial activities that perform social services for an installation on behalf of the Chaplain, such as marital counseling and social work. Also includes activities that assist in church-related functions, such as playing an organ and record keeping.

G901 Berthing BOQ/BEQ. Includes commercial activities that provide temporary or permanent accommodations for officer or enlisted personnel. Management of the facility, room service, and daily cleaning are included.

G904 Family Services. Includes commercial activities that perform various social services for families, such as family counseling, financial counseling and planning, the operation of an abuse center, child care center, or family aid center.

G999 Other Social Services

Health Services

H101 Hospital Care. Includes commercial activities that provide outpatient and inpatient care and consultative evaluation in the medical specialties, including pediatrics and psychiatry; the coordination of health care delivery relative to the examination, diagnosis, treatment, and disposition of medical inpatients.

H102 Surgical Care. Includes commercial activities that provide outpatient and inpatient care and consultative evaluation in the surgical specialties, including obstetrics, gynecology, ophthalmology and otorhinolaryngology; the coordination of health care delivery relative to the examination, treatment, diagnosis, and disposition of surgical patients.

H105 Nutritional Care. Includes commercial activities that provide hospital food services for inpatients and outpatients, dietetic treatment, counseling of patients, and nutritional education.

H106 Pathology Services. Includes commercial activities involved in the operation of laboratories providing comprehensive clinical and anatomical pathology services; DoD military blood program and blood bank activities; and area reference laboratories.

H107 Radiology Services. Includes commercial activities that provide diagnostic and therapeutic radiologic service to inpatients, and the processing, examining, interpreting, and storage and retrieval of radiographs, fluorographs, and radiotherapy.

H108 Pharmacy Services. Includes commercial activities that produce, preserve, store, compound, manufacture, package, control, assay, dispense, and distribute medications (including intravenous solutions) for inpatients and outpatients.

H109 Physical Therapy. Includes commercial activities that provide care and treatment to patients whose ability to function is impaired or threatened by disease or injury; primarily serve patients whose actual impairment is related to neuromusculoskeletal, pulmonary, and

cardiovascular systems; evaluate the function and impairment of these systems, and select and apply therapeutic procedures to maintain, improve, or restore these functions.

H110 Materiel Services. Includes commercial activities that provide or arrange for the supplies, equipment, and certain services necessary to support the mission of the medical facility; responsibilities include procurement, inventory control, receipt, storage, quality assurance, issue, turn-in, disposition, property accounting, and reporting actions for designated medical and nonmedical supplies and equipment.

H111 Orthopedic Services. Includes commercial activities that construct orthopedic appliances such as braces, casts, splints, supports, and shoes from impressions, forms, molds, and other specifications.

H112 Ambulance Service. Includes commercial activities that provide transportation for personnel who are injured, sick, or otherwise require medical treatment, including standby duty in support of military activities and ambulance bus services.

H113 Dental Care. Includes commercial activities that provide oral examinations, patient education, diagnosis, treatment, and care including all phases of restorative dentistry, oral surgery, prosthodontics, oral pathology, periodontics, orthodontics, endodontics, oral hygiene, preventive dentistry, and radiodontics.

H114 Dental Laboratories. Includes commercial activities that operate dental prosthetic laboratories required to support the provision of comprehensive dental care; services may include preparing casts and models, repairing dentures, fabricating transitional, temporary, or orthodontic appliances, and finishing dentures.

H115 Clinics and Dispensaries. Includes commercial activities that operate freestanding clinics and dispensaries that provide health care services. Operations are relatively independent of a medical treatment facility and are separable for in-house or contract performance. health clinics, occupational health clinics, and occupational health nursing offices.

H116 Veterinary Services. Includes commercial activities that provide a complete wholesomeness and quality assurance food inspection program, including sanitation, inspection of food received, surveillance inspections, and laboratory examination and analysis; a complete zoonosis control program; complete medical care for Government-owned animals; veterinary medical support for biomedical research and development; support to other Federal agencies when requested and authorized; assistance in a comprehensive preventive medicine program; and determination of fitness of all foods that may have been contaminated by chemical, bacteriological, or radioactive materials.

H117 Medical Records Transcription. Includes commercial activities that transcribe, file, and maintain medical records.

H118 Nursing Services. Includes commercial activities that provide care and treatment for inpatients and outpatients not required to be performed by a doctor.

H119 Preventive Medicine. Includes commercial activities that operate wellness or holistic clinics (preventive medicine), information centers, and research laboratories.

H120 Occupational Health. Includes commercial activities that develop, monitor, and inspect installation safety conditions.

H121 Drug Rehabilitation. Includes commercial activities that operate alcohol treatment facilities, urine testing for drug content, and drug/alcohol counseling centers.

H999 Other Health Services

Intermediate, Direct, or General Repair and Maintenance of Equipment

Definition. Maintenance authorized and performed by designated maintenance commercial activities in support of using activities. Normally, it is limited to replacement and overhaul of unserviceable parts, subassemblies, or assemblies. It includes (1) intermediate/direct/general maintenance performed by fixed activities that are not designed for deployment to combat areas and that provide direct support of organizations performing or designed to perform combat missions from bases in the United States, and (2) any testing conducted to check the repair procedure. Commercial activities engaged in intermediate/direct/general maintenance and/or repair of equipment are to be grouped according to the equipment predominantly handled, as follows:

J501 Aircraft. Aircraft and associated equipment. Includes armament, electronic and communications equipment, engines, and any other equipment that is an integral part of an aircraft.

J502 Aircraft Engines. Aircraft engines that are not repaired while an integral part of the aircraft.

J503 Missiles. Missile systems and associated equipment. Includes mechanical, electronics, and communication equipment that is an integral part of missile systems.

J504 Vessels. All vessels, including armament, electronics, communications and any other equipment that is an integral part of the vessel.

J505 Combat Vehicles. Tanks, armored personnel carriers, self-propelled artillery, and other combat vehicles. Includes armament, fire control, electronic, and communications equipment that is an integral part of a combat vehicle.

J506 Noncombat Vehicles. Automotive equipment, such as tactical, support, and administrative vehicles. Includes electronic and communications equipment that is an integral part of the noncombat vehicle.

J507 Electronic and Communications Equipment. Stationary, mobile, portable, and other electronic and communications equipment. Excludes electronic and communications equipment that is an integral part of another weapon/support system. Maintenance of ADPE not an integral part of a communications system shall be reported under functional code W825; maintenance of tactical ADPE shall be reported under function code J999.

J510 Railway Equipment. Locomotives of any type or gauge, including steam, compressed air, straight electric, storage battery, diesel electric, gasoline electric, diesel mechanical locomotives, railway cars, and cabooses. Includes electrical equipment for locomotives and cars, motors, generators, wiring supplies for railway tracks for both propulsion and signal circuits, and on-board communications and control equipment.

J511 Special Equipment. Construction equipment, weight lifting, power, and materiel handling equipment (MHE).

J512 Armament. Small arms, artillery and guns, nuclear munitions, chemical, biological, and radiological (CBR) items, conventional ammunition, and all other ordnance items. Excludes armament that is an integral part of another weapon or support system.

J513 Dining Facility Equipment. Dining facility kitchen appliances and equipment.

J514 Medical and Dental Equipment. Medical and dental equipment.

J515 Containers, Textiles, Tents, and Tarpaulins. Containers, tents, tarpaulins, other textiles, and organizational clothing.

J516 Metal Containers. Container express (CONEX) containers, gasoline containers, and other metal containers.

J517 Training Devices and Audiovisual Equipment. Training devices and audiovisual equipment. Excludes maintenance of locally fabricated devices and functions reported under codes T807 and T900.

J519 Industrial Plant Equipment. That part of plant equipment with an acquisition cost of $5,000 or more, used to cut, abrade, grind, shape, form, join, test, measure, heat, or otherwise alter the physical, electrical, or chemical properties of materiels, components, or end items entailed in manufacturing, maintenance, supply processing, assembly, or research and development operations.

J520 Test, Measurement, and Diagnostic Equipment. Test, measurement, and diagnostic equipment (TMDE) that has resident in it a programmable computer. Included is equipment referred to as automated test equipment (ATE).

J521 Other Test, Measurement, and Diagnostic Equipment. Test, measurement, and diagnostic equipment not classified as ATE or that does not contain a resident programmable computer. Includes such items as electronic meters, armament circuit testers, and other specialized testers.

J522 Aeronautical Support Equipment. Aeronautical support equipment excluding TMDE (and ATE). Includes such items as ground electrical power carts, aircraft tow tractors, ground air conditioners, engine stands, and trailers. Excludes aeronautical equipment reported under J501.

J999 Other Intermediate, Direct, or General Repair and Maintenance of Equipment

Depot Repair, Maintenance, Modification, Conversion, or Overhaul of Equipment

Definition. The maintenance performed on materiel that requires major overhaul or a complete rebuild of parts, assemblies, subassemblies, and end items, including the manufacture of parts, modifications, testing, and reclamation, as required. Depot maintenance serves to support lower categories of maintenance. Depot maintenance provides stocks of serviceable equipment by using more extensive facilities

for repair than are available in lower level maintenance activities. (See DoD Instruction 4151.15 [1] for further amplification of the category definitions reflected below.) Depot or indirect maintenance functions are identified by the type of equipment maintained or repaired.

K531 Aircraft. Aircraft and associated equipment. Includes armament, electronics and communications equipment, engines, and any other equipment that is an integral part of an aircraft. Aeronautical support equipment not reported separately under code K548.

K532 Aircraft Engines. Aircraft engines that are not repaired while an integral part of the aircraft.

K533 Missiles. Missile systems and associated equipment. Includes mechanical, electronic, and communications equipment that is an integral part of missile systems.

K534 Vessels. All vessels, including armament, electronics, and communications equipment, and any other equipment that is an integral part of a vessel.

K535 Combat Vehicles. Tanks, armored personnel carriers, self-propelled artillery, and other combat vehicles. Includes armament, fire control, electronics, and communications equipment that is an integral part of a combat vehicle.

K536 Noncombat vehicles. Automotive equipment, such as tactical support and administrative vehicles. Includes electronic and communications equipment that is an integral part of the vehicle.

K537 Electronic and Communications Equipment. Stationary, mobile, portable, and other electronics and communications equipment. Excludes electronic and communications equipment that is an integral part of another weapon/support system. Maintenance of ADPE, not an integral part of a communications system, is reported under functional code W825.

K538 Railway Equipment. Locomotives of any type or gauge, including steam, compressed air, straight electric, storage battery, diesel electric, gasoline, electric, diesel mechanical locomotives, railway cars, and cabooses. Includes electrical equipments for locomotives and cars, motors, generators, wiring supplies for railway tracks for both propulsion and signal circuits, and on-board communication and control equipment.

K539 Special Equipment. Construction equipment, weight lifting, power, and materiel-handling equipment.

K540 Armament. Small arms; artillery and guns; nuclear munitions, CBR items; conventional ammunition; and all other ordnance items. Excludes armament that is an integral part of another weapon or support system.

K541 Industrial Plant Equipment. That part of plant equipment with an acquisition cost of $3,000 or more, used to cut, abrade, grind, shape, form, join, test, measure, heat, or otherwise alter the physical, electrical, or chemical properties of materials, components, or end items entailed in manufacturing, maintenance, supply, processing, assembly or research and development operations.

K542 Dining Facility Equipment. Dining facility kitchen appliances and equipment. This includes feeding equipment.

K543 Medical and Dental Equipment. Medical and dental equipment.

K546 Test Measurement and Diagnostic Equipment. Test measurement and diagnostic equipment (TMDE) that has resident in it a programmable computer. Included is equipment referred to as automated test equipment (ATE).

K547 Other Test Measurement and Diagnostic Equipment. Test measurement and diagnostic equipment not classified as ATE or that does not contain a resident progarammable computer. Includes such items as electronic meters, armament circuit testers, and other specialized testers.

K548 Aeronautical Support Equipment. Aeronautical support equipment excluding TMDE (and ATE). Includes such items as ground electrical power carts, aircraft tow tractors, ground air conditioners, engine stands, and trailers. Excludes aeronautical support equipment reported under code K531.

K999 Other Depot Repair, Maintenance, Modification, Conversion, or Overhaul of Equipment.

Base Maintenance/Multifunction Contracts

P100 Base Maintenance Multifunction Contracts. Includes all umbrella-type contracts where the contractor performs more than one function at one or more installations. (Identify specific functions as non add entries.)

Research Development, Test, and Evaluation (RDT&E) Support

R660 RDT&E Support. Includes all effort not reported elsewhere, directed toward support of installation or operations required for research, development, test, and evaluation use. Included are maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships.

Installation Service

S700 Natural Resource Services. Includes those commercial activities that provide products or services that implement natural resource management plans in the areas of fish, game, wildlife, forestry, watershed areas or ground water table, erosion control, and mineral deposit management. Natural resources planning and management is a governmental function and will not be reported.

S701 Advertising and Public Relations Services. Includes commercial activities responsible for public advertising and public relations, such as public affairs offices, installation newspaper and publications, and press release/information offices.

S702 Financial and Payroll Services. Includes commercial activities that prepare payroll, print checks, escrow, or change payroll accounts for personnel. Includes other services normally associated with banking operations.

S703 Debt Collection. Includes commercial activities that monitor, record, and collect debts incurred by overdrafts, bad checks, or delinquent accounts.

S706 Installation Bus Services. Includes commercial activities that operate local, intrapost, and interpost scheduled bus services. Includes scheduled movement of personnel over regular routes by administrative motor vehicles to include taxi and dependent school bus services.

S706A: Scheduled Bus Services.

S706B: Unscheduled Bus Services.

S706C: Dependent School Bus Services.

S706D: Other Bus Services.

S709 Laundry and Dry Cleaning Services. Includes commercial activities that operate and maintain laundry and dry cleaning facilities.

S709 Custodial Services. Includes commercial activities that provide janitorial and housekeeping services to maintain safe and sanitary conditions and preserve property.

S710 Pest Management. Includes commercial activities that provide control measures directed against fungi, insects, rodents, and other pests.

S712 Refuse Collection and Disposal Services. Includes commercial activities that operate incinerators, sanitary fills, and regulated dumps, and perform all other approved refuse collection and disposal services.

S713 Food Services. Includes commercial activities engaged in the operation and administration of food preparation and serving facilities. Excludes operation of central bakeries, pastry kitchens, and central meat processing facilities that produce a product and are reported under functional area X934. Excludes hospital food service operations (under code H105).

S713A: Food Preparation and Administration.

S713B: Mess Attendants and Housekeeping Services.

S714 Furniture. Includes commercial activities that repair and refurbish furniture.

S715 Office Equipment. Includes commercial activities that maintain and repair typewriters, calculators, and adding machines.

S716 Motor Vehicle Operation. Includes commercial activities that operate local administrative motor transportation services. Excludes installation bus services reported in functional area S706.

S716A: Taxi Service.

S716B: Bus Service (unless in S706).

S716C: Motor Pool Operation.

S716D: Crane Operation (includes rigging, excludes those listed in T800G).

S716E: Heavy Truck Operation.

S716F: Construction Equipment Operation.

S716I: Driver/Operator Licensing & Test.

S716J: Other Vehicle Operations (light truck/auto).

S716K: Fuel Truck Operations.

S716M: Tow Truck Operations.

S717 Motor Vehicle Maintenance. Includes commercial activities that perform maintenance on automotive equipment, such as support and administrative vehicles. Includes electronic and communications equipment that are an integral part of the vehicle.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

S717A: Upholstery Maintenance and Repair.
S717B: Glass Replacement and Window Repair.
S717C: Body Repair and Painting.
S717D: Accessory Overhaul.
S717E: General Repairs/Minor Maintenance.
S717F: Battery Maintenance and Repair.
S717G: Tire Maintenance and Repair.
S717H: Major Component Overhaul.
S717I: Material Handling Equipment Maintenance.
S717J: Crane Maintenance.
S717K: Construction Equipment Maintenance.
S717L: Frame and Wheel Alignment.
S717M: Other Motor Vehicle Maintenance.

S718 Fire Prevention and Protection. Includes commercial activities that operate and maintain fire protection and prevention services. Includes routine maintenance and repair of fire equipment and the installation of fire prevention equipment.
S718A: Fire Protection Engineering.
S718B: Fire Station Administration.
S718C: Fire Prevention.
S718D: Fire Station Operations.
S718E: Crash and Rescue.
S718F: Structural Fire Suppression.
S718G: Fire & Crash/Rescue Equipment Major Maintenance.
S718H: Other Fire Prevention and Protection.

S719 Military Clothing. Includes commercial activities that order, receive, store, issue, and alter military colthing and repair military shoes. Excludes repair of organizational clothing reported under code J515.

S724 Guard Service. Includes commercial activities engaged in physical security operations that provide for installation security and intransit protection of military property from loss or damage.
S724A: Ingress and egress control. Regulation of person, material, and vehicles entering or exiting a designated area to provide protection of the installation and Government property.
S724B: Physical security patrols and posts. Mobile and static physical security guard activities that provide protection of installation or Government property.
S724C: Conventional arms, ammunition, and explosives (CAAE) security. Dedicated security guards for CAAE.
S724D: Animal control. Patrolling for, capture of, and response to complaints about uncontrolled, dangerous, and disabled animals on military installations.
S724E: Visitor information services. Providing information to installation resident and visitors about street, agency, unit, and activity locations.
S724F: Vehicle impoundment. Removal, accountability, security, and processing of vehicles impounded on military installations.
S724G: Registration functions. Administration, filing, processing, and retrieval information about privately owned items that must be registered on military installations.

S725 Electrical Plants and Systems. Includes commercial activities that operate, maintain, and repair Government-owned electrical plants and systems.

S726 Heating Plants and Systems. Includes commercial activities that operate, maintain, and repair Government-owned heating plants and systems over 750,000 BTU capacity. Codes Z991 or Z992 will be used for systems under 750,000 BTU capacity, as applicable.

S727 Water Plants and Systems. Includes commercial activities that operate, maintain, and repair Government-owned water plants and systems.

S728 Sewage and Waste Plants and Systems. Includes commercial activities that operate, maintain, and repair Government-owned sewage and waste plants and systems.

S729 Air Conditioning and Refrigeration Plants. Includes commercial activities that operate, maintain, and repair Government-owned air conditioning and refrigeration plants over 5-ton capacity. Codes Z991 or Z992 shall be used for plants under 5-ton capacity as applicable.

S730 Other Services or Utilities. Includes commercial activities that operate, maintain, and repair Government-owned services or utilities.

S731 Base Supply Operations. Includes commercial activities that receive, store, and issue nonmission stocks and relocate office furniture.

S732 Warehousing and Distribution of Publications. Includes commercial activities that receive, store, and distribute publications and blank forms.

S740 Installation Transportation Office. Includes technical, clerical, and administrative commercial activities that support traffic management services related to the procurement of freight and passenger service from commercial for hire transportation companies. Excludes restricted functions that must be performed by Government employees such as the review, approval, and signing of documents related to the obligation of funds; selection of mode or carrier; evaluation of carrier performance; and carrier suspension. Excludes installation transportation functions described under codes S706, S716, S717, T810, T811, T812, and T814.
S740A: Installation Transportation Management and Administration.
S740B: Materiel Movements.
S740C: Personnel Movements.
S740D: Personal Property Activities.
S740E: Quality Control and Inspection.
S740F: Unit Movements.

S750 Museum Operations

S760 Contractor-Operated Parts Stores and Contractor-Operated Civil Engineering Supply Stores

S999 Other Installation Services

Other Nonmanufacturing Operations

T800 Ocean Terminal Operations. Includes commercial activities that operate terminals transferring cargo between overland and sealift transportation. Includes handling of government cargo through commercial water terminals.
T800A: Pier Operations. Includes commercial activities that provide stevedore and shipwright carpentry operations supporting the loading, stowage, and discharge of cargo and containers on and off ships, and supervision of operations at commerical piers and military ocean terminals.
T800B: Cargo Handling Equipment. Includes commercial activities that operate and maintain barge derricks, gantries, cranes, forklifts, and other materiel handling equipment used to handle cargo within the terminal area.
T800C: Port Cargo Operations: Includes commercial activities that load and unload railcars and trucks, pack, repack, crate, warehouse, and store cargo moving through the terminal, and stuff and unstuff containers.
T800D: Vehicle Preparation. Includes commercial activities that prepare Government and privately owned vehicles (POV) for ocean shipment, inspection, stowage in containers, transportation to pier, processing, and issue of import vehicles to owners.
T800E: Lumber Operations. Includes commercial activities that segregate reclaimable lumber from dunnage removed from ships, railcars, and trucks remove nails; even lengths; inspect; and return the lumber to inventory for reuse. Includes receipt, storage, and issue of new lumber.
T800F: Materiel Handling Equipment (MHE) Operations. Includes commercial activities that deliver MHE to user agencies, perform onsite fueling, and operate special purpose and heavy capacity equipment.
T800G: Crane Operations. Includes commercial activities that operate and perform first-echelon maintenance of barge derricks, gantries, and truck-mounted cranes in support of vessels and terminal cargo activities.
T800H: Breakbulk Cargo Operations. Includes commercial activities that provide stevedoring, shipwright carpentry, stevedore transportation, and the loading of noncontainerized cargo.
T800I: Other Ocean Terminal Operations.

T801 Storage and Warehousing. Includes commercial activities that receive materiel into depots and other storage and warehousing facilities, provide care for supplies, and issue and ship materiel.
T801A: Receipt. Includes commercial activities that receive supplies and related documents and information. This includes materiel handling and related actions, such as materials segregation and checking, and tallying incident to receipt.
T801B: Packing and Crating of Household Goods. Includes commercial activities performing packing and crating operations described in T801H, incident to the movement or storage of household goods.
T801C: Shipping. Includes commercial activities that deliver stocks withdrawn from storage to shipping. Includes onloading and offloading of stocks from transportation carriers, blocking, bracing, dunnage, checking, tallying, and materiel handling in central shipping area and related documentation and information operations.
T801D: Care, Rewarehousing, and Support of Materiel. Includes commercial activities that provide for actions that must be taken to protect stocks in storage, including physical handling, temperature control, assembly

placement and preventive maintenance of storage aids, and realigning stock configuration; provide for movement of stocks from one storage location to another and related checking, tallying, and handling; and provide for any work being performed within general storage support that cannot be identified clearly as one of the subfunctions described above.

T801E: Preservation and Packaging. Includes commercial activities that preserve, represerve, and pack materiel to be placed in storage or to be shipped. Excludes application of final (exterior) shipping containers.

T801F: Unit and Set Assembly and Disassembly. Includes commercial activities that gather or bring together items of various nomenclature (part, components, and basic issue items) and group, assemble, or restore them to or with an item of another nomenclature (such as parent end item or assemblage) to permit shipment under a singel document. This also includes blocking, bracing, and packing preparations within the inner shipping container; physical handling and loading; and reverse operation of assembling such units.

T801G: Special Processing of Nonstock Fund-Owned Materiel. Includes commercial activities performing special processing actions described below that must be performed on Inventory Control Point (ICP)-controlled, nonstock fund-owned material by technically qualified depot maintenance personnel using regular or special maintenance tools or equipment. Includes disassembly or reassembly or reserviceable ICP-controlled materiel being readied for movement, in-house storage, or out-of-house location such as a port to a commercial or DoD-operated maintenance or storage facility, property disposal or demilitarization activity, including blocking, bracing, cushioning, and packing.

T801H: Packing and Crating. Includes commercial activities that place supplies in their final, exterior containers ready for shipment. Includes the nailing, strapping, sealing, stapling, masking, marking, and weighing of the exterior container. Also, includes all physical handling, unloading, and loading of materiel within the packing and shipping area; checking and tallying material in and out; all operations incident to packing, repacking, or recrating for shipment, including on-line fabrication of tailored boxes, crates, bit inserts, blocking, bracing and cushioning shrouding, overpacking, containerization, and the packing of material in transportation containers. Excludes packing of household goods and personnel effects reported under code T801B.

T801I: Other Storage and Warehousing.

T802 Cataloging. Includes commercial activity that prepare supply catalogs and furnish cataloging data on all item of supply for distribution to all echelons world wide. Include catalog files, preparation, and revision of all item identifications for all logistics functions; compilation of Federal catalog sections and allied publication; development of Federal item identification guides, and procurement identification descriptions. Includes printing and publication of Federal supply catalogs and related allied publications.

T803 Acceptance Testing. Includes commercial activities that inspect and test supplies and materiel to ensure that products meet minimum requirements of applicable specifications, standards, and similar technical criteria; laboratories and other facilities with inspection and test capabilities; and activities engaged in production acceptance testing of ammunition, aircraft armament, mobility material, and other military equipment.

T803A: Inspection and Testing of Oil and Fuel.

T803B: Other Acceptance Testing.

T804 Architect Engineering Services. Includes commercial activities that provide architect engineer (A-E) services. Excludes engineering technical services (ETS) reported in functional area T813, and those required under The Brooks Act.

T805 Operation of Bulk Liquid Storage. Includes commercial activities that operate bulk petroleum storage facilities. Includes operation of off-vessel discharging and loading facilities, fixed and portable bulk storage facilities, pipelines, pumps, and other related equipment within or between storage facilities or extended to using agencies (excludes aircraft fueling services); handling of drums within bulk fuel activities. Excludes aircraft fueling services reported under code T814.

T806 Printing and Reproduction. Includes commercial activities that print, duplicate, and copy. Excludes user-operated office copying equipmet.

T807 Audiovisual Services. Includes commercial activities that provide base audiovisual (AV) support, AV production, AV depositories, technical documentation, and broadcasting.

T807A: Base AV Support. Includes commercial activities that provide still photographic products and services, graphic arts products and services, AV library services, AV training aids, models and displays, presentation services, and AV equipment maintenance. May also include photographic or electronic documentation for local use.

T807B: AV Production. Includes commercial activities that produce, distribute, and are accountable for all AV productions, as defined in DoD 5040.2-R[12]

T807C: AV Depositories. Includes commercial activities that store, issue, receive, and maintain AV products at the central library level. Includes records center operations for AV products.

T807D: Technical Documentation. Includes commercial activities that provide medical or intelligence documentation, optional instrumentation, and armament recording.

T807E: Broadcasting. Includes commercial activities that produce, reproduce, and distribute AV products/productions only for broadcast use.

T807K: AV Design Service. Includes commercial activities that provide professional consultation services involving the selection, design, and development of AV equipment or AV facilities.

T808 Mapping and Charting. Includes commercial activities that design, compile, print, and disseminate cartographic and geodetic products.

T809 Administrative Telephone Service. Includes commercial activities that operate and maintain the common-user, administrative telephone systems at DoD installations and activities. Includes telephone operator services; range communications; emergency action consoles; and the cable distribution portion of a fire alarm, intrusion detection, emergency monitoring and control data, and similar systems that require use of a telephone system.

T810 Air Transportation Services. Includes commercial activities that operate and maintain nontactical aircraft that are assigned to commands and installations and used for administrative movement of personnel and supplies.

T811 Water Transportation Services. Includes commercial activities that operate and maintain nontactical watercraft that are assigned to commands and installations and are used for administrative movement of personnel and supplies.

T811A: Water Transportation Services (except tug operations).

T811B: Tug Operations.

T812 Rail Transportation Services. Includes commercial activities that operate and maintain nontactical rail equipment assigned to commands and installation and used for administrative movement of personnel and supplies.

T813 Engineering and Technical Services. Includes commercial activities that advise, instruct, and train DoD personnel in the installation, operation, and maintenance of DoD weapons, equipment, and systems.

These services include transmitting the technical skill capability to DoD personnel in order for them to install, maintain, and operate such equipment and keep it in a high state of military readiness.

T813A: Contractor Plant Services. Includes commercial manufacturers of military equipment contracted to provide technical and engineering services to DoD personnel. Qualified employees of the manufacturer furnish these services in the manufacturer plants and facilities. Through this program, the special skills, knowledge, experience, and technical data of the manufacturer are provided for use in training, training aid programs, and other essential services directly related to the development of the technical capability required to install, operate, maintain, supply, and store such equipment.

T813B: Contract Field Services (CFS). Includes commercial activities that provide services of qualified contractor personnel who provide onsite technical and engineering services to DoD personnel.

T813C: In-house Engineering and Technical Services. Includes commercial activities that provide technical and engineering services described in codes T813A and T813B above that are provided by Government employees.

T813D: Other Engineering and Technical Services.

T814 Fueling Service (Aircraft). Includes commercial activities that distribute aviation

[12] See footnote 11 of Enclosure 1.

petroleum oil lubricant products. Includes operation of trucks and hydrants.

T815 Scrap Metal Operation. Includes commercial activities that bale or shear metal scrap and melt or sweat aluminum scrap.

T816 Telecommunication Centers. Includes commercial activities that operate and maintain telecommunication centers, nontactical radios, automatic message distribution systems, technical control facilities, and other systems integral to the communication center. Includes operations and maintenance of air traffic control equipment and facilities.

T817 Other Communications and Electronics Systems. Includes commercial activities that operate and maintain communications and electronics systems not included in T809 and T816.

T818 Systems Engineering and Installation of Communications Systems. Includes commercial activities that provide engineering and installation services including, design and drafting services, associated with functions specified in T809, T816, and T817.

T819 Preparation and Disposal of Excess and Surplus Property. Includes commercial activities that accept, classify, and dispose of surplus Government property, including scrap metal.

T820 Administrative Supply Services. Includes commercial activities that provide centralized administrative support services not included specifically in another functional category. These activities render services to multiple activities throughout an organization or to multiple organizations; such as a steno or typing pool rather than a secretary assigned to an individual. Typical activities included are word processing centers, reference and technical libraries, microfilming, messenger service, translation services, publication distribution centers, etc.

T820A: Word Processing Centers.

T820B: Reference and Technical Libraries.

T820C: Microfilming.

T820D: Internal Mail and Messenger Services.

T820E: Translation Services.

T820F: Publication Distribution Centers.

T820G: Field Printing and Publication. Incudes those activities that print or reproduce official publications, regulations, and orders. Includes management and operation of the printing facility.

T820H: Compliance Auditing.

T820I: Court Reporting.

T821 Special Studies and Analyses. Includes commercial activities that peform research, collect data, conduct time motion studies, or pursue some other planned methodology in order to analyze a specific issue, system, device, boat, plane, or vehicle for management.

Such activities may be temporary or permanent in nature.

T821A: Cost Benefit Analyses.

T821B: Statistical Analyses.

T821C: Scientific Data Studies.

T821D: Regulatory Studies.

T821E: Defense, Education, Energy Studies.

T821F: Legal/Litigation Studies.

T821G: Management Studies.

T900 Training Devices and Simulators. Includes commercial activities that provide training aids, devices, simulator design, fabrication, issue, operation, maintenance, support, and services.

T900A: Training Aids, Devices, and Simulator Support. Includes commercial activities that design, fabricate, stock, store, issue, receive, and account for and maintain training aids, devices, and simulators (does not include audiovisual production and associated services or audiovisual support).

T900B: Training Device and Simulator Operation. Includes commercial activities that operate and maintain training device and simulator systems.

T999 Other Nonmanufacturing Operations

Education and Training

Includes commercial activities that conduct courses of instruction attended by civilian or military personnel of the Department of Defense. Terminalogy of categories and subcategories primarily for military personnel (marked by an asterisk) follows the definitions of the statutory *Military Manpower Training Report* submitted nnually to the Congress. This series includes only the conduct of courses of instruction: it does not include education and training support functions (that is, Base Operations Functions in the S series and Nonmanufacturing Operations in the T series). A course is any separately identified instructional entity or unit appearing in a formal school or course catalog.

*U100 Recruit Training** The instruction of recruits.

*U200 Officer Acquisition Training** Programs concerned with officer acquisition training.

*U300 Specialized Skill Training** Includes Army One-Station Unit Training, Naval Apprenticeship Training, and health care training.

*U400 Flight Training** Includes flight familiarization training.

*U500 Professional Development Education**

*U510 Professional Military Education** Generally, the conduct of instruction at basic, intermediate, and senior Military Service schools and colleges and enlisted leadership training does not satisfy the requirements of the definition of a DoD commercial activities and is excluded from the provision of this part.

*U520 Graduate Education, Fully Funded, Full-Time**

*U530 Other Full-Time Education Programs**

*U540 Off-Duty (Voluntary) and On-Duty Education Programs** Includes the conduct of basic skills education program (BSEP), english as a second language (ESL), skill development courses, graduate, undergraduate, vocational/technical, and high school completion programs for personnel without a diploma.

U600 Civilian Education and Training Includes the conduct of courses intended primarily for civilian personnel.

U700 Dependent Education Includes the conduct of elementary and secondary school courses of instruction for the dependents of DoD overseas personnel.

U800 Training Development and Support (not reported elsewhere)

U999 Other Training

Automatic Data Processing

W824 Data Processing Services. Includes commercial activities that provide ADP processing services by using Government-owned or leased ADP equipment; or participating in Governmentwide ADP sharing program; or procuring of time-sharing processing services (machine time) from commercial sources. Includes all types of data processing services performed by general purpose ADP and peripheral equipment.

W824A: Operation of ADP Equipment.

W824B: Production Control and Customer Service.

W824C: ADP Magnetic Media Library.

W824D: Data Transcription/Data Entry Services.

W824E: Transmission and Teleprocessing Equipment Services.

W824F: Acceptance Testing and Recovery Systems.

W824G: Punch/Card Processing Services.

W824H: Other ADP Operations and Support.

W825 Maintenance of ADP Equipment. Includes commercial activities that maintain and repair all Government-owned ADP equipment and peripheral equipment.

W826 Systems Design, Development, and Programing Services. Includes commercial activities that provide software services associated with nontactical ADP operation.

W826A: Development and Maintenance of Applications Software.

W826B: Development and Maintenance of Systems Software.

W827 Software Services for Tactical Computers and Automated Test Equipment. Includes commercial activities that provide software services associated with tactical computers and TMDE and ATE hardware.

W999 Other Automatic Data Processing

Products Manufactured and Fabricated In-House

Commercial activities that manufacture and/or fabricate products in-house are grouped according to the products predominantly handled as follows:

X931 Ordnance Equipment. Ammunition and related products.

X932 Products Made from Fabric or Similar Materials. Including the assembly and manufacture of clothing, accessories, and canvas products.

X933 Container Products and Related Items. Including the design, engineering, and manufacture of wooden boxes, crates, and other containers; includes the fabrication of fiberboard boxes, and assembly of paperboard boxes with metal straps. Excludes on-line fabrication of boxes and crates reported in functional area T801.

X934 Food and Bakery Products. Including the operation of central meat processing plants, pastry kitchens, and bakery facilities. Excludes food services reported in functional areas S713 and H105.

X935 Liquid, Gaseous, and Chemical Products. Including the providing of liquid oxygen and liquid nitrogen.

X936 Rope, Cordage, and Twine Products; Chains and Metal Cable Products

X937 Logging and Lumber Products. Logging ans sawmill operations.

X938 Communications and Electronic Products

X939 Construction Products. The operation of quarries and pits, including crushing, mixing, and concrete and asphalt batching plants.

X940 Rubber and Plastic Products

X941 Optical and Related Products

X942 Sheet Metal Products

X943 Foundry Products

X944 Machined Parts

X999 Other Products Manufactured and Fabricated In-House

Maintenance, Repair, Alteration, and Minor Construction of Real Property

Z991 Buildings and Structures-Family Housing. Includes commercial activities that are engaged in exterior and interior painting and glazing; roofing, interior plumbing; interior electric; interior heating equipment, including heat sources under 750,000 Btu capacity; installed food service and related equipment; air conditioning and refrigeration under a 5-ton capacity; elevators; and other equipment affixed as part of the building and not included in other activities. Includes fencing, flagpoles, and other miscellaneous structures associated with family housing.

Z991A: Rehabilitation-Tenant Change.

Z991B: Roofing.

Z991C: Glazing.

Z991D: Tiling.

Z991E: Exterior Painting.

Z991F: Interior Painting.

Z991G: Flooring Painting.

Z991H: Screens, Blinds, etc.

Z991I: Appliance Repair.

Z991J: Electrical Repair. Includes elevators, escalators, and moving walks.

Z991K: Plumbing.

Z991L: Heating Maintenance.

Z991M: Air Conditioning Maintenance.

Z991N: Emergency/Service Work.

Z991T: Other Work.

Z992 Buildings and Structures (Other Than Family Housing). Includes commercial activities that are engaged in exterior and interior painting and glazing; roofing, interior plumbing; interior electric; interior heating equipment, including heat sources under 750,000 Btu capacity; installed food service and related equipment; air conditioning and refrigeration under a 5-ton capacity; elevators; and other equipment affixed as part of the building and not reported under other functional codes. Includes fencing, flagpoles, guard and watchtowers, grease racks, unattached loading ramps, training facilities other than buildings, monuments, grandstands and bleachers, elevated garbage racks, and other miscellaneous structures.

Z992A: Rehabilitation—Tenant Change.

Z992B: Roofing.

Z992C: Glazing.

Z992D: Tiling.

Z992E: Exterior Painting.

Z992F: Interior Painting.

Z992G: Flooring.

Z992H: Screens, Blinds, etc.

Z992I: Appliance Repair.

Z992J: Electrical Repair. Includes elevators, escalators, and moving walkways.

Z992K: Plumbing.

Z992L: Heating Maintenance.

Z992M: Air Conditioning Maintenance.

Z992N: Emergency/Service Work.

Z992T: Other Work.

Z993 Grounds and Surfaced Areas. Commercial activities that maintain, repair, and alter grounds and surfaced areas defined in codes Z993A, B, and C below.

Z993A: Grounds (Improved). Includes improved grounds, including lawns, drill fields, parade grounds, athletic and recreational facilities, cemeteries, other grounds areas, landscape and windbreak plants, and accessory drainage systems.

Z993B: Grounds (Other than Improved). Small arms ranges, antenna fields, drop zones, and firebreaks. Also grounds such as wildlife conservation areas, maneuver areas, artillery ranges, safety and security zones, desert, swamps, and similar areas.

Z993C: Surfaced Areas. Includes airfield pavement, roads, walks, parking and open storage areas, traffic signs and markings, storm sewers, culverts, ditches, and bridges. Includes sweeping and snow removal from streets and airfields.

Z997 Railroad Facilities. Includes commercial activities that maintain, repair, and alter narrow and standard gauge two-rail tracks, including spurs, sidings, yard, turnouts, frogs, switches, ties, ballast, and roadbeds, with accessories and appurtenances, drainage facilities, and trestles.

Z998 Waterways and Waterfront Facilities. Includes commercial activities what maintain, repair, and alter approachs, turning basin, berth areas and maintenance dredging, wharves, piers, docks, ferry racks, transfer bridges, quays, bulkheads, marine railway dolphins, mooring, buoys, seawalls, breakwaters, causeways, jetties, revetments, etc. Excludes waterways maintained by the Army Corps of Engineers (COE) rivers and harbor programs. Also excludes buildings, grounds, railroads and surfaced areas located on waterfront facilities.

Z999 Other Maintenance, Repair, Alteration, and Minor Construction of Real Property

Enclosure 2—Commercial Activities Inventory Report and Five-Year Review Schedule

A. General Instructions

1. Submit reports to the Assistant Secretary of Defense (Manpower, Installations and Logistics) before 1 January. Reports are assigned Reports Control Symbol DD-M(A)1540 and may be transmitted using punched cards, magnetic tape, or terminals as a medium.

2. If cards are used, wrap securely with the outer wrapper containing identification of the submitting department, the title of the report, "Commercial Activities Inventory Report and Five-Year Review Schedule," and the fiscal year covered. Cards shall be interpreted.

3. If tape is medium chosen, then use nine-track tape Extended Binary Coded Decimal Interchange Code (EBCDID), 1600 or 6250 density, even parity. The data record must contain 68 characters, blocked 10 logical records to a block. Omit headers and trailers. Use a tape mark (end of file) to follow the data. An external label shall be used on the reel to identify the organization to which the reel is to be returned, the title of the report, the fiscal year covered, and the tape characteristics.

4. If a remote work station terminal is to be used as the transmittal medium, then concurrence and interface requirements shall be established between the Defense Manpower Data Center (DMDC) and sender before transmission of data.

5. *Data Format: In-house DoD commercial activities*

Data element	Tape positions	Field	Type [1] data
Designator	1	A	A
Installation		A1	
—State, territory, or possession.	2-3	A1a	A
—Place	4-9	A1b	A/N
*Function	10-14	A2	A/N
In-house civilian workload	15-20	A3	N
Military workload	21-36	A4	N
*Reason for in-house operation	49	A8	A
*Most recent year in-house operation approved.	50-51	A9	N
*Year DoD CA scheduled for next review.	52-53	A10	N

[1] A = Alpha; N = Numeric.

NOTE.—A and A/N data shall be left justified space filled. N data shall be right justified and zero filled.

General note for personnel processing these reports: Coding shall be as indicated in the instructions. When specific coding instructions are not provided, reference must be made to DoD 5000.12-M.[13] Failure to comply with the coding instructions comtained herein or those published in Pub. L. 96-342 will make the noncomplier responsible for required concessions in data base communication. Items marked with an asterisk (*) have been registered in the DoD Date Element Dictionary.

6. Instruction for Preparing Data Entries

Field	Instruction
A	Enter an A to designate that the data to follow on this record pertains to a particular DoD commercial activities.
A1a	Enter the two-position alpha code for State or U.S. territory or possession as shown in Attachment 1.
A1b	Enter the unique alpha numeric code established by the DoD Component for military installation, named populated place, or related entity where the commercial activity workload was performed during the fiscal year covered by this submission. A separate look-up listing or file should be provided showing each unique place code and its corresponding place name.
A2	Enter the function code from Enclosure 3 that best describes the type of commercial activity workload principally performed by the commercial activity covered by this submission. Left justify.
A3	Enter total (full and part-time) in-house civilian workyear equivalents applied to the performance of the function during the fiscal year. Round off to nearest whole workyear equivalent. (If amount is equal to or greater than .5, round up. If amount is less than .5, round down. Amounts between zero and 0.9 should be entered as one.) Right justify. Zero fill.

[13] See footnote 11 to enclosure 1.

Field	Instruction
A4	Enter total military workyear equivalents applied to the performance of the function in the fiscal year. Round off to the nearest whole workyear equivalent. (Amounts between zero and one should be entered as one.) Right justify. Zero fill.
A8	Enter the reason for in-house operation of the commercial activity as shown in Attachment 2.
A9	Enter the last two digits of the most recent fiscal year corresponding to the reason for in-house operation of the commercial activity as stated in field A8. If field A8 is coded "N" this field should be left blank; otherwise an entry is required.
A10	Enter the last two digits of the fiscal year in which next review is scheduled to begin for the DoD CA. (Data element reference YE-NA.) Enter WR if a waiver of review has been approved by the ASD(MI&L).

Attachment 1—Code for Denoting States, Territories, and Possessions of the United States

a. State Codes:

AL Alabama
AK Alaska
AZ Arizona
AR Arkansas
CA California
CO Colorado
CT Connecticut
DE Delaware
DC District of Columbia
FL Florida
GA Georgia
HI Hawaii
ID Idaho
IL Illinois
IN Indiana
IA Lowa
KS Kansas
KY Kentucky
LA Louisiana
ME Maine
MD Maryland
MA Massachusetts
MI Michigan
MN Minnesota
MS Mississippi
MO Missouri
MT Montana
NE Nebraska
NV Nevada
NH New Hampshire
NJ New Jersey
NM New Mexico
NY New York
NC North Carolina
ND North Dakota
OH Ohio
OK Oklahoma
OR Oregon
PA Pennsylvania
RI Rhode Island
SC South Carolina
SD South Dakota
TN Tennessee
TX Texas
UT Utah
VT Vermont
VA Virginia
WA Washington
WV West Virginia
WI Wisconsin
SY Wyoming

b. Codes for Territories and Possessions:

AS American Samoa
GU Guam
JA Johnston Atoll
CM Northern Marianas Islands
MW Midway Islands
PR Puerto Rico
TT Trust Territory of the Pacific Islands
NI Navassa Island
MP U.S. Miscellaneous Pacific Islands
VI Virgin Islands
WK Wake Island

Attachment 2—Codes for Denoting compelling Reasons for In-House Operations of Planned Changes in Method of Performance

1. In-House Performance (for Entry in Field A8)

Code and Explanation

A. Indicates that the DoD commercial activity has been retained in-house for national defense reasons in accordance with § 169a.5(a)(i)(iii) of this part.

C. Indicates that the DoD commercial activity is retained in-house because the commercial activity is essential for training or experience in required military skills, or the commercial activity is needed to provide appropriate work assignments for a rotation base for overseas or sea-to-shore assignments, or the commercial activity is necessary to provise career progression to a needed military skill level in accordance with § 169a.5(a)(1)(i) of this part.

D. Indicates procurement of a product or service from a commercial source would cause an unacceptable delay or disruption of an essential DoD program.

E. Indicates that there is no satisfactory commercial source capable of providing the product or service needed.

F. Indicates that a cost comparison has been conducted and that the Government is providing the product or service at a lower total cost as a result of a cost comparison.

G. Indicates that the commercial activity is being performed by DoD personnel now, but decision to continue in-house or convert to contract is pending the results of a scheduled cost comparison.

H. Indicates that the commercial activity is being performed by DoD employees now, but will be converted to contract because of cost comparison results.

J. Indicates that the commercial activity is performed at a DoD hospital and, in the best interests of direct patient care, is being retained in-house.

K. Indicates that the commercial activity is being performed by DoD employees now, but a decision has been made to convert to contract for reasons other than cost.

2. Use of Other Codes

Enter an "N" in tape and card field A8 if the method of performance has never been reviewed and approved. Do not make an entry in tape or card field A9.

Enter a "Z" in tape and card field A8 or B9 if the cost comparison study has been held in abeyance because of direction from higher authority (such as congressional moratorium).

Enclosure 3—Commercial Activities Management Information System (CAMIS)

Upon approving a cost comparison or direct conversion, the DoD Component shall create the initial entry using the format at attachment 1 for cost comparisons and attachment 2 for direct conversions. Quarterly printouts of cost comparison records (CCRs) and direct conversion records (DCRs) shall be provided to the DoD Component by the Defense Manapower Data Center (DMDC). The DoD Component shall annotate the printout and return it to DMDC within 30 days of the end of each quarter. DMDC shall then use these annotated printouts to update the CAMIS and shall return the updated printout along with the annotated printout within two weeks. Instead of this manual update procedure, the DoD Component may submit automated data (tape or cards) to the DMDC.

At the completion of all required data entries, DMDC shall flag the record as being complete and it will no longer be included in the printout provided quarterly to the DoD Component for update. All records, flagged or ongoing, shall be included in the printout provided to each DoD Component at the end of the fiscal year and upon request.

Part I—Cost Comparison

The record for each cost comparison is divided into six sections. Each of these sections contains information provided by the DoD Components. The first five sections are arranged in a sequence of milestone events occurring during a cost comparison. Each section is completed immediately following the completion of the milestone event. These events are as follows:

1. Cost comparison is approved by DoD Component.
2. Solicitation is issued.
3. In-house and contractor costs are compared.
4. Contract is awarded/solicitation is canceled.
5. Contract starts.

The events are used as milestones because upon their completion some elements of significant information concerning the cost comparison become known.

A sixth section is utilized for CCRs that result in award of a contract. This section contains data elements on contract cost and information on subsequent contract actions during the second and third year of contract operation.

The data elements that comprise these six sections are defined in this enclosure.

Part II—Direct Conversions

The record for each direct conversion is divided into five sections. Each of the first four sections is completed immediately following the completion of the following events:

1. Direct conversion is approved by DoD Component.
2. Solicitation is issued.
3. Contract is awarded.
4. Contract starts.

The fifth section is utilized to record contract cost and subsequent contract

actions during the second and third year of contract operation.

The data elements that comprise these five sections are defined in this enclosure.

CAMIS Entry and Update Instruction

Part I—Cost Comparisons

The bracketed number preceding each definition in sections one through five is the DoD data element number. All date fields should be in the format MMDDYY (such as June 30, 1983 = 063083).

Section One

Event: DoD Component Approves Conducting a Cost Comparison

All entries in this section one of the cost comparison record (CCR) shall be submitted by DoD Components upon approving the start of a cost comparison.

These entries shall be used to establish the CCR and to identify the geographical, organizational, political, and functional attributes of the activity (or activities) undergoing cost comparison as well as to provide an initial estimate of the manpower associated with the activity (or activities). The initial estimate of the manpower in this section of the CCR will be in all cases those manpower figures identified in the correspondence approving the start of the cost comparison.

DoD Componets shall enter the following data elements to establish a CCR:

[1] Cost Comparison Number. The number assigned by the DoD Component to uniquely identify a specific cost comparison. The first character of the cost comparison number must be a letter designating DoD Component as noted in data element [3], below. The cost comparison number may vary in length from five to ten characters, of which the second and subsequent may be alpha or numeric and assigned under any system desired by the DoD Component.

[2] Announcement/Approval Date. The date of the congressional notification required by Section 502(a)(2)(A) of P.L. 96342 or the date the DoD Component headquarters approves a cost comparison that does not require congressional notification.

[3] DoD Component Code. Use the following codes to identify the Military Service or Defense Agency conducting the cost comparison:

A—Department of the Army
B—Defense Mapping Agency
C—Strategic Defense Initiatives Agency
D—Office of the Secretary of Defense-OCHAMPUS
E—Defense Advanced Research Projects Agency
F—Department of the Air Force
G—National Security Agency/Central Security Service
H—Defense Nuclear Agency
J—Joint Chiefs of Staff (including the Joint Staff, Unified and Specified Commands, and Joint Service Schools)
K—Defense Communications Agency
L—Defense Intelligence Agency
M—United States Marine Corps
N—United States Navy
R—Defense Contract Audit Agency
S—Defense Logistics Agency
T—Defense Security Assistance Agency
V—Defense Investigative Service
W—Uniformed Services University of the Health Sciences
X—Inspector General, Department of Defense
Y—Defense Audio Visual Agency

[4] Command Code. The code established by the DoD Component headquarters to identify the command responsible for operating the commercial activity undergoing cost comparison. A separate look-up listing or file shall be provided to DMDC showing each unique command code and its corresponding command name. If the DoD Component chooses to submit this on cards or tape, the format should be as follows:

Column	Entry
1-6 (left justify)	Command code.
7	Blank.
880 (left justify)	Command name.

[5] Installation Code. The code established by the DoD Component headquarters to identify the installation where the CA(s) under cost comparison is physically located. Two or more codes (for cost comparison packages encompassing more than one installation) should be separated by commas. A separate look-up listing or file shall be provided to DMDC showing each unique installation code and its corresponding installation name. If the DoD Component chooses to submit this on cards or tape, the format should be as follows:

Column	Entry
110 (left justify)	Installation code.
11	Blank.
1280 (left justify)	Installation name.

DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component and display it with the code on the quarterly printout that is provided to the DOD Component for update.

[6] State Code. A two-character postal abbreviation for the State or U.S. Territory where elements [5] is located. Two or more codes shall be separated by commas.

[7] Congressional District (CD). Number of the congressional district(s) where [5] is located. If representatives are selected "at large," enter "01" in this data element; for a delegate or resident commissioner (e.g., District of Columbia or Puerto Rico) enter "98". If the installation is located in two or more CDs, all CDs should be entered and seperated by commas.

[8] Joint Interservice Resource Study Group (JIRSG) Arena Code. The (JIRSG) Area that [5] is assigned to for coordination of the Defense Regional Interservice Support (DRIS) Program. This is a four-charcter alpha/numeric date element. For instance, "NO15" is the National Capitol Region (as published in DRIS Point of Contact Directory).

Note.—A DoD Component may, at its option, report corresponding multiple values for the following geographical data elements: state code, congressional district, and JIRSG area code. These values shall be grouped and punctuated as shown in the example below so that the proper relationship can be established between each installation code value and its corresponding set of geographical attribute values.

[5] Installation code	[6] State code		[7] CD	[8] JIRSG area code
AAAAA, BBBBB, CCCCC	GA, CA, NJ	42;15	05, 06;	SO03, WE10,*

When multiple values within a data element are reported for a single installation code semicolons shall be used to separate each series of values and to indicate correspondence of each series to its respective installation value; commas shall be used to separate the values within a series. When only a single value (within a data element) is reported for each installation, the value shall be separated by commas. To denote an unknown or missing number of a series of values, the asterisk (*) symbol should be used.

The cost comparison package above involves three installations: AAAAA, BBBBB, and CCCCC. The first is located in Georgia, the second in California, and the third in New Jersey. AAAAA is in Georgia's 5th and 6th congressional districts BBBBB is in California's 42nd district, and CCCCC is in New Jersey's 15th. The first two installations are in JIRSG areas SO03, and WE10, respectively; CCCCC is not in a JIRSG area.

[9] Title of Cost Comparison. The title that describes the commercial activity(ies) under cost comparison (for instance, "Facilities Engineering Package," "Installation Bus Service," or "Motor Pool"). Use a clear title, not acronyms or function codes in this data element.

[10] DoD Functional Area Code(s). The four or five alpha/numeric character designators listed in Enclosure 2 that describe the type of activity undergoing cost comparison. This would be one code for a single activity or possibly several codes for a large cost comparison package. A series of codes shall be separated by commas.

[11] Prior Operation Code. A single alpha character that identifies the mode of operation for the activity at the time the cost comparison is started. Despite the outcome of the cost comparison, this code does not change. The coding is as follows:

I—In-house
C—Contract
N—New requirement
E—Expansion

[12] Cost Comparison Status Code. A single alpha character that identifies the current status of the cost comparison. Enter one of the following codes:

P—In progress

C—Complete
X—Canceled. The CCR shall be excluded from future update listings.
Z—Consolidated. The cost comparison has been consolidated with one or more other cost comparisons into a single cost comparison package. The CCR for the cost comparison that has been consolidated shall be excluded from future update listings. (See data element [16].)
B—Broken out. The cost comparison package has been borken into two or more separate cost comparisons. The previous CCR shall be excluded from future update listings. (See data element [16].)

[13] Commerce Business Daily/Federal Register Dates. § 169a.9(c) of this part requires DoD Components to publish their schedules for conducting cost comparisons in the Commerce Business Daily (CBD) and the Federal Register (FR). These dates shall reflect when the activity undergoing cost comparison was identified in these publications as a cost comparison. The DBD date shall be listed first, followed by a comma and the FR date.

[14] Approval Announcement-Manpower Estimate Civilian and [15] Approval Annoucement—Manpower Estimate Military. The number of civilian and military authorizations allocated to the commercial activity(ies) undergoing cost comparison at the time the start of the cost comparison is approved by the DoD Component headquarters or announced to Congress. This number in all cases shall be those manpower figures identified in the correspondence approving the start of a cost comparison. This number is used to give a preliminary estimate of the size of the activity.

[16] Revised/Original Cost Comparison Number. The number of the cost comparison (revised cost comparison number). This cost comparison has been consolidated into or the number of the cost comparison (original cost comparison number) from which this cost comparison has been broken out.

When a consolidation occurs, create a new CCR containing the attributes of the consolidated cost comparison. In the CCR of each cost comparison being consolidated, enter the cost comparison number of the new CCR in data element [16] and code "Z" in data element [12]. In the new CCR, data element [16] should be blank and data element [12] should denote the current status of the cost comparison. Once the consolidation has occurred, only the new CCR requires future updates.

When a single cost comparison is being broken into multiple cost comparisons, create a new CCR for each cost comparison broken out from the original cost comparison. Each new CCR shall contain its own unique set of attributes; in data element [16], enter the cost comparison number of the original cost comparison from which each was derived, and in data element [12], enter the current status of each cost comparison. For the original cost comparison, data element [16] should be blank and data element [12] should have a code "B" entry. Only the derivative record entries require future updates.

When either a consolidation or a breakout, an explanatory remark shall be entered in data element [57] (such as "part of SW region cost comparison," or, "separated into three cost comparisons").

Section Two

Event: The Solicitation is Issued

The entries in this section two of the CCR provide information on the manpower authorized to perform the workload in the performance work statement (PWS), the number of workyears used to accomplish the workload in the PWS, and the type and kind of solicitation.

The DoD Component shall enter the following data elements at the first quarterly update subsequent to the issuance of the solicitation:

[17] Date Solicitation Issued. The date the solicitation is issued by the contracting officer.

[18] Solicitation-Type Code. A one-character alpha designator that identifies the type of solicitation used to obtain contract bids or offers. Use either the CBD as the source document or information received from the contracting officer for this entry. Solicitations under Section 8(a) of the Small Business Act are negotiated. Enter one of the following codes:

F—Formal Advertised
N—Negotiated

[19] Solicitation-Kind Code. A one-character (or two-character, if "W" suffix is used) alpha designator indicating whether the competition for the contract has been limited to a specific class of bidders or offerors. Use either the CBD as the source document or information received from the contracting officer to enter one of the following codes:

A—Restrict to small business
B—Small Business Administration 8(a)
C—National Industries for the Severely Handicapped (NISH)
D—Other mandatory sources
U—Unrestricted
W—(optional suffix) Unrestricted after initial restriction

[20] Current Authorized Civilians and [21] Current Authorized Military. The number of civilian and military authorizations allocated on the DoD Component's manning documents to perform the work described in the PWS. This number refines the initial authorization estimate (section one, data elements [14] and [15]).

[22] Baseline Workyears Civilian and [23] Baseline Workyears Military. The number of annual workyears it has taken to perform the work described by the PWS before the DoD Component conducts the most efficient organization (MEO) study of the in-house organization; do not include contract monitor requirements. Military workyears include assigned, borrowed, diverted, and detailed personnel.

An annual workyear is the use of 2,087 hours (including authorized leave and paid time off for training). For example, when full-time employees whose work is completely within the PWS are concerned, "one workyear" normally is comparable to "one employee" or two part-time employees, each working 1,043 hours in a fiscal year. Also include in this total the workyears for full-time employees who do not work on a full-time basis on the work described by the PWS. For example, some portion of the workload is performed by persons from another work center who are used on an "as needed" basis. Their total hours performing this workload is 4,172 hours. This would be reflected as two workyears. Less than one-half year of effort should be rounded down and one-half year or more should be rounded up.

These workyear figures shall be the baseline for determining the manpower savings identified by the management study.

Section Three

Event: The In-House and the Contractor Costs of Operation are Compared

The entries in this section provide information on the date of the cost comparison (initial decision), the preliminary results, the number of bids or offers received, and the costing method used in the cost comparison.

The DoD Component shall enter the following date elements in the first quarterly update subsequent to the date of the comparison of in-house and contractor costs (date of initial decision):

[24] Cost Comparison/Initial Decision Date. Date the initial decision is announced. The initial decision is based on the apparent low bid or offer and is subject to preaward surveys and resolution of all appeals and protests. In a formal advertised procurement, the initial decision is announced at bid opening. In a negotiated procurement, the initial decision is announced when the cost comparison is made between the in-house estimate and the proposal of the selection offeror.

[25] Cost Comparison Preliminary Results Code. A one-character alpha designator indicating the results of the cost comparison as announced by the contracting officer at the time the bids or offers are compared. The entries are limited to two possibilities:

I—In-house
C—Contract

[26] Cost Method Code. A one-character numeric designator indicating the procedures under which the cost comparison was/is being conducted. Enter one of the following codes:

1—Cost comparison conducted under the incremental costing procedures in effect prior to 1980.
2—Cost comparison conducted using the full costing procedures in DoD 4100.33.H.
3—Cost comparison conducted under the alternative costing procedures implemented by the Department of Defense in March 1982.
4—Cost comparison conducted under the new costing procedures in the OMB Circular A76 published August 4, 1983, and implemented by the Department of Defense in March 1984.

[27] Number of Bids or Offers Received. The number of commercial bids or offers received by the contracting officer in response to the solicitation.

Section Four

Event: The Contracting Officer Either Awards the Contract or Cancels the Solicitation

The entries in this section identify the final result, information on the contract, the in-house bid, and costing information from the cost comparison form.

The DoD Component shall enter the following data elements in the First quarterly update subsequent to the date the contracting officer either awards a contract or cancels the solicitation:

[28] Contract Award/Solicitation Cancellation Date. For conversions to contract, this is the date a contract was awarded in a formal advertised solicitation or the date contractor was authorized to proceed on a conditional award contract in a negotiated solicitation. For retentions in-house, this is the date the solicitation was canceled (when the contracting officer publishes an amendment to the solicitation canceling it).

[29] Cost Comparison Final Result Code. A one-character alpha designator identifying the final result of the comparison between in-house and contractor costs; the contracting officer either awards the contract or cancels the solicitation. Enter one of the following codes:

I—In-house
C—Contract

[30] Decision Rationale Code. A one-character alpha designator that identifies the rationale for awarding a contract or canceling the solicitation. The work shall either be performed in-house or by contractor, based on cost, or the work shall be performed in-house because no satisfactory commercial source was available (no bids or offers were received or the preaward survey resulted in the determination that no commercial sources were responsive or responsible). Enter one of the following codes:

C—Cost
N—No satisfactory commercial source

[31] Contract-Type Code. Enter one of the following alpha codes for the type of contract used in the cost comparison. This entry is required for all completed studies, regardless of their outcome.

FFP—Firm Fixed Price
FP-EPA—Fixed Price with Economic Price Adjustment
FPI—Fixed Price Incentive
CPIF—Cost Plus Incentive Fee
CPAF—Cost Plus Award Fee
CPFF—Cost Plus Fixed Fee

[32] Prime Contractor Size.

S—Small or small/disadvantage business
L—Large business

[33] MEO Workyears. The number of annual workyears it takes to perform the work described in the PWS after the MEO study has been conducted. This entry will be equal to the number of annual workyears in the in-house bid.

For data elements [34] through [37], enter all data after all adjustments required by appeals board decisions. Do not include the minimum cost differential (line 31 old cost comparison form (CCF) or line 14 new CCF or line 16 new expansion, new requirements, and conversion to (ENRC) in-house form) in the computation of any of these data elements. If a valid cost comparison was not conducted (that is, all bidders or offerors disqualified, no bids or offers received, etc.) do not complete data elements [34] through [37]. Explain lack of valid cost data in data element [58], DoD Component comments.

[34] First Performance Period. Expressed in months, the length of time covered by the contract. Do not include any option periods.

[35] Cost Comparison Period. Expressed in months, the total period of operation covered by the cost comparison; this is the period used as the basis for data elements [36] and [37], below.

[36] Total In-House Cost ($000). Enter the total cost of in-house performance in thousands of dollars, rounded to the nearest thousand. This is the total of line 9 plus line 22 of the old CCF (line 6 of the new CCF or line 8 of the new ENRC CCF).

[37] Total Contract Cost ($000). Enter the total cost of contract performance in thousands of dollars, rounded to the nearest thousand. This is the total of line 17 plus line 30 of the old CCF (line 13 of the new CCF or line 15 of the new ENRC CCF).

[38] Notification Date. The date Congress is notified, if required, that the DoD Component intends to convert a commercial activity to contract performance.

Section Five

Event: The Contract Starts

The entries in this section identify the contract start date and the personnel actions taken as a result of the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the start of the contract:

[39] Contract Start Date. The actual date the contractor began full operation of the commercial activity(ies) as reflected in the contracting documents.

[40] Permanent Employees Transferred To Equal Positions. The number of permanent employees who were reassigned to positions of equivalent grade as of the start date of the contract.

[41] Permanent Employees Transferred To Lower Positions. The number of permanent employees who were changed to lower grade positions as of the start date of the contract.

[42] Employees Taking Early Retirement. The number of employees who took early retirement as of the start date of the contract.

[43] Employees Taking Normal Retirement. The number of employees who took normal retirement as of the start date of the contract.

[44] Permanent Employees Separated. The number of permanent employees who were separated from Federal employment as of the start date of the contract.

[45] Temporary Employees Separated. The number of temporary employees who were separated from Federal employment as of the start date of the contract.

[46] Employees Entitled To Severance. The estimated number of employees entitled to severance upon their separation from Federal employment as of the start date of the contract.

[47] Total Amount of Severance Entitlements ($000). The total estimated amount of severance to be paid to all employees, in thousands of dollars as of the start date of the contract.

[48] Number of Employees Hired by the Contractor. The number of DoD civilian employees (full-time or otherwise) that will be hired by the contractors, or his subcontractors estimated at the start date of the contract.

Administrative Appeal

[49] Filed—Were administrative appeals filed? Answer: Y or N.

[50] Source—Who filed the appeal? Answer: In-house (enter I), contractor (C), or both (B).

[51] Result—Were the appeals finally upheld? Answer: Y or N (if both appealed, explain result in data element [58]). If appeal is still in progress as of the start date of the contract, enter P.

GAO Protest

[52] Filed—Was a protest filed with GAO? Answer: Y or N.

[53] Source—Who filed the protest? Answer: In-house (enter I), contractor (C), or both (B).

[54] Result—Was the protest finally upheld? Answer: Y or N (explain result in data element [58]). If GAO protest is still in progress as of the start date of the contract, enter P.

Arbitration

[55] Requested—Was the FLRA asked to arbitrate? Answer: Y or N.

[56] Result—Was the case found arbitrable. Answer: Y or N (explain result in data element [58]). If arbitration is still in progress as of the start date of the contract, enter P.

General Information

[57] Staff-Hours Expended. Reflect the estimated number of staff hours expended by the installation on the cost comparison from the time it was announced until the final decision was made. Do not include any time that was spent on general policy or procedures applicable to all studies.

[58] DoD Component Comments. Enter comments, as required, to explain situations that affect the conduct of the cost comparison.

[59] Effective Date. "As of" date of the most current update for the cost comparison. Will be generated by DMDC.

Section Six

Event: Quarter Following Contract/Option Renewal

The entries in this section identify actual contract costs and original contract bid and information or subsequent contract actions. This data shall be utilized to determine the accuracy of the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the receipt of actual annual contract cost data.

[60] Contract Bid/Offer ($000). Enter the contractor bid price or offer reflected in column one (the first performance period) of the CCF in thousands of dollars, rounded to the nearest thousand. This is line 10 column 1 of the old CCF (line 7 of the new CCF or line 9 of the new ENRC CCF).

[61] Actual Contract Cost First Performance Period ($000). Enter the actual contract cost for the first performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[62] Actual Contract Cost Second Performance Period ($000). Enter the actual contract cost for the second performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[63] Actual Contract Cost Third Performance Period ($000). Enter the actual contract cost for the third performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[64] Contractor Change. Enter one of the following alpha codes to indicate whether the contract for the second or third performance period has changed from the original contractor.

Y—Yes, the contractor has changed
N—No, the contrctor has not changed

Data elements [65] through [66] are not required if the answer to [64] is no (N).

[65] Prime Contractor Size.

S—New contractor is small/small disadvantaged business
L—New contractor is large business

[66] Reason for Change.

I—Performance Returned In-House
U—Contract workload consolidated into a larger (Umbrella) cost comparison
C—Contract workload consolidated with other exisitng contract workload

Part II—Direct Conversions

The bracketed number preceding each definition in sections one through four is the DoD data element number. All data fields should be in the format MMDDYY (such as June 30, 1983 = 063083).

Section One

Event: DoD Component Approves the Direct Conversion

All entries in this section of the direct comparison record (DCR) shall be submitted by DoD Components upon approving direct conversion. These entries shall be used to establish the DCR and to identify the geographical, organizational, political, and functional attributes of the commercial activity(ies) scheduled for conversion to contract without a cost comparison.

DoD Components shall enter the following data elements to establish a DCR:

[1] Direct Conversion Number. The number assigned by the DoD Component to uniquely identify a specific direct conversion. The first character of the direct conversion number must be a letter designating the DoD Component, as noted in data element [3], below. The number may vary in length from five to ten characters, of which the second and subsequent may be alpha or numeric and assigned under any system desired by the DoD Component.

[2] Approval Date. The date the DoD Component's headquarters approves the direct conversion.

[3] DoD Component Code. Use the following codes to identify the Military Service or Defense Agency converting the CA(s) to contract:

A—Department of the Army
B—Defense Mapping Agency
C—Strategic Defense Initiatives Agency
D—Office of the Secretary of Defense—OCHAMPUS
E—Defense Advanced Research Projects Agency
F—Department of the Air Force
G—National Security Agency/Central Security Service
H—Defense Nuclear Agency
J—Joint Chiefs of Staff (including the Joint Staff, Unitied and Specified Commands, and Joint Service Schools)
K—Defense Communications Agency
L—Defense Intelligence Agency
M—United States Marine Corps
N—United States Navy
R—Defense Contract Audit Agency
S—Defense Logistics Agency
T—Defense Security Assistance Agency
V—Defense Investigative Service
W—Uniformed Service University of the Health Sciences
X—Inspector General, Department of Defense
Y—Defense Audio Visual Agency

[4] Command Code. The code established by the DoD Component headquarter to identify the command responsible for operating the commercial activity to be converted to contract. A separate look-up listing or file shall be provided to DMDC showing each unique command code and its corresponding command name. If the DoD Component chooses to submit this on cards or tape, the format shall be as follows:

Column	Entry
1–6 (left justify)	Command code.
7	Blank.
8–80 (left justify)	Command name.

[5] Installation Code. The code established by the DoD Component's headquarters to identify the installation where the commercial activity to be converted to contract is located physically. Two or more codes (for packages encompassing more than one installation) be separated by commas. A separate look-up listing or file shall be provided to DMDC showing each unique installation code and its corresponding installation name. If the DoD Component chooses to submit this on cards or tape, the format shall be as follows:

Column	Entry
1–10 (left justify)	Installation code.
11	Blank.
12–80 (left justify)	Installation name.

DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component, and display it with the code on the quarterly printout that is provided to the DoD Component for update.

[6] State Code. A two-character postal abbreviation for the state of U.S. territory where element [5] is located. Two or more codes should be separated by commas.

[7] Congressional District (CD). Number of the CD where [5] is located. If representatives are elected "at large," enter "01" in this data element; for a delegate or resident commissioner (such as, District of Columbia or Puerto Rico) enter "98". If the installation is located in two or more CDs, all CDs should be entered and separated by commas.

[8] JIRSG Area Code. The Joint Interservice Resource Study Group (JIRSG) Area that [5] is assigned to for coordination of the Defense Regional Interservice Support (DRIS) Program. This is a four-character alpha/numeric data element. For instance, "N015" is the National Capitol Region (as published in the DRIS Point of Contact Directory).

Note.—The DoD Component may, at its option, report corresponding multiple values for the following geographical data elements: state code, congressional district, JIRSG area code. These values shall be grouped and punctuated as shown in the example below so that the proper relationship can be established between each installation code value and its corresponding set of geographical attribute values.

[5] Installation code	[6] State code		[7] Congressional district	[8] JIRSG area code
AAAAA, BBBBB, CCCCC	GA, CA, NJ	42;15	05, 06;	SO03, WE10*

When multiple values within a data element are reported for a single installation code, semicolons shall be used to separate each series of values and to indicate correspondence of each series to its respective installation code; commas will be used to separate the values within a series. When only a single value (within a data element) is reported for each installation, the values shall be separated by commas. To denote an unknown or missing member of a series of values the asterisk (*) symbol shall be used.

The direct conversion above involves three installations: AAAAA, BBBBB, and CCCCC. The first is located in Georgia, the second in California, and the third in New Jersey. AAAAA is in Georgia's 5th and 6th congressional districts BBBBB is in California's 42nd district, and CCCCC is in New Jersey's 15th. The first two installations are in JIRSG areas S003 and WE10, respectively; CCCCC is not in a JIRSG area.

[9] DoD Functional Area Code(s). The four or five alpha/numeric character designator listed in Enclosure 1 that describes the type of commercial activity to be converted to contract. This would be one for a single commercial activity or possibly several codes for a large package. A series of codes shall be separated by commas.

[10] Status Code. A single alpha character that identifies the current status of the conversion. Enter one of the following codes:

P—In progress
C—Complete
X—Canceled. The DCR shall be excluded from future update listings.
Z—Consolidated. The conversion has been consolidated with one or more other contracts into a single contract package. The DCR for the contract that has been consolidated shall be excluded from future update listings. (See date element [16].)
B—Broken out. The conversion has been broken into two or more separate contracts. The previous DCR shall be excluded from future update listings. (See data element [16].)

[11] Approval Announcement—Manpower Estimate Civilian and [12] Approval Announcement—Manpower Estimate Military. The number of civilian and military authorizations allocated to the commercial activity(ies) to be converted. This number in all cases shall be those manpower figures identified in the correspondence approving the direct conversion.

Section Two

Event: The Solicitation Is Issued

The entries in this section of the DCR provide information on the manpower authorized to perform the workload in the PWS, the number of work-years used to accomplish the workload in the PWS, the type and kind of solicitation, and the number of bids or offers received.

The DoD Component shall enter the following data elements at the first quarterly update subsequent to the issuance of the solicitation:

[13] Date Solicitation Issued. The date the solicitation was issued by the contracting officer.

[14] Solicitation-Type Code. A one-character alpha designator that identifies the type of solicitation used to obtain contract bids or offers. Use either the CBD as the source document or information received from the contracting officer for this entry. Solicitations under Section 8(a) of the Small Business Act are negotiated. Enter one of the following codes:

F—Formal Advertised
N—Negotiated

[15] Solicitation-Kind Code. A one-character (or two-character, if "W" suffix is used) alpha designator indicating whether the solicitation for the contract has been limited to a specific class of bidders or offerors. Use either the CBD as the source document or information received from the contracting officer to enter one of the following codes:

A—Restricted to small business
B—Small Business Adminstration 8(a)
C—National Industries for the Severely Handicapped (NISH)
D—Other mandatory sources
U—Unrestricted
W—(optional suffix) Unrestricted after initial restriction

[16] Current Authorized Civilians and [17] Current Authorized Military. The number of civilian and military authorizations allocated on the DoD Component's manning documents to perform the work described in the PWS. This number refines the initial authorization estimate (section one, data elements [11] and [12]).

[18] Baseline Annual Workyears Civilian and [19] Baseline Annual Workyears Military. The number of annual workyears it has taken to perform the work described by the PWS.

[20] Number of Bids or Offers Received. The number of commercial bids or offers received by the contracting officer in response to the solicitation.

Section Three

Event: The Contracting Officer Either Awards the Contract or Cancels the Solicitation

The entries in this section provide information on the contract.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the date the contracting officer either awards a contract or cancels the solicitation:

[21] Contract Award/Solicitation Cancellation Date. This is the date a contract shall be awarded in a formal advertised solicitation or the date the contractor shall be authorized to proceed on a conditioned award contract in a negotiated solicitation. For retentions in-house, this is the date the solicitation is canceled (when the contracting officer publishes an amendment to the solicitation canceling it).

[22] Contract-Type Code. Enter one of the following alpha codes for the type of contract used in the direct conversion.

FFP—Firm Fixed Price
FP—EPA—Fixed Price with Economic Price Adjustment
FPI—Fixed Price Incentive
CPIF—Cost Plus Incentive Fee
CPAF—Cost Plus Award Fee
CPFF—Cost Plus Fixed Fee

[23] Prime Contractor Size.

S—Small/small disadvantaged business
L—Large business

[24] Performance Period. Expressed in months, the length of time covered by the contract. Do not include any option periods.

Section Four

Event: The Contract Starts

The entries in this section identify the contract start date and the personnel actions taken as a result of the direct conversion.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the start of the contract:

[25] Contract Start Date. The actual date the contractor began full operation of the commercial activity or commercial activities, as reflected in the contracting documents.

[26] Permanent Employees Reassigned to Equivalent Positions. The number of permanent employees who were reassigned to positions of equal grade as of the start date of the contract.

[27] Permanent Employees Changed to Lower Positions. The number of permanent employees who are reassigned to lower grade positions as of the start daste of the contract.

[28] Employees Taking Early Retirement. The number of employees who took early retirement as of the start date of the contract.

[29] Employees Taking Normal Retirement. The number of employees who took normal retirement as of the start date of the contract.

[30] Permanent Employees Separated. The number of permanent employees who were separated from Federal employment as of the start date of the contract.

[31] Temporary Employees Separated. The number of temporary employees who were separated from Federal employment as of the start date of the contract.

[32] Employees Entitled To Severance. The estimated number of employees entitled to severance upon their separation from Federal employment.

[33] Total Amount of Severance Entitlement ($000). The total estimated amount of severance to be paid to all employees, in thousands of dollars, as of the start date of the contract.

[34] Number of Employees Hired by the Contractor. The number of DoD civilian employees (full-time or otherwise) that will be hired by the contractor, or his or her subcontractors estimated at the start of the contract.

Administrative Appeal

[35] Filed—Were administrative appeals filed? Answer: Y or N.

[36] Source—Who filed the appeal? Answer: in-house (enter I), contractor (C), or both (B).

[37] Result—Were the appeals finally upheld? Answer: Y or N (if both appealed, explain the result in data element [43]). If appeal is still in progress as of the start date of the contract, enter P.

GAO Protest

[38] Filed—Was a protest filed with GAO? Answer: Y or N.

[39] Source—Who filed the protest? Answer: in-house (enter I), contractor (C), or both (B).

[40] Result—Was the protest finally upheld? Answer: Y or N (explain result in data element [43]). If GAO protest is still in progress as of the start date of the contract, enter P.

Arbitration

[41] Requested—Was the FLRA asked to arbitrate? Answer: Y or N.

[42] Result. Was the case found arbitrable? Answer: Y or N (explain result in data element [43]). If arbitration is still in progress as of the start date of the contract, enter P.

General Information

[43] DoD Component Comments. Enter comments, as required, to explain situations that affect the direct conversion.

[44] Effective Date. "As of" date of the most current update for the direct conversion. Shall be generated by DMDC.

Section Five

Event: Quarter Following Contract/Option Renewal

The entries in this section identify actual contract costs and original contract bid and information or subsequent contract actions. This data shall be utilized to determine the accuracy of the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the receipt of actual annual contract cost data.

[45] Contract Bid/Offer ($000). Enter the contractor bid price or offer.

[46] Actual Contract Cost First Performance Period ($000). Enter the actual contract cost for the first performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[47] Actual Contract Cost Second Performance Period ($000). Enter the actual contract cost for the second performance period, including all changes orders, in thousands of dollars, rounded to the nearest thousand.

[48] Actual Contract Cost Third Performance Period ($000). Enter the actual contract cost for the third performance period, including all change orders, in thousands of dollars, rounded to the nearest thousand.

[49] Contractor Change. Enter one of the following alpha codes to indicate whether the contractor for the second or third performance period has changed from the original contractor.

Y—Yes, the contractor has changed
N—No, the contractor has not changed

Data elements [50] through [51] are not required if the answer to [49] is no (N).

[50] Prime Contractor Size.

S—New contractor is small/small disadvantaged business
L—New contractor is large business

[51] Reason for Change.

I—Performance returned in-house
U—Contract workload consolidated into a larger (umbrella) cost comparison
C—Contract workload consolidated with other existing contract workload

Attachment 1—Cost Comparison Record (CCR)

Section One

(1) Cost Comparison Number: _____
(2) Announcement/Approval Date: _____
(3) DoD Component Code: _____
(4) Command Code: _____
(5) Installation Code: _____
(6) State Code: _____
(7) Congressional District: _____
(8) JIRSG Code: _____
(9) Title of Cost Comparison: _____
(10) DoD Function Area Code(s): _____
(11) Current Operation Code: _____
(12) Cost Comparison Status Code: _____
(13) CBD/FR Dates——, ——:
(14) Approval Announcement—Manpower Estimate Civilian: _____
(15) Approval Announcement—Manpower Estimate Military: _____
(16) Revised/Original Cost Comparison Number: _____

Section Two

(17) Date Solicitation Issued: _____
(18) Solicitation-Type Code: _____
(19) Solicitation Kind Code: _____
(20) Current Authorized Civilians: _____
(21) Current Authorized Military: _____
(22) Baseline Workyears Civilian: _____
(23) Baseline Workyears Military: _____

Section Three

(24) Cost Comparison/Initial Decision Date:—
(25) Cost Comparison Preliminary Results Code: _____
(26) Cost Method Code: _____
(27) Number of Bids or Offers Received: ——

Section Four

(28) Contract Award/Solicitation Cancellation Date: _____
(29) Cost Comparison Final Result Code: ——
(30) Decision Rationale Code: _____
(31) Contract-Type Code: _____
(32) Prime Contractor Size: _____
(33) MEO Workyears: _____
(34) First Performance Period: _____
(35) Cost Comparison Period: _____
(36) Total In-House ($000): _____
(37) Total Contract Cost ($000): _____
(38) Notification Date: _____

Section Five

(39) Contract Start Date: _____
(40) Permanent Employees Transferred to Equal Positions: _____
(41) Permanent Employees Transferred to Lower Positions: _____
(42) Employees Taking Early Retirement: ——
(43) Employees Taking Normal Retirement: —
(44) Permanent Employees Separated: ——
(45) Temporary Employees Separated: ——
(46) Employees Entitled to Severance: ——
(47) Total Amount of Severance Entitlements ($000): _____
(48) Number of Employees Hired by the Contractor: _____

Administrative Appeal

(49) Filed: _____
(50) Source: _____
(51) Result: _____

GAO Protest

(52) Filed: _____
(53) Source: _____
(54) Result: _____

Arbitration

(55) Requested: _____
(56) Result: _____

General Information

(57) Staff Hours Expended: _____
(58) DoD Component Comments: _____
(59) Effective Date: _____

Section Six

(60) Contract Bid/Offer ($000): _____
(61) Actual Contract Cost First Performance Period ($000): _____
(62) Actual Contract Cost Second Performance Period ($000): _____
(63) Actual Contract Cost Third Performance Period ($000): _____
(64) Contractor Change: _____
(65) Prime Contractor Size: _____
(66) Reason for Change: _____

Attachment—Direct Conversion Record (DCR)

Section one

(1) Direct Conversion Number: _____
(2) Approval Date: _____
(3) DoD Component Code: _____
(4) Command Code _____
(5) Installation Code: _____
(6) State Code: _____
(7) Congressional District: _____
(8) JIRSG Area Code: _____
(9) DoD Functional Area Code(s): _____
(10) Status Code: _____
(11) Approval Announcement—Manpower Estate Civilian: _____
(12) Approval Announcement—Manpower Estate Military: _____

Section two

(13) Date Solicitation Issued: _____
(14) Solicitation-Type Code: _____
(15) Solicitation-Kind Code: _____
(16) Current Authorized Civilians: _____
(17) Current Authorized Military: _____
(18) Baseline Annual Workyears Civilian: ——
(19) Baseline Annual Workyears Military: —
(20) Number of Bids or Offers Received: ——

Section three

(21) Contract Award/Solicitation Cancellation Date: _____
(22) Contract-Type Code: _____
(23) Prime Contractor Size: _____
(24) Performance Period: _____

Section four

(25) Contract Start Date: _____
(26) Permanent Employees Reassigned to Equivalent Positions: _____
(27) Permanent Employees Changed to Lower Positions: _____
(28) Employees Taking Early Retirement: ——
(29) Employees Taking Normal Retirement: —
(30) Permanent Employees Separated: ——
(31) Temporary Employees Separated: ——
(32) Employees Entitled to Severence: ——
(33) Total Amount of Severence Entitlement ($000): _____
(34) Number of Employees Hired by the Contractor: _____

Section five

Administrative Appeal

(35) Filed: _____
(36) Source: _____
(37) Result: _____

GAO Protest

(38) Filed: _____
(39) Source: _____
(40) Result: _____

Arbitration

(41) Requested: _____
(42) Result: _____

General Information

(43) DoD Component Comments: _____
(44) Effective Date: _____

Section five

(45) Contract Bid/Offer ($000): _____
(46) Actual Contract Cost First Performance Period ($000): _____
(47) Actual Contract Cost Second Performance Period ($000): _____
(48) Actual Contract Cost Third Performance Period ($000): _____
(49) Contractor Change: _____
(50) Prime Contractor Size: _____
(51) Reason for Change: _____

Enclosure 4—Public Law 96-342, as Amended by Public Law 97-252 (Hereafter Referred to as Section 502)

Section 502. (a) No commercial- or industrial-type function of the Department of

Defense that on October 1, 1980, is being performed by the Department of Defense civilian employees may be converted to performance by a private contractor—

(1) to circumvent any civilian personnel ceiling or

(2) unless the Secretary of Defense provides to the Congress in a timely manner—

(A) notification of any decision to study such commercial- or industrial-type function for possible performance by a private contractor;

(B) a detailed summary of a comparison of the cost of performance of such function by Department of Defense civilian employees and by private contractor which demonstrates that the performance of such function by a private contractor will result in a cost savings to the Government over the life of the contract and a certification that the entire cost comparison is available;

(C) a certification that the Government calculation for the cost of performance of such function by Department of Defense civilian personnel is based on an estimate of the most efficient and cost-effective organization for performance of such function by Department of Defense personnel; and

(D) a report to be submitted with the certification required by subparagraph (C) showing—

(i) the potential economic effect on employees affected, and the potential economic effect on the local community and the Federal Government if more than 50 employees are involved of contracting for performance of such function;

(ii) the effect of contracting for performance of such function on the military mission of such function; and

(iii) the amount of the bid accepted for the performance of such function by the private contractor whose bid is accepted and the cost of performance of such function by Department of Defense civilian employees, together with costs and expenditures which the Government will incur because of the contract.

(b) If, after completion of the studies required for completion of the certification and report required by subparagraphs (C) and (D) of subsection (a)(2), a decision is made to convert to contractor performance, the Secretary of Defense shall notify Congress of such decision.

(c) The Secretary of Defense shall submit a written report to the Congress by February 1 of each fiscal year describing the extent to which commercial- and industrial-type functions were performed by the Department of Defense contractors during the preceding fiscal year. The Secretary shall include in each such report an estimate of the percentage of commercial and industrial type functions of the Department of Defense that will be performed by Department of Defense civilian employees, and the percentage of such functions that will be performed by private contractors, during the fiscal year during which the report is submitted.

(d) Except as provided in subsection (a)(1), subsections (a) through (c) may not apply to a commercial- or industrial-type function of the Department of Defense that is being performed by ten or fewer Department of Defense civilian employees.

(e) In no case may any commercial- or industrial-type function being performed by the Department of Defense personnel be modified, reorganized, divided, or in any way changed for the purpose of exempting from the requirements of subsection (a)(2) the conversion of all or any part of such function to performance by a private contractor.

(f) The provisions of this section may not apply during war or a period of national emergency declared by the President or the Congress.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 6, 1985.

[FR Doc. 85-11230 Filed 5-9-85; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2806-8]

Standards of Performance for New Stationary Sources: Appendix A; Addition of Alternative Procedure to Method 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this rule is to add an alternative procedure to Method 1 for determining the acceptability of sampling locations that do not meet minimum criteria now in the method. The alternative is the application of a directional flow-sensing probe to determine pitch and yaw angles and would be applicable where the measurement location is less than two equivalent stack diameters downstream or less than half a diameter upstream from a flow distrubance. The proposed revision defines the directional probe equipment and procedure, the acceptance criteria, and calibration procedures. The intended effect is to add flexibility to the sampling location requirements in Method 1. With the addition of this alternative procedure, source owners may choose to use an existing sampling location, if the criteria in the alternative procedures are met, instead of installing new ports and access equipment at another location.

A public hearing, if requested, will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: Comments must be received on or before July 1, 1985.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by May 30, 1985 a public hearing will be held on June 27, 1985 beginning at 10:00 a.m.

Persons interested in attending the hearing should call Ms. Shelby Journigan at the telephone number listed under FOR FURTHER INFORMATION CONTACT to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by May 30, 1985.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention Docket Number A-84-50, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Shelby Journigan, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Docket. Docket No. A-84-50, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m. Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Westlin or Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

Ms. Shelby Journigan for persons interested in attending the hearing, (919) 541-5578.

SUPPLEMENTARY INFORMATION: The EPA promulgated the present Method 1 on August 18, 1977 (42 FR 41754), with revisions published on March 23, 1978 (43 FR 11984), and on September 30, 1983 (48 FR 45034). The method includes criteria for determining acceptable sampling site locations based on the relative locations of flow disturbances and the stack or duct configurations. In some cases, the criteria may cause a sampling location with acceptable flow characteristics to be rejected or cause expensive site modifications to be made unnecessarily. The proposed

amendments supplement the present criteria to allow sampling locations, that would be rejected under the present Method 1 criteria, to be tested for acceptability.

The Agency has reviewed a procedure proposed in "Pollution Engineering" (August 1983) by W.S. Smith and D.J. Grove that includes determination of the angle of gas flow at each sampling point using a three-dimensional pitot and comparing the results with minimum acceptability criteria. The Agency reviewed the procedure in light of potential effects on mass emission measurements and determined that the procedure would provide acceptable measurements of mass concentration and velocity. The number of sampling points required has been increased for these alternate sampling locations from the present requirements in Method 1 in addition to the requirements to meet specific criteria for acceptable angle of gas flow at each sampling point.

In addition, as a result of the review of the effects of nonparallel gas flow of the measurement of mass concentrations, the Agency has determined that the acceptable limit for the rotation angle should be increased from 10° to 20 ° in Section 2.4-Verification of Absence of Cyclonic Flow.

The Administrator requests comments on the applicability of this procedure and other procedures for determining the acceptability of sampling locations.

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are available in the docket.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on small entities because this is not a new requirement but an alternative procedure.

List of Subjects in 40 CFR Part 60

Air pollution control.

Dated: April 30, 1985.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

It is proposed to amend Appendix A, Method 1 of 40 CFR Part 60 as follows:

1. The Authority citation for 40 CFR Part 60 continues to read as follows:

Sections 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

2. By amending Section 2.1 by adding a second paragraph as follows:

* * * * *

2. *Procedure.*

2.1 * * *

A second alternative procedure is available for determining the acceptability of a measurement location not meeting the criteria above. This procedure, determination of gas flow angles at the sampling points and comparing the results with acceptability criteria, is described in Section 2.5.

* * * * *

3. By amending Section 2.4 by changing in the last sentence of the second paragraph the value "10°" to "20°," and by adding a third paragraph as follows:

* * * * *

2.4 * * *

The alternative procedure described in Section 2.5 may be used to determine the rotation angles in lieu of the procedure described above. The limit of acceptability for the average value of σ would remain 20°.

* * * * *

4. By adding a new Section 2.5 to Section 2 as follows:

* * * * *

2.5 Alternative Measurement Site Selection Procedure. This alternative applies to sources where measurement locations are less than two equivalent stack or duct diameters downstream or less than a half duct diameter upstream from a flow disturbance. The alternative should be limited to ducts larger than 24 inches in diameter where blockage and wall effects are minimal. A directional flow-sensing probe is used to measure pitch and yaw angles of the gas flow at 40 or more traverse points, the resultant angle is calculated and compared with acceptable criteria for mean and standard deviation.

Note—Both the pitch and yaw angles are measured from a line passing through the traverse point and parallel to the stack axis. The pitch angle is the angle of the gas flow component in the plane that INCLUDES the traverse line and is parallel to the stack axis. The yaw angle is the angle of the gas flow component in the plane PERPENDICULAR to the traverse line at the traverse point and is measured from the line passing through the traverse point and parallel to the stack axis.

2.5.1 Apparatus.

2.5.1.1 Directional Probe. Any directional probe, such as United Sensor Type DA Three-Dimensional Directional Probe (NOTE: Mention of trade name or specific products does not constitute endorsement by the U.S. Environmental Protection Agency) capable of measuring both the pitch and yaw angles of gas flows is acceptable. Assign an identification number to the directional probe, and permanently mark or engrave the number on the body of the probe. The pressure holes of directional probes are susceptible to plugging when used in particulate-laden gas streams. Therefore, a system for cleaning the pressure holes by "back-purging" with pressurized air is required.

2.5.1.2 Differential Pressure Gauges. Inclined manometers, U-tube manometers, or other differential pressure gauges (e.g., magnehelic gauges) that meet the specifications described in Method 2, Section 2.2.

Note.—If the differential pressure gauge produces both negative and positive readings, then both negative and positive pressure readings shall be calibrated at a minimum of three points as specified in Method 2, Section 2.2.

2.5.2 Traverse Points. Use a minimum of 40 traverse points for circular ducts and 42 points for rectangular ducts for the gas flow angle determinations. Follow Section 2.3 and Table 1-1 or 1-2 for the location and layout of the traverse points. If the measurement location is determined to be acceptable according to the criteria in this alternative procedure, use the same traverse point number and location for sampling and velocity measurements.

2.5.3 Measurement Procedure.

2.5.3.1 Prepare the directional probe and differential pressure gauges as recommended by the manufacturer. Capillary tubing or surge tanks may be used to dampen pressure fluctuations. It is recommended, but not required, that a pretest leak check be conducted. To perform a leak check, pressurize or use suction on the impact opening until a reading of at least 7.6 cm (3 in.) H_2O registers on the differential pressure gauge, then close off the impact opening. The pressure of a leak-free system will remain stable for at least 15 seconds.

2.5.3.2 Level and zero the manometers. Since the manometer level and zero may drift because of vibrations and temperature changes, periodically check the level and zero during the traverse.

2.5.3.3 Position the probe at the appropriate locations in the gas stream and rotate until zero deflection is indicated for the yaw angle pressure gauge. Determine and record the yaw angle. Record the pressure gauge readings for the pitch angle and determine the pitch angle from the calibration curve. Repeat this procedure for each traverse point. Complete a "back-purge" of the pressure lines and the impact openings prior to measurements at each traverse point.

2.5.4 Calculate the resultant angle at each traverse point, the average resultant angle, and the standard deviation using the following equations. Complete the calculations retaining at least one extra

significant figure beyond that of the acquired data. Round the values after the final calculations.

2.5.4.1 Calculate the resultant angle at each traverse point:

R_i = arc cosine [(cosine Y_i) (cosine P_i)] Eq. 1–2

Where:

R_i = Resultant angle at traverse point i, degree.

Y_i = Yaw angle at traverse point i, degree.

P_i = Pitch angle at traverse point i, degree.

2.5.4.2 Calculate the average resultant for the measurements:

$$R = \frac{R_i}{n} \qquad \text{Eq. 1–3}$$

Where

R = Average resultant angle, degree.

n = Total number of traverse points.

2.5.4.3. Calculate the standard deviations:

$$S_d = \sqrt{\frac{\sum_{i}^{n} (R_i - R)^2}{(n-1)}} \qquad \text{Eq. 1–4}$$

Where:

S_d = Standard deviation, degree.

2.5.5 The measurement location is acceptable if $R < 20°$ and $S_d < 10°$.

2.5.6 Calibration. Use a flow system as described in Sections 4.1.2.1 and 4.1.2.2 of Method 2. In addition, the flow system shall have the capacity to generate two test-section velocities: one between 365 and 730 m/min (1200 and 2400 ft/min) and one between 730 and 1100 m/min (2400 and 3600 ft/min).

2.5.6.1 Cut two entry ports in the test-section. The axes through the entry ports shall be perpendicular to each other and intersect in the centroid of the test-section. The ports should be elongated slots parallel to the axis of the test section and of sufficient length to allow measurement of pitch angles while maintaining the pitot head position at the test-section centroid. To facilitate alignment of the directional probe during calibration, the test-section should be constructed of plexiglass or some other transparent material. All calibration measurements should be made at the same point in the test-section, preferably at the centroid of the test-section.

2.5.6.2 To ensure that the gas flow is parallel to the central axis of the test-section, follow the procedure in Section 2.4 for cyclonic flow determination to measure the gas flow angles at the centroid of the test section from two test ports located 90° apart. The gas flow angle measured in each port must be ±2° of 0°. Straightening vanes should be installed if necessary to meet this criterion.

2.5.6.3 Pitch Angle Calibration. Perform a calibration traverse according to the manufacturer's recommended protocol in 5° increments for angles from −60° to +60° at one velocity in each of the two ranges specified above. Average the pressure ratio values obtained for each angle in the two flow ranges, and plot a calibration curve with the average values of the pressure ratio (or other suitable measurement factor as recommended by the manufacturers) versus the pitch angle. Draw a smooth line through the data points. Plot also the data values for each traverse point. Determine the differences between the measured data values and the angle from the calibration curve at the same pressure ratio. The difference at each comparison must be within ±2° for angles between 0° and 40° and with ±3° for angles between 40° and 60°.

2.5.6.4. Yaw Angle Calibration. Mark the three-dimensional probe to allow the determination of the yaw position of the probe. This is usually a line extending the length of the probe and aligned with the impact opening. To determine the accuracy of measurements of the yaw angle, only the zero or null position need be calibrated as follows. Place the directional probe in the test section and rotate the probe until the zero position is found. With a protractor or other angle measuring device, measure the angle indicated by the yaw angle indicator on the three-dimensional probe. This should be within ±2° of 0°. Report this measurement for any other points along the length of the pitot where yaw angle measurements could be read in order to account for variations in the pitot markings used to indicate pitot head positions.

5. By adding Citations 13 and 14 to Section 3, as follows:

3. Bibliography

* * * * *

13. Smith, W.S. and D.J. Grove. A Proposed Extension of EPA Method 1 Criteria. "Pollution Engineering". XV(8):36–37. August 1983.

14. Gerhart, P.M. and M.J. Dorsey. Investigation of Field Test Procedures for Large Fans. University of Akron. Akron, Ohio. (EPRI Contract CS–1651). Final Report (RP–1649–5) December 1980.

[FR Doc. 85–11392 Filed 5–9–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 516

[Docket No. 85–10]

Marine Terminal Agreements; Correction

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule, correction.

SUMMARY: This document corrects the proposed rule relating to marine terminal agreements that the Commission issued on April 2, 1985, and which appeared in the **Federal Register** of Friday, April 5, 1985, beginning at 50 FR 13617. This action is necessary to correct a substantive error in the Supplementary Information. Minor typographical and other errors in the Supplementary Information and in the text of the regulations will be corrected, as necessary, in the final rule.

DATE: Comments on or before June 4, 1985.

ADDRESS: Send comments (original and 15 copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, Washington, D.C. 20573, (202) 523–5787

John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, Washington, D.C. 20573, (202) 523–5866.

The following corrections are made in FR Doc. 85–8184 beginning on page 13617 in the issue of Friday, April 5, 1985:

Supplementary Information [Corrected]

On page 13621, in the first column:*

1. The discussion under section 516.5(a) should read:

This section exempts marine terminal leases, agreements other than terminal leases which relate solely to the financing and/or construction of marine terminal facilities and agreements which relate to off-dock container freight station facilities and/or services from the filing and effectiveness/approval requirements of both the 1984 and 1916 Acts and 46 CFR Parts 572 and 560. This section also exempts proprietary marine terminal agreements from the filing and approval requirements of the 1916 Act and 46 CFR Part 560.

2. The headings and discussions for section 516.5(b) and section 516.5(c) are removed. Note that in the proposed rule there is no § 516.5(c) or § 516.5(d).

3. The heading "§ 516.5(d)" should read "§ 516.5(b)". The discussion following this section remains unchanged.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–11389 Filed 5–9–85; 8:45 am]

BILLING CODE 6730–01–M

* Pages 16 and 17 of the Commission issuance.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 541 and 567

[NHTSA Docket No. T84-01; Notice No. 04]

Performance Standards and Criteria for Selection of Covered Vehicles and Replacement Parts—Motor Vehicle Theft Law Enforcement Act of 1984

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes performance standards for inscribing or affixing identification numbers onto certain major original and replacement parts of high theft lines of passenger motor vehicles. It further proposes guidelines and procedures for selection of such high theft lines, and establishes which major parts are to be included in the marking program. Finally, it proposes a manner and form for certifying compliance with the standard and specifies who will be authorized to certify such compliance.

This rulemaking is undertaken pursuant to the Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. 98-547. The law creates a comprehensive program to reduce vehicle thefts through use of the following: parts identification; expansions in federal criminal penalties for motor vehicle theft, and new criminal sanctions against tampering with identification markings; and tighter controls on the import and export of motor vehicles. This rulemaking constitutes the first phase of the NHTSA's implementation of its responsibilities under Pub. L. 98-547.

DATES: Comments on this NPRM are due no later than June 10, 1985. The agency anticipates publication of the Final Rule by August 12, 1985. The theft prevention standard would become effective 6 months after issuance and apply to passenger cars and replacement equipment for them beginning with model year 1987.

Written comments should refer to the docket number and the number of this notice, and should be submitted to: Docket Section, Room 5109 Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Director, Office of Market Incentives, Room 5313, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-1714).

SUPPLEMENTARY INFORMATION:

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I. Background: The New Law

In response to growing national concern over the problem of motor vehicle theft, Congress, in October 1984, enacted the Motor Vehicle Theft Law Enforcement Act of 1984. The new law is, in the words of the House Energy and Commerce Committee, "a comprehensive package . . . designed to curb the theft of motor vehicles by preventing thefts and decreasing the ease with which certain stolen vehicles and their major parts can be fenced, while trying to minimize regulation of the domestic and foreign motor vehicle manufacturing industry . . . It also gives law enforcement officials at all levels of government the . . . prosecutory tools to crack criminal theft rings and . . . to apprehend, successfully prosecute and punish motor vehicle thieves." House Report at 2-3.

A. Congressional Intent

Congress determined that legislation was needed to address the auto theft problem because its nature and scope has changed dramatically in the past twenty years. Whereas auto theft was once largely the province of "joyriding" teenagers, it has overwhelmingly become a professional criminal enterprise. The percentage of those arrested for motor vehicle theft who were juveniles dropped to its lowest rate in history in 1983. The recovery rate for stolen vehicles has fallen steadily, along with the value of those vehicles which are recovered, as the crime has been "professionalized."

Congress found that cars are frequently stolen so that they can be "chopped" into component parts that are subsequently resold to repair shops and used to repair damaged vehicles. Once a car is "chopped" into its component parts and those parts are separated from the identifying Vehicle Identification Number (VIN) plate and numbered engine and transmission, it is no longer possible for law enforcement officials to establish that they were stolen, much less to trace them to a particular stolen vehicle. As a result, thieves often cannot effectively be prosecuted when found in possession of such unmarked parts, and stolen cars or component parts, once recovered, cannot be traced and returned to the original owners or their insurers.

B. Comprehensive Approach Taken

The Motor Vehicle Theft Law Enforcement Act mounts a comprehensive attack on vehicle theft by combining the following elements: a marking system for the major component parts of frequently stolen vehicles; increased federal criminal penalties for vehicle theft (including listing in the Racketeering Influenced and Corrupt Organizations Act (RICO) as a predicate felony), and penalties for tampering with the new marking system; tighter controls on the import and export of motor vehicles; and a series of studies over the next five years of the new theft prevention program's effectiveness, to determine if the program should be modified or expanded.

The new law calls for swift implementation of the parts-marking standard, requiring that a proposed standard be published promptly. It calls

for selection of vehicles to be covered by the standard within one year of the date of enactment, i.e., by October 24, 1985.

C. Scope of This NPRM

Responsibilities for implementation of the Motor Vehicle Theft Law Enforcement Act of 1984 are distributed among several Federal agencies, primarily the Department of Transportation and the Department of the Treasury (U.S. Customs Service). Full implementation of the Department's responsibilities will require several phases of rulemaking.

This Notice of Proposed Rulemaking, which represents the first phase, addresses some of the responsibilities assigned by the statute to the Department of Transportation (which are, in turn, delegated to the National Highway Traffic Safety Administration). It focuses on the key near-term elements of the major component parts-marking standard to be implemented. Those elements are: the performance standard for affixing or inscribing major parts with identifying numbers or symbols; the criteria and procedures for selection of covered high theft lines and their major parts; certification of compliance with the standard; and the manner and form of certification to be employed.

This Notice reflects the agency's consideration of comments received by the agency since enactment of the Theft Law Enforcement Act. The agency has received many written and oral comments in that time. A public meeting was conducted on December 6th and 7th, 1984, at which all interested persons were invited to comment on a series of questions related to implementation of the law. Copies of all written materials submitted to the agency during and after the public meeting, as well as a copy of the agenda and a transcript of the meeting, are in the docket. In addition, many written comments were submitted during the comment period which ended December 17.

D. Future Rulemaking Action Planned

Subsequent rulemakings will take up other matters not on the statute's accelerated rulemaking schedule, such as: Reporting requirements for manufacturers, Sec. 603(c); reporting requirements for insurance companies, Sec. 612; procedures for exempting up to two lines of passenger motor vehicles per manufacturer per year if they are equipped with effective anti-theft devices, Sec. 605; and a possible voluntary theft prevention standard for vehicles not required to be covered under the terms of the statute, Sec. 613.

II. Definitions for the Theft Program

"Car line" or "line" means a group of motor vehicles of the same make, which have the same body or chassis, or otherwise are similar in construction or design. Some examples of makes and lines are AMC-Alliance, BMW-BMW 320, Chevrolet-Cavalier, Chrysler-New Yorker, and Ford-Escort. If the same car line nameplate were placed on 2-door, 4-door, station wagon and hatchback versions of a vehicle, then all of those versions would be in the same line.

"Committee report" or "report" refers to the House Energy and Commerce Report, "Motor Vehicle Theft Law Enforcement Act of 1984," H. Rept. 98-1087, 98th Cong. 2d Sess.

"Interchangeable part" means a passenger motor vehicle major part that is sufficiently similar in size and shape to a major part of another car line that it could be used to replace the similar part on a vehicle of the other line, with no modification to the vehicle other than to the interior or exterior trim.

"Model year," with reference to any specific calendar year, means a manufacturer's annual production period for a particular line (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period for that line, the model year is the same as the calendar year. (Note: the EPA Administrator uses the manufacturer's start of production to determine model year.) Since the annual production periods for a manufacturer's lines may differ, a manufacturer may have model years with different beginning and ending dates for different lines.

"Public Meeting" refers to the December 6th and 7th, 1984 public meeting held by the NHTSA at the Department of Transportation in Washington, D.C., at which all interested persons were invited to respond to a series of questions about implementation of Title VI.

"Title VI" refers to Title VI of the Motor Vehicle Information and Cost Savings Act. Section 101 of the Motor Vehicle Theft Law Enforcement Act of 1984 (MVTLEA) amended the Cost Savings Act by adding a new Title VI. All of the portions of the statute which create responsibilities for the National Highway Traffic Safety Administration are contained in the new Title VI. Hereinafter this NPRM will refer to Title VI rather than the MVTLEA.

III. The Theft Prevention Standard

A. Original Parts

Title VI requires the agency to promulgate a theft prevention standard. It is to be a minimum performance standard for the identification of major parts of new motor vehicles (and major replacement parts designed as replacements for such major parts), to be achieved by inscribing or affixing numbers or symbols to such parts. The agency proposes the following basic elements of the standard:

1. The number of symbol to be used must consist of the Vehicle Identification Number (VIN) or a derivative thereof.

Discussion

While the statute itself is silent, the committee report on Pub. L. 98-547 calls for the use of the full VIN, or if that is too costly or difficult, a derivative (i.e., some subset of the VIN's seventeen digits) for the inscribed or affixed identification of major parts. The report states (at p. 12) that ". . . it is most desirable if the number used for identification of major parts is the same as that required for the vehicle identification number (VIN) . . ." The law enforcement advantages of using the full VIN over a derivative of the VIN or some other, altogether different number system are significant.

First, each vehicle's 17-character VIN is a unique "signature" that, in order to comply with the applicable Federal Motor Vehicle Safety Standards, cannot be repeated on any two vehicles during a period of thirty years. Since manufacturers are allowed to repeat assembly sequence numbers on vehicles of the same make and model manufactured at separate assembly plants, use of some derivatives could lead to confusion. Use of the full VIN allows a law enforcement agency to differentiate two identical make and model vehicles from different assembly plants. Therefore, if a vehicle's VIN is used to mark its major parts and those parts are stolen and recovered, they can still conclusively be identified as having come from that vehicle. Prosecution of motor vehicle thieves is far more likely to be successful if this link between the initial vehicle theft and the thief's possession of the part from the stolen vehicle can be firmly established.

Second, the full, 17-character VIN is the basis for the National Crime Information Center's vehicle theft reporting system, which is used by law enforcement officials around the nation to detect and track stolen vehicles. When a vehicle is reported stolen, local and state law enforcement officials file uniform theft reports with the NCIC, usually within 24 hours. Once a vehicle theft report is entered into the system, all participating law enforcement

agencies nationwide have access to it and can check the VIN of suspected stolen vehicles against the NCIC master list. Thus, use of the VIN for the theft prevention standard will enable law enforcement officials to employ the existing NCIC data base with ease, rather than develop a new or modified one, to query whether component parts uncovered during investigations were once attached to vehicles reported stolen.

Third, since the full VIN is the commonly used vehicle identifier for all law enforcement agencies, its continued use would mean minimal disruption of the vehicle identification processes of those agencies and avoid the necessity for training of the personnel of those agencies for a new or modified system.

Because of these considerations, the Agency is proposing tht manufacturers be required to employ the VIN in marking covered major component parts. *See* committee report at 12.

However, several factors militate against a requirement that the entire VIN appear on every covered major part.

First, the statute provides that, if any manufacturer is already engaged in identifying vehicle engines and transmissions in a manner which substantially complies with the theft prevention standard at the time the standard goes into effect, that manufacturer shall not be required to conform to an identification system that imposes greater costs. All manufacturers now stamp engines and transmissions with a derivative of the VIN rather than the entire seventeen digits.

Second, the committee report raises the possibility that there may be some identification technologies (although it did not identify any) for which the costs of affixing or inscribing the entire VIN would be higher than the costs of affixing or inscribing a shorter derivative. *See* report at 12.

In view of the foregoing, the agency is proposing as an alternative the use of a VIN derivative. The agency believes that there may be some derivatives that would enable an investigator to determine if a particular component comes from a stolen vehicle. Comments are requested on the specific composition of derivatives that would be sufficient for that purpose and on the cost differential between the use of those derivatives and the full VIN. Further, the agency is proposing that manufacturers which are placing a VIN derivative other than the one specified above on engines and transmissions as of the effective date of the standard be permitted to continue using that derivative on those particular engines and transmissions even if the agency ultimately decides to require the use of the full VIN on other parts.

2. The theft prevention standard must be a performance rather than a design standard; it must be practicable; and it must employ relevant, objective criteria.

Discussion

The committee report indicates that the Agency must take into account all relevant factors involving reasonableness and achievability in drafting a practicable standard (and, of course, must take into account the statute's $15.00/car limit). These factors include the availability of technology and a reasonable lead time for implementing the standard. It specifies that the agency should use either "general criteria" or "performance tests" in drafting the standard. *See* committee report at 10. The standard should promote the statute's goal of making parts more easily traceable and recoverable, and hence an "important objective . . . will be to ensure that the number is as permanent as possible and cannot be easily altered, tampered with or obliterated." Committee report at 12.

"Practicable" and "objective," as used in Title VI, are to be given the same meaning as they are given in interpretation of the Safety Act. That is, "practicable" means "economically and technologically capable of being done"; "objective" means "capable of being measured objectively without recourse to any subjective determination." For further discussion of these terms, *see* page 16 of H. Rept. No. 1776 on the Motor Vehicle Safety Act of 1966, 89th Congress; *Chrysler* v. *DOT*, 472 F. 2d. 659, 675 (6th Cir. 1972).

The Agency has identified a number of criteria that it believes are relevant to the goals of reducing vehicle theft, improving traceability and recoverability of stolen parts, and aiding prosecution, and are reasonable and objective. These criteria are expressed below in terms of performance rather than design, as required by Title VI.

The Agency is proposing that the following criteria be met by the manufacturer's inscription or affixation of the VIN or a derivative onto covered major parts. Comments are requested on the appropriateness of these criteria in light of the above goals and the available technology. (Comments are also requested whether any performance requirement proposed to apply to labels only should be extended to inscriptions.)

(a) The inscription or affixation must meet the same SIZE AND STYLE requirements as the current standard for the Vehicle Identification Number (VIN); i.e., it must have a minimum height of 4 mm; must consist of the Arabic or Roman numerals and/or letters set out in Table 1 of § 571.115; and must consist of capital, sans-serif characters.

(b) The inscription or affixation must be AS PERMANENT AS POSSIBLE. This requirement is not intended to be absolute, i.e., it is not intended to result in inscriptions or affixations that are immune to damage under all possible circumstances. Instead, it is intended that the identification be made in such a way that, under normal conditions of wear, tear, and repair, it will continue to meet the other performance requirements of the theft standard for the average life of the car (ten years).

The agency is also proposing, as an alternative to the "permanence" requirement, a requirement that the marking remain legible only for the average length of time during which cars are generally susceptible to high theft rates. Comments are invited regarding the appropriateness of this approach, and regarding the length of time during which most vehicles are susceptible to high rates of theft.

(c) Locations selected for labels must provide Protection From Damage as a result of normal maintenance and exposure conditions while still being Accessible to investigators Without Further Disassembly once the parts are removed from the vehicle. Further, to ensure that the label is placed in a consistent location on a particular type of part, the identification must be placed in the same 5 cm X 5 cm area on each part of that type. The manufacturer may select any location, consistent with the above requirements. Identifications placed on parts by means of inscription would be subject to the requirements concerning accessibility and consistent location. Given the greater durability of inscriptions, there does not appear to be any need to require that they be placed in a location where they are protected from accidental damage.

(A different location for the parts identifier is being proposed for replacement parts; *see* III B.1 below. The locations selected by the manufacturer would have to accommodate both the original and the replacement part marking standards.)

The committee report specifies that the agency should "consider the location of the number on a particular part, to ensure that the purposes of the Act are satisfied." It instructs the agency to "consider the location of the number so that it will not be easily susceptible to damage in the normal course of dealer preparation (for such procedures as rustproofing and undercoating), or be

easily damaged in the course of repair, or regular automobile maintenance by repair shops or car owners." Committee report at 12.

The agency interprets the committee report to mean that the standard should be written in such a way that a complying identification would be placed in a location where it was as protected as possible from unintentional obliteration, while still serving the law enforcement purposes of the statute. In other words, the markings must be placed where they are protected from damage due to repairs or repainting, but where they can readily be found by law enforcement personnel conducting an investigation.

One representative of the law enforcement community has commented that, as a general rule, parts discovered during field investigations are already disassembled when they are found so that accessibility of markings on fully assembled vehicles was not essential. However, another expert indicated to the agency that there are times when it would be helpful for the police to be able to read an identifier without taking the vehicle apart, and that markings should be placed accordingly. Both commenters agreed, however, that NHTSA's regulations should ensure that investigators will not have to conduct any *additional* dismantling (over and above what the chop shops, parts dealers or thieves have ordinarily done) to locate the identifier on parts removed from a vehicle.

At the public meeting, manufacturers' representatives indicated that, due to variations in vehicle design and marking technologies, it would be very difficult to draft a regulation establishing a uniform location for the placement of all identifying markings for each component part to which the standard will apply. Moreover, law enforcement experts who spoke at the meeting (and provided additional information in subsequent conversations with agency personnel) indicated that the standard need not provide for uniformity of location in order to ensure its effectiveness.

Uniformity among different manufacturers and car lines is unnecessary because the National Automotive Theft Bureau (NATB) currently makes available to law enforcement officials information which it receives from the manufacturers about the location on each car line of identifying numbers on engines, transmissions and elsewhere. This system is probably adaptable to the motor vehicle theft standard, and obviates the need for a standard which specifies a uniform location for the marking on each covered part.

However, since the NATB system depends upon the manufacturer consistently placing its identifiers in the same spot for the entire model year of a car line, the agency has tentatively determined that the manufacturers be permitted to choose the location for labels or inscriptions on each car line as long as that location remains consistent. Comments are solicited as to whether uniformity of placement should be required for the entire time period during which a covered line is produced, or whether the requirement would adequately serve law enforcement purposes if it applies only on an annual basis.

For the reasons discussed above, it is the agency's tentative view that the dual goals of protection from obliteration and accessibility to law enforcement officials are best served by establishment of performance criteria for location selections, rather than by requiring manufacturers to place markings in a particular location. It is therefore proposing that actual location of identifiers be left to the discretion of the manufacturer, subject to the criteria outlined above.

(d) Removal of the affixation must cause the affixation to SELF-DESTRUCT and ALTER THE APPEARANCE of the vehicle part. For example, it must not be possible to remove the affixation from one part and transfer it to another without leaving evidence of the tampering on the original part. Removal of the affixation must uncover or create a "footprint" (i.e., physical evidence that an affixation was originally present or required to be present) on that part. Similarly, removal or alteration of an inscription must ALTER THE APPEARANCE OF THE PART.

Thus, the fact that a marking was transferred to another part must be obvious enough to be discerned by a trained investigator who inspects the part under field conditions. For example, if an inscription is removed and re-welded into another part, the traces left by re-welding would satisfy the standard. If a labelling method is used, self-destruction of the label or rendering the number on it illegible will ensure that it cannot be reaffixed to a new part.

(e) The affixation must be RESISTANT TO COUNTERFEITING; that is, it must be extremely difficult for an unauthorized person systematically to duplicate the marking, or it must be so expensive to duplicate the marking that the price of an illegally obtained part would begin to approach the price of a legitimately purchased replacement part. For example, the 3-M corporation maintains that the process by which it manufactures its security tape, "Confirm," has thus far proven impossible to counterfeit. (Information on this and other attributes of "Confirm" may be found in agency memoranda summarizing meetings with 3-M. Copies of these memoranda are in the public docket.) The agency requests comments on whether it is reasonable to expect that compliance with this requirement would be voluntarily supplemented through the imposition by label and vehicle manufacturers of stringent controls at their plants to safeguard the labels and the marking system so that blank labels could not be stolen, marked and applied by thieves.

As a further guard against counterfeiting of labels, each label would be required to bear a distinctive logo or trademark identifier along with the VIN. Especially if this marking is incorporated in the material of the label itself instead of simply being stamped on the label, use of the marking would make counterfeiting of the label more difficult and expensive because standard templates could not be readily located or purchased.

In proposing the above performance criteria, the agency recognizes that the performance standard might have been stated in test-specific terms such as resistance to levels of abrasion or, for labels, resistance to removal by various common solvents. The tentative decision to state the performance criteria in more general terms was reached because of the following considerations:

First, the time limitations imposed by the language of the statute preclude any of the extensive experimentation by either the agency or the manufacturers which would be necessary to devise appropriate temperature, abrasion or chemical tests. Congress imposed an extraodinarily tight timetable, and urged the agency to avoid seeking extensions unless absolutely necessary. (". . . the Committee expects the Secretary to promulgate the standard as expeditiously as possible so that major parts may begin to be numbered by the earliest applicable model year.") It may be inferred that the legislators placed a higher priority on swift implementation of the standard than they did on the development of one which is more precise. Indeed, the committee report expressly contemplates the course tentatively selected by the agency: "(t)he DOT will establish the test *or general criteria* which the identification must meet." *See* report at 10–11 (emphasis added).

Second, the committee report repeatedly stresses the importance of avoiding formulations that could hinder development of new unanticipated technologies. By stating the standard in more general terms the Agency reduces the possibility of impeding technological advancement.

Third, both industry and law enforcement participants in the public meeting noted that the Agency's current standard for the VIN label or plate, worded as general performance criteria, has resulted in affixation of VIN plates that are very helpful to law enforcement. (The standard provides simply that "[t]he VIN of each vehicle shall appear clearly and indelibly upon either a part of the vehicle other than the glazing that is not designed to be removed except for repair or upon a separate plate or label which is permanently affixed to such a part," and that it shall be "readable, without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions . . . etc., and . . . . [e]ach character in the VIN . . . shall have a minimum height of 4 mm." 49 CFR 571.115 S4.5 and 4.6.) The agency invites comments regarding whether the criteria of Standard 115 are equally well-suited to achieving the goals of the theft prevention standard and Title VI.

3. Parts to be covered by the standard

Section 602 of Title VI provides that this standard is to apply only to major parts, and limits the number of covered major parts to fourteen per vehicle. Section 601(7) of Title VI defines the term "major part" by listing a number of parts and including a provision under which the agency may select for coverage other parts of comparable design or function. The list consists of the following 15 (or 17) parts:

"(A) The engine;

"(B) The transmission;

"(C) Each door allowing entrance or egress to the passenger compartment;

"(D) The hood;

"(E) The grille;

"(F) Each bumper;

"(G) Each front fender;

"(H) The deck lid, tailgate, or hatchback (whichever is present);

"(I) Rear quarter panels;

"(J) The trunk floor pan;

"(K) The frame or, in the case of a unitized body, the supporting structure which serves as the frame; and

"(L) Any other part of a passenger motor vehicle which the Secretary, by rule, determines is comparable in design or function to any of the parts listed in subparagraphs (A) through (K)." Sec. 601(7).

The committee report provides that "the actual selection or choice of the major parts is done in accordance with other specified sections of the file" (sic). Committee report at 10, presumably referring to the provision in Section 603(a)(2) that "(t)he specific lines, and the major parts of the vehicles within such lines, which are to be subject to the standard may be selected by agreement between the manufacturer and the Secretary."

Discussion

Because the list of "major parts" appearing at 601(7) contains 15 to 17 parts (depending on whether a covered vehicle has 2 or 4 doors) and the statute limits the standards to a maximum of 14 major parts per covered vehicle, the drafters obviously anticipated that the agency would select among the parts listed (or would select by rule additional unlisted parts that serve the same or comparable functions) or permit affected manufacturers to so select, in order to derive an appropriate list of covered parts.

Based upon comments offered by law enforcement officials and other persons at the public meeting and in other conversations with the NHTSA, the agency has developed three alternative proposals regarding the parts which should be marked. Under the first proposal, the following parts, if present, would be required to be marked on all covered car lines:

1. Engine;
2. Transmission;
3. Right front fender;
4. Left front fender;
5. Hood;
6. Left front door;
7. Right front door;
8. Front bumper;
9. Rear Bumper;
10. Left rear quarter panel;
11. Right rear quarter panel; and
12. Decklid, tailgate or hatchback (whichever is present).

These parts were selected from the statute's list because they were found to be most frequently repaired or most costly to replace. A more detailed discussion of replacement costs and frequency of repairs appears in section III of the PRIA.

Comments are solicited regarding the existence of any other parts, comparable in design or function, that should be covered by the standard in addition to or in place of the parts on the above list.

While engines and transmissions may not be subject to frequent accidental damage, Congress' intent to include these two parts in the standard is clearly expressed in both the statute and the committee report. In addition, while the frame is an expensive part, it may be the case that the frame is rarely stolen alone; rather, a part of the frame is stolen while still attached to other parts. For this reason, a separate identifier on the frame was given a lower priority. Comments are invited regarding this selection.

The second and third alternative proposals are based on the agency's recognition that vehicles will not uniformly be designed to have all twelve parts listed under the first alternative proposal. The second proposal would be like the first, except that it would require the marking of two additional parts. The standard would not specify the two additional parts but would permit manufacturers individually to propose the additional two parts to the agency for agreement. NHTSA would agree to the manufacturer's proposal if the two parts proposed were on the statute's list. If the manufacturer proposed marking a part that was not on the list but was comparable in design or function, rulemaking by the agency would be necessary before approval could be granted. (See Sec. 601(7).) Timing problems might be created if such rulemaking had to be conducted each year. Comments are requested on the extent of such problems and how they might be minimized.

The third proposal would be like the second, except that the two additional parts to be marked would be specified in the standard. Those two parts would be selected based on the comments from interested parties on this notice. Candidates for the additional parts to be selected are: Rear doors (if present); grille (if present); floor pan; and frame.

The agency is proposing, as well, to permit the certification plate or label (now affixed to the left front door or pillar) to serve as the left door's identification for the purposes of Title VI if affixed to that door. This approach appears reasonable because the certification plate or label must already meet legibility, permanence and non-transferability requirements comparable to the ones proposed for the theft prevention standard, and must include the VIN. *See* 49 CFR 567.4. Since Title VI prohibits the agency from issuing a rule requiring more than one marking per part, it appears consistent with Congress' intent for the agency not to require a second affixation or inscription of the VIN on the door.

After considering the proposal, offered by the National Automobile Theft Bureau (NATB) at the public meeting, that each vehicle be subdivided into three zones and the manufacturer be permitted to make limited selections regarding which parts to mark within each zone, the agency has tentatively

rejected that approach as unnecessarily complex.

4. Cost of compliance with the theft prevention standard

Sec. 604(a) of Title VI provides that the theft prevention standard "may not . . . impose costs upon any manufacturer of motor vehicles to comply with such standard in excess of $15 per motor vehicle . . ." The committee report explains that "[t]his is a limitation on DOT. If DOT, when promulgating the standard, determines that this cost will be exceeded, the standard should not be issued until it is adjusted to be within the limitation. In short, there is no authority to issue a standard that exceeds the cost limitation." Committee report at 16.

Sec. 604(c) (1) and (2) require that the $15.00 cap be annually adjusted to 1984 dollars as reflected in the Consumer Price Index (CPI). Percent changes in the CPI are to be certified to the Agency by the Bureau of Labor Statistics each year, and published in the **Federal Register.**

Discussion

The agency interprets the above statutory language and legislative history to mean that it is NHTSA which determines the cost of compliance with the standard, after consultation with vehicle manufacturers and with manufacturers of the various types of marking technologies. NHTSA may not issue a standard which cannot reasonably be met by all manufacturers for $15, but the standard need not be capable of being met for $15 with every technology by every manufacturer. In other words, the standard would meet this requirement if for each manufacturer there was at least one reasonable means of compliance that, based on reasonable and generally accepted management and accounting techniques, would cost not more than $15. The agency has broad discretion to make adjustments to the standard so that it falls within the $15 limit. Such adjustments would then be generally applicable to all manufacturers. But Congress clearly did not contemplate that no standard would issue merely because one manufacturer claims unverified or reasonable costs above that limit. Nor did Congress contemplate that the agency would have the authority to exempt a manufacturer entirely or modify the standard for a particular manufacturer to bring its costs to that manufacturer below $15. The same performance requirements must pertain to all manufacturers even if adjustments are necessary in order to comply with the $15 limitation.

Based on public comments and statements in the committee report, the agency does not anticipate that any manufacturer will make a claim that it is unable to meet the standard for $15 per vehicle. Given the availability of inexpensive labeling and engraving technologies, every manufacturer should be able to find at least one marking system adaptable to its assembly and management techniques within the cost limitation.

If an occasion does arise in which a manufacturer is able to demonstrate that it cannot despite diligent effort meet the $15 limit, the non-conforming manufacturer should petition the agency to adjust the standard. The manufacturer would not automatically be exempted from the requirements of the standard.

Comments are solicited as to whether other methods for resolving such issues would better serve the goals of Title VI.

B. Performance Standards for Replacement Parts

Title VI provides that the theft prevention standard shall apply to replacement parts as well as to the parts originally installed by the manufacturer.

Sec. 602(d)(2) specifies that the standard may not require identification of any replacement part which is not designed as a replacement of a major part required to be identified under the standard. It further provides that the standard can not provide for the inscribing or affixing of any identification other than a symbol identifying the manufacturer and a common symbol identifying the part as a major replacement part.

The committee report notes that the standard for replacement parts "for example, could be a manufacturer's logo with the initial 'R' for replacement part affixed or inscribed on the part." Committee report at 12.

Discussion

1. Number or Symbol to be Used; Location of Marking. Numerous commenters have noted that the theft prevention standard is only as good as the replacement part-marking standard, because motor vehicle thieves will seek to obliterate identifying unique VIN's on original equipment parts and to replace those VIN's with counterfeit logos and "R" designations. It may be far easier repeatedly to counterfeit a single letter and logo than it is to counterfeit a new unique VIN for each stolen part.

To address the problem of criminals removing VIN's and replacing them with an "R" and a logo, NHTSA is proposing that the *standard* for replacement part identifiers be identical to that for major parts, (i.e., permanent, non-transferable, leave physical evidence if altered or removed, etc.) but that it be combined with a requirement that a different *location* be selected and exclusively used for placement of the "R" and logo. Comments are requested on the burdens that such a requirement would place on manufacturers who produce replacement parts, but not original equipment parts. Such manufacturers would have the burden of learning the location of the theft standard identification on original equipment parts.

If a different location must be selected for replacement part markings, it would be easier for law enforcement officials to discern that a replacement marking has been improperly placed on an original equipment part. It would not be possible, for example, to remove a unique identifier label and place a "replacement part" label over the same spot on the part to obscure the fact that the part's marking had been tampered with.

2. Cost Limitations of the Replacement Part Standard. Sec. 604 of Title VI provides that costs of complying with the standard for any manufacturer of replacement parts shall not be in excess of a reasonable amount, less than $15, per replacement part. The agency must specify that amount in the standard.

Discussion

The agency notes that while the $15 limitation applies to the entire vehicle, the "reasonable lesser amount" limitation applies to each replacement part. This difference in approach presumably reflects factors such as the difference in economies of scale between original parts manufacturers and replacement parts manufacturers. Comments are solicited regarding what "reasonable lesser amount" should be specified and whether it should be the same for each covered part. Comments are specifically requested on the appropriateness of the following amounts: $1 and $5 per part. The amount ultimately specified would be adjusted for inflation in the same manner as the $15 per car cost limitation, and the agency would be limited to a standard that reasonably could be complied with at that per part cost.

Commenters at the public meeting appeared to concur with the agency's interpretation that the language in Sec. 604 gives NHTSA flexibility to determine, for example, that because of the special danger posed by counterfeit replacement part logos, it is necessary to require use of a more costly technology such as stamping for the marking of replacement parts.

The proposed rule does not presently contain such a requirement, but interested parties are invited to comment on that option.

IV. Designation of High Theft Lines; Selection of Such Lines To Be Covered by the Standard

The theft prevention standard applies only to high theft lines. there are three different groups of vehicle lines that may qualify as high theft lines. The first group consists of those "existing lines" (i.e., lines introduced before the beginning of the two calendar years immediately preceding the year in which the standard is promulgated) which are determined to have had a "new passenger motor vehicle theft rate in the 2 calendar years immediately preceding the year in which the final standard is promulgated which exceeds the median theft rate for all new passenger motor vehicle thefts in such 2–year period." Sec. 603(a)(1)(A).

Subsection (b)(5) of 603 provides that "new passenger motor vehicle thefts', when used with respect to any calendar year, refers to those thefts in the United States in such year which are of passenger moior vehicles with the same model-year designation as that calendar year."

The second group consists of lines which are introduced into commerce in th United States at any time after the beginning of that two year period, and which are "determined" by agreement between the manufacturer and the agency (or by the agency alone, if the two are unable to reach agreement) to be "likely to have a theft rate exceeding" the median. Sec. 603(a)(1)(B).

The third group includes those low theft lines or likely low theft lines containing major parts that are interchangeable with the majority of the major parts of a line subject to the standard. An exception is made for a group of low theft lines produced by a manufacturer if they account for more than 90 percent of the production of all lines of that manufacturer containing those interchangeable parts. Sec. 603(a)(1)(C).

For manufacturers producing more than a combined total of 14 high theft lines in the first and second categories, Sec. 603(a)(3) provides that, "of those passenger motor vehicle lines initially introduced by a manufacturer into commerce in the United States before the effective date of the standard, no more than 14 of the lines of any manufacturer shall be selected as high theft lines." In such cases, Sec. 603(a)(2) provides that the "lines which are to be subject to the standard may be selected by agreement between the manufacturer and the Secretary. If the manufacturer and the Secretary disagree as to such selection, the Secretary shall select such lines after notice to the manufacturer and opportunity for written comment . . ."

Discussion

The agency interprets the "selection-by-agreement" provision in Sec. 603(a)(2) to be applicable to those situation in which a manufacturer has more than fourteen high theft lines introduced into commerce before the effective date of the standard.

In those cases where a manufacturer is found to have less than fourteen high theft lines, the agency intends to "select" them all without negotiation. Although the wording of the statute is ambiguous, comments made by manufacturers at the public meeting and in other discussions with the agency indicated that this intepretation is consistent with the intent of Congress. In view of the timetable for implementation of the standard established by the drafters, it is unlikely that Congress contemplated that a separate agreement would have to be reached with each manufacturer having high theft lines where there is no necessity to select among that manufacturer's high theft lines.

For manufacturers having more than fourteen high theft lines introduced into commerce before the effective date of the standard, the agency proposes to establish criteria to be applied in selecting among those lines to determine which ones should be covered by the standard. Rather than incorporate these criteria into the Rule itself, NHTSA proposes to adopt them as binding policy and publish them in an Appendix to the Rule. Comments are solicited on the criteria themselves as well as on the appropriateness of this approach.

Proposed criteria for selection of each of these three categories of "high theft lines" are discussed in turn below. Comments are additionally invited regarding the relative priorities that should be given to high theft lines as between the three groups of lines.

A. Existing Lines

For existing car lines (defined in Secs. 601 and 603(a)(1)(A) as lines introduced into commerce before the beginning of the two year period consisting of the two calendar years immediately preceding the year in which the final standard is promulgated), the statute provides that the following procedures are set to be followed in order to select which lines are to be covered by the theft prevention standard:

1. Determine the theft rate for each line.

The theft rate for a line is expressed by a fraction, whose numerator and denominator are as follows:

NUMERATOR=

new passenger motor vehicle thefts for that line in the two calendar years immediately preceding the calendar year in which a final rule is promulgated

DENOMINATOR=

production volumes of all passenger motor vehicles of that line (as reported to the EPA) which were produced in the two model years having the same model-year designations as the two calendar years immediately preceding the calendar year in which the final rule is promulgated.

Discussion

To make the theft rate determinations, the agency had to make tentative selections of data bases regarding car thefts and production. There were two data sources for nationwide thefts available for NHTSA's consideration: the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation, and the National Automobile Theft Bureau (NATB), an independent organization funded mainly by insurance companies. NHTSA examined the merits of both systems and tentatively decided to use NCIC data in determining the value of the numerator in the theft rate fraction. This agency believes that the NCIC system has two advantages over the NATB system. First, the NCIC system includes self-insured and uninsured vehicles. Second, it includes vehicles that are recovered within the first 24 to 48 hours of theft. By contrast, the NATB system does not record the theft to those quickly recovered vehicles except in the few states where entry of those thefts is mandatory. In choosing the NCIC system, NHTSA also considered Congressional intent and public comments. The Committee Report (at 15) indicates a preference for using government provided data. Although NHTSA initially had some concern regarding the accuracy and comprehensiveness of NCIC data, public comments, particularly those by NCIC representatives, have eliminated these concerns.

In determining which NCIC data to use, the agency interpreted the definition of "new passenger motor vehicle thefts" when used with respect to any calendar year, to mean that, for the purposes of making theft rate calculations, it is to include, for example, 1983 model-year cars stolen in calendar year 1983, and 1984 model-year cars stolen in calendar year 1984.

NHTSA's interpretation of that definition appears to rule out inclusion of 1983 model-year cars stolen in 1984, and 1984 model-year cars (some of which will be on the road before calendar year 1984) stolen in 1983. The agency recognizes that this definition may result in a skewing of the data relied upon for determining theft rates, since some manufacturers may begin their model year earlier or later than others, resulting in a higher- or lower-than normal number of their cars being on the road and subject to theft during the relevant calendar year.

Comments are solicited regarding any inequities which may result from this anomaly. Comments are also solicited on any alternative interpretation of the legislative language that can be supported.

A second problem with the accuracy of the data base may arise because the numerator of the fraction may include vehicles stolen that were not included in the EPA production data which comprises the denominator. Some vehicles reported stolen in the United States (and hence appearing in the NCIC's data base that will make up the numerator) have been imported into the U.S. by parties other than the manufacturer under the bonding procedures of the Safety Act (i.e., "direct imports"). Such vehicles would not be "counted" by the original manufacturers when those manufacturers supply domestic production totals to the EPA.

The agency has identified two possible ways for adjusting the data to correct for the imbalance that may result. The first is to eliminate from the numerator all vehicles reported stolen that do not have a U.S. VIN. Direct imports are labeled with Euro-VINs, and it is the Euro-VIN that has been used by the NCIC in recording reported thefts of these vehicles. Removing such cars from the numerator would mean that the theft rate for the lines affected would be calculated based on the line's U.S. authorized dealership sales only; other vehicles of the same line would be omitted from both numerator and denominator. The agency has tentatively concluded that this is the preferable approach, and is proposing to use this method in calculating the theft rate.

This approach is attractive because it is consistent with the statute's instruction to the agency that it adjust the NCIC figures for accuracy, as appropriate. However, a possible problem may affect the accuracy of the results obtained. If for any reason the theft rate for direct imports within a vehicle line differs significantly from the theft rate for the vehicle line as a whole, elimination of all direct imports from the numerator and denominator would skew that line's theft rate in relationship to other lines. However, the agency believes that this is unlikely to occur, and has seen no evidence to suggest that the theft rates of direct imports are anything other than proportional to their numbers in the vehicle population.

An alternative approach would be to augment the denominator's production figures by adding to it the number of vehicles (of the appropriate model years) of the line in question which have been certified as in compliance with the Safety Act and imported into the U.S. during the same calendar year, and which are therefore "on the road" and subject to theft in the U.S. during the relevant time period. However, the statute instructs the agency to use only the EPA production figures in the denominator and does not expressly authorize the agency to amend these figures even if doing so will improve their accuracy.

The agency solicits comments on the two approaches outlined above—and on the third possible approach, which would be to leave the formula undisturbed and presume that the inaccuracies are not statistically significant.

A third issue related to the accuracy of the theft rate calculations arises because of the time delay in receiving accurate end-of-year production figures from manufacturers. The NHTSA is instructed to rely on production data provided to EPA and will, presumably, need final figures for 1983 and 1984 to calculate the denominators of the theft rate fraction. Yet, the final 1983 figures had still not been provided by all manufacturers as of December 1984.

To address this problem, the agency proposes to rely on the 1984 estimated production data for domestic vehicles appearing in the November 19, 1984 issue of Ward's Automotive Reports Weekly for all car lines that have not submitted final production data to EPA. NHTSA has been informed that the EPA regularly relies on these data in the absence of final figures from manufacturers, and that the figures are more accurate than the manufacturers' mid-model year estimates provided to the EPA. Manufacturers who view the figures as inaccurate are free to suggest a more accurate source of data or to submit final production data as soon as possible to the EPA and to the NHTSA. The latter course of action would enable the agency to rely on the manufacturers' own totals.

Because no comparable listing appears in Ward's for imported vehicles, the agency proposes to rely on the mid-model year projections of total U.S. sales that are submitted by foreign manufacturers to the EPA in those cases where final production figures are not yet available. Comments are invited regarding whether this approach will provide NHTSA with the most accurate possible data base for calculating vehicle theft rates in accordance with the statutory formula.

To summarize: If the statute's formula is strictly applied (and assuming that a final rule is promulgated in 1985) the following fraction will determine the theft rate for an existing line:

$$\frac{\text{MY 83 cars stolen in CY 83} + \text{MY 84 cars stolen in CY 84}}{\text{EPA production volume for MY 83} + \text{EPA production volume for MY 84}}$$

2. Determine the median theft rate.

Sec. 603(b)(2) provides that the median theft rate is "that theft rate midway between the highest and the lowest theft rates" for car lines (as determined above). If an even number of theft rates is determined to exist, "the median theft rate is the arithmetic average of the two adjoining theft rates midway between the highest and the lowest of such theft rates."

3. Determine high theft lines.

Sec. 603(a)(1) provides that all lines with theft rates above the median are high theft lines.

4. Select high theft lines to be covered by the standard.

Discussion

(a) Criteria. The agency proposes that the following criteria, set forth at the end of the notice in Appendix B, be applied to "existing high theft lines" for the purpose of selecting such lines for coverage under the standard. As outlined above, the criteria would be applied only in those cases in which a manufacturer produces more that fourteen high theft lines. (Note: many of these criteria were drawn from the record of the public meeting):

i. How close to the median theft rate does the line fall? Vehicles close to the top of the list should be given higher priority than those on the margin.

ii. How many of such vehicles are scheduled to be produced in the upcoming model year or years? Obviously, if a vehicle line involves a large number of vehicles, the overall impact of the theft prevention standard will be greater and the vehicle line should be given higher priority. Alternatively, if a line is scheduled to be discountinued in the near future, it should be given lower priority.

iii. Is the line's design going to be altered materially, such as through downsizing? If so, the new car design's parts will not all be interchangeable with earlier model years and, by beginning to mark the line in the new model year, all vehicles with interchangable parts within the car line will be identified from the outset. Such lines, like entirely new lines to be discussed below, should receive the highest priority.

iv. Does the line have a higher-than-average whole-vehicle recovery rate? If the whole-vehicle recovery rate is significantly higher than average, it might mean that the particular line is often stolen for joyriding, or that it is popular with car rental agencies whose vehicles are often abandoned by customers unable to pay. If that is the case, the line should receive a relatively low priority in selection because marking the parts wouldn't address the problem of vehicle theft attributable to professional thieves.

v. Is the manufacturer likely to begin installation of an anti-theft device for which it intends soon to seek an exemption from the standard? If the manufacturer can demonstrate a strong likelihood that it will seek and procure and exemption based on installation of a theft prevention device as standard equipment, then the vehicle should be given a relatively low priority. It will be protected by other means, and since subsequent model years' parts would not be marked, the marking system will be devalued even for the interim period during which the standard was applicable. (Comment is requested on whether this criterion should be applied before the agency has completed the rulemaking necessary to implement the provision in Title VI for exempting vehicles with anti-theft devices.)

vi. What is the status of models with interchangeable parts? If the line in question does not have parts that are interchangeable with *any* non-covered lines, it should be given higher priority because marking is likely to be the most effective for such a line. Decreasing priority should be given to vehicles based on the number (i.e., total production number, not number of lines) of other vehicles which have interchangeable parts but which are not covered by the standard.

Selection of vehicles to be covered is not expected to be an exact science. The agency tentatively proposes to apply the above criteria, and to "rank" a manufacturer's vehicles accordingly, in making its selections.

Comments are solicited as to whether a more numerically precise method would better serve the goals of Title VI; for example, it has been suggested by one commenter that these criteria be given numerical values and the vehicles scoring highest be selected for coverage under the standard. The agency also solicits comments on any additional criteria which should be taken into account in selecting high theft lines for coverage.

(b) Procedures. Procedures to be used in reaching agreement with manufacturers regarding which high theft lines are to be covered by the theft prevention standard. The following is a summary of the procedures that NHTSA plans to publish for comment in a subsequent proceeding:

i. A manufacturer with more than fourteen existing high theft lines as determined by the statute's formula and the agency would meet to discuss the application of the criteria outlined above to all the manufacturer's high theft lines and the rationale for the resulting ranking.

ii. If the agency did not agree with the manufacturer's rankings, it would provide the manufacturer with its own rankings and the rationale for those rankings.

iii. The manufacturer could request the agency to amend them.

iv. The agency would make a final selection of covered lines. That selection would be a final decision of the agency, and hence would be subject to a review by the courts.

(c) Lead Time. Sec. 603(a)(4) provides that the agency shall prescribe procedures designed to assure that, to the extent practicable, selection of lines which were introduced initially before the effective date of the standard and are to be subject to the standard should be completed at least six months before the first applicable model year beginning after such selection.

Sec. 603(a)(5) specifies that "(a) manufacturer shall not be required to begin to comply with the standard pursuant to any selection [done in accordance with the agreement process discussed above] for a model year beginning earlier than 6 months after the date of selection."

Sec. 602(a)(4) provides that the theft prevention standard "shall take effect not earlier than 6 months after the date such final rule is prescribed," unless NHTSA finds that an earlier date is in the public interest.

Finally, sec. 602(a)(5) provides that "[t]he standard may apply only with respect to . . . major parts which are installed by the motor vehicle manufacturer in any passenger motor vehicle which has a model year designation later than the calendar year in which such standard takes effect."

The agency anticipates that the above-noted constraints on lead time and effective dates will lead to the following implementation schedule:

The agency intends to publish, simultaneously with the theft prevention standard, those "selections" of covered lines which do not require reaching agreement with the manufacturers. In addition, the agency plans to publish a Notice of Proposed Rulemaking that outlines the requirements for submission of information necessary to "select" likely high theft new lines, and to "select" among those high theft lines of manufacturers producing more than fouteen of such lines.

The agency proposes that, in accordance with sec. 602(a)(4), the theft prevention standard take effect six months after promulgation. As explained below, the practical effect of such an effective date would be that manufacturers are required to begin marking vehicles in model year 1987.

Domestic manufacturers generally begin new model years in August to October of the preceding calendar year. Foreign manufacturers may gear introductions to the calendar year. It is the agency's view that "selection" of covered lines by this fall will mean that the standard will go into effect for all 1987 models introduced in calendar year 1986, so long as those introductions are at least 6 months after this fall. This conclusion is based on the statute's constraints outlined above, coupled with the following considerations:

The time necessary to complete the rulemaking process and the "selection" process mean that, for some manufacturers at least, model year 1987 is the first year in which the standard could legally be applied. The agency considers it inequitable to require those manufacturers whose high theft lines can be "automatically" selected to comply sooner than those manufacturers having more than fourteen covered lines (selection of which must await the rulemaking), and the committee report clearly states that "(t)he standard cannot apply to a car in the middle of the model year." Report at 11. It therefore seems appropriate uniformly to apply the standard beginning in model year 1987. Comments are invited regarding the timetable outlined above.

The agency encourages manufacturers of existing lines that have been selected at the time the final theft prevention standard is promulgated to begin voluntarily to comply with the standard in model year 1986, as well.

B. New Lines

Sec. 601[4] defines as a "new line" any line introduced into commerce on or after the beginning of the two calendar years immediately preceding the calendar year in which a final rule is promulgated. Assuming a final rule is promulgated in 1985, the agency believes that new lines would include any lines introduced into the marketplace on or after January 1, 1983.

Sec. 603(a)(1)(B) instructs the agency to determine which new lines are "likely to" have high theft rates, and then to select such lines for coverage under the anti-theft standard by agreement with the manufacturer. If no agreement can be reached, the agency will "select" the line(s) itself.

Discussion

As with the criteria outlined above (some of which will also be applicable to selection of likely high theft "new lines"), the agency is proposing to establish criteria for making selections and to publish them as an Appendix to the final rule. Procedures for selecting likely high theft lines are summarized below and NHTSA plans to publish for comment in a later proceeding.

1. Criteria. Proposed criteria for determining whether a line is "likely to" have a high theft rate (Note: many of these criteria were suggested by participants at the public meeting):

a. What is the anticipated retail price of the vehicle?

b. What is the vehicle's "image" (e.g., sporty; low-priced; suitable for a family car; exotic; etc.)? The answer to this question will of necessity be partially subjective, but will be based in part on the manufacturers' views regarding styling, equipment and performance as well as planned advertising campaigns or other indicators of the marketing strategy for the vehicle.

c. Against what other vehicles does the manufacturer expect the new line to compete? If those competing vehicles have high theft rates, the new line can be expected to be similarly subject to high theft rates.

d. What existing car line (and hence purchasing audience) of the manufacturer's own lines does the new line replace, if any? If the existing line has a high theft rate, it is more likely that its successor will have the same.

e. Are there any new devices or systems—perhaps short of a vehicle anti-theft device but nevertheless effective—that can be expected to reduce the theft rate?

f. If any theft data are available, what do they reveal? (This criterion requires that the agency factor in the usual months-long delay that generally occurs after introduction of a new line, while thieves become familiar with the vehicle's theft-prevention system and learn to disable it. Nevertheless, vehicles demonstrating a high theft rate immediately upon introduction into the marketplace would be likely candidates for coverage under the standard.)

Unlike the selection of existing high theft lines for coverage under the standard, selection of any new line for coverage will have to be done on a case-by-case basis through agreement between manufacturer and agency with the agency making final determination in case agreement cannot be reached.

2. Procedures. The agency tentatively intends to rely on the following procedure for the selection of new lines likely to have high theft rates. The selection process would begin long enough in advance for a final selection to be reached eight months before scheduled start production. The initial selection would be made by the agency based on available information. If a manufacturer objects to the selection of one of its lines, it would be permitted to seek reconsideration.

The NHTSA is aware that sensitive confidential business information will have to be made available to the agency to facilitate selection of new lines likely to have high theft rates. It is the agency's current assessment that its existing confidentiality regulations, at 49 CFR 512, will be adequate to protect such information; however, comments are solicited regarding any confidentiality issues needing further agency attention.

C. Lines With Interchangeable Parts

Sec. 603(a)(1)(C) defines as "high theft lines" those low theft lines or likely low theft lines containing major parts which are interchangeable with the majority of the major parts of a line subject to the standard. An exception is made for such lines if the low theft lines account for more than 90 percent of the production of all lines which contain those interchangeable parts.

Discussion

Based on comments made at the public meeting, the agency believes that "interchangeability" should be fairly broadly construed and should not require that parts be absolutely identical to be regarded as "interchangeable".

As one commenter pointed out, thieves would prefer to steal a car for which a part's interior trim need not be redone in order to serve as an adequate replacement part. However, once it becomes known that, for example, the front door of an interchangeable line has different trim but *is not marked with an identifying number*, the interchangeable vehicle will become the target of theft. Under this analysis, it is appropriate to read the term "interchangeable" broadly; otherwise, this year's low theft model will, if only broadly interchangeable and unmarked, be next year's high theft model anyway.

NHTSA intends soon to undertake a rulemaking, as mandated by 603(c), to "require each manufacturer to provide information necessary to select . . . the high theft lines and the major parts to be subject to the standard." At that time, the agency hopes to establish the form and manner in which manufacturers must provide data regarding interchangeability of parts.

Once interchangeability has been determined, the agency proposes to apply the mathematical formula spelled out in sec. 603(a)(1)(C). It should be noted that interchangeable lines introduced into commerce before the effective date of the standard are not "counted" against the initial fourteen-line limit for each manufacturer. *See* sec. 603(as)(3). With respect to new lines, the selection of covered interchangeable parts' lines will be based on an initial decision as to whether a line is likely to be high theft; if so, interchangeable lines will be covered unless the statute's formula exempts them. The agency intends to make selections of new and interchangeable-part high theft lines simultaneously, in accordance with the leadtime schedule set out in IV.A.4. (iii) above.

V. Certification of Compliance With the Theft Prevention Standard

Sec. 606(c)(1) provides that "[e]very manufacturer of a motor vehicle subject to the standard . . . and every manufacturer of any major replacement part subject to such standard, shall furnish at the time of delivery of such vehicle or part a certification that such vehicle or replacement part conforms to the applicable motor vehicle theft prevention standard." It further provides that the agency may issue rules prescribing the manner and form of such certification.

Sec. 607(a) prohibits any person from importing into the United States any motor vehicle or part covered by the standard, unless it is in conformity with the standard. The committee report states that "[a]ny motor vehicle not in compliance will be refused admission into the United States." Report at 18.

The committee report indicates that the agency should take "into consideration its present certification practices in the case of safety" in

determining the method and form of certification for the theft prevention standard. *Id.*

A. Who May Certify

Title VI provides, as noted above, that every manufacturer of a motor vehicle or motor vehicle replacement part covered by the standard shall furnish certification of compliance with the theft prevention standard at the time of delivery, and that the certification shall accompany the vehicle until the delivery of the vehicle to the first purchaser. *See* Sec. 606(c)(1).

"Manufacturer" is defined in section 2(7) of the Motor Vehicle Information and Cost Savings Act as "any person engaged in the manufacturing or assembling of passenger motor vehicles or passenger motor vehicle equipment including any person importing motor vehicles or motor vehicle equipment for resale."

Discussion

While it is clear from the statute that compliance with the theft prevention standard must be certified by the "manufacturer," the question arises whether each and every "manufacturer," as that term is defined in section 2(7), should be permitted to certify that a vehicle or part is in compliance. In other words, should the authority to certify compliance be limited by the agency to some narrower subset of the universe of "manufacturers"?

Some of the participants at the pubic meeting argued strenuously that the power to certify vehicle or replacement part compliance with the theft prevention standard should be granted only to the original manufacturers of such vehicles and parts.

A rule restricting power to certify compliance to original manufacturers would effectively preclude "direct importers"—individuals who are manufacturers under the statutory definition because they "import motor vehicles or motor vehicle equipment for resale"—from bringing vehicles into compliance and so certifying. This, in turn, could significantly affect the market for "direct imports," which consists primarily of European luxury vehicles not originally manufactured in accordance with U.S. safety standards.

Both the National Traffic and Motor Vehicle Safety Act of 1966 (the Safety Act) and the Clean Air Act and their attendant regulations currently allow for the importation of such non-complying vehicles under bond. Direct importers then make changes in or add the equipment necessary to bring the vehicles into compliance with U.S. law. The vehicles are then "certified" as in compliance by the importer/manufacturer to the satisfaction of NHTSA and EPA, and the customs bond is liquidated. This system was anticipated by Sec. 108(b) of the Safety Act, which specifies that the Secretary may issue regulations allowing the importation of non-complying vehicles subject to terms and conditions (such as the furnishing of a bond) that will ensure that the vehicles are brought into compliance or exported.

Proponents of the original-manufacturer-only approach to regulating compliance with Title VI (primarily law enforcement personnel and representatives of European vehicle manufacturers and their authorized dealers) made several arguments as to why the theft prevention standard should be treated differently from the safety and emissions standards, for which importer/manufacturers are currently permitted to certify compliance.

First, it was argued, the prosecutorial goals of the statute would best be served by limiting the number of persons who are legitimately in possession of the tools and equipment to mark vehicle parts in accordance with the theft prevention standard. The broader the distribution of the marking technologies, they argued, the less secure from tampering and counterfeiting the system will be.

A former prosecutor (now representing a vehicle manufacturer) argued, for example, that if only original manufacturers can certify compliance, then suspected thieves found in possession of marking technology (such as blank labels or etching equipment) could not argue that they had a legitimate reason for possessing the equipment; i.e., they could not claim to be importers for resale, or "manufacturers," intending legally to mark legitimate imports. Prosecutors could more easily prove criminal intent based on possession of the marking equipment. Evidence of fampering or alteration of identifying markings could more easily be tied to persons in possession of such equipment if it is not widely available.

The 3–M Corporation's representative expressed concern that producers of security labelling technology like 3–M are able to guarantee the usefulness of their product only when the distribution of the product can be tightly controlled. If they are required to make their security tape more widely available in the marketplace, the system's integrity and uniqueness will be more easily compromised.

It was further argued that Congress had important prosecutorial goals in mind when it did not provide for bonding and temporary importation of non-complying vehicles as it had under the Safety Act. In fact, earlier versions of the legislation contained bonding provisions which were dropped before the law's enactment.

While the Safety Act permits the temporary importation into the U.S. of non-complying vehicles, the committee report on the Theft Prevention Act states that vehicles not in compliance with the Theft Prevention Act will be "denied admission to" the United States. This, it was argued, showed an intent to prevent importation under any circumstances of non-complying vehicles.

Moreover, while Title VI neither expressly endorses nor repudiates the definition of "manufacturer" spelled out in section 2(7), it was argued that the wording of certain portions of the Title indicates Congress did not contemplate that every manufacturer (as the term is defined in section 2(7)) would be involved in complying with the theft prevention standard. Proponents of this narrower reading pointed to the language of sec. 602(a)(1), which provides that the standard will apply to "the covered major parts *which are installed by manufacturers* into passenger motor vehicles," and to 602(d)(1), which also refers to "major parts *installed by the motor vehicle manufacturer*". (Emphasis added to both.) It was argued that importer/manufacturers may *alter* but do not *install* major parts, and that Congress intended by these provisions to refer only to original or assemblying manufacturers. Senator Percy, the original sponsor of the Senate's anti-theft bill, stated during Floor debate that, "[u]nder the bill, motor vehicle manufacturers would be required to apply these numbers *before each vehicle leaves the factory.*" (Emphasis added.) (130 Cong. Rec. S13585, Oct. 4, 1984). This statement, it was argued, supports a narrower reading of Congress' intent.

Proponents of the narrow reading of the statute recognized that limiting compliance certification authority to original manufacturers would adversely affect certain parties—i.e., both individuals and direct importers would be prevented from bringing non-complying covered vehicles into the U.S They argued, however, that the adverse impact must be balanced against the adverse impact on the overall theft prevention program if parties other than original manufacturers were given certification authority.

They argued that persons purchasing imported vehicles from the original manufacturer's authorized dealers would be harmed if there is a loss of central control over the marking authority and technology. If numerous types of markings and technologies could legitimately be present on "converted" imports of a given car line, police would find it more difficult to distinguish the genuine from the forged identifiers. Criminals would therefore find it less risky to steal those lines of cars and tamper with the original manufacturer's markings on manufacturer-authorized dealers' vehicles, because investigation of such thefts would be more difficult. This, it was argued, would make imported vehicles still more attractive to thieves than they already are. Because the presence of only a small number of illegitimately-marked vehicles of a particular line can compromise the integrity of the entire marking program for that line (by providing defendants with the defense that possession of a questionably-marked vehicle part is inconclusive), it was argued, the adverse impact on the few (manufacturer/importers) should not be permitted to impose a hardship on the many (those who purchase from original manufacturers).

Finally, it was argued, permitting the widespread marking of vehicles would encourage the importation of stolen vehicles by lending stolen and "marked" vehicles a false imprimatur of legitimacy.

Proponents of permitting certification of compliance by persons other than the original manufacturer, primarily representatives of direct importers, argued strenuously that a broader approach more effectively serves the purposes of the Act.

First, they argued, the statute was clearly intended to have only a minimal economic impact on the auto industry, of which they are an important, if small, competitive segment. Statutory limitations on the cost of the standard, and the requirements that the standard be practicable, reasonable and achievable, indicate that any standard which would put a substantial segment of the market out of business would not be consistent with Congressional intent.

Proponents of a broader authority to comply and certify under the theft prevention standard argued that NHTSA could devise a workable system to achieve the Congress' anti-theft goals without imposing harsh economic consequences on direct importers. While the statute does not expressly authorize importation under bond (for marking in the United States), they argued, it does not expressly forbid this approach if it makes sense for the agency to allow it. Since vehicles are now routinely imported under bond for conversion to U.S. safety and emissions standards and then certified, they contended, there is no reason why that system cannot be expanded to include compliance with the theft prevention standard, as well.

Alternatively, they proposed that either the Department of Transportation or the U.S. Customs Service could establish a program for the controlled issuance of security labels or other identifiers to supply to manufacturers other than original manufacturers. If the government were to control access to the marking system, and to require, for example, photographic evidence that each label had been applied in compliance with the standard, then concerns about the integrity of the system could be met without unnecessarily restricting direct imports.

The proponents further argued that, while "importation" of uncertified vehicles may arguably be prohibited by Title VI, a vehicle need not be defined as "imported" until a posted customs bond has been liquidated and the vehicle in question has passed into commerce in the United States. Thus, they maintained, a vehicle could be brought to the U.S. but not actually "imported" by an importer/manufacturer under the statute; brought into compliance while under bond on U.S. soil; certified by the manufacturer; and then "imported" once the bond had been liquidated.

Finally, they argued, it is inconsistent with the United States' international trade policies to erect non-tariff barriers to the entry of foreign goods.

After giving careful consideration to the arguments made at the public meeting and in other discussions with affected parties, including law enforcement and manufacturing representatives and the U.S. Customs Service, the agency has tentatively determined that the purposes of the statute will be better served if only original manufacturers are authorized to certify compliance with the theft prevention standard.

This decision is based on several considerations. First, the agency is persuaded that the effectiveness of the overall theft prevention program is only as good as its weakest link. In combating a highly organized and professional criminal enterprise, law enforcement officials must anticipate that every possible avenue for bypassing the new law will be sought out, and must act to plug as many loopholes as possible.

Limiting the legitimate possession of marking techniques to a few major manufacturers of vehicles and parts would mean that other persons in possession of such technologies can be more easily linked to their criminal enterprises. (Similarly, replacement parts covered by the standard, mostly large sheet metal or heavy duty cast parts, will tend to be produced only be established industrial manufacturers rather than by many small shops and producers. The universe of replacement part manufacturers legitimately possessing marking technologies will not include many parties not directly linked to the original vehicle manufacturers.) While the statute does not make illegal the mere possession of the marking tools or labels, possession of these instruments will be valuable evidence in a prosecutor's case if a lawful purpose for their possession cannot be argued by the defendant.

Second, the NHTSA interprets the statute's repeated references to *manufacturer's* compliance and certification as precluding DOT's issuance of secure labels in the type of government program proposed by several of the commenters. Sec. 606(c)(1) provides that "[e]very manufacturer of a motor vehicle subject to the standard . . . shall furnish at the time of delivery . . . a certification that such vehicle . . . conforms to the applicable motor vehicle theft prevention standard." The committee report directs the agency to "take() into consideration its present certification practices in the case of safety." Report at 18. In the view of the agency, government participation in assisting manufacturers with achieving compliance would be inconsistent with current practice under the Safety Act.

The responsibility for compliance with the Safety Act is entirely with the manufacturer, and the NHTSA does not "approve" designs or equipment for manufacturers. The same is true for the Motor Vehicle Theft Law Enforcement Act. This is an essential element in the regulatory philosophy of "performance standards" and self-certification (such as specified by Title VI and the Safety Act) as contrasted with "design standards" and pre-sale government type approval mechanisms. DOT should not play a role in compliance by providing labels, or otherwise assist in the process of bringing a vehicle into compliance; if it did, the agency would then become involved in accepting certification of its own compliance, since compliance would be measured in part by whether the agency had provided "complying" products (i.e.,

labels) to manufacturers. (Similarly, Customs officials would be placed in the untenable situation of issuing "complying" products and then enforcing certification of compliance at the border if that agency were to undertake the task of issuing labels or other identifiers.) This type of procedure surely was not contemplated by the drafters. It differs radically from practices under the Safety Act; no resources in the budget are available; and Title VI provides for neither additional budget authority nor authority to seek reimbursement through user fees or some other mechanism.

Third, while it is true that the legislative history indicates a combined purpose for the new law of both curbing automobile theft and "minimiz(ing) regulation of the domestic and foreign motor vehicle manufacturing industry," the agency believes that minimizing regulation at the expense of the effectiveness of the overall theft prevention program would run counter to the Congress' intent. Law enforcement officials and European manufacturers' representatives argued that a marking system known to have less integrity for the imported vehicles than for the domestic (since the original manufacturer/importer for resale issue does not arise in the case of domestically-produced vehicles) can only make all lines of imported vehicles more attractive to thieves. Moreover, the wide availability of the marking equipment would mean that domestic vehicles would also be less protected from counterfeiting and tampering.

It should be added that the agency disagrees with the argument, offered at the public meeting, that "importation" does not occur until a posted customs bond has been liquidated. The U.S. Customs Service has indicated that it does not concur with that analysis; according to the Customs Service's interpretation of the law, the vehicle is "imported" and a bond is posted only to ensure that it is later brought into compliance with U.S. standards. Liquidation of the bond indicates compliance is completed.

If only original manufacturers can apply markings and certify compliance, the enforcement and inspection burden on the agency will be vastly simplified. If the task of properly policing compliance with the theft prevention standard is not manageable, and hence is ineffectively carried out, professional criminals will swiftly learn that the system's integrity is easily breached. Once again, the prosecutorial value of the standard will suffer. Based on NHTSA's experience with the odometer tampering enforcement program, the agency believes that strict inspection and enforcement of the standard, particularly in the beginning years, is essential to the overall success of the program.

The agency notes that the importation of passenger cars not originally manufactured to comply with Federal motor vehicle safety standards (the so-called "gray market"), subject to bonding and subsequent modification to assure compliance, has increased substantially in popularity in recent years. While section 607 of the Cost Savings Act prohibits the importation into the U.S. of any vehicles subject to the theft standard which do not comply with the theft standard, the agency specifically seeks comments on whether it would be consistent with the Theft Act to construe the term "manufacturer" so as to permit entities other than the original manufacturer to certify compliance with the standard.

Commenters should discuss whether any alternative scheme is consistent with the agency's authority under the Theft Act and the Congressional intent underlying that Act. Commenters are also invited to address the effects of both the agency's proposal and any alternative certification scheme on international trade and on U.S. purchasers of foreign-manufactured motor vehicles. In particular, the agency seeks comments and data on the costs and benefits of different certification proposals, as well as on the effects of the various proposals on the avenues through which foreign-manufactured automobiles may be sold in the United States. Are there other alternatives possible within the constraints of the Theft Act that would not adversely affect the gray market?

Commenters should also provide details as to how any proposed alternative certification schemes would be structured. In particular, the agency seeks comments on whether separate certifications should be permitted for compliance with vehicle safety and theft standards, and whether such certifications could be made by different entities. The agency also requests commenters to specify what type of manufacturer "logo" would be used by entities other than original equipment manufacturers. The agency is particularly interested in receiving comments on the effects of any alternative certification scheme on law enforcement agencies, including the use of Euro-VINs rather than U.S. VINs in theft markings, the ability to trace persons other than original equipment manufacturers, and whether inexpensive marking systems such as paper labeling could continue to be used for marking purposes. The agency also seeks comments as to whether parties other than original manufacturers could comply with the standard for less than the $15 cost cap established by the Act, and whether an alternative certification scheme would require modifications to the performance standard for theft markings that would increase compliance costs for original manufacturers.

Because the agency is tentatively taking the position that only original manufacturers should be allowed to certify compliance with the standard, it need not address in detail the question of what number or identifier, other than a U.S. VIN, would be placed on the major parts of vehicles not assigned U.S. VIN's.

With respect to vehicles which are not in other respects designed to be in compliance with U.S. safety and emissions standards, comments are invited as to whether foreign manufacturers should be permitted to comply with the theft prevention standard via use of the Euro-VIN initially assigned to their vehicles, and then to certify compliance through affixation of a certification plate or label comparable to the U.S. certification plate (as explained further below) but limited to certification of compliance with the theft prevention standard alone rather than in conjunction with the safety and bumper standard compliance certification statements. Such a system would ensure that a vehicle retains its "signature" VIN, which all interested parties appear to consider essential for law enforcement purposes. At the same time, it would permit continued importation and "conversion" of direct imports without compromising the integrity of the parts-marking program if foreign manufacturers so desired. Comment is also requested on whether foreign manufacturers would be likely to certify compliance with the theft prevention standard alone. Commenters should discuss why foreign manufacturers would or would not be likely to so certify.

B. Manner of Certification

1. Major parts.

At present, manufacturers are required under the Safety Act to affix a permanent plate or label to each vehicle providing a number of pieces of information including the following statement:

"This vehicle conforms to all applicable Federal motor vehicle safety

standards in effect on the date of manufacturer shown above."

In the case of passenger cars, the expression 'and bumper' has been included in the statement following the word 'safety' for all vehicles manufactured on or after September 1, 1978.

The agency proposes to require that, for vehicles covered by the theft prevention standard, the statement on the certification plate be modified to read:

"This vehicle conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards in effect on the date of manufacture."

The legislative history of Title IV, which urges the agency to consider its Safety Act certification method and which stresses minimization of the regulatory burden on manufacturers (see committee report at 2) favors this simple approach to certification. As discussed above, since the agency intends to limit to original manufacturers the authority to certify compliance, requiring alterations in the certification plate should prove feasible for all affected parties.

2. Replacement Parts.

Once again relying on the committee report's instructions that the agency take into account current certification practices under the Safety Act, NHTSA proposes that certification of compliance with the standard for replacement parts be achieved by marking each replacement part with the symbol "DOT". This method of certification can easily be combined with the marking requirement of the theft prevention standard itself. The DOT symbol should be placed immediately adjacent to the "R" and logo required by the theft prevention standard.

While a member of the public suggested at the public meeting that the agency permit crates or boxes containing replacement parts be marked, instead of the parts themselves, with a "DOT" for the purposes of certification, the agency has tentatively rejected this proposal for several reasons.

First, most or all of the major parts to be covered by the standard are too large to be shipped in boxes or crates. Certification by means of marking the shipping containers, while appropriate for small parts such as lamps, brake hoses or seat belts, is impracticable when each part is likely to be shipped separately or to be separated rapidly from any crate or box in which it may have been shipped.

Second, the law enforcement officials who commented on this issue suggested that the value of the certification lies in its being present and visible on the major replacement part at the time an inspection is undertaken. If the certification disappears with the packaging material, its value as legal evidence will be lost because its absence will have no significance.

NHTSA proposes to adapt the language of the certification standard for motorcycle helmets, at 49 CFR 571.218 S5.6.1. The standard would provide that "the symbol DOT constitutes the manufacturer's certification that the replacement part conforms to the applicable theft prevention standard."

VI. Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers

The agency has determined that this rulemaking should be classified as significant under the Department's regulatory policies and procedures, but not as a major rulemaking within the meaning of E.O. 12291. A Preliminary Regulatory Evaluation (PRE) is being placed in the public docket simultaneously with the publication of this Notice. A copy of the Evaluation may be obtained by writing to: National Highway Traffic Safety Administration, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590.

The Department's determination that the proposed rule is significant is based on the costs that the rule will impose on manufacturers, as well as on the benefits (in terms of reduced thefts, increased vehicle recoveries, and lower insurance premiums) that are anticipated from its promulgation. The rule is further expected to affect "direct imports," possibly resulting in a significant reduction of the market for those services.

As discussed in more detail in the PRE, the agency estimates that approximately 43% of all cars produced would be selected as high theft models subject to the standard. Assuming 10 million passenger car sales per year, 4.3 million cars annually would be covered. Costs of compliance are estimated at $8.40 per vehicle for stamped identifiers, and $3.60 per vehicle for label identifiers. The total annual fleet costs are thus estimated at $35 million for stamped identifiers ($8.40 × 4.3 million), and $15 million for label identifiers ($3.60 × 4.3 million).

Benefits of the proposed rule are estimated in the PRE based on the anticipated reductions in thefts attributable to the marking system. Assuming that the marking system will reduce thefts of high theft lines by 10%, the agency estimates that 23,000 thefts per year might be averted by the rule. Since the average value per stolen vehicle is $3,900, the annual value of the assumed 10% reduction in thefts is $90 million (23,000 thefts averted × $3,900). Because no systematic data on theft reductions attributable to marking systems currently exist, this estimate should be considered preliminary.

B. Small Business Impacts

Because of the proposed rule's potential impacts on "direct importers," this action is likely to have a significant economic effect on a substantial number of small entities. Accordingly, a preliminary regulatory flexibility analysis has been incorporated in the PRE.

The NHTSA estimates that there are approximately 400 separate enterprises engaged in one or more aspects of vehicle conversion; many of those enterprises would be designated "small businesses" under the terms of 13 CFR Part 121 because they derive annual revenues of less than $3.5 million (for servicing) or less than $11.5 million (for retail sales) from those businesses. The industry association estimates that a majority of these 400 enterprises are engaged solely in vehicle conversion. Those establishments that now depend on direct importing high theft lines for a significant part of their revenues could be forced either to expand into other fields or to go out of business. Comments are invited regarding the number of enterprises and employees that would be affected by the proposed rule.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of the proposed rule and anticipates no significant environmental effects. Accordingly, no Environmental Impact Statement will be filed.

D. Paperwork Reduction Act

The Office of Management and Budget has already approved the NHTSA requirement that vehicle identification numbers appear on all new vehicles (OMB # 2127–0051). However, since this notice proposes to expand the scope and uses of the vehicle identification number system, it would impose additional information collection requirements, as that term is defined by OMB in 5 CFR Part 1320. Accordingly, these proposed requirements are being submitted to the OMB for its approval, pursuant to the requirements of the Paperwork

Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

VII. Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

49 CFR Part 567

Labeling, Motor vehicle safety, Reporting and recordkeeping requirements.

VIII. The Rule

1. Title 49 of the CFR would be amended by adding a new Part 541, to read as follows:

PART 541—FEDERAL MOTOR VEHICLE THEFT PREVENTION STANDARD

Sec.

Authority: Sec. 101, Pub. L. 98-547, 98 Stat. 2754 (15 U.S.C. 2021); delegation of authoirty at 49 CFR 1.50.

§ 541.1 Scope.

This standard specifies performance requirements for identifying numbers or symbols to be placed on major parts of certain passenger motor vehicles.

§ 541.2 Purpose.

The purpose of this standard is to reduce the incidence of motor vehicle thefts by facilitating the tracing and recovery of parts from stolen vehicles.

§ 541.3 Application.

This standard applies to those passenger car parts identified in § 541.5(a) that are present in the car lines listed in Appendix A. It also applies to major replacement parts for those cars.

§ 541.4 Definitions.

(a) *Statutory terms.* All terms defined in sections 2 and 601 of the Motor Vehicle Information and Cost Savings Act are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) below.

(b) *Other definitions.* (1) "Interior surface" means, with respect to a vehicle part, a surface that is not directly exposed to sun and precipitation.

(2) "Line" or "car line" means a name which a manufacturer applies to a group of motor vehicle models of the same make which have the same body or chassis, or otherwise are similar in construction or design. A "line" may, for example, include 2-door, 4-door, station wagon and hatchback vehicles of the same make.

(3) "Manufacturer" means the orignial producer who installs or assembles the covered major parts of the passenger motor vehicle.

(4) "Passenger car" is used as defined in § 571.3 of Part 571.

(5) "VIN" means the vehicle identification number required by Part 565 and § 571.115 of this chapter.

§ 541.5 Requirements for passenger cars.

(Proposal 1)

(a) Each passenger car subject to this standard must have an identifying number affixed or inscribed on each of the parts specified in paragraphs (a)(1) through (a)(12), if present on the vehicle.

(1) Engine.
(2) Transmission.
(3) Right front fender.
(4) Left front fender.
(5) Hood.
(6) Right front door.
(7) Left front door.
(8) Front bumper.
(9) Rear bumper.
(10) Right rear quarter panel.
(11) Left rear quarter panel.
(12) Deck lid, tailgate, or hatchback (whichever is present.)

(Proposal 2)

(a) Each passenger car subject to this standard must have an identifying number affixed or inscribed on each of the parts specified in paragraphs (a)(1) through (a)(12), if present on the vehicle, and on two additional parts, selected by the manufacturer and agreed to by the Administrator from the parts specified in paragraphs (a)(13) through (a)(16).

(1) Engine.
(2) Transmission.
(3) Right front fender.
(4) Left front fender.
(5) Hood.
(6) Right front door.
(7) Left front door.
(8) Front bumper.
(9) Rear bumper.
(10) Right rear quarter panel.
(11) Left rear quarter panel.
(12) Deck lid, tailgate, or hatchback (whichever is present.)
(13) Frame.
(14) Grille.
(15) Trunk floor pan.
(16) (Parts to be determined in the final rule which are comparable in design or function to any of the parts listed in paragraphs (a)(1) through (a)(15).)

(Proposal 3)

(a) Each passenger car subject to this standard must have an identifying number affixed or inscribed on each of the parts specified in paragraphs (a)(1) through (a)(14), if present on the vehicle.

(1) Engine.

(2) Transmission.

(3) Right front fender.

(4) Left front fender.

(5) Hood.

(6) Right front door.

(7) Left front door.

(8) Front bumper.

(9) Rear bumper.

(10) Right rear quarter panel.

(11) Left rear quarter panel.

(12) Deck lid, tailgate, or hatchback (whichever is present).

(13) [To be determined in the final rule.]

(14) [To be determined in the final rule.]

(b) (1) Except as provided in paragraph (b)(2) of this section, the number required by paragrah (a) shall be the VIN of the passenger car.

(2) In place of the VIN, engines and transmissions being marked with any derivative of the VIN on the day preceding the effective date of this standard may be marked with that derivative.

(c) The characteristics of the number required to be affixed or inscribed by paragraph (a) of this section must be identical in size and style to the characteristics of the VIN as provided for in S4.7 and S4.8 of § 571.115 of this Title.

(d) The number required by paragraph (a) of this section must be affixed by means that comply with paragraph (d)(1) of this section or inscribed by means that comply with paragraph (d)(2) of this section.

(1) Labels.

(i) The number must be printed indelibly on a label, and the label must be permanently affixed to the car's part.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location such that the number is, if practicable, on an interior surface of the part as installed in the vehicle and is protected from damage during maintenance or repair of the vechicle.

(iii) The number must be placed on each part specified in paragraph (a) of this secion in a location that is visible without further disassembly once the vehicle part has been removed from the vehicle.

(iv) The number must be placed within the same 5 cm × 5 cm region of the part, on each part specified in paragraph (a) of this section [the duration of the model year OR the duration of production of such vehicle line].

(v) Removal of the label must—

(A) Cause the label to self-destruct by tearing or rendering the number on the label illegible, and

(B) discernibly alter the appearance of the vehicle part by creating or uncovering evidence that a label was originally present or required to be present.

(vi) Alteration of the number on the label must leave traces of the original number or otherwise visibly alter the appearance of the label material.

(vii) The label and the number shall be resistant to counterfeiting.

(viii) The logo or some other unique identifier of the vehicle manufacturer must be placed on the label in a manner such that alteration or removal of the logo visibly alters the appearance of the label.

(2) Other means of identification.

(i) Removal or alteration of any portion of the number must visibly alter the appearance of the vehicle part.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicles.

(iii) The number must be placed within the same 5 cm × cm region of the part on each part specified in paragraph (a) of this section for [the duration of the model year OR the duration of production of such vehicle line].

§ 541.6 Requirements for replacement parts.

(a) Each replacement part for a part which is specified or selected under § 541.5 must have the registered trademark of the manufacturer of the replacement part and the letter "R" affixed or inscribed on such replacement part by means that comply with § 541.5(d), except as provided for in paragraph (c) of this section.

(b) The trademark and letter "R" required by paragraph (a) must be at least 1 cm high.

(c) The trademark and letter "R" must be placed in a location that is at least 15 cm away from the location where the original part's theft prevention marking is placed.

(d) The trademark and letter "R" must be placed within the same 5 cm × 5 cm region of the part for [the duration of the model year OR the duration of production of such replacement part].

(e) Each replacement part must bear the symbol "DOT" in letters at least 1 cm high, within 5 cm of the trademark and letter "R". The symbol "DOT" constitutes the manufacturer's certification that the replacement part conforms to the applicable theft prevention standard.

Appendix A

Passenger car lines covered by the motor vehicle theft prevention standard (reserved for inclusion of list).

Appendix B

Criteria for limiting selecting for coverage under the theft prevention standard to 14 lines of a manufacturer.

Scope

These criteria specify the factors which the Administrator will take into account in determining which high theft lines initially introduced by a manufacturer into commerce in the United States before [insert effective date of the standard] will be selected for coverage under the theft prevention standard.

Purpose

The purpose of these criteria is to enable the Administrator to select, with the agreement, if possible, of the manufacturer, those high theft lines for which the greatest benefits in reducing motor vehicle theft are likely to be achieved by being made subject to the theft prevention standard.

Application

These criteria apply to those high theft lines produced by a manufacturer of passenger motor vehicles having more than fourteen "high theft lines" that have been introduced into commerce in the United States before [insert effective date of the standard].

Methodology

For each manufacturer producing more than fourteen high theft lines that were introduced into commerce in the United States before [insert effective date of the standard], these criteria will be applied in order to rank such lines against one another. Each manufacturer's lines will be considered in relationship to other lines produced by the same manufacturer. Once the manufacturer's lines have been ranked according to which lines appear likely to demonstrate the greatest benefits in reducing vehicles theft if covered by the standard, the Administrator will select, by agreement with the manufacturer, if possible, and in accordance with the procedures set out elsewhere in this Appendix, up to fourteen of such lines for coverage under the theft prevention standard.

Criteria

1. Proximity of the line's theft rate, calculated in accordance with the statutory formula, to the median theft rate. Higher theft rate receives higher priority.

2. Approximate number of vehicles within such line scheduled to be produced in the upcoming model year. Larger total number receives higher priority. However, if the line is scheduled to be discontinued in the near future, it should be given lower priority than one which will continue to be produced.

3. Likelihood of significant changes in the design of the line (such as downsizing or restyling) that would reduce the number of interchangeable parts within such line as between the new model year and previous model years. Lines with significant style changes receive higher priority.

4. Whole vehicle recovery rate for such line in the most recent calendar year for which data are available. Lines with higher recovery rates receive lower priority.

5. Plans for installation of an anti-theft device for which the manufacturer intends to seek an exemption under Sec. 605 of Title VI. Lines likely to be exempted receive lower priority. (This criterion would not be applied until the agency has completed rulemaking regarding that exemption process.)

6. Number of lines, and actual number of vehicles produced, having interchangeable parts. Lines for which numerous low theft vehicles or lines have interchangeable parts receive lower priority.

Appendix C

Criteria for Selecting New Likely High Theft Lines.

Scope

These criteria specify the factors which the Administrator will take into account in determining whether a new line is likely to have a high theft rate and whether such line should therefore be covered by the theft prevention standard.

Purpose

The purpose of these criteria is to enable the Administrator to select, by agreement, if possible, with the manufacturer, those new lines which are likely to be high theft lines and therefore should be subject to the theft prevention standard.

Application

These criteria apply to lines of passenger motor vehicles initially introduced into commerce in the United States at any time after the beginning of the 2 calendar years immediately preceding the year in which the final theft prevention standard is promulgated; i.e., "new lines".

Methodology

These criteria will be applied to each "new line." The likely theft rate for such new line will be determined in relation to the national median theft rate, as detemined for the 2 calendar years immediately preceding the model year in which such new line will be introduced. If the new line is determined to be likely to have a theft rate above the national median, then the Administrator may select such line for coverage under the theft prevention standard.

Criteria

1. Retail price of the vehicle line.

2. Vehicle "image" or marketing strategy.

3. Vehicle lines against which the new line is intended to compete, and theft rate(s) of such line(s).

4. Vehicle line(s), if any, which the new line is intended to replace, and theft rate(s) of such line(s).

5. Presence or absence of any new theft prevention devices or systems.

6. For new lines already introduced into commerce on the date the final theft prevention standard is promulgated, preliminary theft rate(s), if known, based on data available.

PART 567—CERTIFICATION

Part 567 would be amended as follows:

2. The authority citation for Part 567 would be revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; 15 U.S.C. 1912 and 1915; 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

3. Section 567.1 would be revised to read as follows:

§ 567.1 Purpose.

The purpose of this part is to specify the content and location of, and other requirements for, the label or tag to be affixed to motor vehicles as required by section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1403) (the Safety Act) and by sections 105(c)(1) and 606(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1915(c) and 2026(c)) (the Cost Savings Act), and to provide the consumer with information to assist him in determining which of the Federal Motor Vehicle Safety Standards (Part 571 of this chapter) and Theft Prevention Standards (Part 541 of this chapter) (Standards) are applicable to the vehicle.

4. Section 567.2 would be revised to read as follows:

§ 567.2 Application.

(a) Except as povided for in subsection (c) of this section, this part applies to manufacturers and distributors of motor vehicles to which one or more standards are applicable.

(b) In the case of imported motor vehicles, the Safety Act requirement of affixing a label or tag applies to importers of vehicles admitted to the United States under 19 CFR 12.80(b)(1) to which the required label or tag is not affixed.

(c) In the case of imported motor vehicles, certification of compliance with the Motor Vehicle Theft Prevention Standard, as required by Section 606 of the Cost Savings Act, applies only to the manufacturer of the motor vehicle, as defined in § 541.4(b) of this chapter.

5. Section 567.4(g)(5) would be revised to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(g) * * *

(5) The statement: "This vehicle conforms to all applicable Federal motor vehicle safety and bumper standards in effect on the date of manufacture shown above." The expression "U.S." or "U.S.A." may be inserted before the word "Federal."

(i) In the case of passenger cars manufactured on or after [insert the effective date of the theft prevention standard], and subject to the theft prevention standard of part 541, the expression ", bumper, and theft prevention" shall be substituted in the statement for the expression "and bumper".

* * * * *

(Sec. 101, Pub. L. 98-547, 98 Stat. 2754 (15 U.S.C. 2021); delegation of authority at 49 CFR 1.50)

Issued on May 3, 1985.

Diane K. Steed,

Administrator.

[FR Doc 85-11206 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 85-06; Notice 1]

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Passenger Car Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a new Standard No. 135, *Passenger Car Brake Systems*, which would replace Standard No. 105, *Hydraulic Brake Systems*, as it applies to that vehicle type. The new standard would differ from the existing one primarily in that it contains a revised and shortened test procedure based on a draft harmonized international procedure developed by the United Nations Economic Commission for Europe (ECE). NHTSA believes that the new standard would ensure the same level of safety for the aspects of performance covered by Standard No. 105, while improving safety by addressing some additional safety issues. The standard would make it easier for manufacturers to build the same braking systems for installation in cars to be sold in different parts of the world, thereby resulting in cost savings. Compliance costs would also be reduced by the shorter test procedure.

DATES: Comments must be received on or before October 7, 1985. The proposed changes in the Code of Federal Regulations would become effective 30 days after publication of a final rule in the **Federal Register**, at which time optional compliance with the new standard instead of Standard No. 105 would be permitted. The proposed effective date for mandatory compliance with the new standard is September 1, 1991.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Duane Perrin, Office of Vehicle Safety Standards, National Highway Traffic Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–2800).

SUPPLEMENTARY INFORMATION:

Background

Over the past several years, NHTSA has had a policy of reviewing its Federal motor vehicle safety standards to assess the current effectiveness of and necessity for each of those standards. Efforts to identify ineffective or unnecessarily burdensome provisions have taken several courses. The agency on its own has initiated a variety of rulemaking actions to modify or eliminate such provisions while preserving the safety goals of the affected standards. The agency has also worked with international standards bodies to revise some of its standards through the harmonization process.

This rulemaking action, which relates to the brake requirements for passenger cars, grew out of that process. As the automotive industry has become an increasingly worldwide industry, interest in international harmonized standards has increased. With harmonized standards, manufacturers can build the same product to sell in different parts of the world. Significant cost savings can be achieved in areas of vehicle design, production, inventory and certification. Harmonization takes on additional importance under the Trade Agreements Act of 1979. That Act provides that Federal agencies may not engage in standards-related activity which creates unnecessary obstacles to the foreign commerce of the United States. In developing standards, agencies are required to take into consideration international standards and, if appropriate, base the standards on international standards. However, agencies are not required to base standards on international standards if it would be inappropriate to do so for reasons of safety.

Over the past several years, the United Nations Economic Commission for Europe (ECE) has worked toward developing an international harmonized brake standard for passenger cars. As a member of ECE, the United States has participated in that work.

This notice proposes a new Standard No. 135, *Passenger Car Brake Systems* which would replace Standard No. 105, as it applies to that vehicle type. The new standard differs from the passenger car provisions of Standard No. 105, *Hydraulic Brake Systems*, primarily in that its test procedure would be shorter. Standard No. 105 incorporates a very lengthy and complex test procedure, much of which consists of various conditioning procedures. The new test procedure is based on a simplified one developed during the ECE harmonization process.

The agency believes that the proposed standard would ensure the same level of safety for the aspects of performance covered by Standard No. 105, while improving safety by addressing some additional aspects of performance. Like Standard No. 105, the proposed standard would specify requirements for service brake effectiveness, fade and recovery, partial system failure, parking brakes, and equipment integrity. For the first time, the agency would establish adhesion utilization requirements, for the purpose of ensuring stability during braking under all conditions of traction, including wet roads. Unlike Standard No. 105, the proposed standard would not include water recovery requirements. As discussed below, the agency tentatively concluded that water recovery requirements can be eliminated since they are not necessary for disc brakes and all passenger cars now sold in the United States have front disc brakes.

In developing this proposal, NHTSA carefully evaluated a proposed harmonized test procedure and tentative performance requirements developed by an ad hoc committee of the ECE, as well as Standard No. 105. Performance data for vehicles tested according to these two procedures, and various other available data were also evaluated. Evaluation of any braking standard must include consideration of two major components: the test procedure and actual performance requirements. The test procedure of a braking standard consists primarily of numerous stops under various test conditions. Single vehicles are required to be capable of going through the entire test procedure while meeting specified performance requirements, e.g., stopping distances.

To the extent that the ECE draft harmonized test procedure adequately addressed aspects of performance covered by Standard No. 105, the agency tentatively adopted the ECE draft procedure for the proposal. Where the ECE draft contained requirements addressing aspects of performance not covered by Standard No. 105, the agency evaluated the appropriateness of proposing such requirements. Finally, where the ECE draft did not cover aspects of performance subject to the requirements of Standard No. 105, the agency evaluated the appropriateness of retaining or deleting such requirements.

During this process, the agency recognized that major deviations from the ECE draft harmonized test procedure, other than at or near the end, could reduce the usefulness of test data accumulated from tests run according to that procedure, for purposes of harmonization. As a vehicle goes through the test procedure, there are cumulative effects on the vehicle's braking performance. If NHTSA were to adopt a standard with major changes in the early part of the harmonized test procedure, the rest of the test procedure might no longer be comparable in terms of stringency to the original ECE draft. To the extent that changes are made only at or near the end of the harmonized procedure, the earlier parts of the test procedure remain comparable.

In considering specific performance requirements, the agency largely focused on the current levels established by

Standard No. 105. Those performance requirements have now been in effect for a decade and have not caused manufacturers any significant difficulty. The requirements have been justified in the past, and NHTSA does not believe that they should be reduced in stringency. The bulk of the proposed standard's test procedure is consistent with the ECE draft. Adoption of the proposed standard would be a major step toward harmonization and would make it much easier for manufacturers to build vehicles for the world market.

While the agency has sought to propose requirements that are similar in stringency to those of Standard No. 105, it should be emphasized that the issue of what levels of performance for the proposed standard are equivalent to Stadard No. 105 is a difficult one. Test procedures can significantly affect the stringency of performance requirements, both by the sequence of testing, i.e., the cumulative effects noted above, and by the various test conditions. As discussed below, the test procedure for the proposed standard is significantly different than that of Standard No. 105, making comparisons fairly difficult. The agency has devoted considerable effort to the task of estimating equivalent levels of stringency, including conducting a test program. The proposed performance requirements have been compared to the requirements of Standard No. 105 using several different methods for determining equivalent stringency, each of which has several advantages and disadvantages. The different methods and their results are discussed in the agency's Regulatory Evaluation. The agency requests comments on them and on the issue of whether any other methods should be considered. Results of NHTSA's test program are available in Docket 79-18-GRRF.

The agency emphasizes that the proposed standard is in many respects an entirely new standard. While this preamble discusses the more significant differences between the proposed standard and Standard No. 105, commenters are encouraged to carefully compare the regulatory texts.

Effectiveness Requirements

A crucial test of a vehicle's brake system is its effectiveness in bringing the vehicle to a quick and controlled stop in an emergency situation. Like Standard No. 105, the proposed standard would test a vehicle's braking performance in both a pre-burnish or new condition and after burnish, i.e., in a broken-in condition. (As discussed below, however, manufacturers would have the option of omitting the burnish procedure and going directly from the pre-burnish tests to the tests ordinarily conducted after burnish.) The pre-burnish tests are conducted under fully loaded conditions. The after-burnish tests are referred to as cold effectiveness tests in the proposed standard and would be conducted under both fully loaded and lightly loaded conditions. Performance requirements are specified in terms of stopping distances.

The ECE draft international harmonized test procedure does not include a pre-burnish test. The agency tentatively concludes that such a test should be included in the new standard since braking performance can vary significantly between pre-burnished and post-burnished conditions, and vehicles may be driven for many miles in a pre-burnished state. In order to preserve harmonization of the test procedure, the proposed standard incorporates the pre-burnish effectiveness test into the ECE draft's burnish procedure.

As noted above, manufacturers would have the option of omitting the burnish procedure and going directly from the pre-burnish tests to the cold effectiveness tests. The agency tentatively concludes that this option would minimize compliance costs while ensuring that vehicles are adequately tested during the cold effectiveness tests. In many cases, vehicle performance improves with burnish. If a manufacturer chooses the option of foregoing burnish, it may thus be more difficult to meet the cold effectiveness test requirements. In this situation, there does not appear to be any reason to impose the burnish procedure on the manufacturer. It is also possible that a vehicle's braking performance may be degraded by burnish. However, the agency believes that other requirements included in the standard would prevent any significant degradation caused by burnish. The reasons discussed below concerning why the agency believes that several of the proposed standard's requirements would ensure that a vehicle's braking performance is not significantly degraded by heating during fade are also relevant to this issue.

The three proposed tests discussed above, i.e., pre-burnish; cold effectiveness—fully loaded; and cold effectiveness—lightly loaded, correspond generally to Standard No. 105's first, second and third effectiveness tests.[1]

Standard No. 105 also includes a fourth effectiveness test. This test is conducted near the end of the test sequences, after the fade and recovery tests. As discussed below, the fade and recovery tests simulate the conditions experienced during a mountain descent. A vehicle's brakes become very hot during such conditions, which may affect subsequent braking performance. The fourth effectiveness test ensures adequate braking effectiveness after experiencing high temperatures. The test also includes a high speed test to ensure adequate braking for vehicles which are capable of very high speeds.

While NHTSA believes that these aspects of performance are important, it has tentatively concluded that they can adequately be addressed by means other than a full fourth effectiveness test. As discussed below, the proposed standard's fade and recovery tests include a hot stop test and a recovery stop test. These tests would help ensure that a vehicle's braking performance is not significantly degraded by the simulated fade conditions. Moreover, a final effectiveness test, which consists of 4 stops from 100 km/h (62.1 mph) and is included at the end of the proposed standard, following spike stops, would protest against significant degradation due to the simulated fade conditions. The proposed standard also includes high speed effectiveness tests, conducted before the fade and recovery tests, under both fully loaded and lightly loaded conditions. The agency believes that all of these tests together would adequately ensure the aspects of performance addressed by Standard No. 105's fourth effectiveness test and that including an additional test in the proposed standard would merely lengthen the test procedure without offering any concomitant benefits.

30-mph Tests

The agency also notes that the proposed standard's effectiveness tests do not include tests corresponding to Standard No. 105's 30-mph tests, which are part of that standard's first, second and fourth effectiveness tests. Tests at a speed of this magnitude were not included in the ECE draft harmonized test procedure because there was general agreement among the

[1] The proposed standard does not use the terminology of first, second, third and fourth effectiveness tests. As used in Standard No. 105, that terminology is based in part on the organization of the regulatory text. It should be noted in comparing the regulatory texts that they have different organizations. For example, the regulatory text of Standard No. 105 concerning effectiveness tests is organized in part by loading conditions, i.e., the second effectiveness test is at the fully loaded condition while the third effectiveness test is at the lightly loaded condition, whereas comparable tests in the proposed standard are organized together as part of the cold effectiveness test.

international delegates that such tests offer little information not provided by the higher speed tests. The agency tentatively agrees with this view. Assuming that a vehicle is capable of meeting the proposed standard's higher speed tests, the agency believes that it is highly unlikely that the vehicle would have difficulty meeting a 30-mph test of similar stringency.

Adhesion Utilization

The purpose of adhesion utilization requirements is to ensure that a vehicle's brake system is able to utilize whatever adhesion is available at the tire-road interface in such a way that a stable stop can be made within a specified distance. Adhesion utilization is addressed to some extent by Standard No. 105's (and the proposed standard's) service brake effectiveness requirements, since stops must be made within specified distances without leaving a lane of a specified width. All of those stops are made on a high friction surface, however. Standard No. 105 does not include any requirements concerning stops made on lower friction surfaces, such as wet roads.

The proposed adhesion utilization requirements are similar to those in the ECE's current braking standard, Regulation 13, and the corresponding directive of the European Economic Community (EEC). The requirements are expressed in terms of plots on a graph of the amount of adhesion utilized at each axle of the vehicle to produce a given level of deceleration. Using a specified test procedure, the adhesion utilized is graphically compared to the level of adhesion available at the tire/road interface. Four adhesion curves are plotted, representing the front and rear axle brake performance at each of two load conditions.

Two basic performance requirements would be established. First, none of the curves could cross an upper line for coefficients of friction between 0.2 (a low friction surface) and 0.8 (a high friction surface). The purpose of this requirement would be to ensure that, on all road surfaces from very slippery to dry, one axle is not overbraked with respect to the other. Put another way, this requirement would limit the amount that the performance of an individual axle could deviate from theoretically ideal brake balance. The effect of the overbraking of one axle with respect to the other would be to reduce the overall braking efficiency of the vehicle and make wheel lock-up at the axle more likely.

The second requirement would be that for all deceleration rates between 0.15 g (a mild stop) and 0.8 g (a severe stop), the curve for the front axle must be above that for the real axle. The purpose of this requirement would be to ensure stability of the vehicle by requiring the front axle to have a greater adhesion utilization than the rear axle. In practical terms, this means that if a driver applied the brakes hard enough to get wheel lockup, the front brakes would be the first to lock. Since locked wheels always tend to lead, the vehicle would skid but would remain stable, i.e., heading forward. However, if the rear wheels were to lock first, there would be a spin-out since those wheels would tend to lead.

The proposed adhesion utilization requirements differ from those of Regulation 13 in three ways. First, the proposal does not follow Regulation 13 in including an exception to the requirement that, for all deceleration rates between 0.15 and 0.8 g, the curve for the front axle must be above that for the rear axle. Between 0.3 and 0.45 g, Regulation 13 permits the curves to invert, as long as they remain close to theoretically ideal adhesion. NHTSA does not believe that there is any reason to adopt the exception. Wheel lockup can easily occur on slippery wet roads in the range of decelerations between 0.3 and 0.45 g, which could result in spin-outs.

Second, the proposed adhesion utilization requirements take into account the engine retardation effects of a vehicle being braked in gear, whereas Regulation 13 does not. NHTSA believes this approach is more realistic, since it is not typical for a driver to place the car in neutral or deculutch at the beginning of a stop. The effect of considering engine retardation is to move the adhesion utilization curves for the driven axle to the right.

Third, while the proposed standard specifies a test method for determining adhesion utilization, Regulation 13 does not. In Europe, compliance with safety standards is based on type approval. Manufacturers submit various information to governmental authorities which approve or disapprove a vehicle based on the information and on vehicle testing. In the United States, the government does not engage in approving or disapproving vehicles with respect to their safety performance. Under the National Traffic and Motor Vehicle Safety Act, manufacturers must certify that their vehicles comply with applicable safety standards. Safety standards are required to be objective to enable manufacturers to ensure that their vehicles are in compliance. To provide such objectivity, the agency must specify a specific method for determining adhesion utilization.

The proposed method involves a road test to determine actual braking force as a function of brake line pressure for each axle separately. From this information, plus brake valve characteristics, coast-down effects, engine braking effects, and center of gravity, the curves of adhesion utilized versus deceleration can be plotted. While the final curves are based on calculations, the input variables are all actual test measurements made under specified conditions. The proposed method takes account of rolling friction, aerodynamic drag and engine braking, which are present in actual braking situations but are not considered in theoretical design calculations, which are generally used for type approval.

The curves would be generated for a speed of 50 km/h (31.1 mph), which represents a value in the middle of the range of speeds that a vehicle ordinarily experiences during braking. Although higher initial speeds are used for stopping distance testing, the agency believes that 50 km/h is an appropriate speed for adhesion utilization testing because a vehicle shows more sensitivity to wheel lockup at slower speeds than at higher speeds and because a slower speed makes the test easier and safer to run. Curves would be calculated for vehicle performance in gear in order to account for engine braking effects normally present in actual driving situations. The adhesion utilization test procedure is discussed at length in a paper published by the Society of Automotive Engineers (SAE), Radlinski, R.W., and Flick, M.A., "A Vehicle Test Procedure for Determining Adhesion Utilization Properties," #840334, February 1984. The proposed procedue has been revised slightly from that in the SAE paper, to decrease its sensitivity to testing variability. The agency specifically requests comments on the proposed test procedure and on any others that should be considered.

The agency notes that there are limitations to any possible single adhesion utilization test, since brake balance, like most other aspects of braking performance, can change in use and over time. It is not feasible at this time to establish specific performance requirements which test a vehicle's adhesion utilization under all of the many varied conditions a vehicle is likely to experience during its lifetime. The proposed requirements would ensure reasonable adhesion utilization for new vehicles, a significant step toward ensuring safer vehicles. A vehicle meeting such requirements could become unsafe over time if the brake balance significantly changed. However,

by using sound engineering judgment, manufacturers could design vehicles in such a manner that good brake balance will be maintained over a vehicle's lifetime.

The agency also emphasizes that it is not proposing to decrease the level of stringency of any of Standard No. 105's other requirements in light of the proposed adhesion utilization requirements. In particular, available data clearly show that Standard No. 105's stopping distance requirements can easily be met by vehicles which have good adhesion utilization.

The proposed adhesion utilization requirements would apply only in part to vehicles equipped with fully operational anti-lock systems. The stability aspect of adhesion utilization would automatically be satisfied as long as the anti-lock system prevented wheel lockup as intended. Anti-lock-equipped vehicles would still have to meet the braking efficiency aspect of the adhesion utilization requirement, however. Regulation 13 includes special requirements to test anti-lock-equipped vehicles which have not been adopted in this proposal. In testing two vehicles with anti-lock systems to these ECE requirements, NHTSA encountered problems with the test procedure. One vehicle showed braking efficiencies of well over 100%, which is theoretically impossible. The ECE is currently considering possible changes to the anti-lock requirements. At present, NHTSA does not believe that it should propose any similar requirements.

The agency notes that five out of 19 cars tested failed the proposed adhesion utilization requirements. The agency believes that the vast majority of cars can meet the proposed requirements with either no changes or relatively minor changes. It is possible that manufacturers may choose to meet the requirements for some cars by using variable proportioning valves. The agency particularly requests comments on the types of changes that may be necessary to meet the proposed requirements and the number of vehicles that would be affected.

Fade and Recovery

The purpose of the fade and recovery tests is to ensure adequate braking capability during and after exposure to the high brake temperatures caused by prolonged or severe use. Such temperatures are typically experienced in long, downhill driving. The proposed requirements consist of a heating sequence, a hot stop test, a cooling sequence and a recovery stop test.

The agency is not proposing to adopt the ECE draft test procedure's heating sequence. In vehicle tests, that heating sequence produced brake temperatures more than 100 °F. lower than Standard No. 105's second fade test procedure. The temperatures produced by Standard No. 105's procedure had previously been verified as being representative of the temperatures experienced by vehicles travelling in mountainous areas. The agency is particularly concerned about this difference because the relationship between temperature and fade is not a linear one. For one brake lining, there is a "knee" in the curve, above which degradation due to fade is much more pronounced. If that "knee" occurred at a temperature between those produced by the ECE draft test procedure and Standard No. 105 procedure, a vehicle's braking system could meet the ECE draft requirements but still experience a sharply increased propensity to fade during mountain descents.

The agency has developed a new heating sequence for this proposal, based on SAE Recommended Practice J1247 (Apr 80), Simulated Mountain Brake Performance Test Procedure. This sequence produces temperatures similar to those of the Standard No. 105 procedure. The agency believes that it produces a temperature cycle that more closely approximates an actual mountain descent than either Standard No. 105 or the ECE draft test procedure.

As an alternative, the agency is considering modifying the ECE draft test procedure by shortening the time interval between snubs from 45 seconds to 30 seconds. This would result in temperatures that compare with those obtained in Standard No. 105. One problem, however, is that some cars are not powerful enough to accelerate to the 120 km/h test speed in the time interval permitted. The primary advantage of this alternative is that it would be closer to the heating sequence of the ECE draft test procedure.

The agency requests comments on both alternatives and, with respect to the second alternative, comments on how vehicles that cannot accelerate to 120 km/h in the specified time interval should be tested. Since NHTSA believes that the first alternative more closely approximates an actual mountain descent, the agency would particularly appreciate more detailed comments from any commenters which support the second alternative. The agency contemplates adopting one or the other alternative and not providing an option in this area.

The proposed test procedure and the ECE draft procedure differ in the method used for determining the amount of force to be applied to the brakes during fade and other brake testing. The proposal uses the constant output method while the ECE draft harmonized test procedure uses the constant input method. In the constant output method, vehicle deceleration is held constant and pedal force is varied as necessary to keep deceleration at the prescribed level. In the constant input method, either pedal force or brake line pressure is held constant and the deceleration of the vehicle is allowed to vary.

Although the choice of method is not very important for most types of brake testing, the agency believes that it is important for fade testing. Brake fade is caused by heat buildup in the brake components. This heat buildup is a function not only of the total amount of energy imparted to the brakes during the stops or snubs, but also the rate at which that energy is applied. For a given sequence of brake applications, the total energy input depends only on the number of applications, and the initial and final speed. That will be the same with either method. For the constant decleration method, the rate of application of that energy will also be fixed. For the constant pedal force method, however, the deceleration rate (and hence the time to input the energy) will vary with the performance of the brakes. If the brakes fade, the deceleration drops off. A drop in deceleration decreases the amount of work being done by the brakes, which decreases the amount of heat buildup (the factor that causes fade). Therefore, the test becomes easier for vehicles that perform poorly. This result leads the agency tentatively to disfavor the constant input method because NHTSA believes that a test that varies in severity according to the performance of the vehicle being tested is inappropriate for a Federal motor vehicle safety standard. Accordingly, the constant output method appears preferable.

Another reason in favor of a constant output method is that it produces less variability in testing. With the constant output method, the test driver attempts to maintain the prescribed deceleration throughout each test run, and any random errors will tend to cancel each other out. With the constant input method, however, the pedal force maintained is based on the average pedal force on two baseline snubs. Any errors made in determining the baseline pedal force will therefore also be introduced in each subsequent brake application, and the effect will be additive, rather than self-cancelling. With the constant output method, there is no need for the baseline snubs.

As noted above, the proposed fade and recovery test includes two

performance tests. The first, a hot stop test, specifies both a minimum stopping distance and a percentage limit on degradation from the performance achieved in the cold service brake test. This latter requirement would limit the amount of reduction in performance that a driver experiences when brakes are heated. The allowable pedal force could not exceed the mean pedal force actually used on the best cold stop.

The second, a recovery stop test, places both lower and upper limits on the difference in performance after recovery from that achieved in the cold service brake test. These limits are the same as included in the ECE draft. The upper limit is included to ensure that brakes do not become too sensitive when heated and "over-recover."

It is difficult to directly compare Standard No. 105's fade and recovery test with the proposed test, since the test procedures are entirely different. The proposed requirements are more simple than Standard No. 105's, since only one series of tests is run instead of two. Standard No. 105 does not include a hot stop performance test, although there is a limit on the pedal force applied during the heating stops. As noted above, both the proposal and Standard No. 105 include a recovery performance test. The agency believes that the proposed requirements would reduce the costs of testing while, particularly in light of the hot stop performance test, better ensuring safety.

Partial System Failure

Like Standard No. 105, the proposed standard would specify stopping distance requirements for conditions of circuit failure, power assist failure, and anti-lock or proportioning valve failure. If part of the service brake system should fail, it is crucial that the vehicle's brake system still be able to bring the vehicle to a controlled stop in a reasonable distance.

The agency notes that 11 out of 43 cars tested failed the proposed stopping distance requirement for power assist failure. As discussed by the Regulatory Evaluation, the primary factor which explains the failures is the lower maximum allowable control force of the proposed standard as compared to Standard No. 105 (500 N versus 667 N). This proposed test condition change, which is the same as the ECE draft, would increase the stringency of the requirement and necessitate redesigning of brake components on some cars to provide as greater mechanical or hydraulic gain. The test data indicate that while some redesign would be necessary, passenger cars can easily meet the proposed requirements. As discussed below, the agency believes the 500 N control force limit is justified based on human factors data. The proposed stopping distance, which is not significantly different from the specified in Standard No. 105, is derived from the proposed requirement for service brake stopping distance, using the same mathematical relationship used in the ECE draft. Since the agency is proposing a more stringent service brake stopping distance than that tentatively selected for the ECE draft, however, the proposed stopping distance for power assist failure is also more stringent. Given the number of failures in the test program, the agency particularly requests comments on the proposed requirements of power assist failure.

The proposed standard would also establish a new requirement for brake performance after engine failure. The requirement would ensure that a driver can make at least one stop with 90 percent of full service brake performance following engine failure. Since engine failure is a relatively common occurrence, the agency believes this is a reasonable requirement.

The vast majority of all cars already meet the proposed engine failure requirement, which requires the use of a supplemental source of stored energy for the booster, such as a vacuum reservoir or hydraulic accumulator. Of 44 cars tested, one failed the proposed requirement. That car was equipped with a hydraulic booster without an accumulator. The agency requests comments on the costs associated with meeting the requirements and the specific number of vehicles that would be affected.

Parking Brake

Like Standard No. 105, the proposed standard would require that the parking brake of passenger cars be able to hold the vehicle when it is parked on a specified gradient and a force not exceeding a specified amount is applied to the parking brake. There are several significant differences in test conditions, however.

Since the static parking brake test is a pass/fail type of test, i.e., the parking brake either holds the vehicle or it does not, the test conditions determine the stringency of the performance requirement. Two conditions are of primary importance, the gradient and allowable control force. The two are interrelated in that, for the same parking brake system, it is generally true that the higher the force that is applied to the control, the steeper the gradient on which the vehicle can be held in place.

The agency believes that the proposed parking brake requirement would have a level of stringency approximately the same as that of Standard No. 105. The standard would specify a less stringent gradient, 20 percent instead of 30 percent, in line with the ECE draft harmonized test procedure. To offset that change and thereby maintain the existing level of stringency, the agency is also proposing a more stringent, i.e., lower, allowable control forces, 500 N (113 pounds) for foot-operated parking braking systems instead of 125 pounds and 320 N (72 pounds) instead of 90 pounds for hand-operated parking brake systems.

The agency notes that of 18 passenger cars with foot-applied parking brakes that were tested to the proposed requirements, five failed. The agency believes that the vast majority of cars can meet the proposed requirements with either no changes or relatively minor changes, such as improving the mechancial advantage of some foot-applied parking brakes. The agency requests comments on the types of changes that may be necessary to meet the proposed requirements and the number of vehicles that would be affected.

While Standard No. 105 tests the parking brake with the vehicle in both a fully loaded condition and a lightly loaded condition, the proposed standard would only test the vehicle in the fully loaded condition. The purpose of testing in a lightly loaded condition is to ensure that the parking brakes do not simply lock a very lightly loaded axle and allow the vehicle to slide. Wheel slide is not likely to be a problem on a 20 percent gradient given the weight distribution of passenger cars. Gradients which are significantly greater than 20 percent are very rare in the United States, and the agency does not believe that this aspect of performance needs to be tested.

The agency notes that Standard No. 105 includes a barrier impact test of the strength of a transmission or driveline parking mechanism, as part of an option. For vehicles with a transmission or transmission control incorporating a parking mechanism that must be engaged before the ignition key can be removed (most automatic transmissions have this feature), manufacturers have the option of meeting the 30 percent gradient test with the transmission's parking mechanism engaged, so long as certain other requirements are also met. These include passing the same test on a 20 percent grade without the parking mechanism engaged and the moving barrier test. Since the proposed standard would specify a 20 percent grade instead

of a 30 percent grade, the agency does not believe this type of option should be provided. The agency requests comments on not providing the option.

The proposed standard would establish a new dynamic stopping test using the parking brake. NHTSA believes that the primary means for emergency stopping should be the service brakes. That aspect of performance is addressed by the partial failure requirements. Nevertheless, drivers could occasionally use the parking brake as an emergency brake. The proposed parking brake dynamic stopping test, which is identical to that in the harmonized test procedure, would improve safety by ensuring that drivers can also use the parking brake for that purpose.

The ECE draft harmonized test procedure also includes a parking brake test which NHTSA is not proposing, a test with a trailer. That test requires a passenger car's parking brake to be able to hold the vehicle and an attached trailer on a 12 percent grade. Based on engineering analysis, the agency has determined that the proposed parking brake test without a trailer ensures that a vehicle would be able to meet this requirement so long as trailer weight is not more than about 65 percent of passenger car weight. Accordingly, the agency does not believe there is a safety need to include the trailer test in the proposed standard for passenger cars.

Equipment Integrity

Like Standard No. 105, the proposed standard would test the capability of a vehicle's braking system to withstand a series of severe "spike" stops without loss of structural integrity. A final effectiveness test follows the spike stops to ensure that the vehicle still has adequate braking capability. While these tests are not included in the ECE draft harmonized test procedure, the agency believes that the tests address an important aspect of safety performance. Since a vehicle's brakes are occasionally subjected to sudden, very hard applications during normal usage, it is important that the brake system components be strong enough to avoid being bent or otherwise damaged by those applications. As noted above, the final effectiveness test following the spike stops would also help ensure that a vehicle's brakes are not significantly degraded by conditions of fade.

The spike stop test and final effectiveness test are relatively simple to conduct. Since they are conducted at the end of the test sequence, their inclusion would not affect the relative stringency of the preceding portion of the test procedure.

Since these tests are not included in the ECE draft harmonized test procedure, the agency specifically requests comments on the desirability of their inclusion in the proposed standard. Any commenters opposing adoption of the tests should provide detailed arguments in favor of their position, including comments addressing the above discussion.

Equipment Safety and Failure Warning Requirements

Standard No. 105 includes a number of equipment and failure warning requirements, most notably for reservoir capacity, failure warning indicators, and fluid reservoir labeling. Regulation 13 contains similar, but in some cases different, requirements. While these requirements have been discussed to some extent as part of the ECE harmonization process, they have not yet received the degree of attention that has been given to the road tests. Most of the proposed requirements are essentially the same as those in Standard No. 105.

One notable addition is a requirement that the fluid level in a master cylinder reservoir be able to be checked without removing the cap. The agency believes that this is in the interest of safety for two reasons. First, since it would be easier to check fluid level, drivers and maintenance personnel would be more likely to routinely make such checks. Second, it is desirable not to have to remove the cap since that creates a situation where the brake fluid can be contaminated. Under the proposal, the requirement could be met by a means to check fluid without removing the reservior cap, e.g., by constructing the reservior of a transparent material or by having a fluid level sensor. There is already a trend in passenger car design to use transparent material to enable checking of the brake fluid without removing the cap. If a passenger car had a fluid level seneor, i.e., activation of the brake warning light in situations of low fluid level, the requirement would be deemed met. With a fluid level sensor, drivers would automatically be warned about low fluid level. The agency notes, however, that drivers would have to remove the cap to determine the actual level of brake fluid. Also, drivers might want to remove the cap to check brake fluid level rather than rely on the sensor for that purpose. The agency requests comments on permitting use of a fluid level sensor to meet this requirement.

Water Recovery

Unlike Standard No. 105, the proposed standard would not include a water recovery test. The purpose of a water recovery test in Standard No. 105 is to ensure that a vehicle will have adequate braking capability after exposure to water, such as would occur in going through a flooded area. Standard No. 105's test assesses the effects of such exposure by providing for driving a vehicle through a water trough and then testing its braking capability.

Application of a water recovery test to cars sold in this country does not appear to be necessary to ensure safe braking, for several reasons. First, there is little evidence that the potential adverse safety effects of water on braking capability is a problem for today's passenger cars. This is due in large part to the fact that all passenger cars sold in the United States now have disc brakes on at least the front axle. In the past, passenger cars had drum brakes on both the front and rear axles. While brake drums can trap water, the design of disc brakes is such that they tend to expel water. Indeed, with Standard No. 105's current test procedure, disc brakes on vehicles driven through the water trough often become completely dry before the vehicle's braking capability can be tested.

Second, the agency does not believe that inclusion of a water recovery test is necessary to ensure that manufacturers continue to equip their cars with front disc brakes. In Europe, where there is no water recovery requirement, almost all passenger cars have front disc brakes.

Third, the agency believes that the brakes of modern cars are sufficiently shielded from direct water spray to make water fade unlikely. Moreover, the application of friction materials that are highly resistant to wet fade is fairly widespread on current passenger cars.

Test Conditions

Many of the proposed standard's test conditions are different from those of Standard No. 105. Some of those differences are discussed above. Other significant difference include the following:

A. Burnish. The proposed standard's burnish procedure, which is based on the ECE draft harmonized test procedure, is significantly shorter than that of Standard No. 105. The nature of many brake linings is such that a break-in period is needed for the braking system to achieve its full capability. Inclusion of a lengthy burnish procedure, however, significantly increases the cost of testing. The agency believes that brakes can adequately be burnished using a shorter procedure than that specified by Standard No. 105, thereby decreasing testing costs. As

discussed above, manufacturers would be permitted the option of foregoing burnish entirely as a way of making even greater cost savings.

B. Number of runs per test condition. Standard No. 105 generally specifies that six stops be made for each test condition. Prescribed performance must be achieved on at least one stop. The purpose of specifying multiple stops is to enable test drivers to achieve a vehicle's best performance. The proposed standard would specify four stops, thereby reducing testing costs. Testing experience indicates that it takes only three or four stops for a test driver to attain the best possible performance.

C. Wheel lockup. Standard No. 105 generally permits lockup of one wheel during stopping distance tests. The proposed standard, in line with the ECE draft harmonized test procedure, would prohibit all lockup (except during spike stops). A vehicle's stopping performance is usually at its best with a brake application just short of that which would cause wheel lockup to occur. A test driver attempting to obtain a vehicle's best performance may thus inadvertently lock one or more wheels. With four stops permitted, however, the agency believes test drivers can determine a vehicle's best performance on at least one stop while avoiding all lockup.

For anti-lock-equipped vehicles, Standard No. 105 permits controlled lockup during the stopping distance tests. The proposed standard, in line with the ECE draft harmonized test procedure, would prohibit all lockup. The agency believes this is appropriate, since a well-designed, anti-lock system would pervent all lockup during the specified tests.

D. Control forces. The proposed standard specifies a more stringent control force limit for the service brake test than Standard No. 105, in line with the harmonized test procedure. The agency believes that these more stringent control forces are justified based on human factors data. In a study by Ford Motor Company,[2] female test subjects, chosen to be a representative sample of the female population, were confronted with an actual emergency braking situation in which maximum braking force applied over a ½ second interval was measured. The results indicate that only 56 percent of the female driving population can be expected (with 95 percent confidence) to be able to generate the 150 pound pedal force (667 N) specified by Standard No. 105 during an actual panic stop. By decreasing the control force limit to 500 N, at least 86 percent of the female driving population can be expected (with 95 percent confidence) to be able to generate the specified force during an emergency brake application. Other human factor studies have reached similar but not identical conclusions.[3] The agency has greater confidence in the results of the Ford study, however, since the others were conducted under laboratory conditions rather than actual driving situations.

As noted above, these lower control forces may necessitate redesigning of brake components on some cars to provide a greater mechanical or hydraulic gain, particularly to meet the requirements for performance with a failed power assist unit.

E. Road Surface. Like Standard No. 105, the proposed standard would specify road surface friction in terms of skid number. This test condition has proven to be satisfactory over many years.

The agency recognizes, however, that skid number is not generally used for this purpose in Europe. During the ECE harmonization meetings, there was some discussion about specifying road surface friction in terms of peak coefficient of friction. However, no procedure was developed for that purpose.

Road surface friction is an important test condition which the agency believes should ideally be the same in harmonized brake standards. For this reason, the agency requests comments on whether it should consider a method other than skid number for the proposed standard. Depending on the comments, the agency could issue a supplemental NPRM proposing an alternative method or initiate separate rulemaking or research to develop such a method for the future.

The agency notes that the International Standards Organization (ISO) has developed two draft test procedures which are relevant to this issue. One procedure, ISO/DTR 8350, Road Vehicles—High Friction Test Track Surface—Specifications, provides specifications for constructing a road test surface. The other procedure, ISO/DTR 8349, Road Vehicles—Measurement of Road Surface Friction, provides a method for measuring road surface friction. The agency requests comments on whether it should consider using these ISO documents in developing a specification of road surface in terms of peak coefficient of friction. If the agency were to propose specifying test surface in terms of peak coefficient of friction, it would contemplate proposing a specific number. If any commenters favor using the ISO documents for this purpose, the agency would appreciate analysis concerning the specific peak coefficient of the ISO test surface, whether test tracks constructed to the ISO specifications may have varying peak coefficients of friction either on a particular track or between tracks, how the peak coefficient of friction changes over time and as the track is used for testing, and how the test surface compares with that specified by Standard No. 105.

The agency also requests comments on any other documents or research that should be considered for specifying road surface friction in terms of peak coefficient of friction, and on any methods other than skid number or peak coefficient of friction that should be considered for specifying road surface.

F. Brake Adjustment. Standard No. 105 permits automatic brake adjusters to be locked out during testing. The proposed standard, in line with the ECE draft harmonized test procedure, would require automatic brake adjusters to be operational. The agency believes this is reasonable. Since automatic adjusters are operational in vehicle use, it is reasonable to require that they be operational during testing.

Analyses; Costs and Benefits

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency's detailed analysis of the economic effects is set forth in a preliminary regulatory evalution, copies of which are available from the Docket Section.

The preliminary regulatory evaluation concludes that the current Standard No. 105 has been successful in substantially upgrading brake performance and that the proposed requirements would improve safety by ensuring an equivalent level of safety for those aspects of performance covered by Standard No. 105 and by addressing several additional areas of brake performance which are safety

[2] Eaton, Dennis A. and Dittmeier, Henry J., "Braking and Steering Effort Capabilities of Drivers," Ford Motor Company, Automotive Research Office, Dearborn, Michigan, 1970 (published as SAE paper #700363, 1970 International Safety Conference Compendium (P-30), New York, NY, 1970, pp. 153-158).

[3] Stoudt, H. W., et al., "Vehicle Handling: Force Capabilities for Braking and Steering," Harvard School of Public Health, May 1969 (DOT Contract FH-11-6810); Mortimer, R.G. et. al, "Brake Force Requirement Study: Driver-Vehicle Braking Performance as a Function of Brake System Design Variables," Highway Safety Research Institute, April 1970 (DOT Contract FH-11-6952).

significant. Moreover, compliance testing costs would be reduced by the shortened test procedure, and the proposed five-year leadtime would enable manufacturers to make any necessary changes to meet the proposed requirements as part of their regular design cycle, with little or no impact on cost.

In accordance with the Regulatory Flexibility Act, the NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. As discussed by the agency's preliminary regulatory evaluation, only relatively simple changes would generally be needed for all passenger cars to meet this proposed standard. These changes would not significantly affect the purchase price of a vehicle. No changes would be needed for many cars. While some reduction in compliance costs would occur, the reduction would not be of a magnitude which would significantly affect the purchase price of a vehicle. For these reasons, neither manufacturers of passenger cars, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, would be significantly affected by the proposed standard. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

The brake fluid reservoir labeling requirements in this proposal are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements are being submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Leadtime

While only relatively simple changes would be needed for virtually all passenger cars to meet the proposed standard, with no changes needed for many cars, any brake system redesign involves a certain amount of leadtime. The proposed standard's test procedure is sufficiently different from that of Standard No. 105 that implementation of the standard could require substantial testing by manufacturers before they could be sure what components would require redesign. In order to keep the costs of implementation low, a long leadtime is being proposed. Thus, manufacturers could incorporate any necessary changes into their normal design cycles, minimizing cost impacts.

Accordingly, the agency is proposing a mandatory effective date of September 1, 1991. It is contemplated that this would provide a leadtime of approximately five years after issuance of a final rule. The agency proposes an optional effective date for certifying passenger cars to the new standard instead of Standard No. 105 beginning 30 days after publication of a final rule in the **Federal Register**. The agency finds good cause for a short leadtime on an optional basis since the new standard would result in safety benefits over those of Standard No. 105, and, since compliance would be optional, there would be no imposition of mandatory new requirements during that time period.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available to the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

1. The authority citation for Part 571 would be revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

1. Section 571.105 would be amended by revising S3 to read as follows:

* * * * *

S3. *Application.* This standard applies to multipurpose passenger vehicles, trucks, and buses with hydraulic brake systems, and to passenger cars manufactured before September 1, 1991, with hydraulic brake systems. At the option of the manufacturer, passenger cars manufactured before September 1, 1991, may comply with the requirements of Federal Motor Vehicle Safety Standard No. 135, *Passenger Car Brake Systems*, instead of the requirements of this standard.

* * * * *

1. Section 571.135—Federal Motor Vehicle Safety Standard No. 135 would be added to read as follows:

§ 571.135 Federal Motor Vehicle Safety Standard No. 135.

Passenger Car Brake Systems

S1. *Scope.* This standard specifies requirements for service brake and associated parking brake systems.

S2. *Purpose.* The purpose of this standard is to ensure safe braking

performance under normal and emergency driving conditions.

S3. *Application.* This standard applies to passenger cars manufactured on or after September 1, 1991. In addition, passenger cars manufactured before September 1, 1991, may, at the option of the manufacturer, meet the requirements of this standard instead of Federal Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems.*

S4. *Definitions.*

"Adhesion utilization curves" of a vehicle means curves showing, for specified load conditions, the adhesion utilized by each axle plotted against the braking ratio of the vehicle.

"Anti-lock system" means a portion of a vehicle's service brake system that automatically controls the degree of rotational wheel slip of one or more road wheels of the vehicle during braking.

"Backup system" means a portion of a service brake system, such as a pump, that automatically supplies energy in the event of a primary brake power source failure.

"Brake power assist unit" means a device installed in a hydraulic brake system that reduces the amount of muscular force that a driver must apply to actuate the system, and that, if inoperative, does not prevent the driver from braking the vehicle by a continued application of muscular force on the service brake control.

"Brake power unit" means a device installed in a brake system that provides the energy required to actuate the brakes, either directly or indirectly through an auxiliary device, with driver action consisting only of modulating the energy application level.

"Braking ratio" means the deceleration of the vehicle divided by the gravitational acceleration constant.

"Hydraulic brake system" means a system that uses hydraulic fluid as a medium for transmitting force from a service brake control to the service brake, and that may incorprate a brake power assist unit, or a brake power unit.

"Initial brake temperature" means the average temperature of the service brakes on the hottest axle of the vehicle 0.32 km (0.2 miles) before any brake application.

"Lightly loaded vehicle weight" or "LLVW" means unloaded vehicle weight plus 180 kg (396 pounds), including driver and instrumentation.

"Maximum speed" of a vehicle means the highest speed attainable by accelerating at a maximum rate from a standing start for a distance of 3.2 km (2 miles) on a level surfaces, with the vehicle at its lightly loaded vehicle weight.

"Parking mechanism" means a component or subsystem of the drive train that locks the drive train when the transmission control is placed in a parking or other gear position and the ignition key is removed.

"Pressure component" means a brake system component that contains the brake system fluid and controls or senses the fluid pressure.

"Skid number" means the frictional resistence of a pavement measured in accordance with American Society for Testing and Material (ASTM) Method E-274-70 (as revised July, 1974) at 40 mph, omitting water delivery as specified in paragraphs 7.1 and 7.2 of that method.

"Snub" means the braking deceleration of a vehicle from a higher reference speed to a lower reference speed that is greater than zero.

"Spike stop" means a stop resulting from the application of 900 N (202.3 pounds) of force on the service brake control in 0.08 second.

"Split service brake system" means a brake system consisting of two or more subsystems actuated by a single control designed so that a leakage-type failure of the pressure component in a single subsystem (except structural failure of a housing that is common to two or more subsystems) does not impair the operation of any other subsystem.

"Stopping distance" means the distance traveled by a vehicle from the point of application of force to the brake control to the point at which the vehicle reaches a full stop.

"Variable proportioning brake system" means a system that automatically adjusts the braking force at the axles to compensate for vehicle static axle loading and/or dynamic weight transfer between axles during deceleration.

S5. *Requirements.* Each vehicle shall meet the requirements of this section, under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7. If a vehicle is incapable of attaining the specified test speed, it is tested at the speed that is a multiple of 5 Km/h (3.1 mph) and is 4 to 8 km/h (2.5 to 5.0 mph) less than its maximum speed, and its performance shall be within a stopping distance given by the formula provided for the specific requirement.

S5.1. *Full service brake system performance.*

S5.1.1. *Stopping performance.* The service brakes shall stop each vehicle in four series of effectiveness tests within the distances and from the speeds specified in S5.1.1.1 through S5.1.1.4.

S5.1.1.1. *Preburnished effectiveness.* In the preburnished effectiveness test, the vehicle shall stop, with its transmission in neutral, from 100 km/h (62.1 mph) within a distance of 72 m (236 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.006V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.1.1.2. *Cold effectiveness.* In the cold effectiveness tests, the vehicle shall stop, with its transmission in neutral, from 100 km/h (62.1 mph) within a distance of 65 m (214 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.006V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.1.1.3. *High speed effectiveness.* In the high speed effectiveness test, the vehicle shall stop, with its transmission in gear, from a speed which is 80% of the maximum speed of the vehicle, within a distance given by $S=0.05V+0.006V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.1.1.4. *Final effectiveness.* In the final effectiveness test, the vehicle shall stop, with its transmission in neutral, from 100 km/h (62.1 mph) within a distance of 72 m (236 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.006V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

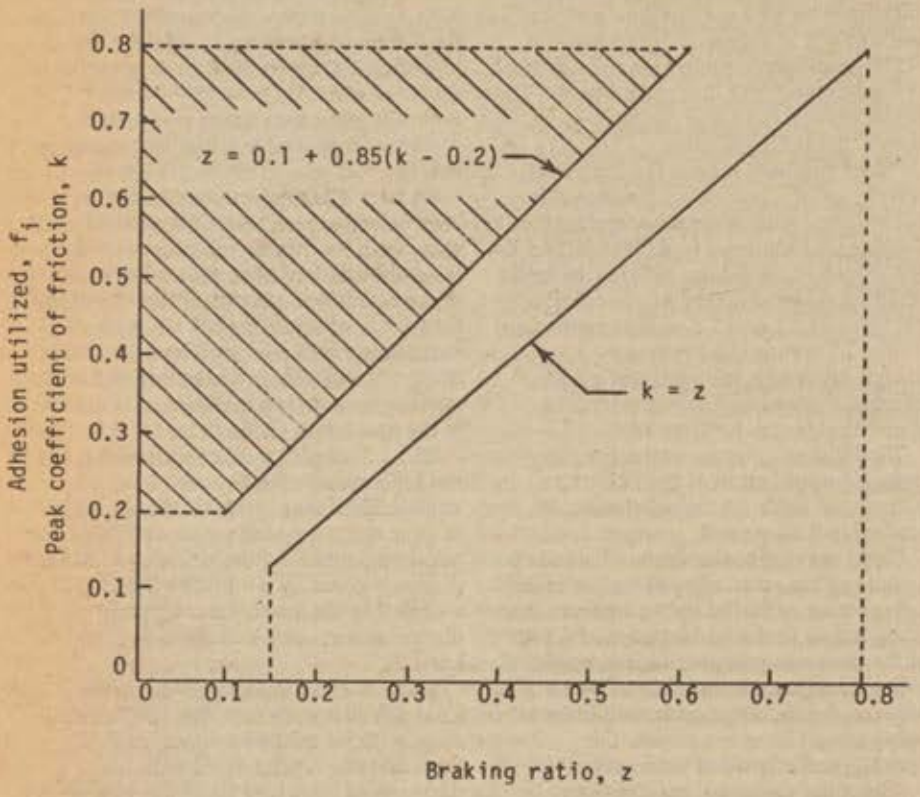
S5.1.2. *Adhesion Utilization.* Adhesion utilization curves for both front and rear axles of the vehicle are generated for a speed of 50 km/h (31.1 mph), in gear, for both GVWR and LLVW conditions. If the vehicle is not equipped with an anti-lock systems, the adhesion utilization curves shall meet the requirements of S5.1.2.1 and S5.1.2.2, as shown in Figure 1. If the vehicle is equipped with an anti-lock system, the curves are generated with the anti-lock system disabled, and only the requirement of S5.1.2.1 shall be met.

S5.1.2.1. *Braking efficiency of individual axles.* For all values of peak coefficient of friction, k, between 0.2 and 0.8, each adhesion utilization curve shall be situated to the right of a line defined by $z = 0.1 + 0.85 (k - 0.2)$, where z is the braking ratio.

S5.1.2.2. *Wheel lockup sequence.* For all braking ratios between 0.15 and 0.8, each adhesion utilization curve for a front axle shall be situated above the corresponding curve for the rear axle.

Figure 1

Adhesion Utilization Requirements



S5.1.3. *Fade and recovery.*

S5.1.3.1. *Hot performance.* After heating according to the procedure specified in S7.11.1, the vehicle shall stop, from 100 km/h (62.1 mph), with its transmission in neutral and with a pedal force equal to the average pedal force on the shortest cold effectiveness stop at GVWR, within a distance equal to the shorter of:

(a) 91 m (298 ft), or

(b) The shortest stopping distance achieved in the cold effectiveness test at GVWR divided by 60%.

If the vehicle is incapable of attaining 100 km/h, it is tested at the same speed used for the cold effectiveness test at GVWR, and the distance in (a) is given by $S=0.05V+0.0086V^2$, where S is the maximum stopping distance in m and V is the test speed in km/h.

S5.1.3.2. *Recovery performance.* After conducting the cooling stops according to procedure specified in S7.11.3, the vehicle shall stop from 100 km/h (62.1 mph), with its transmission in neutral and with a pedal force equal to the average pedal force on the shortest cold effectiveness stop at GVWR, in a distance that is:

(a) Not longer than the shortest stopping distance achieved in the cold effectiveness test at GVWR divided by 70%, and

(b) Not shorter than the shortest stopping distance achieved in the cold effectiveness test at GVWR divided by 120%.

If the vehicle is incapable of attaining 100 km/h, it is tested at the same speed used for the cold effectiveness test at GVWR.

S5.1.4. *Spike stops.* Each vehicle shall make 10 spike stops from 50 km/h (31.1 mph).

S5.2. *Partial service brake system performance.*

S5.2.1. *Hydraulic circuit failure.*

S5.2.1.1. For vehicles manufactured with a split service brake system, in the event of any rupture or leakage type of failure in a single subsystem, other than a structural failure of a housing that is common to two or more subsystems, the remaining portions of the service brake system shall continue to operate and shall stop the vehicle from 100 km/h (62.1 mph) within a distance of 155 m (509 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $s=0.05V+0.015V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.2.1.2. For vehicles not manufactured with a split service brake system, in the event of any one rupture or leakage type of failure in any component of the service brake system and after activation of the brake system indicator as specified in S5.4.5.1, the vehicle shall, by operation of the service brake control, stop 10 times consecutively from 100 km/h (62.1 mph) within a distance of 155 m (509 ft.) If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.015V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.2.2. *Inoperative brake power assist unit or brake power unit.*

S5.2.2.1. *Engine failure (system charged).* The service brakes on a vehicle equipped with one or more brake power assist units or brake power units, with all such systems fully charged at the beginning of the stop but the vehicle's engine not running, shall stop the vehicle once from 100 km/h (62.1 mph) within a distance of 72m (236 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.0067V^2$, where S is the maximum stopping distance in m and V is the test speed in km/h.

S5.2.2.2. *Unit failure (system depleted).* The service brakes on a vehicle equipped with one or more brake power assist units or brake power units, with one such unit inoperative and depleted of all reserve capability, shall stop the vehicle from 100 km/h (62.1 mph) within a distance of 155 m (509 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.05V+0.0015V^2$, where S is the maximum stopping distance in m, and V is the test speed in km/h.

S5.2.3. *Failed anti-lock or variable proportioning system.* The service brakes on a vehicle equipped with one or more anti-lock or variable proportioning systems, in the event of any single failure (structural or functional) in any one such system, shall stop the vehicle from 100 km/h (62.1 mph) within a distance of 80 m (263 ft). If the vehicle is incapable of attaining 100 km/h, it shall stop within a distance given by $S=0.005V+0.0075V^2$, where S

is the maximum stopping distance in m, and V is the test speed in km/h.

S5.3. *Parking brake system performance.* The requirements of S5.3.1 and S5.3.2 shall be met with a force applied to the parking brake control not exceeding 500 N (113 lb) for a foot-operated system or 320 N (72 lb) for a hand-operated system.

S5.3.1. *Gradient holding.* The parking brake system shall hold the vehicle stationary for 5 minutes in both a forward and reverse direction on a 20 percent grade, with the vehicle's transmission in neutral.

S5.3.2. *Dynamic performance.* The parking brake system shall stop the vehicle, with its transmission in neutral, from 60 km/h (37.3 mph) within a distance of 73 m (238 ft). In addition, the final deceleration rate just prior to stopping shall be at least 1.5m/sec^2 (4.92 ft/sec^2).

S5.4. *Equipment requirements.*

S5.4.1. *Service brake system.* Each vehicle shall be equipped with a service brake system acting on all wheels. Wear of the brakes shall be compensated for by means of a system of automatic adjustment.

S5.4.2. *Parking brake system.* Each vehicle shall be equipped with a parking brake system of a friction type with solely mechanical means to retain engagement.

S5.4.3. *Controls.* The service brakes shall be activated by means of a foot control. The control of the parking brake shall be independent of the service brake control, and may be either a hand or foot control. All service brake system requirements, including the partial system requirements of S5.2, shall be met solely by use of the service brake control.

S5.4.4. *Reservoirs.*

§ 5.4.4.1. *Master cylinder reservoirs.* A master cylinder shall have a reservoir compartment for each service brake subsystem serviced by the master cylinder. Loss of fluid from one compartment shall not result in a complete loss of brake fluid from another compartment.

§ 5.4.4.2. *Reservoir capacity.* Reservoirs, whether for master cylinders or other type systems, shall have a total minimum capacity equivalent to the fluid displacement resulting when all the wheel cylinders or caliper pistons serviced by the reservoirs move from a new lining, fully retracted position (as adjusted initially to the manufacturer's recommended setting) to a fully worn, fully applied position, as determined in accordance with § 7.15(c) of this standard. Reservoirs shall have completely separate compartments for each subsystem except that in reservoir systems utilizing a portion of the reservoir for a common supply to two or more subsystems, individual partial compartments shall each have a minimum volume of fluid equal to at least the volume displaced by the master cylinder piston servicing the subsystem, during a full stroke of the piston. Each brake power unit reservoir servicing only the brake system shall have a minimum capacity equivalent to the fluid displacement required to charge the system piston(s) or accumulator(s) to normal operating pressure plus the displacement resulting when all the wheel cylinders or caliper pistons serviced by the reservoir or accumulator(s) move from a new lining fully retracted position (as adjusted initially to the manufacturer's recommended setting) to a fully worn, fully applied position.

§ 5.4.4.3. *Reservoir labeling.* Each vehicle shall have a brake fluid warning statement that reads as follows, in letters at least 3.2 mm (1/8 inch) high: "WARNING, Clean filler cap before removing. Use only _____ fluid from a sealed container." (Inserting the recommended type of brake fluid as specified in 49 CFR 571.116, e.g., "DOT 3".) The lettering shall be:

(a) Permanently affixed, engraved or embossed;

(b) Located so as to be visible by direct view, either on or within 100 mm (3.94 inches) of the brake fluid reservoir filler plug or cap; and

(c) Of a color that contrasts with its background, if it is not engraved or embossed.

§ 5.4.4.4. *Fluid level indication.* Brake fluid reservoirs shall be so constructed that the level of fluid can be checked without need for the reservoir to be opened. This requirement is deemed to have been met if the vehicle is equipped with a brake fluid level indicator meeting the requirements of § 5.4.5.1(b).

§ 5.4.5. *Brake system warning indicator.* Each vehicle shall have one or more visual brake system warning indicators, mounted in front of and in clear view of the driver, which meet the requirements of § 5.4.5.1 through § 5.4.5.5. In addition, a vehicle manufactured without a split service brake system shall be equipped with an audible warning signal that activates under the conditions specified in § 5.4.5.1(a).

S5.4.5.1. *Activation.* An indicator shall be activated when the ignition (start) switch is in the "on" ("run") position and whenever any of conditions (a), (b) or (c) occur.

(a) A gross loss of fluid or fluid pressure (such as caused by rupture of a brake line but not by a structural failure of a housing that is common to two or more subsystems) as indicated by one of the following conditions (chosen at the option of the manufacturer):

(1) A drop in the level of the brake fluid in any master cylinder reservoir compartment to less than the recommended safe level specified by the manufacturer or to one-fourth of the fluid capacity of that reservoir compartment, whichever is greater.

(2) For vehicles equipped with a split service brake system, a differential pressure of 1.5 MPa (218 psi) between the intact and failed brake subsystems, measured at a master cylinder outlet or a slave cylinder outlet.

(3) A drop in the supply pressure in a brake power unit to a one-half of the normal system pressure.

(b) A total functional electrical failure in an anti-lock or variable proportioning brake system.

(c) Application of the parking brake.

S5.4.5.2. *Function check.* All indicators shall be activated as a check of function either when the ignition (start) switch is turned to the "on" ("run") position when the engine is not running, or when the ignition (start) switch is in a position between "on" ("run") and "start" that is designated by the manufacturer as a check position, and the transmission shift lever is in a position other than a forward or reverse drive position.

S5.4.5.3. *Duration.* Each indicator activated due to a condition specified in S5.4.5.1. shall remain activated as long as the condition exists, whenever the ignition (start) switch is in the "on" ("run") position, whether or not the engine is running.

S5.4.5.4. *Function.* When a visual warning indicator is activated, it may be continuous or flashing, except that the visual warning indicator on a vehicle not equipped with a split service brake system shall be flashing. The audible warning required for a vehicle manufactured without a split service brake system may be continuous or intermittent.

S5.4.5.5. *Labeling.* (a) Each visual indicator shall display a word or words, in accordance with the requirements of Standard No. 101 (49 CFR 571.101) and/or this section, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm (⅛ inch) high and the letters and background shall be of contrasting colors, one of which is red. Words or symbols in addition to those required by Standard No. 101 and/or this section may be provided for purposes of clarity.

(b) Vehicles manufactured with a split service brake system may use a single common brake warning indicator. If a single common indicator is used, it shall display the word "Brake"

(c) A vehicle manufactured without a split service brake system shall use a separate indicator to indicate the failure condition in S5.4.1(a). This indicator shall display the words "STOP—BRAKE FAILURE" in block capital letters not less than 6.4 mm (¼ inch) in height.

(d) If separate indicators are used for one or more than one of the functions described in S5.4.5.1(a) to S5.4.5.1(c), the indicators shall display the following wording:

(1) If a separate indicator is provided for the low brake fluid condition in S.5.4.5.1(a)(1), the words "Brake Fluid" shall be used except for vehicles using hydraulic system mineral oil.

(2) If a separate indicator is provided for the gross loss of pressure condition in S5.4.5.1(a)(2), the words "Brake Pressure" shall be used.

(3) If a separate indicator is provided for anti-lock failure as specified in S5.4.5.1(b), the single word "Antilock" or "Anti-Lock" may be used. The letters and background of a separate indicator for an antilock system shall be of contasting colors, one of which is yellow.

(4) If a separate indicator is provided for application of the parking brake as specified for S5.4.5.1(c), the single word "Park" may be used.

(5) If a separate indicator is provided for any other function, the display shall include the word "Brake" and appropriate additional labeling.

S5.5. *Brake system integrity.* Each vehicle shall meet the complete performance requirements of S5 without:

(a) Detachment or fracture of any component of the braking system, such as brake springs and brake shoe or disc pad facing, other than minor cracks that do not impair attachment of the friction facing. All mechanical components of the braking system shall be intact and functional. Friction facing tearout (complete detachment of lining) shall not exceed 10 percent of the lining on any single frictional element.

(b) Any visible brake fluid or lubricant on the friction surface of the brake, or leakage at the master cylinder or brake power unit reservior cover, seal, and filler openings.

S6. *Test Conditions.* The performance requirements of S5 shall be met under the following conditions. Where a range of conditions is specified, the vehicle shall meet the requirements of all points within the range.

S6.1. *Ambient conditions.*

S6.1.1. *Ambient temperature.* The ambient temperature is any temperature between 0 °C (32 °F) and (40 °F).

S6.1.2. *Wind speed.* The wind speed is not greater than 5m/sec (11.2 mph).

S6.2. *Road test surface.*

S6.2.1. *Skid number.* The road test surfact has a skid number of 81.

S6.2.2. *Gradient.* Except for the parking brake gradient holding test, the test surface has no more than a 1% gradient in the direction of testing and no more than a 2% gradient perpendicular to the direction of testing.

S6.2.3. *Lane width.* Road tests are conducted on a test lane 3.5m (11.5ft) wide.

S6.3. *Vehicle conditions.*

S6.3.1. *Vehicle weight.* Except for the test at LLVW in S7.7, S7.8 and S7.9, the vehicle is loaded to its GVWR such that the weight on each axle as measured at the tire-ground interface is in proportion to its GAWR, except that the fuel tank is filled to 100 percent of capacity at the beginning of testing (corresponding to full GVWR loading) and may not be less than 75 percent of capacity during any part of the testing. However, if the weight on any axle of a vehicle at lightly loaded vehicle weight exceeds the axle's proportional share of the gross vehicle weight rating, the load required to reach GVWR is placed so that the weight on that axle remains the same as at lightly loaded vehicle weight.

For the tests at LLVW specified in S7.7, S7.8 and S7.9, the vehicle is loaded to its lightly loaded vehicle weight, with the added weight distributed in the front passenger seat area.

S6.3.2. *Lining preparation.* At the beginning of preparation for the road test in S7.1, the brakes of the vehicle are in the same condition as when the vehicle is manufactured. No burnishing or other special preparation is allowed, unless all vehicles sold to the public are similarly prepared as a part of the manufacturing process

S6.3.3. *Adjustment and repairs.* the requirements must be met without replacing any brake system part or making any adjustments to the brake system except as specified in this standard. Where a brake adjustment is specified in this standard, adjust the brakes, including the parking brakes, in accordance with the manufacturer's recommendation. Automatic adjusters are operational throughout the entire test sequence and are adjusted manually or by making stops, as recommended by the manufacturer. The brakes are adjusted in this manner prior to the beginning of the road test sequence.

S6.3.4. *Tire iniflation pressure.* Tires are inflated to the pressure recommended by the vehicle manufacturer for the GVWR of the vehicle.

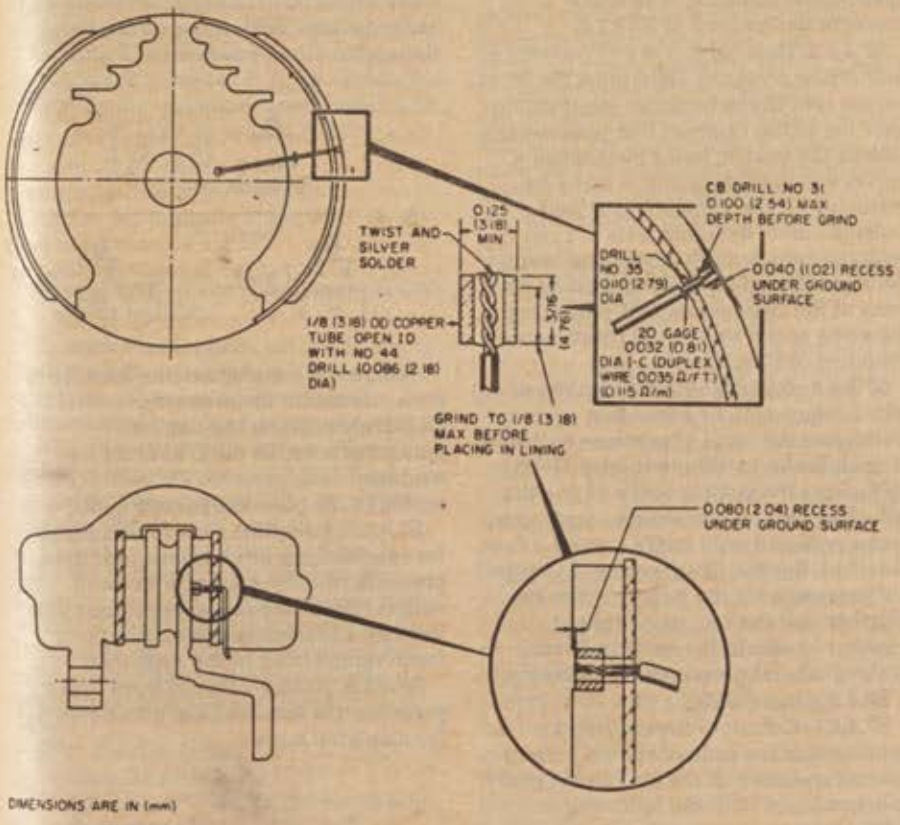
S6.3.5. *Engine.* Engine idle speed and ignition timing settings are according to the manufacturer's recommendations. If the vehicle is equipped with an adjustable engine speed governor, it is adjusted according to the manufacturer's recommendation.

S6.3.6. *Vehicle openings.* All vehicle openings (doors, windows, hood, trunk, convertible top, cargo doors, etc.) are closed except as required for instrumentation purposes.

S6.4. *Instrumentation—Brake temperature.* The brake temperature is measured by plug-type thermocouples installed in the approximate center of the facing length and width the most heavily loaded shoe or disc pad, one per brake, as shown in Fiqure 2. A second thermocouple may be installed at the beginning of the test sequence if the lining wear is expected to reach a point causing the first thermocouple to contact the metal rubbing surface of a drum or rotor. For center-grooved shoes or pads, thermocouples are installed within 3 mm (.12 in) to 6 mm (.24 in) of the groove and as close to the center as possible.

Figure 2

Typical Plug-Type Thermocouple Installations



S6.5. *Procedural conditions.*

S6.5.1. *Vehicle position and attitude.* The vehicle is aligned in the center of the lane at the start of each brake application. Stops are made without any part of the vehicle leaving the lane and without rotation of the vehicle about its vertical axis of more than ±15° from the center line of the test lane at any time during any stop. Steering corrections are permitted.

S6.5.2. *Transmission selector control.* For tests in neutral, the transmission selector control is in neutral for all decelerations. For tests in gear, the transmission selector is in the control position recommended by the manufacturer for driving on a level surface at the applicable test speed. To avoid engine stall during tests required to be run in gear, a manual transmission may be shifted to neutral (or the clutch disengaged) when the vehicle speed is below 30 km/h (18.6 mph).

S6.5.3. *Wheel lockup.* Unless otherwise specified, stops are made without lockup of any wheel at speeds greater than 15 km/h (9.3 mph).

S6.5.4. *Control forces.* Unless otherwise specified, the force applied to a service brake control is not more than 500 N (172.4 lb) nor less than 65 N (14.6 lb).

S6.5.5. *Initial brake temperature.* Unless otherwise specified, the initial brake temperature is 50 °C (122 °F) to 100 °C (212 °F). If the lower limit of initial brake temperature for the first stop in a test sequence (other than a parking brake grade holding test) has not been reached, the brakes are heated to the initial brake temperature by making one or more brake applications from a speed not exceeding 100 km/h (62.1 mph), at a deceleration not greater than 3 m/sec^2 (9.8 ft/sec^2).

S6.5.6. *Stopping distance.* The braking performance of a vehicle is determined by measuring the stopping distance from a given initial speed. Unless otherwise specified and subject to the constraints above, the vehicle is to be stopped in the shortest distance achievable (best effort) on all stops. Where more than one stop is allowed for a given set of test conditions, a vehicle is deemed to comply with the corresponding stopping distance requirements if at least one of the stops is made within the prescribed distance.

S7 *Test procedures and sequence.* Each vehicle shall meet all the applicable requirements of S5 when tested according to the procedures and in the sequence set forth below.

When the transmission selector control is required to be in neutral for a deceleration, a stop or snub is made in accordance with the following procedures: (1) Exceed the test speed by 6 to 12 km/h (3.7 to 7.5 mph); (2) close the throttle and coast in gear to approximately 3 km/h (1.9 mph) above the test speed; (3) shift to neutral; and (4) when the test speed is reached, apply the brakes.

S7.1. *Preparation*

S7.1.1. *Instrumentation.* Install shut-off valves and pressure transducers in the hydraulic system to allow the front and rear brakes to be operated independently and to allow measurement of front and rear brake line pressures. Valves and transducers are located downstream of any proportioning valves.

S7.1.2. *Load vehicle.* Load the vehicle to its GVWR, with the load distributed between the axles in proportion to the GAWR's.

S7.1.3. *Pretest instrumentation check.* Conduct a general check of instrumentation by making 10 stops from a speed of not more than 50 km/h (31.1 mph), at a deceleration of not more than 3 m/sec^2 (9.8 ft/sec^2). The lower force limit of S6.5.4 does not apply to these stops. If instrument repair, replacement, or adjustment is necessary, make not more than 10 additional stops after such repair, replacement, or adjustment.

S7.2. *Service brake system—preburnish effectiveness test.* Make four stops from 100 km/h (62.1 mph).

S7.3. *Service brake system—cold effectiveness test at GVWR.*

S7.3.1. *Burnish.* At the option of the manufacturer, the brakes may be burnished by making 36 stops from 80 km/h (49.7 mph) at a deceleration rate of 3 m/sec^2 (9.8 ft/sec^2), with the transmission selector control in gear.

The lower force limit of S6.5.4 does not apply to these stops. The internal from the start of one service brake application to the start of the next is either the time necessary to reduce the initial brake temperature to 100 °C (212 °F), or the distance of 2 km (1.24 mi), whichever occurs first. Accelerate to 80 km/hr (49.7 mph) after each stop and maintain that speed until making the next stop. After burnishing, adjust the brakes as specified in S6.3.3.

S7.3.2 *Cold effectiveness stops.* Make four stops from 100 km/h (62.1 mph).

S7.3.3. *Reburnish.* At the option of the manufacturer, the brakes may be given an additional burnish of 50 stops according to the procedure specified in S7.3.1.

S7.3.4. *Cold effectiveness stops—retest.* If the optional reburnishing is selected, the four stops from 100 km/hr specified in S7.3.2 are also repeated. For purposes of determining required performance on the hot performance and recovery stops of the fade and recovery sequence, the best performance achieved of all stops in S7.3.2 and S7.3.4 and the corresponding mean pedal force is used as a baseline.

S7.4. *Adhesion utilization tests.*

S7.4.1. *Test procedure.*

S7.4.1.1 *Coast downs in neutral and in gear.* Coast in neutral and determine the time required to decelerate from 55 to 45 km/h (34.2 to 28.0 mph). Make six runs starting from 65 km/h (40.4 mph). Repeat with the transmission in gear appropriate for decelerating from 65 to 45 km/h (40.4 to 28.0 mph).

S7.4.1.2. *Preliminary snubs to determine front and rear brake pressures needed to achieve 6.4 m/sec² (21 ft/sec²) with all brakes operational.* With an initial brake temperature of 50–100 °C (122–212 °F) in each case, make four preliminary snubs to determine the front and rear brake pressures when the vehicle deceleration is 6.4 m/sec² (21 ft/sec²). Accelerate the vehicle to 70 km/h (43.5 mph), coast in gear to 65 km/h (40.4 mph), shift to neutral and apply the brakes at a constant front brake pressure until the vehicle reaches 45 km/h (28.0 mph). For subsequent snubs, adjust the brake pressure so that the deceleration time from 55 to 45 km/h (34.2 to 28.0 mph), is between .40 seconds and .46 seconds. The front and rear brake pressures for the snub having a deceleration time closest to 0.43 seconds are used in the front-only and rear-only brake tests which follow.

S7.4.1.3 *Front brake only test.* Make six snubs, in neutral, at the constant front brake pressure determined in S7.4.1.2, using the same initial brake temperatures. Determine the average value of the brake pressure actually maintained between 55 and 45 km/h (34.2 and 28.0 mph) for each snub, by recording brake pressure versus time. Record deceleration times from 55 to 45 km/h (34.2 to 28.0 mph) for each snub.

S7.4.1.4. *Rear brake only test.* Repeat S7.4.1.3 with only the rear brakes operational using the rear brake pressure determined in S7.4.1.2.

S7.4.1.5. *Determination of front versus rear brake pressure.* Determine the front versus rear brake pressure relationship over the entire range of line pressures. Unless the vehicle has a load sensing valve, this determination is made by static test. If the vehicle has a load sensing valve, dynamic tests are run with the vehicle both empty and loaded. Between 20 and 25 snubs are made for each of the two load conditions, using the same speed and initial conditions specified in S7.4.1.2.

S7.4.1.6. *Determination of front and rear brake push-out pressures.* Determine the level of pressure required at each brake to initiate torque. Do this by jacking the vehicle and rotating the wheel by hand while slowly increasing brake pressure until brake torque is first detected. Record the pressure. Average the pressures for the two front brakes together and the two rear brakes together to obtain the front and rear brake push-out pressures respectively.

S7.4.2. *Calculations.*

S7.4.2.1. Calculate the coastdown deceleration for each of the six runs in neutral and each of the six runs in gear in accordance with the following formula:

$$Z = \frac{2.778}{tg}$$

Where Z = deceleration (g), g = 9.8 m/sec² and t = time (seconds) to decelerate from 55 to 45 km/h (34.2 to 28.0 mph). Average the six coastdown decelerations in neutral (= coast in neutral) and the six coast-down decelerations in gear (= coast in gear).

S7.4.2.2. Determine the decelerations as in S7.4.2.1 for the front brakes only tests and the rear brakes only tests. Subtract the average coastdown deceleration in neutral from each of the six decelerations in each test series.

S7.4.2.3. Determine the front and rear braking forces from each of the six decelerations in each test series by:

$T = PZ$

Where T = braking force (N), P = total vehicle weight (N), and Z is the deceleration (g).

S7.4.2.4. Determine the braking force versus brake pressure relationship for the front brakes and for the rear brakes as follows:

Fit a straight line through the push-out pressure, zero force point and the group of six pressure, force data points determined in the snubs. The group of six data points is fit using the method of least squares. With this method, the slope of the line is defined as follows:

$$s = \frac{\sum_{i=1}^{6} (T_i x_i)}{\sum_{i=1}^{6} (x_i)^2 - x_0 \sum_{i=1}^{6} x_i}$$

Where s is the slope of the braking force versus brake pressure relationship (N/MPa), T_i is the braking force measured on snub i (N), x_i is the average brake pressure for snub i (MPa) and x_0 is the push-out pressure (MPa).

S7.4.2.5. Using the linear relationship for rear braking force versus rear brake pressure from S7.4.2.4 and the front versus rear brake pressure relationship from S7.4.1.5, determine rear braking force versus front brake prsessure.

S7.4.2.6. At any value of front brake pressure, the total vehicle deceleration is calculated from:

$$Z_T = \frac{T_1 + T_2}{P} + Z_{\text{coast in gear}}$$

Where Z_T = total vehicle deceleration (g), T_1 = front braking force (N) at the given front brake pressure, T_2 = rear braking force corresponding to the same front brake pressure, P = total vehicle weight (N), and $Z_{\text{coast in gear}}$ is the average coastdown deceleration in gear.

S7.4.2.7. At any level of front brake pressure, the adhesion utilization of the brakes on both axles is calculated from:

$$f_1 = \frac{T_1 + D}{P_1 + Z_T \frac{h}{E} P}$$

$$f_2 = \frac{T_2 + D}{P_2 - Z_T \frac{h}{E} P}$$

Where f_1 = adhesion utilization of the front axle, f_2 = adhesion utilization of the rear axle, P_1 = static weight on the front

axle (N), P_2 = static weight on the rear axle (N), h = center of gravity height (mm), E = vehicle wheelbase (mm), D = engine and drive train drag such that:

For non-driving axle: D = O
For the driving axle:
$D = P[Z_{coast\ in\ gear} - Z_{neutral}]$

S7.4.2.8. The adhesion utilization for all other states of load is determined by repeating S7.4.2.6 and S7.4.2.7 using appropriate values of P, P_1, P_2 and h, and adjusting the coastdown deceleration in gear by multiplying it by the ratio:

$$\frac{P_s \text{test weight}}{P_{desired\ weight}}$$

(Values of T_1, T_2, D and E are independent of vehicle loading).

S7.4.2.9. Plot f_1 and f_2 versus Z_T for both the laden and the unladen condition. These are the adhesion utilization curves for the in-gear case.

S7.5. *Service brake system—high speed effective tests at GVWR.* Make 4 stops from 80 percent of the maximum speed of the vehicle, in gear.

S7.6 *Stops with engine off.* (For vehicles equipped with one or more brake power units or brake power assist units). Make four stops from 100 km/h (62.1 mph), in neutral, with the engine not running. All reservoirs are fully charged prior to the beginning of each stop.

S7.7. *Service brake system—cold effectiveness tests at LLVW.*

S7.7.1. *Unload vehicle.* Decrease the vehicle load to LLVW.

S7.7.2. *Cold effectiveness stops.* Make four stops from 100 km/h (62.1 mph).

S7.8. *Service brake system—high speed effectiveness tests at LLVW.* Make 4 stops from 80 percent of the maximum speed of the vehicle, in gear.

S7.9. *Partial system test at LLVW.*

S7.9.1. *Circuit failure.* Alter the service brake system to produce any one rupture or leakage type of failure, other than a structural failure of a housing that is common to two or more subsystems. Determine the control force, pressure level, or fluid level (as appropriate for the indicator being tested) necessary to activate the brake warning indicator. After the brake warning indicator has activated, make four stops if the vehicle is equipped with a split service brake system or 10 stops if the vehicle is not so equipped, each from 100 km/h (62.1 mph) in neutral, by a continuous application of the service brake control. Restore the service brake system to normal at the completion of this test. Repeat the entire sequence for each of the other subsystems.

S7.9.2. *Failed anti—lock or variable proportioning system.* (For vehicles equipped with anti-lock and/or variable proportioning brake systems). Disconnect the functional power source, or otherwise render the anti-lock system inoperative, or disconnect the variable proportioning brake system. Make four stops, each from 100 km/h (62.1 mph). Determine whether the brake system indicator is activated when any electrical power source to the ant-lock or variable proportioning unit is disconnected. Restore the system to normal at the completion of this test. If more than one anti-lock or variable proportioning brake subsystem is provided repeat for each subsystem provided.

S7.10. *Partial system tests at GVWR.*

S7.10.2. *Load vehicle.* Restore the vehicle to its GVWR loading.

S7.10.2. *Circuit failure.* Repeat S7.9.1.

S7.10.3. *Failed anti-lock or variable proportioning system.* Repeat S7.9.2.

S7.10.4. *Inoperative brake power assist unit or brake power unit.* (For vehicles equipped with one or more brake power units or brake power assist units). Disconnect the primary source of power for one brake power assist unit or brake power unit, or one of the brake power unit or brake power assist unit subsystems if two or more subsystems are provided. If the brake power or brake power assist unit operates in conjunction with a backup system and the backup system is automatically activated in the event of a primary power source failure, the backup system is operative during this test. Exhaust any residual brake power reserve capability of the disconnected system. On vehicles with brake power units, disconnect the primary source of power. Make four stops, each from 100 km/h (62.1 mph) by a continuous application of the service brake control. Restore the system to normal at completion of this test. For vehicles equipped with more than one brake power unit or brake power assist unit, conduct tests for each in turn.

S7.11. *Fade and recovery tests (GVWR).*

S7.11.1. *Heating snubs.* [Proposed alternative 1] Make 80 snubs from 55 km/h to 25 km/h (34.2 to 15.6 mph), at a constant deceleration rate of 2.4 m/sec² (7.9 ft/sec²). The lower force limit in S6.5.4 does not apply to these snubs. Establish and initial brake temperature before the first brake application of 55 to 65°C (131 to 149°F). Initial brake temperatures before brake applications for subsequent stops are those occurring at the distance intervals. Attain the required deceleration within one second and, as a minimum, maintain it for the remainder of the snub. Maintain an interval of 15 seconds between the start of brake applications. Accelerate as rapidly as possible to the initial test speed immediately after each snub. Immediately after the 80th snub, accelerate to 100 km/h (62.1 mph) to commence the hot performance test.

[Proposed alternative 2] Make 15 snubs from 120 km/h (74.6 mph) or 80% of the maximum speed of the vehicle, whichever is slower, to one-half the initial speed. Maintain a constant deceleration rate of 3.0 m/sec² (9.8 ft/sec²). The lower force limit in S6.5.4 does not apply to these snubs. Establish an initial brake temperature before the first brake application of 55 to 65°C (131 to 149°F). Initial brake temperatures before brake applications for subsequent stops are those occurring at the distance intervals. Attain the required deceleration within one second and, as a minimum, maintain it for the remainder of the snub. Maintain an interval of 30 seconds between the start of brake applications. Accelerate as rapidly as possible to the initial test speed immediately after each snub. Immediately after the 15th snub, accelerate to 100 km/h (62.1 mph) to commence the hot performance test.

S7.11.2 *Hot performance test.* Make one stop from 100 km/h (62.1 mph), in neutral, at a pedal force not greater than the mean pedal force actually measured on the best cold performance stop in either S7.3.2 or S7.3.4. Immediately after the stop, drive 1.5 km (.93 mi) at 50 km/h (31.1 mph) before the first cooling stop.

S7.11.3. *Brake cooling.* Make four stops from 50 km/h (31.1 mph), in gear, at a constant deceleration rate of 3.0 m/sec² (9.8 ft/sec²). The lower force limit in S6.5.4 does not apply to these stops. Immediately after the first through third stops, the vehicle shall be accelerated at the maximum rate to 50 km/h (31.1 mph) and that speed maintained until beginning the next stop at a distance of 1.5 km (0.95 mi) since the beginning of the previous stop. Immediately after the fourth stop, accelerate the vehicle at the maximum rate to 100 km/h (62.1 mph) and maintain that speed until beginning the recovery performance stop at distance of 1.5 km (0.93 mi) after the beginning of the fourth cooling stop.

S7.11.4. *Recovery performance test.* Make one stop from 100 km/h (62.1 mph), under the same conditions as for the hot performance test in S7.11.2.

S7.12. *Parking brake performance.*

S7.12.1. *Conditions.*

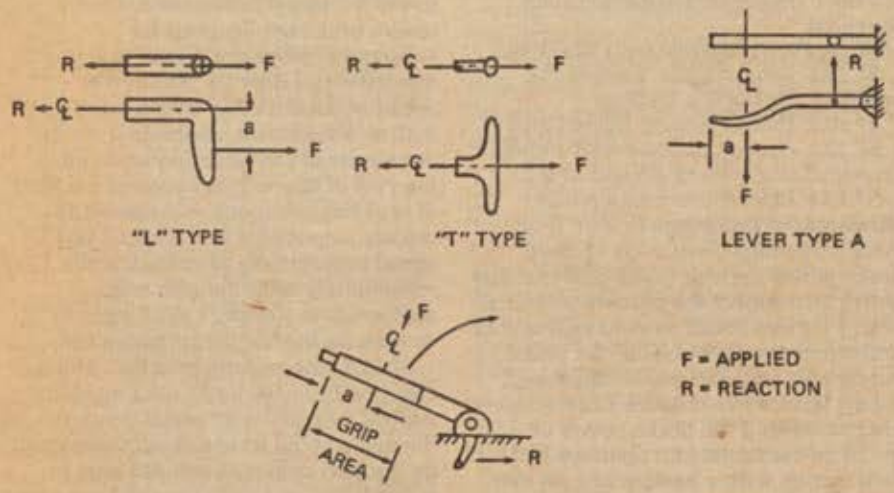
S7.12.1.1. *Application force.* The parking brake shall be actuated by a single application not exceeding the limits specified in S5.3, except that a series of applications to achieve the

specified force may be made in the case of a parking brake system design that does not allow the application of the specified force in a single application. The force required for actuation of a hand-operated brake system shall be measured at the center of the hand grip area or at a distance of 40 mm (1.57 in) from the end of the actuation level, as illustrated in Figure 3.

Figure 3

Location for Measuring Brake Application Force

(Hand Brake)



Dimension a = 40mm (1.57 in)

S7.12.1.2. The lower temperature limit of S6.5.5 does not apply to the test in S7.12.2 and S7.12.3.

S7.12.1.3. For vehicles with parking brake systems not utilizing the service brake friction elements, the friction elements of such a system are burnished prior to the parking brake tests, according to the published recommendations furnished to the purchaser by the manufacturer. If no recommendations are furnished, the vehicle's parking brake is tested in an unburnished condition.

S7.12.2. *Gradient Hold.* Drive the vehicle onto a 20 percent grade with the longitudinal axis of the vehicle in the direction of the slope of the grade, stop the vehicle and hold it stationary by application of the service brake control, and place the transmission in neutral. With the service brake applied sufficiently to just keep the vehicle from rolling, apply the parking brake as specified in S7.12.1.1. Following the application of the parking brake, release all force on the service brake control and, if the vehicle remains stationary, start the measurement of time. If the vehicle does not remain stationary, reapplication of a force to the parking brake control at the level specified in S7.12.1.1 as appropriate for the vehicle being tested (without release of the ratcheting or other holding mechanism of the parking brake) may be used twice to attain a stationary position. Verify the operation of the parking brake application indicator. Following observation of the vehicle in a stationary condition for the specified time in one direction, repeat the same test procedure with the vehicle orientation in the opposite direction on the same grade.

S7.12.3. *Dynamic test.* Make one stop from 60 km/h (37.3 mph), in neutral, with a force applied to the parking brake control not exceeding the values specified in S7.12.1.1. If the required performance is not achieved, a second attempt is permitted.

S7.13. *Spike stops.* Make 10 successive spike stops from 50 km/h (31.1 mph) with the transmission in neutral, with no reverse stops. Make the spike stops by applying a control force of 900 N (202.3 lb) while recording control force versus time. Maintain the control force until the vehicle has stopped. The prohibition of wheel lockup in S6.5.3 does not apply to this test.

S7.14. *Service brake system-Final effectiveness test.* Make four stops from 100 km/h (62.1 mph).

S7.15. *Final inspection.* Inspect—

(a) The service brake system for detachment or fracture of any components, such as brake springs and brake shoes or disc pad facing.

(b) The friction surface of the brake, the master cylinder or brake power unit reservoir cover, and seal and filler openings, for leakage of brake fluid or lubricant.

(c) The master cylinder or brake power unit reservoir for compliance with the volume and labeling requirements of S5.4.4.2 and S5.4.4.3. In determining the fully applied worn condition, assume that the lining is worn to (1) rivet or bolt heads on riveted or bolted linings or (2) within 0.8 mm (1/32 inch) of shoe or pad mounting surface on bonded linings, or (3) the limit recommended by the manufacturer, whichever is larger relative to the total possible shoe or pad movement. Drums or rotors are assumed to be at nominal design drum diameter or rotor thickness. Linings are assumed adjusted for normal operating clearance in the released position.

(d) The brake system indicators, for compliance with operation in various key positions, lens color, labeling, and location, in accordance with S5.4.5.

Issued on May 3, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-11402 Filed 5-7-85; 3:43 pm]

BILLING CODE 4910-59-M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Pending Petitions and Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on pending petitions and description of progress on listing actions.

SUMMARY: The Service announces its findings on pending petitions to revise the Lists of Endangered and Threatened Wildlife and Plants. These findings must be made within one year of the date of receipt of such a petition or of a previous positive finding. The Service also describes its progress in revising the lists during the period from October 13, 1983 to October 12, 1984.

DATES: The findings announced in this notice were made on October 12, 1984. The description of the Service's progress in revising the lists is current as of October 13, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made on the merits within 12 months of the date of receipt of the petition. Provisions at section 2(b)(1) of the Endangered Species Act Amendments of 1982 (hereafter called Amendments) require that petitions pending on the date of enactment of the Amendments (hereafter called pending petitions) be treated as having been filed on that date. Findings (hereafter called 12-month findings) on these petitions were therefore made on October 13, 1983, and reported in the **Federal Register** of January 20, 1984 (49 FR 2485). This notice reports findings made on October 12, 1984, on pending petitions, and descirbes the Service's progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the second year following the enactment of the Amendments.

Findings

The petitions that are the subjects of this notice are ones that the Service initially determined had presented substantial scientific or commercial information indicating that the petitioned action may be warranted. Some of these determinations were made and announced in the **Federal Register** before the enactment of the Amendments. A series of such determinations was announced in the **Federal Register** of February 15, 1983 (48 FR 6752). The remainder of the initial findings for taxa considered here were announced in the **Federal Register** on January 16, 1984 (49 FR 1919).

Section 4(b)(3)(B) of the Act requires that the Service make one of the following 12-month findings on each petition containing substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and the petitioned action will be proposed promptly; or (iii) the petitioned action is warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species.

Petitioned actions found to be warranted [(ii) above] are the subjects of proposals that will be published or have already been published in the **Federal Register.** Findings of "not warranted" and "warranted but precluded" [(i) and (iii) above, respectively] for pending petitions are reported here.

The Service's 12-month findings of "not warranted" and "warranted but precluded" on pending petitions for U.S. native animal taxa are given in Table 1. Petitioned actions that are found to be not warranted are indicated by the word "No" in the "Warranted?" column opposite the name of the affected species. Species that are the subjects of petitioned actions that are found to be warranted but precluded are designated with either "Yes" or "Yes*" corresponding to categories 1 and 2, respectively, in the general animal notices of review. The general notice for vertebrate animals was published on December 30, 1982 (47 FR 58454), and can be consulted on the definitions of these category designations. The general notice on invertebrate animals was published on May 22, 1984 (49 FR 21664).

TABLE 1.—CURRENT 12-MONTH FINDINGS ON PENDING ANIMAL PETITIONS

Species	Petitioner	Date	Warranted
Carolina sponge, *Corvomeyenia carolinensis*	Ronald M. Cowden	June 17, 1974	Yes*
Oklawaha sponge, *Dosilla petrneri*	do	do	Yes*
Kissimmee sponge, *Ephydatia subtilis*	do	do	Yes*
Pennsylvania sponge, *Heteromeyenia longistylis*	do	do	Yes*
Oneida sponge, *Spongilla heterosterila*	do	do	Yes*
Central Missouri cave amphipod, *Allocrangonyx hubrichti*	National Speleological Society	Sept. 9, 1974	Yes*
Oklahoma cave amphipod, *Allocrangonyx pellucidus*	do	do	Yes*
Pennsylvania cave amphipod, *Crangonyx dearolfi*	do	do	Yes*
Hobbs cave amphipod, *Crangonyx hobbsi*	do	do	Yes*
Illinois cave amphipod, *Gammarus acherondytes*	do	do	Yes*
Bousfield's amphipod, *Gammarus bousfieldi*	do	do	Yes*
Noel's amphipod, *Gammarus desperatus*	do	do	Yes*
Diminutive amphipod, *Gammarus hyalleloides*	do	do	Yes*
Pecos amphipod, *Gammarus pecos*	do	do	Yes*
Tidewater interstitial amphipod, *Stygobromus araeus*	do	do	Yes*
Arizona cave amphipod, *Stygobromus arizonensis*	J. Holsinger	July 12, 1974	Yes*
Balcones cave amphipod, *Stygobromus balconis*	National Speleological Society	Sept. 9, 1974	Yes*
Barr's cave amphipod, *Stygobromus barri*	do	do	Yes*
Bifurcated cave amphipod, *Stygobromus bifuractus*	do	do	Yes*
Bowman's cave amphipod, *Stygobromus bowmani*	do	do	Yes*
Clanton's cave amphipod, *Stygobromus clantoni*	do	do	Yes*
Bournsville Cove cave amphipod, *Stygobromus conradi*	do	do	Yes*
Cooper's cave amphipod, *Stygobromus cooperi*	do	do	Yes*
Cascade Cave amphipod, *Stygobromus dejectus*	do	do	Yes*
Elevated Spring amphipod, *Stygobrorgus elatus*	do	do	Yes*
Greenbriar Cave amphipod, *Stygobromus emarginatus*	do	do	Yes*
Ephemeral cave amphipod, *Stygobromus emphemerus*	do	do	Yes*
Ezell's Cave amphipod, *Stygobromus flagellatus*	do	do	Yes*

TABLE 1.—CURRENT 12-MONTH FINDINGS ON PENDING ANIMAL PETITIONS—Continued

Species	Petitioner	Date	Warranted
Grady's cave amphipod, *Stygobromus gradyi*	J. Holsinger	July 12, 1974	Yes*
Devil's Sinkhole amphipod, *Stygobromus hadenoecus*	National Speleological Society	Sept. 9, 1974	Yes*
Hara's cave amphipod, *Stygobromus harai*	J. Holsinger	July 12, 1974	Yes*
(No common name), *Stygobromus heteropodus*	National Speleological Society	Sept. 9, 1974	Yes*
Malheur Cave amphipod, *Stygobromus hubbsi*	J. Holsinger	July 12, 1974	Yes*
Tidewater amphipod, *Stygobromus indentatus*	National Speleological Society	Sept. 9, 1974	Yes*
Long-legged cave amphipod, *Stygobromus longipes*	do	do	Yes*
MacKenzie's cave amphipod, *Stygobromus mackenziei*	J. Holsinger	July 12, 1974	Yes*
Mountain cave amphipod, *Stygobromus montanus*	National Speleological Society	Sept. 9, 1974	Yes*
Morrison's cave amphipod, *Stygobromus morrisoni*	do	do	Yes*
Bath County cave amphipod, *Stygobromus mundus*	do	do	Yes*
Norton's cave amphipod, *Stygobromus nortoni*	do	do	Yes*
Onodaga Cave amphipod, *Stygobromus onondagaensis*	do	do	Yes*
Ozark cave amphipod, *Stygobromus ozarkensis*	do	do	Yes*
Minute cave amphipod, *Stygobromus parvus*	do	do	Yes*
Peck's cave amphipod, *Stygobromus pecki*	do	do	Yes*
Pizzini's amphipod, *Stygobromus pizzini*	do	do	Yes*
Wisconsin well amphipod, *Stygobromus putealis*	do	do	Yes*
Redell's cave amphipod, *Stygobromus redelli*	do	do	Yes*
Alabama well amphipod, *Stygobromus smithi*	do	do	Yes*
Spring cave amphipod, *Stygobromus spinatus*	do	do	Yes*
Stellmack's cave amphipod, *Stygobromus stellmacki*	do	do	Yes*
Subtle cave amphipod, *Stygobromus subtilis*	do	do	Yes*
Wengerors' cave amphipod, *Stygobromus wengerorum*	J. Holsinger	July 12, 1974	Yes*
Alabama cave shrimp, *Palaemonias alabamae*	National Speleological Society	Sept. 9, 1974	Yes*
Palm Springs Cave crayfish, *Procambarus acherontis*	do	do	Yes*
Texas cave shrimp, *Palaemonetes antrorum*	do	do	Yes*
Squirrel Chimney cave shrimp, *Palaemonetes cummingi*	do	do	Yes
Dolloff Cave spider, *Meta dolloff*	Thomas S. Briggs	Oct. 25, 1983	No
Columbia River tiger beetle, *Cicindela columbica*	Gary Shook	Dec. 15, 1979	Yes*
Uncompahgre fritillary butterfly, *Boloria acronema*	Lawrence F. Gall	Nov. 5, 1979	Yes
San Francisco tree lupine moth, *Grapholita edwardsiana*	Richard Arnold and Jerry R. Powell	Dec. 12, 1982	Yes*
Wiest's sphinx moth, *Euproserpinus wiesti*	Jo Brower	Jan. 26, 1981	Yes
Bliss Rapids snail, Genus and species undescribed	Peter A. Bowler	Feb. 7, 1980	Yes
Snake River physa snail, *Physa sp.*	do	do	Yes
Bonneville cutthroat trout, *Salmo clarki utah*	P.G. Sanchez, Desert Fishes Council	Oct. 23, 1979	Yes
Shoshone sculpin, *Cottus greenei*	Peter A. Bowler	Dec. 13, 1979	Yes*
Puerto Rican sharp-shinned hawk, *Accipiter striatus venator*	Internat. Counc. Bird Preservation	Nov. 24, 1980	Yes*
Puerto Rican broad-winged hawk, *Buteo platypterus brunnescens*	do	do	Yes*
Radak Micronesian pigeon, *Ducula oceanica ratakensis*	do	do	Yes*
Truk Micronesian pigeon, *Ducula oceanica teraoki*	do	do	Yes*
Mariana fruit dove, *Ptilinopus roseicapillus*	do	do	Yes*
Palau Nicobar pigeon, *Caloenas nicobarensis pelewensis*	do	do	Yes*
Virgin Islands screech owl, *Otus nudipes newtoni*	do	do	Yes
Ponape short-eared owl, *Asio flammeus ponapensis*	do	do	Yes*
Truk monarch, *Metabolus rugensis*	do	do	Yes*
Guam rufous-fronted fantail, *Rhipidura rufifrons uraniae*	Paul M. Calvo, Governor of Guam	Dec. 23, 1981	Yes
Palau white-breasted wood-swallow, *Aretamus leucorhynchus pelewensis*	Internat. Counc. Bird Preservation	Nov. 24, 1980	Yes*
Rota bridled white-eye, *Zosterops conspicillata rotensis*	do	do	Yes*
Truk greater white-eye, *Rukia ruki*	do	do	Yes*
Least Bell's vireo, *Vireo bellii pusillus*	James M. Graves	Nov. 8, 1979	Yes
Amak song sparrow, *Melospiza melodia amaka*	Internat. Counc. Bird Preservation	Nov. 24, 1980	Yes*
Palau blue-faced parrotfinch, *Erythrura trichroa pelewensis*	do	do	Yes*
Silver rice rat, *Oryzomys argentatus*	Center for Action on Endangered Species	April 12, 1980	Yes*

An additional finding of "warranted but precluded" is reported here in the case of 58 foreign bird species for which listing was petitioned in 1980 by Dr. Warren B. King, Chairman, United States Section, International Council for Bird Preservation. The Service published a notice of review for these species on May 12, 1981 (46 FR 26464). Readers should refer to that notice for the names of the species involved.

A finding of "not warranted" in regard to a petition to list *Meta dollof* (Dollof Cave spider) requires some additional explanation of circumstances that favor continuation of a status review for this species. At the time the petition was submitted, the presence and restricted known distribution of this organism had not been given specific consideration in a planning process underway for development of lands belonging to the University of California in Santa Cruz County, California. At the same time, its distribution and biology have received very little systematic scientific investigation at all. The petition by Thomas S. Briggs acknowledged these unknowns both in our biological understanding and in the directions that possible threats might take. However, without specifically considering this animal, all the planning documentation that has been made public to date includes ecological considerations for its environment, and the likely immediate threats have not materialized. Because of the apparent absence of direct threats, the existence of one more known colony that can be added to the two described in the petition, and the need for further understanding of its distribution and biology, the Service considers the petitioned listing of the Dollof Cave spider not to be warranted at this time. As in the situation for the alligator snapping turtle discussed in the **Federal Register** for February 29, 1984 (49 FR 7416), however, the Service also continues to regard *Meta dollof* as a possible candidate for future listing as endangered or threatened (category 2 in the general notice of review).

"Not warranted" and "warranted but precluded" findings for pending plant petitions are announced in this notice by categories; their application to individual taxa is published in a notice of review for plants in the December 15, 1980, **Federal Register** (45 FR 82480) as updated in a supplementary notice of review in the November 28, 1983, **Federal Register** (48 FR 53670). The plant notice category number opposite the name of each taxon that is the subject of a pending petition indicates the Service's finding on that taxon. Findings of "not warranted" on the petitioned action are hereby reported by the designation of subcategories 3A, 3B, or 3C for such taxa. Findings of "warranted

but precluded" are hereby reported by the designation of category 1, 1*, 1**, 2, or 2* for such subject taxa. The complete definitions of these category numbers are described in the supplement to the 1980 general plant notice (45 FR 82479).

The following eleven plant species, placed in categories 1 or 2 in the 1980 notice of the 1983 supplement, were found not to warrant listing in 1984: *Arabis* sp. nov. ined. (Gray Knolls, Uintah Co., Utah), *Astragalus barnebyi, Astragalus lutosus, Astragalus striatiflorus, Cryptantha jonesiana, Eriogonum lancifolium, Opuntia basilaris* var. *woodburyi, Penstemon nanus, Sclerocactus spinosior,* and *Sphaeralcea caespitosa.*

Section 4(b)(3)(C)(i) of the Act requires that a petition found to be warranted but precluded be treated as an accepted petition newly submitted on the date of the finding. A finding on such a petition must then be made again within 12 months of the date of the last 12-month finding.

Progress in Revision of the Lists

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditions progress in revising the lists. The Service's progress in revising the lists in the year following October 13, 1983, the current date of the previous report, is described in this section of the present notice. The described activities prevented immediate action on the "warranted but precluded" petitioned actions.

The Service has complied with section 4 by publishing revised regulations covering listing procedures under the Act (codified at 50 CFR Part 424, see 49 FR 38900, October 1, 1984) to comply with the Amendments. Provisions of the Amendments that address the handling of petitions have made it necessary for the Service to implement extensive new procedures for conforming to deadlines and making findings on petitions. These internal procedures have been set down by the Service in a June 15, 1984, document entitled *Petition Management Guidelines,* which is available from the Service on request (see **"FOR FURTHER INFORMATION CONTACT:** above).

The Service's progress in revising the lists during the 12-month period following October 13, 1983, is represented by the publication in the **Federal Register** of final listing actions on 52 species, proposed listing actions on 62 species, and emergency listings on 2 species. The number of species affected by each type of listing action published during this period is presented in Table 2.

TABLE 2.—LISTING ACTIONS DURING THE PERIOD OCT. 14, 1983 THROUGH OCT. 13, 1984

Type of action	Number of species affected
Emergency endangered status	2
Final endangered status with critical habitat	2
Final endangered status	37
Final threatened status with critical habitat	3
Final threatened status	1
Final designation of critical habitat	1
Final removal from lists	4
Final change from threatened to endangered status	1
Final change from endangered to threatened status	3
Proposed endangered status with critical habitat	21
Proposed threatened status with critical habitat	10
Proposed endangered status	20
Proposed threatened status	8
Proposed change from endangered to threatened status	1
Proposed change from threatened to threatened due to similarity of appearance	1
Proposed removal from lists	1

As of October 13, 1984, the Service's Washington Office of Endangered Species was also reviewing documents that would propose or make final listing actions on 63 species. The type of action and numbers of affected species are given in Table 3.

TABLE 3.—POSSIBLE LISTING ACTIONS FOR WHICH THE SERVICE WAS REVIEWING DRAFT DOCUMENTS ON OCT. 13, 1984

Type of action	Number of species affected
Final endangered status with critical habitat	5
Final endangered status	2
Final threatened status	2
Final designation of critical habitat	1
Proposed endangered with critical habitat	22
Proposed threatened with critical habitat	8
Proposed endangered status	16
Proposed threatened status	2
Proposed change from endangered to threatened status	2
Proposed removal from lists	3

The Service has also identified 190 species for which listing documents are to be developed during the fiscal year beginning October 1, 1984. The numbers of species affected and types of listing actions are given in Table 4. The Service anticipates that listing actions in addition to these will be identified during the fiscal year.

TABLE 4.—POSSIBLE LISTING ACTIONS FOR WHICH THE SERVICE EXPECTS TO DEVELOP DRAFT LISTING DOCUMENTS DURING THE FISCAL YEAR BEGINNING OCT. 1, 1984.

Type of action	Number of species affected
Final endangered status with critical habitat	25
Final endangered status	5
Final threatened status with critical habitat	9
Final threatened status	8
Proposed endangered status with critical habitat	9
Proposed threatened status with critical habitat	7
Proposed endangered status	96
Proposed threatened status	7
Final change from threatened to threatened due to similarity of appearance	1
Proposed change from endangered to threatened status	5
Proposed change from endangered and threatened to threatened due to similarity of appearance	1
Proposed revision of critical habitat	1
Final removal from lists	1
Proposed removal from lists	15

The Service also funded status surveys for 173 species during the 12-month period following October 13, 1983. These surveys are designed to gather any additional data needed to make a determination on whether the subject species are eligible for protection under the Act.

Author

This notice was prepared by Dr. George Drewry, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; 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).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: May 3, 1985.

Susan Reece,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–11409 Filed 5–9–85; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 682

Western Pacific Fishery Management Council; Pacific Billfish Public Hearing

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

ACTION: Notice of public hearings.

SUMMARY: The Western Pacific Fishery Management Council will hold additional public hearings on the revised draft Billfish Fishery Management Plan. The draft plan proposes management measures and reporting requirements to regulate the taking of billfish, mahimahi, wahoo, and oceanic sharks by foreign fishing vessels in the fishery conservation zone surrounding Hawaii, Guam, American Samoa, and U.S. island possessions in the Pacific Ocean.

DATES: Individuals and organizations may comment in writing to the Council if they wish to add to statements made at a hearing or if they are unable to attend the hearings. The public comment period will close June 28, 1985. See "**SUPPLEMENTARY INFORMATION**" for dates and locations of the hearings.

ADDRESS: Copies of the proposals are available at the Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, Hawaii 96813, telephone 808–523–1368 or FTS 808–546–8923.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 808–523–1368.

SUPPLEMENTARY INFORMATION: The dates, time, and locations of the public hearings are scheduled as follows:

Kona, Hawaii

May 13, 1985—7:30 p.m.; First Hawaiian Bank, Kona Branch Meeting Room, 74–5593 Palani Road, Kailua-Kona, Hawaii

Hilo, Hawaii

May 14, 1985—7:30 p.m.; County Council Room, 25 Aupuni Street, Hilo, Hawaii

Kauai, Hawaii

May 16, 1985—7:30 p.m.; Kauai County Council Office, County Building, Libue, Kauai

Oahu, Hawaii

May 20, 1985—7:30 p.m.; Waianae High School Cafetorium, 85–251 Farrington Highway, Waianae

May 21, 1985—7:30 p.m.; McCoy Pavilion, Ala Moana Park, Honolulu

May 22, 1985—7:30 p.m.; Haleiwa Elementary School Cafetorium, 66–505 Haleiwa Road, Haleiwa

May 23, 1985—7:30 p.m.; Benjamin Parker Elementary School Cafetorium, 45–259 Waikalua Rd., Kaneobe

American Samoa

May 27, 1985—4:30 p.m.; American Samoa Government Convention Center, Fagatogo, Pago Pago

Dated: May 6, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–11308 Filed 5–9–85; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 50, No. 91
Friday, May 10, 1985

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

Cigar-Binder (Types 51 and 52), Dark Air-Cured (Types 35 and 36), and Fire-Cured Types 21-24) Tobacco; Referenda Results: 1985 Through 1987 Crops of Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of results of marketing quota referenda for the 1985 through 1987 crop of cigar-binder (types 51 and 52), dark air-cured (types 35 and 36), and fire-cured (type 21-24) tabacco.

SUMMARY: This notice proclaims the results of the marketing quota referenda for cigar-binder (types 51 and 52), dark air-cured (types 35 and 36), and fire-cured (types 21-24) tobacco which were held during the period February 19 through February 22, 1985, in accordance with Section 321(c) of the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"). The referenda were conducted in order to determine whether producers of these kinds of tobacco favor or oppose marketing quotas.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: C. Douglas Richardson, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447-4281.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that this notice will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title-Commodity Loan and Purchases, Number-10051; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 19115 (June 24, 1983).

On January 24, 1985, the Secretary of Agricultural announced that national marketing quotas would be in effect for cigar-binder (types 51 and 52), dark air-cured (types 35 and 36), and fire-cured (types 21-24) tobacco for the three marketing years beginning on October 1, 1985, subject to approval by producers of each of these kinds of tobacco in separate referenda. Section 312(c) of the 1983 Act provides that, if more than one-third of such producers voting in the referenda oppose national marketing quotas, such results shall be proclaimed by the Secretary and national marketing quotas shall not be in effect. During the period February 19 through February 22, 1985 referenda for the 1985-1987 crops of cigar-binder (types 51 and 52), dark air-cured (types 35 and 36), and fire-cured (types 21-24) tobacco were conducted.

Since the only purpose of this notice is to announce the results of referenda, it has been determined that no further public rulemaking is required. Accordingly, the results of such referenda are set forth below:

Results of the National Marketing Quota Referenda for the 1985 Through 1987 Crops of Cigar-Binder (Types 51 and 52), Dark Air-Cured (Types 35 and 36), and Fire-Cured (Typed 21-24) Tobacco.

(1) *Referenda period.* The national marketing quota referenda for the 1985-1986, 1986-1987 and 1987-1988, (marketing years for cigar-binder (types 51 and 52), dark air-cured (types 35 and 36), and fire-cured (types 21-24) tobacco were held during the period February 19 through February 22, 1985, in accordance with 7 CFR Part 717.

(2) *Producers Voting.* The following is a summary by State, of the results of each referendum:

State	Yes	No	Total
Cigar-Binder (Types 51 and 52) Tobacco [1]			
Connecticut	6	57	63
Massachusetts	28	5	33
Totals	34	62	96
Dark Air-Cured (Types 35 and 36) Tobacco [2]			
Indiana	6	1	7
Kentucky	5,154	322	5,486
Tennessee	1,702	143	1,845
Totals	6,862	476	7,338
Fire-Cured (Types 21-24) Tobacco [3]			
Kentucky	2,865	158	3,023
Tennessee	3,393	272	3,665
Virginia	1,601	202	1,803
Totals	7,859	632	8,491

[1] Of those voting, 34 producers, or 35.42 percent, favored marketing quotas for cigar-binder (types 51 and 52) tobacco, and 62 producers, or 64.58 percent, opposed quotas.
[2] Of those voting, 6,862 producers, or 93.51 percent, favored marketing quotas for dark air-cured (types 35 and 36) tobacco, and 476 producers, or 6.49 percent, opposed quotas.
[3] Of those voting, 7,859 producers, or 92.56 percent, favored marketing quotas for fire-cured (types 21-24) tobacco, and 632 producers, or 7.44 percent, opposed quotas.

(3) *Marketing quotas will not be in effect for the 1985 crop of cigar-binder (types 51 and 52) tobacco.* Since more than one-third of the producers of cigar-binder (types 51 and 52) tobacco voting in the referendum opposed quotas, national marketing quotas shall not be in effect for cigar-binder (types 51 and 52) tobacco for the 1985-86 marketing year. In accordance with Section 312 of the 1938 Act, the Secretary of Agriculture will proclaim national marketing quotas for cigar-binder (types 51 and 52) tobacco for the next three marketing years beginning with the 1986-87 marketing year. Producers engaged in the production of such kind of tobacco quota for such kind of tobaccos in the 1985 crop-year will vote again in 1986 to determine if marketing will be in effect for the next three succeeding marketing years beginning with the 1986-87 marketing year.

(4) *Marketing quotas will be in effect for the 1985 through 1987 crops of dark air-cured (types 35 and 36) and fire-cured (types 21-24) tobacco.* Since less than one-third of the producers of dark air-cured (types 35 and 36) and fire-cured (types 21-24) tobacco voting in

referenda voted to disapprove marketing quotas and since the 1984–85 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed will be in effect, national marketing quotas shall be in effect for dark air-cured (types 35 and 36) and fire cured (types 21–24) tobacco for the marketing years 1985–1986, 1986–1987, and 1987–1988.

(Secs. 312(c), 52 Stat. 46, as amended (7 U.S.C. 1312(c))]

Signed at Washington, D.C., on May 7, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85–11419 Filed 5–9–85; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service

Food Stamp Program; Adjustment of Income Eligibility Standards

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department is adjusting the limits on gross and net income which a household may have and still be eligible for food stamps. The Food Stamp Act of 1977, as amended, requires the Department to make this adjustment each year. By adjusting the income eligibility limits, the Program takes into account changes in the cost of living.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Issuance and Benefit Delivery Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 756–3461.

SUPPLEMENTARY INFORMATION: .

Classification

Exective Order 12291. The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512–1. This action will affect the economy by less than $100 million a year. It will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not major".

Publication. State agencies must implement the new standards on July 1, 1985, and these offices need adequate advance notice of the new standards to carry out all steps necessary for them to meet the implementation deadline. Based on regulations published at 47 FR 46485–46487 (October 19, 1982), annual statutory adjustments to the gross and net monthly income eligibility standards are issued by General Notices published in the **Federal Register** and not through rulemaking procedures.

Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will primarily affect State and local welfare agencies and future food stamp applicants. The effect upon the welfare agencies is not significant.

Paperwork Reduction Act. This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Background

The Food Stamp Act requires that the gross (130 percent of poverty line) and net (equal to poverty line) income eligibility standards take into account the annual adjustments of the poverty guidelines issued by the Department of Health and Human Services. Section 3(i) of the Act provides that elderly individuals (and their spouses) unable to prepare meals because of certain disabilities may be considered separate households even if they are living and eating within another household. The Act limits this exception to those persons who meet both of the following requirements: (1) Their own income may not exceed the net income eligibility standards; and (2) The income of those with whom they reside does not exceed 165 percent of the poverty line. Since the gross, net and elderly/disabled income eligibility standards are based on the poverty line, each is adjusted, as set forth in the following tables:

NET MONTHLY INCOME ELIGIBILITY STANDARDS

[100 pct. of poverty line]

Household size	48 States[1]	Alaska	Hawaii
1	438	547	504
2	568	735	676
3	738	922	849
4	888	1,110	1,021
5	1,038	1,297	1,194
6	1,188	1,485	1,366
7	1,338	1,672	1,539
8	1,488	1,860	1,711

NET MONTHLY INCOME ELIGIBILITY STANDARDS—Continued

[100 pct. of poverty line]

Household size	48 States[1]	Alaska	Hawaii
Each additional member	+150	+188	+173

[1] Includes District of Columbia, Guam and Virgin Islands.

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS

[130 pct of poverty line]

Household size	48 States[1]	Alaska	Hawaii
1	569	711	655
2	764	955	879
3	959	1,199	1,103
4	1,154	1,442	1,328
5	1,349	1,686	1,552
6	1,544	1,930	1,776
7	1,739	2,174	2,000
8	1,934	2,417	2,225
Each additional member	+195	+244	+225

[1] Includes District of Columbia, Guam and Virgin Islands.

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS FOR HOUSEHOLDS WHERE ELDERLY/DISABLED A SEPARATE HOUSEHOLD

[165 pct of poverty line]

Household size	48 States[1]	Alaska	Hawaii
1	722	902	831
2	970	1,212	1,116
3	1,217	1,521	1,400
4	1,465	1,831	1,685
5	1,712	2,140	1,969
6	1,960	2,449	2,254
7	2,207	2,759	2,539
8	2,455	3,068	2,823
Each additional member	+248	+310	+285

[1] Includes District of Columbia, Guam and Virgin Islands.

(91 Stat. 958 (7 U.S.C. 2011–2029)

(Catalogue of Federal Domestic Assistance, No. 10.551, Food Stamps)

Dated: May 3, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85–11368 Filed 5–9–85; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Regional Guide for the Pacific Northwest Region; The Entire States of Washington and Oregon and Minor Portions of Idaho and California; Intent To Prepare a Supplement to the Final Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare a Supplement to the Final Environmental Impact Statement (FEIS) for the Regional Guide for the Pacific Northwest Region. The Guide provides Standards and Guidelines to be used in the development of Land and Resource Management Plans for each of the 19 National Forests in the Pacific

Northwest Region. The Supplement will address Standards and Guidelines that relate to planning for management of habitat of the northern spotted owl.

In a review of my decision to implement the Regional Guide, appealed by the National Wildlife Federation, the Deputy Assistant Secretary of Agriculture for Natural Resources and Environment reversed my decision only as it related to the northern spotted owl. The Deputy Assistant Secretary remanded the Regional Guide and FEIS for preparation of a Supplement to the FEIS which addresses the relevance of biological information on the northern spotted owl that has become available since 1980. This notice of intent is being issued as the first step in preparing the Supplement.

During the preparation of the Supplement, meetings will be held with invited participation by the appellants, intervenors, agencies, and others having specific knowledge of the subject matter of this Supplement. If public meetings are used as one of the methods for public involvement, they will be announced in newspapers of general circulation in the geographic area of such meetings well in advance of the scheduled dates. The purpose of all such meetings will be to gather biological information on the northern spotted owl, especially that which has become available since 1980 and to identify sources thereof.

Alternatives which may be considered include the following:

1. No further reduction in suitable spotted owl habitat on National Forest System lands in the Pacific Northwest Region.

2. The appellant's proposal in a January 3, 1985, letter, which in general calls for management of 1,000 Spotted Owl Management Areas (SOMA's) each preserving at least 2,200 acres of suitable old-growth habitat.

3. An alternative based upon the Oregon-Washington Interagency Wildlife Committee's recommendations of March 6, 1981, which in part call for the Forest Service to maintain a minimum of 290 nesting pairs of northern spotted owls in Oregon SOMA's each containing 1,000 acres of old-growth habitat.

4. An alternative that proposes less than the Oregon-Washington Interagency Wildlife Committee's March 6, 1981, recommendation.

5. No formal measures to protect the owl habitat.

The Bureau of Land Management, U.S. Department of the Interior (USDI); Fish and Wildlife Service, USDI; the National Park Service, USDI; the Soil Conservation Service, U.S. Department of Agriculture; the State of Washington Department of Game; the State of Oregon Department of Fish and Wildlife; and Oregon State University may be requested to participate as cooperating agencies. These agencies may participate through their representatives on the Oregon-Washington Interagency Wildlife Committee.

The responsible official for the Supplement to the Final Environmental Impact Statement is R. Max Peterson, Chief, Forest Service.

A Draft Supplement to the Final Environmental Impact Statement is expected to be available for agency and public review by January 1, 1986, and a Final Supplement should be available by July 1, 1986.

Comments or questions about this Notice and the proposed Supplement to the FEIS may be sent to Allan O. Lampi, Director of Planning, Pacific Northwest Region, USDA Forest Service, P.O. Box 3623, Portland, Oregon 97208.

Dated: May 6, 1985

R. Max Peterson,

Chief.

[FR Doc. 85-11332 Filed 5-9-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-401-402, C-433-402, C-307-403]

Extension of the Deadline for Final Countervailing Duty Determinations; Certain Carbon Steel Products From Austria, Sweden, and Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of the United States Steel Corporation, the Department of Commerce is extending the deadline for its final determinations in the countervailing duty investigations of certain carbon steel products from Austria, Sweden, and Venezuela to correspond to the date of the final determinations in the antidumping investigations of the same products pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573).

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 377-3464 or 377-1785.

SUPPLEMENTARY INFORMATION:

Case Histories

On December 19, 1984, we received antidumping and countervailing duty petitions filed by the United States Steel Corporation against (1) carbon steel plate, hot-rolled carbon steel flat-rolled products, and cold-rolled carbon steel flat-rolled products from Venezuela and (2) hot-rolled carbon steel sheet and cold-rolled carbon steel sheet from Austria. We also received a countervailing duty petition against carbon steel plate, hot-rolled carbon steel flat-rolled products, and cold-rolled carbon steel flat-rolled products from Sweden.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petitions alleged that imports of certain carbon steel products from Austria and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure or threaten material injury to a U.S. industry.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petitions alleged that manufacturers, producers, or exporters in Austria, Sweden, and Venezuela of certain carbon steel products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petitions contained sufficient grounds on which to initiate antidumping and countervailing duty investigations, and on January 8, 1985 we initiated such investigations (50 FR 2318, 50 FR 2319, and 50 FR 1905). On March 14, 1985, we issued affirmative preliminary determinations in the countervailing duty investigations (50 FR 11220, 50 FR 11224, and 50 FR 11227). Preliminary determinations in the antidumping investigations will be made on or before May 28, 1985.

On March 22, 1985, the United States Steel Corporation filed a request for extension of the deadline date for the final determinations in the countervailing duty investigations of certain carbon steel products from Austria, Sweden, and Venezuela to correspond with the date of the final

determinations in the antidumping investigations of the same products.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation * * * which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the Petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, the Department is granting an extension of the deadline for the final determinations in the countervailing duty investigations of certain carbon steel products from Austria, Sweden and Venezuela to August 12, 1985, the current deadline for the final determination in the antidumping investigations.

May 6, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-11343 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-401]

Red Raspberries From Canada; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

SUMMARY: We determine that red raspberries from Canada as described in the "Scope of the Investigation" section of this notice are being, or are likely to be, sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend liquidation on entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. We further determine that "critical circumstances" do not exist.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: David Johnston, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-2239.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that red raspberries from Canada are being, or are likely to be, sold in the United States at less than fair value, pursuant to section 735(a) of the Tariff Act of 1930, as amended (the Act). One exporter, Abbotsford Growers Cooperative Association, was excluded from this determination because we found *de minimis* margins of sales at less than fair value.

We have found that the foreign market value of red raspberries exceeded the United States price on 55.0 percent of the sales compared. These margins ranged from 0.3 percent to 25.8 percent. The overall weighted-average margin on all sales compared is 2.41 percent. The weighted-average margins for individual companies investigated are listed in the "Suspension of Liquidation" section of this notice. We further determined that critical circumstances do not exist.

Case History

On July 3, 1984, we received a petition from the Washington, Red Raspberry Commission, the Red Raspberry Committee of the Oregon Caneberry Commission, the Red Raspberry Committee of the Northwest Food Processors Association, the Red Raspberry Member Group of the American Frozen Food Institute, Rader Farms (a grower/packer of red raspberries), Ron Roberts (a grower of red raspberries), and Shuksan Frozen Foods Inc. (an independent packer of red raspberries) on behalf of themselves and the domestic producers of red raspberries. The petition was amended to include the Washington Red Raspberry Growers Association, and the North Willamette Horticultural Society as co-petitioners.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of red raspberries from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury or threaten material injury to a United States industry.

After reviewing the petition, we determined it contained sufficient grounds upon which to initiate an antidumping duty investigation. We also investigated whether there were sales in the home market at less than the cost of production. We notified the ITC of our action and initiated such an investigation on July 23, 1984 (49 FR 30342). On August 20, 1984, the ITC determined that there is a reasonable indication that imports of red raspberries are threatening material injury to a United States industry (49 FR 34424).

On September 11, 1984, questionnaires were sent to Abbotsford Growers Cooperative Association (AG), East Chilliwack Fruit Growers Cooperative (EC), Mukhtiar & Sons Packers Ltd. (M&S) and Jesse Processing Ltd. (JP), processors of red raspberries. On November 1, 1984, we received their responses. On October 25, 1984, cost of production questionnaires were sent to AG, EG, M&S, JP, and a representative sample of growers (Mukhtiar Growers Ltd., J.J. Martens, Chester Lien, Harnack S. Gill, H.P. Riemer, Darshan Mahil, Nachattar Bains, Hoege Driegen, Sandhu Fruit Farms, John Enns, Egan Foerderer, and Jesse Farms, Ltd.).

On November 20, 1984, we received an allegation from petitioners that critical circumstances exist. On December 10, 1984, we preliminarily determined that there was a reasonable basis to believe or suspect that red raspberries from Canada were being sold in the United States at less than fair value (49 FR 49129). On December 21, 1984 we received a letter from respondents requesting that the final determination be postponed. On January 14, 1985, through January 25, 1985, we conducted the verification of the responses. On February 5, 1985, we postponed the final determination to May 2, 1985 (50 FR 5654). At the request of the respondents, we held a hearing on March 22, 1985, to allow the parties an opportunity to address the issues arising in this investigation. We received written comments from the parties and have taken them into consideration in this determination.

Scope of Investigation

The merchandise covered by this investigation is fresh and frozen red raspberries packed in bulk containers and suitable for further processing. Fresh raspberries are classified under item numbers 146.5400 and 146.5600 of the Tariff Schedules of the United States Annotated (TSUSA), and frozen raspberries under item number 146.7400 of the TSUSA. We treated fresh and frozen red raspberries packed in bulk containers suitable for further processing as the same class or kind of merchandise because we determined that the only difference between the two is the freezing cost, which is a post-processing and packing quantifiable cost.

Fair Value Comparisons

For purposes of determining whether there were sales at less than fair value, we compared the United States price to the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of certain sales of red raspberries to represent the United States price for sales by EC and JP when the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the f.o.b. plant, packed price. We made no deductions.

As provided in section 772(c) of the Act, we used the exporter's sales price in certain sales of red raspberries to represent the United States price for sales by AG, EC, and M&S when the merchandise was sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the duty paid, f.o.b. warehouse, packed price. We made deductions for freight, commissions to unrelated agents, U.S. customs duties, brokerage, discounts, quality control, cold storage, puree processing, and all costs and expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise.

Foreign Market Value

In accordance with section 773 of the Act we based the foreign market value for EC and JP on constructed value and home market prices for AG and M&S.

The petitioners alleged that home market prices were below the cost of producing the raspberries. The DOC verified the cost of production for the four major processors. This verification included the cost of growing raspberries by the growers because they were related to the processors. Therefore, a sample of ten growers was selected scientifically to represent the cost of raspberries supplied by Canadian growers (material cost for the raspberry processors) to two of the processors, AG and EC. The two remaining processors, JP and M&S, purchase nearly all raspberries from their own farms. For them, we treated the cost of production of the farm as representative of the processor's cost of raspberries.

When determining the cost of production the DOC used the cost of growing raspberries, which included materials, labor, maintenance, equipment, interest on debt, property taxes, and insurance. The costs for cultivation include deferred plant cost, irrigation, fertilizers, and labor. Harvesting expenses included contract labor, hired labor, and machinery depreciation expenses.

Farm land is not depreciated and therefore a depreciation cost was not included. If the farm mortgaged, the interest expense was included in the cost. New plantings are normally a deferred expense in the first year and amortized over the next ten years, and were treated as such. Replacement plantings were expensed in the year of replacement.

Most growers did not include administrative costs in their responses. Although the grower may be compensated for management from the residual profits of the farm, a value for such expense was included as a cost. One processor, M&S, did not include a management charge since all payments were made as a bonus. We allocated a portion of the bonus as an administrative expense.

Income from the Farm Insurance Income Program (FIIP), and government wage rebate benefits were included as offsets to cost since these benefits are attributable directly to raspberry production. Premiums paid into FIIP were treated as an expense, and were included in the cost of production. We excluded other income which was not considered directly related to the raspberry production, such as income from the sale of fertilizer and chemicals and income from property rentals.

The two co-ops received interest-free loans from their members. Since these loans represent virtually all operating capital, we consider them as owners' equity and not as interest-bearing loans.

One processor, JP, considers juice stock raspberries, which are subject to this investigation, as a by-product of its primary individual quick frozen berry business. We do not agree, since the subject product represents a significant portion of revenue and production for the processor. We treated the products as co-products for the calculation of production cost and processing.

After determining such costs, we found that all of the home market sales were below the cost of production for EC and JP. These sales were made over an extended period and in substantial quantities, and were not made at prices which would permit the recovery of all costs within a reasonable period, in the normal course of trade. Therefore, in accordance with §§ 353.6 and 353.7 of the Commerce Regulations (19 CFR 353.6, 353.7), we used constructed value for the determination of foreign market value for EC and JP for comparisons to sales of red raspberries imported in fresh and frozen condition. We used the statutory minimums of 10 percent for selling, general and administrative expenses and 8 percent profit for JP since the actual amounts were below the statutory minimum. For EC, the actual selling, general, and administrative expenses were used since they were greater than 10 percent and the statutory minimum of 8 percent for profit was used since the actual profit was below the statutory minimum.

Sufficient home market sales for M&S and AG were found to be above the cost of production. Therefore, for M&S and AG we used home market sales for the determination of foreign market value. We calculated the foreign market value on the basis of the f.o.b. plant or delivered, packed or unpacked, prices as appropriate. We made deductions for freight, where appropriate. In accordance with § 353.15 of the Commerce Regulations (19 CFR 353.15), we made a circumstance of sale adjustment for differences in credit expenses. Where exporter's sales prices was used as United States price, we made deductions for indirect selling expenses incurred in the home market up to the amount of U.S. sales commissions and indirect selling expenses, in accordance with § 353.15 of the Commerce Regulations. We made adjustments for packing costs. We made no deductions for in-transit warehousing as this expense was paid by the customer. We found fresh raspberries similar to frozen raspberries and made a difference in merchandise adjustment to account for the cost of freezing.

Determination of Critical Circumstances

Petitioners alleged that imports of red raspberries from Canada present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of red raspberries from Canada in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping

duty orders. We also reviewed the antidumping actions of other countries, and found no past antidumping determinations on red raspberries from Canada.

We then considered whether the person by whom, or for whose account, this product was imported knew or should have known that the exporter was selling this product at less than fair value. It is the Department's position that this test is met where margins calculated are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below home market sales prices or the constructed value. In this case, the margins calculated are not sufficiently large that the importer knew or should have known that the merchandise was being sold in the United States at less than fair value. Therefore, we determine that the importer did not have knowledge of sales at less than fair value. Since there is no history of dumping in the United States or elsewhere and we have no reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value, we did not consider whether there had been massive imports over a relatively short period.

Based on the foregoing, we determine that critical circumstances do not exist with respect to imports of this product.

Petitioner's Comments

Comment 1: Petitioners claim that substantially all home market sales from the 1983 harvest were at prices below the cost of production. Sales to third country export markets were negligible and also at prices below the cost of production. Home market sales were made over an extended period and in substantial quantities and were not at prices which would permit recovery of all costs within a reasonable period in the normal course of trade. Therefore, the DOC should use constructed value for the determination of foreign market value.

In computing constructed value the DOC should include Canadian packing costs and Canadian processing costs.

DOC Position: We found that substantial sales in the home market by EC and JP were below cost, and used constructed value for those processors. M&S and AG had sufficient home market sales above cost to allow use of those sales for their foreign market value. Where sales were found in substantial quantities below the cost of production we determined the constructed value. We included processing costs but excluded Canadian packing costs because these costs are not part of the cost of the merchandise sold to the United States. We added the cost of United States packing in accordance with section 773(e)(1)(c) of the Act.

Comment 2: The sample used by the DOC is flawed for the following reasons: it is not stratified between hand-pick and machine-pick farms; it assumes that variation of costs is very small among growers regardless of size and level of investment; the sample covers only small percentages of total acres and pounds harvested; and, it is incorrect to use only Jesse Farm's cost of production to determine JP's material cost because 40 percent of the raspberries supplied to JP are from sources other than Jesse Farms and are therefore not covered. The British Columbian Provincial Government administers the British Columbian Farm Income Insurance Program (FIIP), which establishes the cost of producing raspberries using a model farm concept and above-average efficiency. The DOC should use the FIIP model farm as the best information available for the cost of production.

DOC Postion: We disagree with the contention that the sample of farms investigated as a basis for the cost portion of this detemination is flawed. The techniques used to establish the sample were in accordance with recognized and appropriate practice and more importantly, were recommended by experts familiar with the factors that affect raspberry production cost.

The DOC solicited advice from both U.S. and Canadian government experts on commercial raspberry horticulture, specifically attempting to identify factors which affect cost and price before we chose a sample. These experts said that costs differed very slightly due to economies of scale, and that the technical limitation of raspberry-picking machines diminish the effect of machinery on total cost. Differences in scale in land and labor also were not significant. Further, the 10 farms selected for the sample were representative. The two other growers were selected because they were the preponderant suppliers for two of the processors under investigation and are representative of the other suppliers for these processors. An analysis of variations in the cost information actually received in the investigation substantiated the working assumptions on the nature of the population which helped establish the size of the sample.

Finally, the DOC feels that the acutal market information obtained through the sample is representative, and certainly is perferred as a basis for determination to a modelled cost of production as suggested by respondent.

Comment 3: If the DOC does not use either the cost of production as calculated by the FIIP or the Ministry's Raspberry Production Budget as the best information available, then it should use such studies to impute costs to reflect the industry norm where the cost reported by a grower is substantially below that shown in the studies.

DOC Position: The DOC used verified information of the respondents and considered all other information supplied by the respondents and petitioners when computing the appropriate cost of production. Only with regard to management expenses of the growers, did we use FIIP study information.

Comment 4: The DOC should use the grower's cost of production unless the price the grower receives for its raspberries is higher, in determining the packer's cost of production. If the transaction price is higher it should be used regardless of whether it includes profit and regardless of whether the grower is related to the processor. Profit is a necessary part of the material cost in either related or unrelated party transactions.

DOC Position: We disagree. In the preliminary determination our sample included some growers which were known to be related to the processors and others which were not known to be related to the processors. We used the cost of production of the sample of growers as the minimum material cost of the processors where the processors indicated a material cost. Where processors listed higher material costs, the higher costs were used. This was done because we assumed that the sample consisted of both related and unrelated growers. Verification showed that all growers in the sample were related to processors. In accordance with § 353.6(b) of the Commerce Regulations, in our final analysis we cannot use transaction price because all growers are related to the processors. Therefore we used the average cost of production of the growers as the material cost for the processors where the sample was used. For JP and M&S the actual cost of production of Jesse Farms Ltd. and Mukhtiar and Sons Growers Ltd. were used for the respective processor's material cost.

Comment 5: It is improper to compare sales of frozen packed raspberries with sales of fresh packed raspberries. The two products have different physical characteristics and different commercial values. Fresh packed raspberries are perishable, and frozen are not.

demonstrating the difference in physical characteristics. A seven percent U.S. duty is applicable to frozen packed raspberries while there is no duty on fresh packed raspberries imported during the growing season, demonstrating the difference in commercial value.

DOC Position: We disagree. We learned during verification that the only difference in the physical characteristics of fresh and frozen raspberries is the freezing. The cost of freezing is easily quantified and has been verified. Therefore, we have made a difference in merchandise adjustment by adjusting for the freezing costs. As for there being a difference in commercial value due to the different tariff provisions, we have seen price variation in both the U.S. and Canadian markets and cannot attribute an identifiable difference in commercial value to the U.S. duty.

Comment 6: Raspberries packed in pails should not be compared with raspberries packed in drums. Raspberries packed in pails receive a higher price than raspberries packed in drums. Where a similar pail-to-pail, drum-to-drum merchandise comparison cannot be made, constructed value should be used.

DOC Position: The product is identical whether packed in drums or pails. We deducted home market packing from the foreign market value and then added the packing for the U.S. sale being compared.

Comment 7: Sales prices in both the U.S. and Canadian markets of respberries packed in pails varied 29 precent. It is not reasonable to compare the price of each U.S. sale with the weighted-average price of sales in the Canadian market over the entire period of investigation. Instead, monthly average prices should be compared to each U.S. sale and constructed value should be used when there are no sales in the Canadian market in a given month for comparison with U.S. sales.

OC Position: We disagree. Although there are price variations, these variations are likely due to differences in level of trade, quantity purchased and other price negotiation factors.

Comment 8: The DOC did not obtain surveys, aerial photos or other supporting documents to verify the amount of land devoted to raspberries.

DOC Position: During verification the DOC used whatever information was available to verify the respondent's data. Aerial photos and land surveys are useful only if they show the 1983 crop year. There were none available. The DOC used the yield and cost per acre data supplied by all respondents and petitioners to verify the reasonableness of the raspberry production and acreage allocations.

Comment 9: The DOC should not offset the cost of producing raspberries with the revenues received from the FIIP.

DOC Position: To determine if the FIIP payment should be considered in the growers' costs, the DOC reviewed the relationship of such payments to the production and sale of respberries. Receipt of the FIIP was directly related to this activity. Therefore, in accordance with the DOC's policy of accounting for "other revenues" which arise as a result of producing the product under investigation, the DOC accounted for such FIIP payments as a "financial gain" in calculating the cost of production. The FIIP premium was included as a cost.

Respondents' Comments

Comment 1: The Canadian dollar declined by almost 7 percent in value compared with the U.S. dollar over the investigative period. The DOC used only the third quarter exchange rate to convert Canadian dollar values into U.S. dollar values. Current DOC regulations require conversion of foreign currencies as of the date of exportation, if an exporter's sales price is the basis of comparison. However, recent amendments to the antidumping statute establish that foreign market value must be determined at the time imported merchandise is first sold by the importer to an unrelated purchaser in an exporter's sales price situation. Therefore, foreign market value should be determined at the time of sale and converted to U.S. dollars at the exchange rate on the date of sale.

DOC Position: We agree that, if possible, the exchange rate in effect at the time of the U.S. sale should be used to convert foreign currency to U.S. dollars. This appears to be more consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). Therefore, we chose not to follow § 353.56(a)(2) of the Commerce regulations which predates the 1984 Act.

Comment 2: The authority to average United States price and foreign market value is provided in the 1984 Act. It is appropriate to use the average U.S. and Canadian net sales prices since the investigation period is a full year (longer than the normal investigative periods of six months).

DOC Position: We used a weighted-average of home market sales by M&S and AG, and constructed value for EC and JP to determine their foreign market value. We did not average U.S. prices of the subject merchandise because there was not a sufficiently large number of sales or large number of adjustments to the prices to warrant the use of averaging.

Comment 3: East Chilliwack Cooperative made a number of small-volume sales in the Canadian market to institutional customers (other than large volume remanufacturers and brokers). These sales are distinguishable from sales to remanufacturers and brokers by the volume and price of the sale. The Commerce regulations provide that comparisons must be made on sales of comparable quantities. DOC should either exclude the small-volume sales from price comparison or make an adjustment for differences in quantity, level of trade or customer category.

DOC Position: We agree. The sales made to the institutional buyers were in fact sales to consumers, whereas, sales to remanufacturers and brokers are sales at the wholesale level of trade. We excluded the sales of instititional buyers because they were made at a different level of trade. By volume, these sales account for less than two percent of total volume sold.

Verification

In accordance with section 776(a) of the Act, we verified all data used in reaching this determination by using standard verification procedures, including on-site inspection of the growers' and processors' operations, and examination of accounting records and selected documents containing relevant information.

Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of red raspberries packed in bulk containers suitable for further processing from Canada except those from Abbotsford Growers Cooperative Association, which are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price.

This suspension of liquidation will remain in effect until further notice. Imports of red raspberries sold by AG are excluded from this suspension of liquidation, since the weighted-average margin is 0.19 percent, which is *de*

minimis. The weighted-average margins are as follows:

Manufactures	Weighted-average margins (percent)
Abbotsford Growers Cooperative Assoc.[1]	0.19
Jesse Processing Limited	22.76
Mukhtiar & Sons Packers Ltd.	1.21
East Chilliwack Fruit Growers Coop.	3.39
All Other Manufacturers/Producers/Exporters	2.41

[1] De minimis, excluded.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation.We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or threatening material injury to, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury does not exist, this proceeding will be terminated and all cash deposits, securities or bonds posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order, directing Customs officers to assess an antidumping duty on red raspberries from Canada entered, or withdrawn from warehouse, for consumption, on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Assistant Secretary for Trade Administration.

[FR Doc. 85-11345 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; American Health Foundation

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-316. Applicant: American Health Foundation, Valhalla, NY 10595. Instrument: Cigarette Smoking Machine, Model RM 20/CS. Manufacturer: Heinrich Borgwaldt, West Germany. Intended use: See notice at 49 FR 42775.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument simultaneously measures tar and nicotine content of up to 20 cigarettes with the following parameters: (1) Puff time range of 0.02 to 99.9 seconds, (2) puff frequency range of 1 per 20 to 400 seconds, and (3) puff volume range of 20 to 50 milliliters. The National Institutes of Health advises in its memorandum dated February 26, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or appraratus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-11348 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Augustana Hospital and Health Care Center

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84-284. Applicant: Augustana Hospital and Health Care Center, Chicago, IL 60614. Instrument: Kinetic Polarization Fluorometer with Spare Parts. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: See notice at 49 FR 39356.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is a prototype which provides the sensitivity required to measure lymphocyte fluorescence polarization in a test method for determining the presence of cancer. The National Institutes of Health advises in its memorandum dated January 3, 1985 that (1) the capability of a foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-11347 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Harvard College

This decision is made pursuant to section 6(c) of the Education, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84-59R. Applicant: Harvard College, Cambridge, MA 02138. Instrument: STEM System for Scanning Transmission Electron Microscope. Original notice of this resubmitted application was published in the **Federal Register** of March 2, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is an accessory for an existing instrument perviously entered duty-free, which will allow it is to be used as a scanning

transmission electron microscope. The capability of the foreign article described above is pertinent to the applicant's intended purpose and we know of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-11346 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Open Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held Wednesday, May 22, 1985 at 10:30 a.m., Room 718, #6 World Trade Center, New York, New York. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials on problems and conditions in the textile and apparel industry.)

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: May 7, 1985.

Ronald I. Levin,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85-11469, Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DR-M

Semiconductor Technical Advisory Committee; Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 4, 1985 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

DATE: Time and place: May 29, 1985 at 9:30 a.m., Herbert C. Hoover Building, Room B849, 14th Street and Constitution Ave., NW., Washington, D.C.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: May 7, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-11400 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Minority Business and Industry Associations/Minority Chambers of Commerce Application Announcement

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: On August 22, 1984 MBDA announced its Minority Business and Industry Associations/Minority Chambers of Commerce (MB&IA/C of C) Program in the **Federal Register** Volume 49, page 33298.

MBDA announces it is soliciting competitive applications (national, regional or local) for financial assistance awards to MB&IA/C of C. Funding will usually be for a twelve (12) month period.

All applications for funding will be competed according to the total project cost proposed by the applicant. The cost categories are:

$50,000-$100,000
$125,000-$175,000
$200,000-$250,000

The highest ranking applicant will be the first funded in each category. Additional projects will be awarded based on:

1. Availability of funds;
2. Minority business development needs; and
3. Geographic coverage needs.

Closing Date: The closing date for applications is June 10, 1985.

Funding Instrument: The funding instrument will be a grant, as defined by the Federal Grant and Cooperative Agreement Act of 1977.

Program Description: This program is designed to provide financial assistance to Minority Business and Industry Associations/Minority Chambers of Commerce which act as advocates for their members and the minority business community.

In addition, they function as part of Minority Business Development Agency's (MBDA) service network and supplement the Minority Business Development Center Program in responding to minority business needs. MB&IA/C of C play an important role in supporting MBDA goals, expending business opportunties for minority firms, and increasing the contribution of minority business enterprises to the national economy.

The following activities will be performed by the MB&IA/C of C:

1. Develop and Expand Membership,
2. Disseminate Information,
3. Educational Programs,
4. Advocate Minority Business Develpment,
5. Development Resources,
6. Identify Membership.

Eligibility Requirements: Competition is open to established business, industry, professional, and trade associations and chambers of commerce.

It is advisable that the applicants have an existing office in the geographic region for which they are applying.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Office of Resource Development (ORD), Minority Business Development Agency, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 5096, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: Applications kits (including Evaluation Criteria), and applicable regulations can be obtained at the above address. Questions concerning the preceding information can be addressed to the Assistant Director, Office of Resource Development, at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Joseph Cooper,

Assistant Director, ORD, Washington, D.C.

Dated: April 29, 1985.

[FR Doc. 85-11327 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of public workshop.

SUMMARY: The National Bureau of Standards will host an informal public workshop on June 17, 1985, to provide interested parties an opportunity to participate in the development of technical requirements for accrediting laboratories that perform electromagnetic compatibility and telecommunications equipment testing.

DATE: The workshop will be held on Monday, June 17, 1985, from 12:30 p.m. to 4:30 p.m.

Place: The workshop will be held at the National Bureau of Standards, Administration Building, Lecture Room D, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Peter Unger, Associate Manager, Laboratory Accreditation, National Bureau of Standards, ADMIN A531, Gaithersburg, MD 20899; (301) 921-3431. Please contact Mr. Unger not later than June 14 if you plan to attend the meeting.

SUPPLEMENTARY INFORMATION: On February 8, 1985, the National Bureau of Standards published in the **Federal Register** (50 FR 5411-12) a request to establish a laboratory accreditation program (LAP), for accrediting laboratories that perform electromagnetic compatibility and telecommunications equipment testing, under the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP). Based upon public comments and an analysis of other pertinent information on this matter, the Director of the National Bureau of Standards has determined that there is a need to establish such a LAP. A memorandum recording this determination and the accompanying summary and analysis of comments, dated April 29, 1985, is available for inspection and copying at the NBS Freedom of Information Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland 20899.

The requestor, Walter A. Poggi, President of Retlif, Inc. Testing Laboratories, has initiated development of recommendations for the technical requirements for implementing and administering this LAP. Mr. Poggi has formed a task group which is developing draft documents that will be reviewed and discussed at the workshop. For further information on this development effort, contact Mr. Poggi at Retlif, Inc., 795 Marconi Avenue, Ronkonkoma, NY 11779; (516) 737-1500.

The following procedures have been established for the workshop:

1. *Purpose.* The purpose of the workshop is to provide all interested persons with an opportunity to participate in the development of technical requirements for accreditation of laboratories that perform electromagnetic compatibility and telecommunications equipment testing.

2. *Conduct of Workshop.* The workshop will be an informal nonadversarial meeting. The presiding officer from NBS has the right to allocate the time available for discussion of each issue to be addressed, and to exercise such authority as may be necessary to insure the equitable and efficient conduct of the workshop and to maintain order. Mr. Poggi and/or participants in his task group will be allocated time to present the task group's recommendations.

3. *General Provisions.* This workshop will be open to the public. Summary minutes of the workshop will be prepared. A copy of those minutes will be available for inspection and copying in the NBS Freedom of Information Records Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland 20899.

Dated: May 6, 1985.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 85-11333 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-13-M

Research Grants Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcing Research Grants Program.

SUMMARY: The purpose of this notice is to inform potential applicants that the Automated Manufacturing Research Facility (AMRF), Center for Manufacturing Engineering, National Bureau of Standards, which conducts a program of basic and applied research in computer automated manufacturing, also administers a program of research grants in highly selected areas of research related to the mission of the AMRF. Funding available for grants is variable, depending upon levels of external support for AMRF research. During fiscal year 1984, AMRF awarded grants totaling approximately $1 million. The grant program is limited to unsolicited proposals and is highly competitive.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Nanzetta, Project Manager, AMRF, B-112 Metrology Building, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3119.

SUPPLEMENTARY INFORMATION: The NBS Center for Manufacturing Engineering conducts a program of basic and applied research in computer automated manufacturing. During fiscal year 1984, approximately $1 million was made available for grants and cooperative research under this program. Grants made under this research program are awarded on the basis of unsolicited proposals that are in accord with the objectives and programs of the AMRF. Areas of active research include:

(a) Realtime Control. Realtime control of robots, clusters of robots and machine tools (workstations), material handling systems, supporting devices, and aggregations of workstations.

(b) Automated Systems Integration. Architectural issues for large computer automated systems, initialization, restart, orderly shutdown, error detection and recovery.

(c) Sensory Systems and Adaptive Control. Sensors and applications of sensors to closed-loop control of major systems.

(d) Factory Floor Communications. Development and testing of factory floor communications networks.

(e) Data Management. Development and testing of architectures for distributed data management on the factory floor.

(f) Robot Metrology. Characterization and measurement of errors in robot motion and development of techniques to accommodate those errors.

(g) Robot Vision and Sensory World Modeling. Study of models for processing and inference from vision and other complex source sensory systems.

(h) Machine Tool Metrology. Application of software and hardware techniques for improvement of machine tool accuracy and evaluation of machine tool performance.

(i) Automated Process Planning. Development of systematic approach to computer aided process planning, leading to fully generative systems.

(j) Organization and Processing of Manufacturing Geometry Data. CAD-directed inspection, common domain data formats, integration of vision data, automated feature selection, automated generation of machining sequences from geometry.

(k) Application of expert systems and artificial intelligence to automated manufacturing systems.

(l) Software Engineering Tools applied to real-time control systems. Development of tools for specification, design, testing, and verification of software for automated manufacturing.

(m) Quality control issues in an automated factory. Development of tools and procedures for measuring quality control during manufacturing operations.

(n) Scheduling in an automated factory. Development of algorithms and simulation/emulation techniques for planning factory scheduling.

Proposal Review Process

Unsolicited proposals are assigned to the relevant group leader(s) and Division Chiefs for technical review and recommendation of funding. External peer review is employed as appropriate. The technical value of the proposal, the direct relationship of the proposed work to the needs of the group's research program, the applicability of the proposed research to high priority issues of the AMRF, and the availability of funds are taken into consideration in the group leader's and Division Chief's decisions. If the proposal is funded, a member of the Center's professional staff who performs related research will be appointed "Scientific Officer" to monitor the progress and facilitate the application of the work.

Since supported research must be directly related to the AMRF, it is generally expected that senior workers on the project will find it appropriate to conduct a major portion of their effort on-site at the National Bureau of Standards in Gaithersburg, Maryland.

Grant proposals should be addressed to Grants Office, Office of Acquisition and Assistance, Room B-141 Building 301, National Bureau of Standards, Gaithersburg, MD 20899, with an information copy to Dr. Nanzetta.

In order to avoid unnecessary effort, it is suggested that before preparing a proposal, you write or call Dr. Nanzetta at the address shown above, to ascertain whether there is possible interest in your idea, and whom to contact for further discussion if such interest does exist.

Dated: May 6, 1885.

Ernest Ambler,

Director.

[FR Doc. 85-11331 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

May 6, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 10, 1985. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

Background

On March 15, 1985 a notice was published in the **Federal Register** (50 FR 10527), which established an import restraint limit for polyster/cotton lightweight fabrics in Category 613pt (currently under TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059), produced or manufactured in Indonesia and exported during the ninety-day period which began on January 31, 1985 and extends through May 1, 1985, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia. The notice also stated that the Government of the Republic of Indonesia is obligated under the bilateral agreement, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the period which began on January 31, 1985 and extends through the end of the agreement year, June 30, 1985, to 4,947,216 square yards.

The notice also stated that merchandise which is in excess of the ninety-day limit, if it is allowed to enter, may be charged to the prorated limit.

The United States Government has decided, inasmuch as no mutually satisfactory solution has been agreed concerning this category, to control imports at the designated limit. The limit may be adjusted to include prorated swing and carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 6, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 10, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 613pt.,[1] produced or manufactured in Indonesia and exported during the period which began on January 31, 1985 and extends through June 30, 1985, excess of 4,947,216 square yards.[2]

Textile products in Category 613pt.[1] which have been exported to the United States during the previously established ninety-day period which began on January 31, 1985 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for

[1] In Category 613, only TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059).

[2] The limit has not been adjusted to reflect any imports exported after January 30, 1985.

consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-11349 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of Turkey on Category 317pt. (Twill)

May 7, 1985.

On April 30, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Turkey to enter into consultations concerning exports to the United States of cotton twill fabric in Category 317pt., (only TSUSA numbers 310.—through 331.—with statistical suffixes 51, 52, 85, 89, 91 and 95), produced or manufactured in Turkey.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations between the two governments within sixty days of the date of delivery of the aforementioned note, entry and withdrawal from warehouse for consumption of cotton textiles in Category 317pt., produced or manufactured in Turkey and exported to the United States during the twelve-month period which began on April 30, 1985 may be restrained at 6,441,771 square yards.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 317pt. is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Turkey—MARKET STATEMENT

Category 317 pt.—Cotton Twills

April 1985.

Summary and Conclusions

U.S. imports of Category 317 Pt.—cotton twill fabric from Turkey during the year-ending February 1985 were 7.8 million square yards, more than 19 times the 400,000 square years imported a year earlier. 2.9 million square yards of this entered during January-February 1985. Imports of cotton twills from Turkey totalled 5.3 million square yards in 1984. Prior to 1984 Turkey did not export cotton twills to the U.S.; however, in 1984 Turkey was the eighth largest U.S. supplier. It accounted for 19.4 percent of cotton twill imports during the January-February 1985 period.

The U.S. market for cotton twill fabric is disrupted by imports and the sharp increase from turkey is contributing to the disruption.

U.S. Production and U.S. Imports

U.S. production of cotton twill fabric declined by 7 percent from 138.2 million square yards in 1983 to 128.0 million square yards in 1984. Imports of cotton twill fabric, on the other hand, increased 49 percent from 78.5 million square yards in 1983 to 117.3 million square yards in 1984.

Import Penetration

The ratio of imports to U.S. production has increased steadily over the years. From a ratio of 37.5 percent in 1982, it increased to 56.8 percent in 1983 and to 91.6 percent in 1984.

Market Share

The U.S. producers share of the market for domestically produced and imported cotton twill fabric declined from 72.7 percent to 63.8 percent in 1983 and to 52.2 percent in 1984.

Import Value vs Domestic Producer's Price

Approximately 61 percent of Category 317 Pt.—cotton twill fabric—from Turkey enter under TSUSA No. 320.0058, wholly cotton with yarn count 1-9, and the remaining 39 percent under TSUSA No. 320.1058 wholly cotton with yarn count 10-19. These imports enter at duty-paid values below the U.S. producer price for comparable cotton twill fabric.

[FR Doc. 85-11401 Filed 5-9-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1985 commodities to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: May 10, 1985.

ADDRESS: Commitee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Addition to the Procurement List of the commodities listed below was published in the **Federal Register** on December 7, 1984 (49 FR 47890). Two comments were received in response to the notice. One commentor indicated that the addition would cause the loss of jobs in his firm which is located in an area of substantial unemployment. The other commenter indicated that his firm was a small business and that the addition erodes the firm's ability to compete for Government business.

The Committee considered the comments received as well as other pertinent information and determined that the addition will not result in serious adverse impact on the current or most recent contractor for the item involved.

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46 48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1985:

Class 7530

Index Sheet Set, Looseleaf Binder: 7530-00-160-8474, 7530-00-160-8475, 7530-00-160-8476, 7530-00-959-4441

C.W. Fletcher,

Executive Director.

[FR Doc. 85-11397 Filed 5-9-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: June 12, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Class 1670

Adapter Web, Lowering Line: 1670-01-065-8169

Class 7510

Eraser, Blackboard: 7510-00-244-9145

Class 8340

Line, Tent, Manila: 8340-00-252-2280, 8340-00-252-2282, 8340-00-252-2297, 8340-00-252-2293

Class 8915

Potatoes, White, Fresh: 8915-00-456-6111 (whole), 8915-00-228-1945 (diced)

(Requirements for North Carolina and South Carolina only)

SIC 7349

Janitorial/Elevator Operator, Wyoming Valley Veterans Building, 19 North Main Street, Wilkes-Barre, Pennsylvania

C.W. Fletcher,

Executive Director.

[FR Doc. 85-11396 Filed 5-9-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1985 commodities, military resale commodities and services to be provided by Workshops for the blind and other severely handicapped.

EFFECTIVE DATE: May 10, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 14, October 26, November 9, December 21, 1984 and February 1, February 15 and March 15, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 36133, 49 FR 43087, 49 FR 44788, 49 FR 44789, 49 FR 49694, 50 FR 4726, 50 FR 6376 and 50 FR 10529) of proposed additions to and deletions from Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities, military resale commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and military resale commodities and provide the services procured by the Government.

Accordingly, the following commodities, military resale commodities and services are hereby added to Procurement List 1985:

Class 8465

Bag, Personal Effects: 8465-00-174-0808

Military Resale Item Nos. and Names

No. 519, Fabric Softener Sheets, Reusable (4" x 8¾")
No. 921, Mop, Anglematic
No. 931, Refill, for #921

SIC 0782

Grounds Maintenance, Bergstrom Air Force Base, Texas (Portion not on Procurement List)

SIC 7349

Janitorial/Custodial, Federal Building, 536 South Clark Street, Chicago, Illinois
Janitorial/Custodial, Umpqua National Forest-Radio Shop, 2691 NE. Diamond Lake Boulevard, Roseburg, Oregon
Janitorial/Custodial, William J. Green, Jr. Federal Building, 600 Arch Street, Philadelphia, Pennsylvania
Janitorial/Custodial, Naval Air Station, Whidbey Island, Building 102, Oak Harbor, Washington

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following commodities and services are hereby deleted from Procurement List 1985:

Class 8105

Bag, Plastic: 8105-00-NSH-0001, 8105-00-NSH-0002, 8105-00-NSH-0003, 8105-00-NSH-0004

(Requirements for Naval Weapons Support Center, Crane, Indiana only)

Sic 7349

Janitorial Service, Federal Office Building Cass & Stephens Streets, Roseburg, Oregon

SIC 7374

Keypunch and Verification, General Services Administration, Region 2, Automated Data Management Services Division "overflow" requirements

SIC 7399

Repair of Air Cargo Pallet Top and Side Nets, McChord Air Force Base, Washington

C.W. Fletcher,

Executive Director.

[FR Doc. 85-11395 Filed 5-9-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 4-5 June 1985, 9:00 a.m. to 5:00 p.m.

ADDRESS: Los Alamos National Laboratory, Los Alamos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Microelectronics and Computers.

Thomas J. Condon,

Acting OSD Federal Register Liaison Officer, Department of Defense.

May 7, 1985.

[FR Doc. 85-11352 Filed 5-9-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Wednesday and Thursday, May 29 and 30, 1985.

Times and Places: 0830-1700 hours (Closed) at Depot Systems Command, Chambersburg, Pennsylvania on 29 May; 0830-1700 hours (Closed) at HQS, Army Materiel Command, Alexandria, Virginia on 30 May.

Agenda: The Mobilization Subpanel of the Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle will meet to receive background briefings concerning current and future logistics and logistics initiatives in preparation for the 2-week working session in August. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-11355 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday and Wednesday, June 4 and 5, 1985.

Times of meeting: 0830-1700 hours on both days (Closed).

Place: Boeing Aerospace Company, Seattle, Washington.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense Follow-On will meet for classified briefings and discussions on airborne optical adjunct and associated topics. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, Subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-11356 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: Wednesday, June 5, 1985.

Time: 0830-1700 hours (Open).

Place: The Pentagon, Washington, D.C.

Agenda: The Chairperson of the 1985 Army Science Board Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts will meet with the Chairs of the three subpanels (Training Effectiveness, Training Technology, and Doctrine & Training Integration) for an internal study organization and planning session. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the comittee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc.85-11357 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday and Friday, June 6 and 7, 1985.

Times of Meeting: 0830-1700 hours on both days (Closed).

Place: Johns Hopkins University Applied Physics Laboratory, Laurel, Maryland.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Atmospheric Sciences Laboratory (ASL) Effectiveness Review will meet to prepare a draft report of the panel recommendations. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5 U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Office, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Office, Army Science Board.

[FR Doc. 85-11358 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday and Friday, June 6 and 7, 1985.

Times of Meeting: 0830-1700 hours (Closed) on both days.

Places: Both National Security Agency and Systems Exploitation Detachment at Fort Meade, Maryland on 6 June; both Central Intelligence Agency, Langley, Virginia and Armed Forces Medical Intelligence Center, Fort Detrick, Maryland on 7 June.

Agenda: The Army Science Board Ad Hoc Subgroup on Chemical/Biological Warfare Intelligence will visit the above-designated agencies for classified briefings and discussions on technical collection, CW/BWI analysis and production and methods of

dissemination. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 85-11359 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Friday June 7, 1985.

Times of Meeting: 0830-1700 hours (Closed).

Place: Hughes Aircraft Company, Fullerton, California.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Signals Warfare Laboratory (SWL) Effectiveness Review will meet to prepare as draft report of the panel recommendations. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-11360 Filed 5-9-85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Navy Artificial Intelligence R&D will meet on May 30 and 31, 1985, at Carnegie-Mellon University, Pittsburgh, Pennsylvania. The first session of the meeting will commence at 8:00 A.M. and terminate at 5:30 P.M. on May 30. The second and final session will commence at 8:30 A.M. and terminate at 5:30 P.M. on May 31. All sessions of the meeting will be open to the public.

The purpose of the meeting is to receive technical briefings from industry and university representatives in order to develop a working definition of artificial intelligence suited to Navy needs; determine the current state of R&D and evaluate its relevance to Navy needs; establish criteria for evaluating potential applications of artificial intelligence in the Navy and identify the most beneficial applications for the Navy in combat and non-combat roles; identify commercial applications that may be readily adapted to Navy needs; and propose mechanisms for bringing existing artificial intelligence technology to the Navy. The agenda will include presentations and discussions by industry and university representatives on expert systems, natural language, robotics, training, and basic research in artificial intelligence.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: May 7, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-11385 Filed 5-9-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Application Notice for Noncompeting Continuation Awards Under the Bilingual Vocational Training Program and the Bilingual Vocational Instructor Training Program for Fiscal Year 1985

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: Applications are invited for noncompeting continuation award under the Bilingual Vocational training Program and the Bilingual Vocational Instructor Training Program.

Authority for this program is contained in section 441 of Part E. Title IV of the Carl D. Perkins Vocational Education Act. (20 U.S.C. 2441)

Currrent recipients of grants under these programs that have one or more year(s) remaining of an approved project period may apply for continuation of their present projects.

The purpose of the awards of the Bilingual Vocational Training Program is to provide financial assistance for bilingual vocational education and training for individuals with limited English proficiency to prepare them for jobs in recognized occupations and new and emerging occupations.

The purpose of the awards of the Bilingual Vocational Instructor Training Program is to provide training programs for persons seeking to improve their skills and qualifications as instructor in bilingual vocational training programs for persons of limited English speaking ability.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applicants for noncompeting continuation awards should mail or hand deliver their applications on or before June 10, 1985.

If a application is late, the Department of Education may lack sufficiant time to review it with other applications for noncompeting continuation awards and may decline to accept it.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84:077A, for Bilingual Vocational Training; and 84.099B, for Bilingual Vocational Instructor Training, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legibly mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Educations.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Befor relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th & D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays

Intergovernmental Review

On June 24, 1983, the Secretary published final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) in the **Federal register.** This implemented Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect september 30, 1983

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review:

Alabama
Arizona
Arkansas
California
Connecticut
Delaware
Florida
Hawaii
Indiana
Kansas
Louisiana
Maine
Massachusetts
Michigan
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Utah
Vermont
Virginia
Washington
Wyoming
Virgin Islands
Northern Mariana Islands

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawjde, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 10, 1985, to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA No. 84.050), 400 Maryland Avenue SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please Note That the Above Address is not the Same Address as the one to Which the Applicant Submits Their Completed Application. *Do Not Send Applications To the Above Address.*

Application Forms

Application forms and program information packages will be available on May 10, 1985. These packages may be obtained by writing to the Office of Vocational and Adult Education, U.S. Department of Education, (Room 5028, Regional Office Building 3) 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed five pages.

The Secretary further urges that applicants not submit information that is not requested

(The application is approved under OMB control number 1830-0013)

Available Funds

It is expected that approximately $1,350,000 will be available for the Bilingual Vocational Training Program for 10 noncompeting continuations, and approximately $700,000 will be available for 4 noncompeting continuations under the Bilingual Vocational Instructor Training Program in FY 1985.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable Regulations

The following regulations apply to this program:

(1) The regulations governing the Bilingual Vocational Training and Bilingual Vocational Instructor Training Programs, as proposed to be codified in 34 CFR Parts 407 and 408. The proposed regulations were published on January 25, 1985 (50 FR 3650-3653). Applicants should prepare their applications based on these proposed regulations. Applicants will be given an opportunity to amend their applications if the final regulations are changed significantly form the proposed regulations.

(2) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, 78, and 79.

FOR FURTHER INFORMATION CONTACT: For further information, contact Ron Castaldi, Office of Vocational and Adult Education, U.S. Department of Education, (Room 5028, Regional Office Building 3) 400 Maryland Avenue, SW, Washington, D.C. 20202. Telephone: (202) 245-2614.

(20 U.S.C. 347(a))

(Catalog of Federal Domestic Assistance No. 84.077A, Bilingual Vocational Training and 84.099B, Bilingual Vocational Instructor Training)

Dated: May 3, 1985.

Robert M. Worthington,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 85-11362 Filed 5-9-85; 8:45 a.m.]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Near Term Intertie Access Policy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Delay of Termination of Interim Intertie Access Policy (Interim IAP). *BPA File No.:* IAP-1.

SUMMARY: BPA is delaying termination of the Interim IAP. This delay is necessary to allow BPA to evaluate a recent Ninth Circuit Court of Appeals decision on Intertie access and to determine how best to incorporate the decision into the Near Term IAP and Record of Decision.

Responsible Official: James L. Jones, Deputy Power Manager.

DATES: The Interim IAP has been in effect since September 7, 1984. The Interim IAP will terminate not later than May 31, 1985, at which time a Near Term IAP will be adopted.

FOR FURTHER INFORMATION CONTACT:

Ms. Lynn W. Baker, Public Involvement Office, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, 503-230-3478. Oregon callers may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Reginald Kaiser, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137.

SUPPLEMENTARY INFORMATION: On April 26, 1985, BPA notified interested parties on BPA's Intertie Access Policy mailing list that BPA is extending the effective period of the Interim IAP for a period not longer than 30 days, from May 1, 1985, to May 31, 1985. The Interim IAP has been in effect since September 7, 1984, and was previously scheduled to be replaced on May 1, 1985, by a Near Term IAP.

This extension is necessary in order to allow BPA to evaluate the recent Ninth Circuit Court of Appeals Decision in the *Department of Water and Power of the City of Los Angeles* v. *BPA* [No. 84-7618, April 24, 1985] and to determine how best to incorporate the decision into the Near Term IAP and Record of Decision. The extension will also allow for completion of the internal and departmental review process for BPA's environmental findings on this Policy. Copies of the final Near Term IAP along with notice of the availability of the Record of Decision will be mailed to interested parties.

Issued in Portland, Oregon on May 2, 1985.

James J. Jura,

Executive Assistant Administrator.

[FR Doc. 85-11533 Filed 5-9-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 84-19-NG; DOE/ERA Opinion and Order No. 80]

Tenngasco Exchange Corp. and LHC Pipeline Co.; Final Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of opinion and order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on May 6, 1985, the ERA Administrator issued an opinion and order granting Tenngasco Exchange Corporation and LHC Pipeline Company (TGX and LHC) a blanket authorization to import natural gas from Canada as a supplemental supply for sale in their domestic short-term, spot sales program. The order authorizes TGX and LHC to import up to 110 Bcf of natural gas for a term of two years beginning on the date of first delivery. The ERA is to be notified of the date of first delivery within two weeks after the occurance. The order also requires TGX and LHC to file with the ERA quarterly reports of the details of each sale of the gas imported under this authorization.

The text of the opinion and order follows:

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr. (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue SW., Washington, D.C., 20585, (202) 252-6162

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6667.

Issued in Washington, D.C., on May 6, 1985.

James W. Workman,

Office of Fuels Programs, Economic Regulatory Administration.

SUPPLEMENTARY INFORMATION:

1. Background

On December 7, 1984, Tenngasco Exchange Corporation and LHC Pipeline Company (TGX and LHC) filed an application with the Economic Regulatory Adminstration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, requesting a blanket authorization to import Canadian natural gas as supplemental supply for sale in their domestic short-term, spot sales program. The applicants requested authority to import a volume of natural gas not to exceed 110 Bcf for the first two years and a volume not to exceed 120 Bcf for the succeeding two years for a four-year term beginning on the date of first delivery of the import. The applicants propose to buy natural gas from reliable Canadian sources, resell the gas to various customers, or act as an agent on behalf of sellers or purchasers, and if required, assist in the arrangements for transporting the gas to the end users.

ON December 20, 1984, the ERA issued a notice of application inviting protests, interventions and written comments by February 6, 1985.[1] Fourteen motions to intervene representing sixteen parties were received.[2] One intervenor, Columbia

[1] 50 FR 879, January 7, 1985.

[2] Intervenors are: Northern Natural gas Company; Joint Petition of Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and Lake Superior District Power Company; The Brooklyn Union Gas Company; Pacific Gas Transmission Company; Cabot Energy Supply Corporation; United Distribution Companies;

Continued

Gas Transmission Company (Columbia) protested the application and asked that it be denied, or in the alternative, any order granting the requested import authority be conditioned to require that applicants provide 30 days notice of any proposed sales and to prohibit, for the most part, sales of such gas to an interstate pipeline's core market.

New York State Electric and Gas Corporation (NYSE&G) expressed concern that the applicants would be potential competitors in its service area under circumstances where the applicants could offer gas in an unregulated manner, thereby disrupting the present market such that the NYSE&G could lose must of its interruptible sales market.

Niagara Mohawk Power Corporation (Niagara Mohawk) believed that the application was too vague to evaluate and pointed out that the ERA should consider in its evaluation the current excess deliverability of domestic gas which is causing disorder in affected markets.

It was the position of the Pacific Gas Transmission Company (PGT) that the ERA must reserve for itself the ability to determine whether each transaction comported with the DOE's import policy guidelines. PGT also contended that the ERA should impose safeguards adequate to avoid the adverse impacts such a proposal might have on consumers in general and on the maintenance of competitive terms in long-term, firm import arangements. As one such safeguard, PGT suggested the imposition of a provisions stating that the proposed sales would not displace other Canadian gas sales.

Transcontinental Gas Pipeline Corporation (Transco) expressed concern about the capacity of point of entry facilities and requested that any order issued to the applicants be conditioned to assign a lower priority for the transportation of short-term, interruptible imports than for firm import volumes through any point of entry facility.

On March 20, 1985, after after a review of the information in the record, the ERA issued a procedural order to all parties providing opportunity for comments on its proposal to limit approval of the applicants' blanket authorization to a term of two years and to a maximum volume of 100 Bcf during the two-year term, consistent with recent orders granting other blanket authorizations.[3] The order required comments to be filed and served on all parties by April 3, 1985, and responses to be filed and served by April 10, 1985. The order requested that the parties review the proposed restrictions on the term and volumes to be imported under this blanket arrangement and their earlier comments on the application. If any opposition to the restricted proposal continued, the order required the parties to restate that opposition in order for it to be taken into consideration in the final decision. The order provided that previously filed comments could be incorporated by reference and thus restated in any additional comments.

Only Niagara Mohawk, PGT and Transco submitted additional comments. No new issues were raised by the comments to the procedural order, nor did the parties making comments change their position from their previous comments on the application. Columbia did not file a restatement of its protest of the application. Since Columbia and all other parties were notified by telephone on March 20 or 21, 1985, that each had been mailed a copy of the March 20, 1985, order, it is presumed that Columbia purposefully decided not to pursue its protest, and no longer is opposed to the application.[4]

II. Decision

The application filed by TGX and LHC has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest."[5] The Administrator is guided by the DOE's natural gas import policy guidelines.[6] Under these guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

The parties intervening in this case raised a number of issues related to the competitiveness of the proposed import. However, most of those issues relate to concerns that the import made under the blanket authorization will be too competitive rather than not competitive in the markets served.

Niagara Mohawk, both in its original intervention and in its comments in response to the procedural order, expressed concern that the ERA should evalute whether the requested import authorization can be justified given the current excess of domestic deliverability of gas and the present market disorder. Niagara Mohawk contended that the ERA must consider the prevention of further potential market disruptions caused by short-term, interruptible sales skimming off the large industrial customers from present suppliers. In addition, Niagara Mohawk stated that the modification of the import proposed by the ERA does not cure the lack of specific information needed to fully evaluate the application.

TGX and LHC, in their response, perceived Niagara Mohawk's concern over the lack of justification for the new import in the face of excess domestic deliverability as an attempt to protect and insulate its market from potential competition. With respect to "skimming" of industrial customers to the detriment of the long-term suppliers and its other customers, the applicants asserted this is bare allegation, unsubstantiated by any reason except that of attemping to seek protection from possible competition. TGX and LHC pointed out that Niagara Mohawk's criticism of the application's specificity is without merit and moot since the ERA has already granted authorizations to import gas based on applications containing information and terms not materially different nor more detailed than the applicant's.

The ERA agrees with the position taken by the applicants on Niagara Mohawk's comments. The DOE strongly supports the establishment of a spot market, and the competition such short-term, spot sales bring to the marketplace.[7] The addition of spot sales

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Algonquin Gas Transmission Company; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Public Service Electric and Gas Corporation; Transcontinental Gas Pipeline Corporation; Columbia Gas Transmission Corporation; National Fuel Gas Supply Corporation; and Consolidated Gas Transmission Corporation.

[3] *See Cabot Energy Supply Corporation*, DOE/ERA Opinion and Order No. 72, issued February 26, 1985 [1 ERA ¶ 70.124] and *Northwest Alaskan Pipeline Company*, DOE/ERA Opinion and Order No. 73, issued February 26, 1985 (1 ERA ¶ 70.585).

[4] We note that a subsidiary of Columbia Gas System, Inc., which in turn is an affiliate of Columbia, is a limited partner in the U.S. Natural Gas Clearinghouse, Inc., which is requesting blanket authorization to import up to 1 Bcf per day of Canadian natural gas for four years for short-term, spot market sales. *See The U.S. Noturol Gas Clearinghouse, Ltd.*, Application to Import Natural Gas from Canada; ERA Docket No. 85-06-NG, (50 FR 10533, March 15, 1985).

[5] 15 U.S.C. 717b.

[6] 49 FR 6684, February 22, 1984.

[7] In *Increasing Competition in the Natural Gas Market: Second Report Required by Section 123 of the Natural Gas Policy Act of 1978*, submitted in January 1985, the DOE observed that an active spot market will allow the natural gas market to allocate risks efficiently and will help minimize price and supply fluctuations as the market moves from a

Continued

to a surplus market places downward pressure on prices and encourages pipelines and distributors to continue to renegotiate their arrangements to make them more competitive and market-responsive.

PGT, in its comments in response to the procedural order, reiterated the concerns stated in its initial intervention. Specifically, PGT requested the ERA to consider what impacts short-term proposals have on the maintenance of competitive terms for long-term, firm supplies of Canadian gas in the markets which would be affected. PGT restated its request that the ERA provide safeguards to assure protection of the interests of all gas consumers in the markets affected and not just a particular short-term buyer. Finally, PGT reiterated its concern that the proposed quarterly report required to be submitted by the applicants does not reserve to the ERA the ability to determine that the import policy guidelines will be satisfied in each import transaction.

In response to PGT's concern that the ERA reserve its ability to determine that each individual import transaction complies with the policy guidelines, applicants stated that, given the characteristics of the short-term, spot market sale, the proposed required quarterly reporting of sales data is precisely such a safeguard. TGX and LHC replied to PGT's reiterated concern that long-term imports of Canadian gas not be displaced by short-term sales by restating their belief that additional imports from additional sources foster price competition which is consistent with the policy goal of allowing market forces to keep the price of natural gas at market-clearing levels.

The ERA made a decision on PGT's concerns when it authorized the blanket import arrangements requested by Cabot Energy Supply Corporation and Northwest Alaskan Pipeline Company.[8] In those orders we found there was no need to protect long-term, firm imports against competition from short-term, spot imports. PGT has not submitted any additional evidence or arguments which cause us to change this position. We continue to believe that such arrangements enhance competition in the marketplace and that quarterly reporting requirements adequately safeguard the public interest.

Transco, in both its original intervention and in its comments in response to the procedureal order, stated its concern that transportation of its firm Canadian import volumes could still be interrupted by even the reduced volumes proposed by the ERA in the event that insufficient pipeline capacity exists at its point of entry to transport all authorized gas imports. Accordingly, Transco repeated its request that, in any order granting the requested import, the ERA assign a higher priority for firm import volumes than for interruptible volumes through any existing point of entry facility.

In reply to Transco's restated request, the applicants repeated their previous argument that such decisions are best left to the contracting parties and asserted that there is precedent for the ERA to deny Transco's request for a conditioned order.[9]

The ERA is not persuaded by Transco's arguments that the ERA should assign priority rights in its import orders for transporting Canadian gas through existing point of entry pipeline facilities. Such priority rights are best negotiated in the ordinary course of arranging for product transportation by the contracting parties.

In sum, the ERA finds that the parties opposing the import have failed to raise issues or present evidence which would support a finding that the proposed or modified import arrangement is not competitive, or that would support disapproval of the authorization on other grounds. Further, it is noted that the applicants, in their response, indicated their willingness to accept the restrictions on the import arrangement of a two-year term and volumes not to exceed 110 Bcf, as proposed by the ERA in its March 20, 1985, procedureal order.

This modified version of the applicants' request for authorization represents an opportunity to test the use of imported natural gas as a supplemental supply for the domestic spot market, where until recently it has been prinicipally restricted to supplementing supplies for meeting long-term, domestic market requirements. Under this blanket import authority the applicants will be able to import, within fixed limits, Canadian natural gas for subsequently executed individual short-term sales contracts negotiated in the competitive atmosphere of the domestic sport market. Additional regulatory approval of each import sale will not be necessary. The ERA, through review of the contract sales information submitted by TGX and LHC in required quarterly reports, will be able to evaluate the impact of the individual transactions on the markets served. Other than the quarterly reporting requirement, no additional conditions to this order are necessary.

After taking into consideration all the information in the record of this proceeding, I find that granting the blanket authroization to import up to 110 Bcf of Canadian gas oer a term of two years for sale in the domestic short-term, spot market is not inconsistent with the public interest.[10]

Order

For reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. Tenngasco Exchange Corporation and LHC Pipeline Company (TGX and LHC) are authorized to import up to 110 Bcf of natural gas from Canada for a term of two years beginning on the date of first delivery.

B. TGX and LHC shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraph A above within two weeks after the date of such delivery.

C. With respect to the imports authorized by this order, TGX and LHC shall file with the ERA in the month following each calender quarter, quarterly reports showing, by month, whether sales have been made, and if so, the details of each transaction. The report shall include the purchase and sales prices, volumes, any special contract price adjustments, take or make-up provisions, duration of the agreements, ultimate sellers and purchasers, transporters, points of entry, and markets served.

Issued in Washington, DC., on May 6, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-11453 Filed 5-9-85; 8:45 am]

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tightly regulated environment towards fully competitive market conditions. *See* Summary, pp. S-1 and S-5, and Chapter 6, p. 75.

[8] *See supra* note 3.

[9] *See Tennessee Gas Pipeline Company*, DOE/ERA Opinion and Order No. 59, issued September 4, 1984 (1 ERA ¶ 70.569).

[10] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Federal Energy Regulatory Commission

Natural Gas Certificate Filings; Columbia Gas Transmission Corp., et al.

[Docket Nos. CP78-41-003, et al.]

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission

[Docket No. CP78-41-003]

May 3, 1985.

Take notice on April 12, 1985, that Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, (referred to collectively as Petitioners) filed in Docket No. CP78-41-003 a petition to amend the Commission's order issued April 13, 1978, in Docket No. CP78-41 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The April 13, 1978, order authorized Petitioners, *inter alia*, to transport and exchange natural gas pursuant to a transportation and exchange agreement dated October 18, 1977, which is filed in Columbia's FERC Tariff, Original Volume No. 2, Rate Schedule X-70, and Equitable's FERC Gas Tariff, Original Volumne No. 2, Rate Schedule X-13. Petitioners state that this agreement provides that delivery of exchange volumes of natural gas may be made at such other points not enumerated therein as are mutually agreed upon.

It is stated that Petitioners have agreed upon and request authorization for a new point of delivery from Columbia to Equitable at an existing point of interconnection between Columbia and Texas Eastern Transmission Corporation (Texas Eastern) near Waynesburg, Greene County, Pennsylvania. It is further stated that deliveries at this location would not exceed 30,000 Mcf of gas per day on a firm basis and in addition up to 20,000 Mcf per day on a best-efforts basis, provided that the combined delivery at this location plus deliveries at the existing Waynesburg delivery point do not exceed 50,000 Mcf per day for the five-month period, November through March, and 30,000 Mcf per day for the seven-month period, April through October. It is explained that all deliveries made at the new delivery point would be made by Columbia to Texas Eastern for Equitable's account.

Comment date: May 24, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP78-30-002]

May 3, 1985.

Take notice on April 12, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001 filed in Docket No. CP84-30-002 a petition to amend the order issued December 20, 1984, in Docket No. CP84-30-000 pursuant to section 7(c) of the Natural Gas Act, so as to delete authorization for a delivery point, add authorization for three additional delivery points and to authorize an increase in its transportation volumes, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee is currently authorized to transport, on an interruptible basis, certain quantities of Conoco, Inc.'s (Conoco), natural gas reserves produced from West Cameron Blocks 66A, 66B, 66C, and 34D production platforms, offshore Louisiana, and at the Gibbstown separation facilities on Tennessee's system in Cameron Parish, Louisiana. Tennessee is authorized to transport this natural gas to Louisiana Gas System, Inc. (LGS), for the account of Conoco, and deliver the gas at two interconnections located between Tennessee's and LGS's systems in Calcasieu and Allen Parishes, Louisiana, for further transportation by LGS on Tennessee's behalf.

Tennessee requests authorization to provide Conoco with a revised transportation service in accordance with an amendment dated September 11, 1984, to the gas transportation agreement dated August 26, 1983, between Tennessee and Conoco.

Pursuant to the amendment, Tennessee requests authorization to add three new points of delivery whereby Tennessee would transport and deliver thermally equivalent quantities of natural gas received from the production reserves in the West Cameron Block 66 Area, offshore Louisiana, for the account of Conoco to Florida Gas Transmission Company near Vinton in Calcasieu Parish, Louisiana, and to Transcontinental Gas Pipe Line Corporation near Kinder in Allen Parish, Louisiana, and near Crowley in Acadia Parish, Louisiana. Additionally, pursuant to the September 11, 1984, amendment, Tennessee requests authorization to revise the transportation quantity for the years 1985 and 1986 from 15,000 Mcf of gas per day to 25,000 Mcf per day and delete the Lake Charles chemical plant as an LGS delivery point.

Comment date: May 24, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Northwest Central Pipeline Corporation

[Docket No. CP85-461-000]

May 3, 1985.

Take notice that on April 24, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-461-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas for Scissortail Natural Gas Company (Scissortail) on behalf of the Petrolite Corporation (Petrolite) under the certificate issued in Docket No. CP82-479-000 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.

Northwest Central proposes to transport through June 30, 1985, up to 1.5 billion Btu equivalent of natural gas per day on an interruptible basis for Scissortail on behalf of Petrolite. Northwest Central states that Petrolite has entered into a gas sales agreement to purchase gas from Scissortail which would be produced from wells in Payne, Grant, Washington, Comanche, Grady, Logan, Creek, Woods and Lincoln Counties, Oklahoma, and in Johnson, Cowley, Montgomery and Harper Counties, Kansas. It is stated that such gas was not committed or dedicated to interstate commerce on November 8, 1978. Northwest Central states that it would receive gas from Scissortail at existing points of receipt in the above-mentioned counties and redeliver the gas for Scissortail on behalf of Petrolite at an existing interconnection in Osage County, Oklahoma.

Northwest Central would charge Scissortail in accordance with the then effective rates and provisions set forth from time to time in Northwest Central's FERC Gas Tariff, Original Volume No. 2.

Comment date: June 17, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Central Pipeline Corporation

[Docket No. CP85-462-000]

May 3, 1985.

Take notice that on April 24, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-462-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas for Scissortail Natural Gas Company (Scissortail) on behalf of the Pester Refining Company (Pester) under the certificate issued in Docket No. CP82-479-000 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.

Northwest Central proposes to transport through June 30, 1985, up to 3.0 billion Btu equivalent of natural gas per day on an interruptible basis for Scissortail on behalf of Pester. Northwest Central states that Pester has entered into a gas sales agreement to purchase gas from Scissortail which would be produced from wells in Payne, Grant, Washington, Comanche, Grady and Lincoln Counties, Oklahoma, and in Johnson, Cowley and Harper Counties, Kansas. It is stated that such gas was not committed or dedicated to interstate commerce on November 8, 1978. Northwest Central states that it would receive gas from Scissortail at existing points of receipt in the above-mentioned counties and redeliver the gas for Scissortail on behalf of Pester at an existing interconnection in Butler County, Kansas.

Northwest Central would charge Scissortail in accordance with the then effective rates and provisions set forth from time to time in Northwest Central's FERC Gas Tariff, Original Volume No. 2.

Comment date: June 17, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. El Paso Natural Gas Company

[Docket No. CP85-431-000]

May 3, 1985.

Take notice that on April 12, 1985, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-431-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a sales meter station in order to permit the delivery of natural gas to Southern Union Gas Company (SUG) under the certificate issued in Docket No. CP82-432-000 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.

Applicant proposes to install and operate a sales meter station in order to permit the delivery of natural gas to SUG for resale to consumers in the City of Flagstaff, and environs, in Coconino County, Arizona. Applicant states that the sales meter station would consist of two 2-⅜ inches O.D. tap and valve assemblies, one 4-½ inches O.D. standard orifice-type meter and one American 500B positive meter, with appurtenances. Applicant states further that the meter station would be known as the Flagstaff No. 3 Meter Station and would be located at a point on Applicant's San Juan Mainline and San Juan First Loop Line in Coconino County, Arizona. Applicant estimates deliveries the third year of 359 Mcf of gas on a peak day.

Applicant estimates the cost of the facility to be $75,710 which would be financed through the use of internally generated funds.

Comment date: June 17, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Central Pipeline Corporation

[Docket No. CP85-452-000]

May 3, 1985.

Take notice that on April 19, 1985, Northwest Central Pipeline Corporation (Northwest Central), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-452-000 pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a request for authorization to transport natural gas on behalf of the City of Coffeyville, Kansas (Coffeyville), under the certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is no file with the Commission and open to public inspection.

Northwest Central proposes to transport up to 1.7 billion Btu of natural gas per day for Coffeyville for a term through June 30, 1985. Northwest Central states that the gas to be transported would be purchased by Coffeyville from Colonial Corporation (Colonial) and would be used as boiler fuel in Coffeyville's power plant. It is indicated that Northwest Central would receive the gas at an existing delivery point with Colonial in Cowley County, Kansas, and redeliver the gas to Union Gas System, Inc., the distribution system serving Coffeyville.

Northwest Central states that it would charge Coffeyville in accordance with Northwest Central's Rate Schedule TS-1, FERC Gas Tariff, Original Volume No. 2.

Comment date: June 17, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Gas Transport, Inc.

[Docket No. CP85-456-000]

May 3, 1985.

Take notice that on April 19, 1985, Gas Transport, Inc. (Applicant), P.O. Box 1323, Parkersburg, West Virginia 26101, filed in Docket No. CP85-456-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of interconnecting facilities and the transportation of natural gas for Anchor Hocking Corporation (Anchor Hocking), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 2,000 Mcf of natural gas per day for Anchor Hocking. Applicant states that it would accept the quantities to be transported on its existing gathering system located near Gravel Bank, Ohio, and redeliver thermally equivalent volumes to Hope Natural Gas Company (Hope) in Wood County, West Virginia. Hope, a natural gas distributor, would then deliver these quantities of natural gas to Anchor Hocking's glass plant in Clarksburg, West Virginia, it is asserted. Applicant proposes to charge Anchor Hocking rates which are currently approved for its Rate Schedule T-1. Such rate is currently 22.66 cents per Mcf. The proposed term of service would be until May 30, 1986, and then would be continued year to year thereafter.

Applicant also requests authority to construct and operate a tap at the proposed interconnection of its system with Hope. It is also stated that Hope would install and operate a meter and regulation station for which Applicant would reimburse Hope. Applicant estimates that the costs associated for the proposed facilities would be $37,990.

Comment date: May 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Mountain Fuel Resources, Inc.

[Docket No. CP85-443-000]

May 3, 1985.

Take notice that on April 17, 1985, Mountain Fuel Resources, Inc. (Applicant), P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP85-443-000 and application pursuant

to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the restaging of the existing centrifugal compressor unit at its Fidlar compressor station (Fidlar station) located in Uintah County, Utah, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the Fidlar station, which consists of one reciprocating compressor unit and one centrifugal compressor unit, is used to boost the pressure in Applicant's Main Line No. 40 for the delivery of natural gas to Mountain Fuel Supply Company (Mountain Fuel), and to deliver natural gas into Applicant's Main Line No. 59 for redelivery to Northwest Pipeline Corporation (Northwest) at the Red Wash exchange point.

Applicant indicates that the centrifugal unit, which serves as a back-up for the reciprocating unit, does not currently have the capability of compressing natural gas to the discharge pressure required to deliver gas to Northwest and Mountain Fuel during certain periods. During such periods, should the reciprocating unit be inoperable or both units be required to operate in parallel, Applicant states that it may experience reductions or interruptions of its certificated service obligations.

Applicant proposes to restage the centrifugal compressor unit so that its discharge pressure would be sufficient to make the deliveries to Northwest and Mountain Fuel. Applicant indicate that the estimated total cost, excluding filing fees, of the project is $94,140 and that such cost would be financed from internally generated funds or from short term borrowings.

Comment date: May 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Louisiana Resources Company

[Docket No. CP85-478-000]

May 3, 1985.

Take notice that on April 12, 1985, Louisiana Resources Company (LRC), P.O. Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. CP85-478-000 an application pursuant to §§ 284.123 and 284.127 of the Commission's Regulations for authorization to transport natural gas on behalf of Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), and for approval of the proposed rates and charges therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

LRC proposes to receive Northern's gas at points of interconnection between ANR Pipeline Company and LRC and between Transcontinental Gas Pipe Line Corporation and LRC in Cameron Parish, Louisiana, and to transport and redeliver the gas for Northern's account to a point of interconnection between Faustina Pipe Line Company and LRC in Vermilion Parish, Louisiana. LRC states that the contract between Northern and LRC for this transportation service is dated March 1, 1985, and is for a term of two years from the date of initial deliveries. This service, LRC states, would enable Northern to fulfill its contractual undertaking to sell and deliver natural gas to Arcadian Corporation (Arcadian) at Arcadian's Geismar plant in Iberville Parish, Louisiana.

LRC continues by stating that Northern, in a separate application filed in Docket No. CP85-422-000, is also seeking authorization to transport and deliver this gas to Arcadian.

Further, it is stated, since this transportation by LRC is on behalf of Northern, and LRC alleges that the gas is not returned to Northern's system supply; specific approval is required for this transaction. LRC estimates the maximum quantities of gas to be transported are approximately 45,000 Mcf per day subject to available capacity.

LRC would charge a rate of 5.516 cents per million Btu transported and redelivered for this transportation service. This rate is a negotiated rate for a limited-term transportation service to be performed between specific points on LRC's system, and is not a general system-wide transportation rate, it is stated.

Comment date: May 10, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Natural Gas Pipeline Company of America

[Docket No. CP85-419-000]

May 3, 1985

Take notice that on April 8, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed a Docket No. CP85-419-000 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 for an eligible end-user under the certificate issued in Docket No. CP82-402-000 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.

Natural proposes to transport up to 26 billion Btu of natural gas per day for Inland Steel Company (Inland) pursuant to a gas transportation agreement dated February 18, 1985 (agreement).

Natural states this transportation service commenced on February 18, 1985, pursuant to the automatic provisions of § 157.209(e)(1) of the Commission's Regulations. Natural proposes to continue this service through June 30, 1985, under the requested authorization. The agreement provides for service through two years from February 18, 1985, the date of initial deliveries, in the event that the Commission's Regulations are amended to allow service past June 30, 1985, it is indicated.

Natural states it would receive volumes of gas for the account of Inland, at four separate points, at the interconnection between the facilities of (1) Natural and Oklahoma Natural Gas Company (ONG) located in Custer County, Oklahoma; (2) Natural and ONG located in Woodward County, Oklahoma; (3) Natural and Kaiser-Francis Oil Company (KF) located in Woodward County, Oklahoma; and (4) Natural and M.V. Pipeline Company (MV) located in Caddo County, Oklahoma. Natural would transport and redeliver equivalent volumes of gas to Northern Indiana Public Service Company (NIPSCO), for the account of Inland, at a point of interconnection between the facilities of Natural and NIPSCO located on the state border of Cook County, Illinois and Lake County, Indiana. Natural indicates that Inland has made arrangements with NIPSCO, a local distribution company, for subsequent movement of the gas for Inland's end use in its Indiana Harbor, Indiana, plant.

Natural states that it would charge Inland transportation and fuel charges as follows:

Receipt points and location	Transportation fee (cents per million Btu)	Fuel charge (cents per million Btu)
ONG—Custer Co.	27.2	22.8
ONG—Woodward Co.	27.2	21.8
KF—Woodward Co.	27.2	21.8
MV—Caddo Co.	27.9	27.2

It is explained that these rates are based on Natural's settlement cost of onshore transmission in Docket No. RP83-68 and are consistent with Natural's EUT-1 rate schedule on file with the Commission.

Natural, in addition, requests flexible authority to add or delete receipt/

delivery points associated with sources of gas acquired by the end-user. The flexible authority requested appies only to points related to source of gas supply, not to delivery points in the market area. Natural will file a report providing certain information with regard to the additon or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities. Natural indicates the end use of the gas is for blast furnaces, boilers, and reheat furnaces with alternative fuel capability at Inland's plant and is advised that Inland purchased this gas in a first sale and the natural gas was not committed or dedicated to interstate commerce on November 8, 1978, and was not produced by an interstate pipeline.

Comment date: June 17, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP85-444-000]

May 6, 1985.

Take notice that on April 17, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-444-000 a request pursuant to § 17.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Armco Inc. (Armco) under the certificate issued in Docket No. CP82-430-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport 18,180 Mcf of natural gas per day for Armco for a term through June 30, 1985. It is stated that the gas to be transported would be purchased from EnTrade Corporation (EnTrade) and would be used as boiler fuel in Armco's Middletown, Ohio, plant.

It is indicated that United would receive the gas from EnTrade at existing receipt points in Gregg, Wood, and Harrison Counties, Texas, and would redeliver the gas to Texas Gas Transmission Corporation (Texas Gas) at an existing interconnection of the two pipeline's facilities in Panola County, Texas. United explains that Texas Gas would then transport the gas to Armco's plant in Middletown, Ohio, under separate authorization.

It is stated that United would charge Armco its Rate Schedule IT transportaion rate, currently 11.09 cents per Mcf.

Comment date: June 20, 1985, in accordance with Standard Paragraph G at the end of this notice.

12. Panhandle Eastern Pipe Line Company; Trunkline Gas Company

[Docket No. CP85-43-009]

May 6, 1985.

Take notice that on April 16, 1985, Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Applicants), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP82-43-009 a petition to amend the order issued February 25, 1982, in Docket No. CP82-43-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize an additional delivery point in Kiowa County, Kansas, for the delivery of natural gas transported for United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicants request authorization to implement a certain amendment dated October 24, 1984, to the transportation agreement dated October 13, 1981, between Applicants and United. Pursuant to this agreement, Applicants propose to add a secondary point of redelivery to United near Greensburg, Kansas, where Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), would accept the pursuant to an exchange agreement between United and Northern. All other terms of the transportation agreement remain the same, it is stated.

Comment date: May 28, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP85-434-000]

May 6, 1985.

Take notice that on April 15, 1985, Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonnet Avenue, Houston, Texas 77001, filed in Docket No. CP85-434-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Phillips Petroleum Company (Phillips) Panhandle's S-Bar booster station, Campbell County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle explains that all compressor facilities have been removed from the site and that it has no current or future use for the remaining facilities. Panhandle states that Phillips has agreed to pay $21,275 for these facilities for use at another location and would restore the site to its original condition.

Comment date: May 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any persons 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, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing 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 159.205) 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 11421 Filed 5-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 18-001, et al.]

Applications Filed With the Commission; Hydroelectric Applications (Idaho Power Co., et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. Type of Application: Revised Relicense Application.

b. Project No.: 18-001.

c. Date Filed: February 19, 1985.

d. Applicant: Idaho Power Company.

e. Name of Project: Twin Falls Hydroelectric.

f. Location: On the Snake River in Jerome and Twin Falls Counties, Idaho, partially on lands of the United States administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act [16 U.S.C. 791(a)-825(r)].

h. Contact Person: Lee Sherline, Leighton & Sherline, Suite 803, 1701 K Street, NW, Washington, DC 20006.

i. Comment Date: June 10, 1985.

j. Expiration of Initial License: June 10, 1984.

k. Description of Project: The project proposed for relicensing would consist of the facilities currently licensed as Project No. 18, including: (1) The Twin Falls dam, which has three sections, a concrete arch dam across the north falls with a 474-foot-long overflow crest at elevation 3508 feet, 3511.4 feet with flashboards, a non-overflow concrete gravity dam across the south falls with a 203-foot-long crest at elevation 3520 feet, and a concrete dike across the island between the north and south falls in two sections, one 108 feet long with the crest at elevation 3516 feet and the other 207 feet long with the crest at elevation 3509 feet, 3512 feet with flashboards; (2) the Twin Falls reservoir, which has a storage capacity of about 1000 acre-feet at normal pool elevation 3511.4 feet; (3) a gated intake structure in the non-overflow gravity section; (4) a 10-foot-diameter, 136-foot-long inclined penstock; (5) a 40-foot-long, 37-foot-wide concrete powerhouse containing a generating unit with a rated capacity of 9 MW and an average annual energy output of 65.8 GWh; and (6) a 1-mile-long, 138 kV transmission line connecting to the Applicant's distribution system. The existing project will be subject to Federal takeover upon expiration of the initial license under Sections 14 and 15 of the Federal Power Act. As of July 1, 1983, the Applicant's estimated net investment in the project is $1,074,017 and estimated severance damages are $126,079,341.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

2 a. Type of Application: New License (Over 5 MW).

b. Project No.: 1966-003.

c. Date Filed: December 20, 1984.

d. Applicant: Wisconsin Public Service Corporation.

e. Name of Project: Grandfather Falls.

f. Location: On the Wisconsin River in Lincoln County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C 791(a)-825(r).

h. Contact Person: Mr. Eugene R. Mathews, Senior Vice President, Power Supply and Engineering, Wisconsin Public Service Corporation, 700 North Adams Street, P.O. Box 19001, Green Bay, WI 54307-9001.

i. Comment Date July 5, 1985: .

j. Description of Project: The existing project would consist of: (1) The 410-foot-long and 36-foot-high reinforced concrete dam; (2) the reservoir with a surface area of 200 acres and a storage capacity of 2,540 acre-feet at powerpool elevation of 1,396 feet m.s.l.; (3) the 4,000-foot-long by 300- foot-wide by 11-foot-deep power canal; (4) the two 1,400-foot-long, 13.5-foot and 11-foot diameter wood stave penstocks which connect to two steel penstocks that are 61.5 feet and 68.75 feet long; (5) the powerhouse containing two generating units rated at 6,240 kW and 11,000 kW, respectively, for a total installed capacity of 17,240 kW; (6) the tailrace; (7) the 6.9-kV transmission line; and (8) appurtenant facilities. The average annual energy generation is estimated to be 102.8 GWh.

k. Purpose of Project: The energy generated at the project is distributed to the applicant's load centers in north central Wisconsin.

l. This notice also consists of the following standard paragraphs: A3, A9, B, & C.

3 a. Type of Application: Exemption 5 MW or less.

b. Project No.: P-2644-001.

c. Date Filed: December 27, 1984.

d. Applicant: The Bowersock Mills & Power Co.

e. Name of Project: Kansas River.

f. Location: On the Kansas River in Douglas County, Kansas.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.

h. Contact Person: Stephen H. Hill, The Bowersock Mills & Power Co., Box 66, Sixth and New York Streets, Lawrence, Kansas 66044.

i. Comment Date: June 10, 1985.

j. Description of Project: The proposed project would utilize a currently licensed facility. Licensee/Applicant plans to increase the installed capacity of the project from 1.85 to 1.91 MW. The exempted project would consist of: (1) An existing 665-foot-long, 20-foot-wide dam including spillway at elevation 808 feet m.s.l. owned by the Applicant; (2) an existing 200-acre reservoir with a storage capacity of 900 acre-feet at elevation 812 m.s.l.; (3) an existing powerhouse to house a rebuilt turbine/generator with a capacity of 1.91 MW which would discharge flows back into the Kansas River; (4) an existing three phase transmission line 600 feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 6.5 million kWh operating under a new hydraulic head of 17 feet. Project power will be sold to the Kansas Power and Light Company.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

l. *Purpose of Exemption*—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

4 a.Type of Application: Transfer of License.

b. Project No: 5089-004.

c. Date Filed: February 20, 1985.

d. Applicant: Fall River Rural Electric Cooperative, Inc. and Hydro Valley Development, Inc.

e. Name of Project: Felt Hydroelectric.

f. Location: Teton River, near Tetonia, Teton County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person:

Mr. McNeill Watkins II, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th St. NW., Washington, DC 20036

and

Charles L. Dawsey, Fall River Rural Electric, Cooperative, Inc., P.O. Box AE, Ashton, ID 83420

i. Comment Date: June 17, 1985.

j. Description of Transfer: On February 20, 1985, Fall River Rural Electric Cooperative, Inc. (Licensee); and Hydro Valley Development Inc. (Hydro Valley) filed an application for transfer of major license for the Felt Hydroelectric Project No. 5089, issued on September 9, 1983, to Licensee and Hydro Valley (Joint Transferrees).

The purpose of the proposed transfer is to facilitate the financing of the project and to provide lower rates to the consumers.

Hydro Valley is a private corporation organized under the laws of the State of Utah and is wholly-owned by Bonneville Pacific Corporation. Joint Transferees state that they will comply with all applicable laws of the State of Utah as required by section 9 (b) of the Federal Power Act.

Under the agreement of transfer, Licensee agrees to lease certain lands and water rights to Hydro Valley's parent corporation, as necessary to construct and operate the project. Hydro Valley, for its part, will own all power facilities to be constructed under the license. Hydro Valley claims that its construction and ownership of the project's power facilities will achieve a better cost-benefit ratio.

The Licensee certifies that it has fully complied with the terms and conditions of its license, and accepts its continuing obligation to comply with those terms and conditions as a Joint Transferee. Hydro Valley accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

5 a. Type of Application: Major License.

b. Project No.: 8285–000.

c. Date Filed: May 4, 1984, as amended on October 18, 1984, and December 14, 1984.

d. Applicant: Puget Sound Power and Light Company.

e. Name of Project: Noisy Creek Hydroelectric.

f. Location: On Noisy Creek, partially within the Mount Baker-Snoqualmie National Forest, near concrete, in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert V. Myers, Vice President, Engineering and Operations, Puget Sound Power & Light Company, Puget Power Building, Bellevue, WA 98009.

i. Comment Date: June 26, 1985.

j. Description of Project: The proposed project would consist of: (1) A 20-foot-high, 100-foot-long concrete diversion dam at elevation 1,420 feet creating an impoundment with a gross storage capacity of 3 acre-feet; (2) an intake structure with gates; (3) a 2200-foot-long, 66-inch-diameter low pressure pipeline; (4) a 2500-foot-long, 66-inch-diameter penstock; (5) a 98-foot-long, 47-foot-wide partially buried concrete powerhouse containing two generating units with a total capacity of 10.7 MW; (6) a 10-foot-long, 9-foot-wide tailrace discharging into Baker Lake; (7) a 1200-foot-long, 12-foot-wide gravel access road to the powerhouse; (8) a 30-foot-longs 30-foot-wide fenced switchyard adjacent to the powerhouse; and (9) a 2.9-mile-long, 34.5-KV transmission line connecting to the proposed Swift Creek Project transmission line.

The Applicant estimates that the average annual energy production would be 44.3 million kWh. The cost to construct the project would be approximately $17 million in 1987 dollars.

k. Purpose of Project: The project dollars will help Puget Power and other utilities in the Pacific Northwest Region meet their electrical demands.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

6 a. Type of Application: Exemption (5 MW or Less).

b. Project No: 8519–000.

c. Date Filed: August 13, 1984, and supplemented January 22, 1985.

d. Applicant: City Mills Company.

e. Name of Project: City Mills Hydro Project.

f. Location: On the Chattahoochee River in Columbus, Muscogee County, Georgia.

Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: Mr. Lloyd G. Bowers, Jr., President, City Mills Company, 918th Street, Columbus, Georgia 31901.

i. Comment Date: June 10, 1985.

j. Description of Project: The proposed project is owned by the City Mills Company, and would consist of: (1) An existing 730-foot-long, 10-foot-high, stone and masonry gravity dam with a crest elevation of 226 feet m.s.l.; (2) an existing 114-acre reservoir with minimal storage capacity; (3) the proposed rehabilitation of 2 existing powerhouses located on the east bank of the river and described as Powerhouse A, housing three 85-kW generating units, and Powerhouse B, housing three 160-kW generating units for a total combined installed capacity of 735 kW; (4) a proposed 4.16-kV transmission line or equivalent approximately 100 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy generation will be 5,805 MWh

K. Purpose of Project: The Applicant proposes to sell all the generated power to a local utility company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

m. Purpose of exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the subject.

7 a. Type of Application: Minor License.

b. Project No.: 8601–000.

c. Date Filed: September 17, 1984.

d. Applicant: Merle Jore and Sons.

e. Name of Project: Jore.

f. Location: On an unnamed tributary of Mollman Creek in Lake County, Montana near the town of Ronan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Matthew Jore, Route 1, Box 134–B, Charlo, MT 59824.

i. Comment Date: July 1, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 10-foot-long concrete dam at elevation 4,075 feet; (2) an 8-inch-diameter pipe located through the front wall of the dam to maintain minimum streamflow; (3) a 22-foot-long concrete trough located on a side wall of the dam containing three 15-inch-diameter, 1,600-foot-long pipes; (4) three 16-inch-diameter, 1,700-foot-long iron penstocks; (5) a powerhouse containing a single generating unit rated at 1,000 kW operating under a hear of 475 feet; (6) a 3-foot-diameter corrugated tailrace with a 6-foot-diameter, 6-foot-high dissipator and; (7) a 700-foot-long 7.2-kV transmission line tying into an existing Department of Interior line at the Flathead Irrigation Project. The average annual energy output would be 3,168 MWH.

The estimated cost of the project is $250,000.

k. Purpose of Project: Project Power would be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

a. Type of Application: Preliminary Permit.

b. Project No: 8799–000.

c. Date filed: December 13, 1984.

d. Applicant: Missisquoi Hydroelectric Company.

e. Name of Project: Richford Dam.

f. Location: Missisquoi River in Franklin County, Vermont.

g. Files Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Thomas J. Stuwe, RD #1, Barre, VT 05641.

i. Comment Date: June 26, 1985.

j. Description of Project: The proposed project would utilize the proposed Army Corps of Engineers Richford Dam and would consist of: (1) A proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 750-kw; (2) a proposed 600-foot-long transmission line tying into the existing Citizens Utilities Company's system; and (3) appurtenant facilities. The Applicant estimates a 3,200,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36-months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project power construction and operation, and project potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $5,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 8942–000.

c. Date Filed: February 8, 1985.

d. Applicant: Rocky Mountain Water Works Company.

e. Name of Project: Independent Blue Ditch Hydropower.

f. Location: On the Blue River in Summit County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: William B. DeOreo, 3030 15th Street, Boulder, Colorado 80302.

i. Comment Date: July 1, 1985.

j. Description of Project: The proposed project would consist of : (1) An existing headgate diversion structure about 3 feet in height, consisting of two steel slide gates approximately 36 inches in diameter; (2) a reservoir with negligible storage capacity; (3) about 200 feet of 30 inch diameter steel penstock; (4) a new powerhouse approximately 12 feet by 10 feet that will contain one turbine-generator unit with an installed capacity of 150 kW; (5) a proposed tailrace; (6) approximately 500 feet of new transmission line at 12.5-kV; and (7) appurtenant facilities. Applicant estimates that the average annual energy generation would be 930,000 kWh.

K. Purpose of Project: The Applicant anticipates that project energy will be sold to the Public Service Company of Colorado.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $20,000.

10 a. Type of application: Preliminary Permit.

b. Project No: 8946–000.

c. Date Filed: February 12, 1985.

d. Applicant: Snake River Energy Company.

e. Name of Project: Willow Creek.

f. Location: On Willow Creek in Cassia Country, Idaho.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ted S. Sorenson, 550 Linden Drive, Idaho Falls, Idaho. 83401.

i. Comment Date: June 27, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, diversion dam at elevation 5,400 feet; (2) an 11,800-foot-long, 24-inch-diameter steel penstock; (3) a powerhouse containing a single generating unit with a capacity of 740 kW and an average annual generation of 2.7 million kWh; and (4) a 1-mile-long transmission line.

k. Purpose of Project: Project power would be sold to Idaho Power.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

11 a. Type of Application: 5 MW Exemption.

b. Project No.: 9000–000.

c. Date Filed: March 5, 1985.

d. Applicant: STS Consultants, Ltd.

e. Name of Project: Morrow Dam Hydro.

f. Location: On the Kalamazoo River in Kalamazoo County, Michigan.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: Mr. Mark J. Sundquist, STS Consultants, Ltd. 3340 Ranger Road, Lansing, Michigan 48906.

i. Comment Date: June 10, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing dam about 3,770 feet in length and 26 feet in height, which includes a spillway mounted with four 24-foot-wide by 14-foot-high steel Tainter gates; (2) an existing reservoir with a water surface area of about 1,000 acres and an estimated storage capacity of 6,000 acre-feet at elevation 776.0 N.G.V.D.; (3) a new powerhouse approximately 80 feet by 60 feet, housing four turbine-generator units with a total installed capacity of 880 kW, and located in two bays of the spillway; (4) approximately 2,250 feet of new transmission line at 4,800 volts; and (5) appurtenant facilities. Applicant estimates that the average annual energy would be 4,500,000 kWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Consumers Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

12 a.Type of Application: Preliminary Permit.

b. Project No.: P–9076–000.

c. Date Filed: April 1, 1985.

d. Applicant: Messrs. Ernest R. Field and Robert A. Bernhard.

e. Name of Project: Monroe Dam.

f. Location: On the Salt Creek in Monroe County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John E. Fisher, P.E., Lawson-Fisher Associates, 525 W. Washington Street, South Bend, Indiana 46601.

i. Comment Date: June 26, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corp of Engineer's Monroe Dam and Reservoir and would consist of: (1) An existing 12-foot-diameter penstock 455 feet in length branching into two smaller penstocks at the intake to; (2) a proposed 58-foot-long and 46-foot-wide powerhouse to contain 3 turbine/generators with a total installed capacity of 3800 kW; (3) a proposed 58-foot-long and 46-foot-wide concrete-lined tailrace; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 10.6 million kWh operating under a net hydraulic head of 48 feet. Project power will be sold to the Public Service of Indiana and Indianapolis Power and Light.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminay permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $65,000.

13 a. Type of Application: Preliminary Permit.

b. Project No.: P-9077-000.

c. Date Filed: April 1, 1985.

d. Applicant: Messrs. Ernest R. Field and Robert A. Bernhard.

e. Name of Project: Salamonie Dam.

f. Location: On the Salamonie River in Wabash County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John E. Fisher, P.E., Lawson-Fisher Associates, 525 W. Washington Street, South Bend, Indiana 46601.

i. Comment Date: June 28, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corp. of Engineer's Salamonie Dam and Reservoir and would consist of: (1) An existing 16-foot-diameter penstock 565 feet in length branching into two smaller penstocks at the intake to; (2) a proposed 60-foot-long and 40-foot-wide powerhouse to contain two turbine/generators with a total installed capacity of 2,700 kW; (3) a proposed 90-foot-long and 60-foot-wide concrete-lined tailrace; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 9.3 million kWh operating under a net hydraulic head of 65 feet. Project power will be sold to the Public Service of Indiana and Indiana and Michigan Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $65,000.

14 a. Type of Application: Amendment of License application.

b. Project No.: 5226-002.

c. Date Filed: February 19, 1985.

d. Co-Applicants: Incorporated County of Los Alamos and Middle Rio Grande Conservancy District.

e. Name of Project: El Vado Hydro Project.

f. Location: On Rio Chama in Rio Arriba County, New Mexico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person:

Mr. James B. Harder, Utilities Manager, Incorporated County of Los Alamos, P.O. Box 30, Los Alamos, NM 87544

Mr. Charles R. Martinez, General Manager, Middle Rio Grande Conservancy District, 1932 Second Street, SW., P.O. Box 581, Albuquerque, NM 87103.

i. Comment Date: June 17, 1985.

j. Description: An amendment of license application to include a co-applicant, Middle Rio Grande Conservancy District with the Incorporated County of Los Alamos, for the El Vado Hydro Project No. 5226, has been filed pursuant to Section 4.35 of the Commission's regulations. The project description remains that provided in the public notice issued March 29, 1984 for Project No. 5226-001.

k. This notice also consists of the following standard paragraphs: B, C.

15 a. Type of Application: Conduit Exemption.

b. Project No: 8831-000.

c. Date Filed: December 26, 1984.

d. Applicant: Hydrodynamics.

e. Name of Project: South Dry Creek.

f. Location: On Rock Creek-Clear Creek Ditch, near the town of Red Lodge in Carbon County, Montana.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Susan Young, Hydrodynamics, Inc., P.O. Box 413, Red Lodge, MO 59068.

i. Comment Date: June 17, 1985.

j. Description of Project: The proposed project would consist of: (1) A box/weir concrete diversion at elevation 5,700 feet; (2) an 8,000-foot-long, 24-inch-diameter pipeline: (3) a power house containing a single generating unit with a capacity of 1,800 kW and an average annual generation of 7.1 GWh.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs. A3, A9, B, C and D3b.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 8905-000.

c. Date Filed: January 30, 1985.

d. Applicant: Henderson Hydro Company.

e. Name of Project: Dark and Henderson Canyons.

f. Location: On unnamed Tributaries to Thomes Creek in Tehama County, California; within Mendocino National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Paul Eichenberger, Eichenberger and Associates, 4020 El Camino Drive, B-4, Sacramento, CA 95865.

i. Comment Date: July 5, 1985.

j. Description of Project: The proposed project would consist of: (1) Two 5-foot-high, 26-foot-long diversion dams located at elevation 2,920 feet on two unnamed tributaries of Thomes Creek; (2) a 10,000-foot-long, 30-inch-diameter diversion conduit; (3) a 28-inch-diameter, 3,200-foot-long penstock; (4) a powerhouse with a total installed capacity of 4,200 kW, located at elevation 920 feet; and (5) a 5-mile-long, 12.5-kV transmission line interconnecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

k. Purpose of Project: A preliminary permit if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of 120,000. No new roads would be constructed to conduct these studies.

The estimated 19.3 million kWh generate annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 8906-000.

c. Date Filed: January 30, 1985.

d. Applicant: Canyon Hydro Company.

e. Name of Project: Canyon Creek.

f. Location: On Canyon Creek in Nevada County, California; within Tahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Paul E. Eichenberger, Eichenberger Associates,

4020 El Camino Drive, Sacramento, CA 95821.

i. Comment Date: July 8, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 103-foot-long diversion dam at elevation 4,200 feet; (2) a 4,000-foot-long, 53-inch-diameter diversion conduit; (3) a 1000-foot-long, 37-inch-diameter penstock; (4) a powerhouse with a total installed capacity of 4,300 kW, located at elevation 3,600 feet; and (5) a 4.5-mile-long, 12.5-kV transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

k. Purpose of Project: A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $125,000. No new roads would be constructed to conduct these studies.

The estimated 16.9 million kWh generated annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

18 a. Type of Application: License (Under 5 MW).

b. Project No.: 8914–000.

c. Date Filed: February 1, 1985.

d. Applicant: Colorado River Water Conservation District & Water User's Association No. 1 in the Colorado Water Conservation District.

e. Name of Project: Taylor Draw.

f. Location: White River, Rio Blanco County, Colorado, located partially on lands administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roland C. Fischer, Secretary-Engineer, Colorado River Water Conservation District, P.O. Box 1120, Glenwood Springs, CO 81602.

i. Comment Date: July 8, 1985.

j. Description of Project: The proposed project would be located at the Applicant's Taylor Draw Dam and Kenney Reservoir presently under construction for water supply purposes. The proposed project works would consist of: (1) The Taylor Draw Dam, a 1,100-foot-long earth fill structure, about 75 feet in height; (2) the Kenney Reservior, which has a surface area of approximately 615 acres at a normal water surface elevation of 5317.5 feet, and a storage capacity of 13,800 acre-feet; (3) an existing submerged intake; (4) an existing 96-inch-diameter conduit approximately 300 feet long, bifurcating into an 80-inch-diameter penstock section, approximately 200 feet long; (5) a proposed powerhouse containing a single 1,600 kW generating unit; (6) a proposed 100-foot-long, 20 feet wide tailrace; (7) a proposed 12.5-kV transmission line about 7 miles long; and (8) appurtenant facilities. The estimated average annual generation of 11,225,000 kW would be sold to Moon Lake Electric Association, Inc.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 8933–000.

c. Date Filed: February 4, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Bear Rock Falls.

f. Location: On Bear Rock Stream in Berkshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John R. Anderson and Joseph D. Brostmeyer, 64 Blanchard Road, Burlington, MA 01803.

i. Comment Date: July 8, 1985.

j. Description of Project: The proposed project would consist of: (1) A proposed 5-foot-high, 30-foot-wide, 5-foot-long, timber diversion structure; (2) a proposed impoundment of negilgible size at a normal maximum surface elevation of 1651 ft m.s.l.; (3) a proposed 5,300-foot-long, 0.75-foot-diameter steel penstock; (4) a proposed powerhouse which will contain an installed generating capacity of 130 kW; (5) a proposed 4-foot-wide, 20-foot-long, open channel tailrace; (6) a proposed 100-foot-long, 35.4 kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy generation to be 570 MWh. It is anticipated that Massachusetts Electric will purchase the power.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

20 a. Type of Application: Exemption of Small Conduit Facility.

b. Project No.: 8962–000.

c. Date Filed: February 19, 1985.

d. Applicant: City of Boulder.

e. Name of Project: Kohler Power Generation Facility.

f. Location: Boulder County, Colorado.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. Bill Mitzelfeld, City of Boulder, Utilities Division, P.O. Box 791, Boulder, Colorado 80306.

i. Comment Date: June 17, 1985.

j. Description of Project: The proposed project would utilize the City of Boulder's existing 24-inch water distribution system and would consist of: (1) A proposed powerhouse site located on the distribution system which will house either a single vertical turbine or twin pump turbines for an installed capacity of 149 kW discharging into a proposed 6 inch drain line; and (2) appurtenant facilities. The estimated average annual energy produced by the project would be 770,000 kWh using the vertical turbine and 755,200 kWh using the pump turbine operating under a net hydralic head of 240 feet. Project power will be used for the city's domestic energy needs.

k. This notice also consist of the following standard paragraphs: A3, A9, B, C, & D3b.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from the permit or licence applicants that would seek to take or develop the project.

21 a. Type of Application: Exemption (5 MW or Less).

b. Project No: 8998–000.

c. Date Filed: March 4, 1985.

d. Applicant: Donald K. Lee.

e. Name of Project: Bluff Springs.

f. Location: Bluff Springs, near Manton, in Tehama County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Mr. Donald K. Lee, P.O. Box 327, Chico, California 95927, (916) 891–5577.

i. Comment Date: June 17, 1985.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A concrete drop inlet structure below an existing 24-inch culvert on Bluff Springs Creek; (2) a 15-inch-diameter, 3,900-foot-long PVC pipeline; (3) a 14-inch-diameter, 2,200-foot-long steel penstock; (4) a powerhouse containing a single 100 kW impulse turbine-generator unit with an estimated average annual generation of 0.617 GWh at a design flow of 3.9 cfs and 450 feet of head; (5) a tailrace discharging to Pacific Gas and Electric Company's (PG&E) Union

Canal; and (6) a 1,000-foot-long, 12-kV transmission line connecting the project to an existing PG&E line. Project power would be sold to PG&E. Real property interest in private lands is evidenced by lease agreements.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license permit application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be receive on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATIONS", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, local agencies are invited to file comments on the described applications. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coorination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. It an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 7, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11420 Filed 5-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST81-215-002, et al.]

Northwest Pipeline Corp., et al.; Extension Reports

May 3, 1985.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "C" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before May 28, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 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 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a 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.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [1]
ST81-215-002 [2]	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110.	Southwest Gas Corp	4-02-85	G	3-26-85	7-01-85
ST81-416-003	Panhandle Eastern Pipe Line Co., P.O. Box 1642, Houston, TX 77001.	Delhi Gas Pipeline Corp	4-15-85	B	7-15-85	
ST81-430-003	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201.	Panhandle Eastern Pipe Line Co	4-15-85	C	7-15-85	
ST81-441-002	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	Delhi Gas Pipeline Corp	4-05-85	B	7-29-85	
ST83-532-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001.	Bridgeline Gas Distribution Co	4-04-85	B	7-07-85	
ST83-544-001	Oklahoma Natural Gas Co., P.O. Box 871, Tulsa, OK 74103.	Kansas Power and Light Co	4-15-85	C	7-13-85	
ST83-598-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001.	Delhi Gas Pipeline Corp	4-15-85	B	7-19-85	
ST83-627-001	Producer's Gas Co., 4925 Greenville Ave., Dallas, TX 75206.	Florida Gas Transmission Co	4-01-85	C	8-04-85	
ST83-631-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978.	El Paso Gas Transportation Co	4-12-85	B	7-18-85	
ST83-633-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	West Texas Gas, Inc	4-15-85	B	7-27-85	
ST83-638-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	West Texas Gas, Inc	4-05-85	B	7-27-85	
ST83-658-001 [2]	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243.	Producer's Gas Co	4-02-85	B	6-26-85	7-01-85
ST83-719-002	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	Westar Transmission Co	4-05-85	B	7-28-85	

[1] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.
[2] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-11422 Filed 5-9-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ER79-97-001, et al.]

Electric Rate and Corporate Regulation Filings; Alamito Co., et al.

Take notice that the following filings have been made with the Commission:

1. Alamito Company

[Docket No. ER79-97-001]

May 3, 1985.

Take notice that on April 1, 1985, Alamito Company (Alamito) submitted for filing a compliance report pursuant to the Commission's order dated June 25, 1979.

Alamito included in its filing the required justification for the rate of return for the Phase Four period at the power sale. The Phase Four period will commence when Alamito's Springerville Unit 1 goes into commercial service and will continue through May 31, 1987. The unit is expected to go into commercial service on June 1, 1985.

Comment date: May 14, 1985, in accordance with Standard Paragraph H at the end of this notice.

2. Wisconsin Power and Light Company

[Docket No. ER84-576-001]

May 3, 1985.

Take notice that on April 29, 1985, Wisconsin Power and Light Company (WP&L) submitted for filing a compliance report.

WP&L included in its filing a summary of the amounts billed, the corrected billings, the amounts of the refunds and the interest calculated for each of its wholesale billing customers that arose because of a clerical error in the fuel clause computations for the months of January and February, 1985.

Comment date: May 21, 1985, in accordance with Standard Paragraph H at the end of this notice.

3. Dayton Power and Light Company

[Docket No. ER85-453-000]

May 3, 1985.

Take notice that on April 23, 1985, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Lakeview (Lakeview), Ohio.

DP&L states that the proposed Agreement allows Lakeview to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Lakeview.

DP&L requests an effective date of May 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: May 14, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company

[Docket No. ER85-455-000]

May 3, 1985.

Take notice that on April 23, 1985, Northern States Power Company (Minnesota), tendered for filing the Transmission and Transformation Service Agreement between Northern States Power Company and The State Board of Higher Education for the University of North Dakota (Transmission and Transformation Service Agreement).

The Transmission and Transformation Service Agreement filed in accordance with this letter supersedes FERC Rate Schedule No. 404. The Transmission and Transformation Agreement essentially provides that Northern States Power Company will provide transmission and transformation service associated with the delivery of Western Area Power Administration power and energy.

Northern States Power Company requests an effective date of June 23, 1984, and therefore requests waiver of the Commission's notice requirements.

Comment date: May 14, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Dayton Power and Light Company

[Docket No. ER85-454-000]

May 3, 1985.

Take notice that on April 23, 1985, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the City of Tipp (Tipp City), Ohio.

DP&L states that the proposed Agreement allows Tipp City to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Tipp City.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed Agreement to become effective May 1, 1985.

Comment date: May 14, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Electric Light and Power Company

[Docket No. ER85-458-000]

May 6, 1985.

Take notice that on April 26, 1985, Iowa Electric Light and Power Company (Iowa Electric) and the Resale Power Group of Iowa, (RGPI), which represents the complete class of Iowa Electric's jurisdictional companies, tendered for filing proposed changes in its FERC Electric Service Tariff. The proposed changes would modify the fuel adjustment clause from an historical to a forecasted cost basis, and provide for recovery of nuclear waste disposal and coal contract termination costs.

Iowa Electric requests an effective date of July 1, 1985.

Copies of the filing were served upon the public utility's jurisdictional customers, and the Iowa State Commerce Commission.

Comment date: May 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Utah Power & Light Company

[Docket No. ER85-457-000]

May 6, 1985.

Take notice that on April 22, 1985, Utah Power & Light Company (UP&L) tendered for filing in accordance with the provisions of Section V of Exhibit C of the Residential Purchase and Sale Agreement between the Company and Bonneville Power Administration (BPA), BPA's written report, for an exchange period beginning September 13, 1984 and ending September 30, 1984.

Comment date: May 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER85-456-000]

May 6, 1985.

Take notice that on April 25, 1985, Florida Power & Light Company (FPL) tendered for filing a document entitled "Amendment Number Four to Contract for Interchange Service Between Florida Power & Light Company and Tampa Electric Company."

FPL states that Amendment Number Four amendments Service Schedules A and B to the Contract for Interchange Service to allow gas, at the option of the Seller, to be included in the deviation of the replacement cost of fuel and to allow more flexibility in the assignment of units under said Service Schedules.

FPL states that the effect on the amount of sales, services, or revenues, if any, brought about by the above described modifications to Servcie Schedules A and Service Schedules B cannot be projected and respectfully requests a waiver of the Commission's regulations.

FPL requests waiver of the Commission's regulations be granted to the extent necessary to permit the proposed Amendment Number four to become effective May 1, 1985.

Comment date: May 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Union Electric Company

[Docket No. ER84-146-002]

May 6, 1985.

Take notice that on March 18, 1985, Union Electric (Union Electric) Company submitted for filing a refund compliance report pursuant to a Commission letter request of February 21, 1985.

Union Electric submitted a copy of the bill for service to Malden for the billing periods December 31, 1984 to January 14, 1985 and January 15, 1985 to January 31, 1985. Also included are various work sheets which show those bills were calculated and how the refund and interest were determined.

Comment date: May 14, 1985, in accordance with Standard Paragraph H at the end of this notice.

10. Consolidated Edison Company of New York

[Docket No. ER85-459-000]

May 6, 1985.

Take notice that on April 26, 1985, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement and initial rate schedule implementing the agreement between the Power Authority of the State of New York and Con Edison. The rate schedule contains an effective date of July 1, 1986 and provides that Con Edison will deliver a maximum of 16 megawatts of Power Authority power and associated energy to one customer and 10 megawatts of Power Authority power and associated energy to another, both located in Con Edison's service area. Under the rates contained in the

initial rate schedule, Con Edison would realize about $4.7 million in annual revenues for this service.

Con Edison states that the allocation of low-cost Power Authority nuclear power was made pursuant to special state legislation (Ch. 521, N.Y. Laws of 1984) designed to stimulate the economy of southeastern New York State. The agreement provides that in the event Con Edison and the Power authority fail, as they have, to reach an agreement as to the rates, terms and conditions of this service, the New York State Public Service Commission will review the rate schedule subject to ultimate review by the Commission.

Copies of the filing were served upon the public utility's only jurisdictional customer the rate schedule, *i.e.*, the Power Authority of the State of New York.

Comment date: May 15, 1985, 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, N.E., Washington, D.C. 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.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11338 Filed 5-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-359-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Cogenic Energy Systems, Inc., et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

May 3, 1985.

Take notice that the following filings have been made with the Commission.

1. Cogenic Energy Systems, Inc.

[Docket No. QF85-359-000]

On April 26, 1985, Cogenic Energy Systems, Inc., (Applicant) of 127 East 64th Street, New York, New York 10021, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Arkay Packaging Corporation, 22 Arkay Drive, Hauppauge, New York. The facility will consist of an internal combustion engine/ synchronous generator with waste heat recovery from both jacket water and exhaust gases to produce low pressure steam for space heating, air conditioning and domestic hot water. The electric power production capacity of the facility will be 456 kW. The primary energy source will be natural gas.

2. Himolene-FWF Partnership

[Docket No. QF85-348-000]

On April 15, 1985, Himolene-FWF Partnership (Applicant), of of 5690 Lindbergh Lane, Bell, California, 90201 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in Kern County, California. The facility will consist of a maximum of nine vertical axis wind turbine/ generators with each unit rated at 150 kilowatts for a 36 miles per hour wind. The planned electric power capacity of the facility will be 1.35 megawatts. The primary energy source is wind. Small amounts of electric energy will be required for starting purposes only.

3. International Paper Company

[Docket No. QF85-354-000]

On April 25, 1985, International Paper Company, (Applicant) of 77 West 45th Street, New York, New York 10036 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Applicant's paper mill in Mobile, Mobile County, Alabama. The facility contains six boilers, two extraction steam turbine generators and one extraction/ condensing steam turbine generator. The steam is primarily used for paper drying, concentrating spent liquor, and heating wood chips for pulping. The primary energy sources are biomass in the forms of wood and spent pulping liquor, and coal. The net power production capacity of the facility is 85 MW. The facility was installed in November 1978. No electric utility, electric utility holding company or any combination thereof, has any ownership interest in the facility.

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, N.E., Washington, D.C. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11339 Filed 5-9-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59714; FRL-2833-6]

Certain Chemicals Premanufacture Notices; Acrylic Copolymer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certian types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary of it.

DATE: Close of Review Period: Y 85-70—May 20, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the on-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-70

Importer. Confidential.

Chemical. (G) Arcylic copolymer.

Use/Import. (S) Emulsion pressure sensitive adhesive for self wound tapes, for self adhesive labels/decals and self adhesive parts for product assembly and emulsion polymer base for waterborne adhesives and caulks. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Use: Dermal, up to 250-365 da/yr, 2-8 persons/shift, 1-3 shifts/da.

Environmental Release/Disposal. No release. Disposal by landfill.

Dated: May 3, 1985.

James A. Combs,

Acting Director, Information Management Division.

[FR Doc. 85-11262 Filed 5-9-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51570; FRL-2833-3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-859, 85-860, 85-861, 85-862, and 85-863—July 24, 1985.

P 85-864, 85-865, 85-866, 85-867, 85-868, 85-869, 85-870, 85-871, 85-872, 85-873, 85-874, 85-875, 85-876, 85-877, 85-878, 85-879, 85-880, 85-881, 85-882, 85-883, 85-884, 85-885, and 85-886—July 27, 1985.

P 85-887, 85-888, 85-889, 85-890, 85-891, and 85-892—July 29, 1985.

P 85-893, 85-894, 85-895, 85-896, 85-897, 85-898, and 85-899—July 30, 1985.

Written comments by:

P 85-859, 85-860, 85-861, 85-862, and 85-863—June 24, 1985.

P 85-864, 85-865, 85-866, 85-867, 85-868, 85-869, 85-870, 85-871, 85-872, 85-873, 85-874, 85-875, 85-876, 85-877, 85-878, 85-879, 85-880, 85-881, 85-882, 85-883, 85-884, 85-885 and 85-886—June 24, 1985.

P 85-887, 85-888, 85-889, 85-890, 85-891, and 85-892—June 29, 1985.

P 85-893, 85-894, 85-895, 85-896, 85-897, 85-898, and 85-899—June 30, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51570]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-859

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. (S) Site-limited and industrial coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal and inhalation, a total of 10 workers, up to 8 hrs/da.

Environmental Release/Disposal. No release.

P 85-860

Manufacturer. Confidential.

Chemical. (G) Functionally modified acrylate type polymer.

Use/Production. (G) Polymer product with an open use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 29 workers, up to 8 hrs/da, up to 260 da/yr.

Environmental Release/Disposal. 5 to 60 kg/batch released to land. Disposal by incineration and landfill.

P 85-861

Manufacturer. Confidential.

Chemical. (G) Ammonium salt.

Use/Production. (G) Coatings specialty additive. Prod. range: 100-6,400 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 21 workers, up to 6 hrs/da, up to 28 da/yr.

Environmental Release/Disposal. 1 to 3 kg/batch released to land. Disposal by incineration and landfill.

P 85-862

Manufacturer. Confidential.

Chemical. (G) Blocked aliphatic polyisocyanate.

Use/Production. (S) Industrial water dispersible blocked cross-linking agent for glass fiber sizing formulations and coil coatings incorporating polyurethane an epoxy water dispersion. Prod. range: 50,000-150,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal and inhalation: a total of 30 workers, up to 6 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. 0.1 to 2.0 kg released to air with 2.0 kg to water. Disposal by biological treatment and incineration.

P 85–863

Importer. CdF Chimie North America, Inc.

Chemical. (S) Polymer of ethylene, ethylene acrylate and maleic anhydride.

Use/Import. (S) Industrial bonding layer in coextrusion and coating; adhesive polymer in manufacture of hot-melts; thermal adhesive film for bonding tissues and others non extrudable materials and an additive in synthetic rubber and plastic material as processing aid or impact modifier. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Dermal, a total of 1,000 workers.

Environmental Release/Disposal. No data submitted.

P 85–864

Manufacturer. Confidential.

Chemical. (G) Dimethylhydrogen terminated polysiloxane.

Use/Production. (G) Polymerization initiator. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Not mutagenic.

Exposure. Manufacture: Dermal, a total of 1 worker, up to 2 hrs/da, up to 11 da/yr.

Environmental Release/Disposal. 5 to 80 kg/batch incinerated. Disposal by waste water treatment.

P 85–865

Manufacturer. Rohm and Haas Company.

Chemical. (G) Substituted acetonitrile.

Use/Production. (S) Site-limited pesticide intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Between 5.0 to 0.5 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames Test: Non-mutagenic.

Exposure. Manufacture and use: Dermal, a total of 6 workers.

Environmental Release/Disposal. 0.75 kg/batch released with 0.0156 kg/batch to water and 40 kg/year to land. Disposal by publicly owned treatment works (POTW), biological treatment facility and incineration.

P 85–866

Manufacturer. Rohm and Haas Company.

Chemical. (G) Substituted acetonitrile.

Use/Production. (S) Industrial pesticide intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Inconsequential irritant; Ames Test: Not mutagenic.

Exposure. Manufacture and use: Dermal, a total of 5 workers.

Environmental Release/Disposal. 0.25 to 0.75 kg/batch released with 0.0096 kg/batch to water and 60 kg/year to land. Disposal POTW and incineration.

P 85–867

Manufacturer. Confidential.

Chemical. (G) Ketopolycyclic polyacid.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: 50–250 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 6 workers.

Environmental Release/Disposal. 0.003 to 0.008 kg released to land. Disposal by landfill.

P 85–868

Manufacturer. Confidential.

Chemical. (G) Diacetyl polycyclic hydrocarbon.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: 50–250 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers.

Environmental Release/Disposal. 0.01 kg released to land. Disposal by landfill.

P 85–869

Manufacturer. Confidential.

Chemical. (G) Ketopolycyclic polyacidchloride.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: 50–250 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 6 workers.

Environmental Release/Disposal. 0.01 to 1.225 kg released to land. Disposal by landfill.

P 85–870

Manufacturer. Confidential.

Chemical. (G) Isocyanate-terminated polyurethane.

Use/Production. (S) Used internally as an intermediate in the production of an adhesive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 5 workers, up to 1 hr/da, up to 70 da/yr.

Environmental Release/Disposal. 200 grams to 5 kg incinerated.

P 85–871

Manufacturer. Confidential.

Chemical. (G) Hydroxyl-terminated polyurethane.

Use/Production. (S) Laminating adhesive in ethyl alcohol solution. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 2 workers, up to 2 hrs/da, up to 42 da/yr.

Environmental Release/Disposal. 5 kg/batch released to land. Disposal by landfill.

P 85–872

Manufacturer. Confidential.

Chemical. (G) Amidoamine.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal and inhalation, a total of 6 workers.

Environmental Release/Disposal. Less than 0.1 kg released to water with less than 0.5 kg/batch to land. Disposal by POTW and sanitary landfill.

P 85–873

Manufacturer. Confidential.

Chemical. (G) Amidoamine.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, and inhalation, a total of 6 workers.

Environmental Release/Disposal. Less than 0.1 kg released to water with less than 0.5 kg/batch to land. Disposal by POTW and sanitary landfill.

P 85–874

Importer. Products Research and Chemical Corporation.

Chemical. (S) 3-thiahept-5-ene-1-ol.

Use/Import. (S) Site-limited, industrial monomer for production of polymers. Import range: 4,500–115,000 kg/yr.

Toxicity Data. Acute oral: Male and female—3,430 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight.

Exposure. Processing: Dermal, a total of 12 workers, up to 0.5 hr/da, up to 100 da/yr.

Environmental Release/Disposal. .05 kg/batch/drum released to land. Disposal by approved landfill.

P 85–875

Manufacturer. Confidential.

Chemical. (G) Alkylamidopropyl betaine.

Use/Production. (G) Surfactant in cleaning compounds, oil drilling, recovery and purification at drilling site and foaming agent for fire fighting foams. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Non-irritant, Eye—Severe.

Exposure. Manufacture: Dermal, a total of 5 workers, up to 2 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 0.2 kg sample released with 5.0 kg to water. Disposal by POTW.

P 85-876

Manufacturer. Confidential.

Chemical. (G) Alkylamidopropyl betaine.

Use/Production. (G) Surfactant in cleaning compounds, oil drilling, recovery and purification at drilling site and foaming agent for fire fighting foams. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Non-irritant, Eye—Severe.

Exposure. Manufacture: Dermal, a total of 5 workers, up to 2 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 0.2 kg sample released with 5.0 kg to water. Disposal by POTW.

P 85-877

Manufacturer. Confidential.

Chemical. (G) Alkylamidopropyl betaine.

Use/Production. (G) Surfactant in cleaning compounds, oil drilling, recovery and purification at drilling site and foaming agent for fire fighting foams. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Non-irritant, Eye—Severe.

Exposure. Manufacture: Dermal, a total of 5 workers, up to 2 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 0.2 kg sample released with 5.0 kg to water. Disposal by POTW.

P 85-878

Manufacturer. Confidential.

Chemical. (G) Alkylamidopropyl betaine.

Use/Production. (G) Surfactant in cleaning compounds, oil drilling, recovery and purification at drilling site and foaming agent for fire fighting foams. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Non-irritant, Eye—Severe.

Exposure. Manufacture: Dermal, a total of 5 workers, up to 2 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 0.2 kg sample released with 5.0 kg to water. Disposal by POTW.

P 85-879

Manufacturer. Confidential.

Chemical. (G) Alkylamidopropyl betaine.

Use/Production. (G) Surfactant in cleaning compounds, oil drilling, recovery and purification at drilling site and foaming agent for fire fighting foams. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Non-irritant, Eye—Severe.

Exposure. Manufacture: Dermal, a total of 5 workers, up to 2 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 0.2 kg sample released with 5.0 kg to water. Disposal by POTW.

P 85-880

Manufacturer. Confidential.

Chemical. (G) Sodium bisulfite, reaction product with an epoxidized natural oil.

Use/Production. (G) Open, non-dispersive. Prod. range: 50,000-115,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 1 worker, up to 2 hrs/da, up to 11 da/yr.

Environmental Release/Disposal. 25 kg released to water.

P 85-881

Importer. Confidential.

Chemical. (gG) 2,2,6,6-tetramethyl-4-N-(substituted) aminopiperidine.

Use/Import. (S) Industrial UV absorber for paints, varnishes, lacquers, etc. Import range: Confidential.

Toxicity Data. Acute oral: Male and famale—2,180 mg/kg, ±127 mg; Irritation: Skin—Slight, Eye—Slight.

Exposure. Use: Dermal, a total of 15 workers.

Environmental Release/Disposal. No data submitted.

P 85-882

Manufacturer. Confidential.

Chemical. (S) Octadecenamide, N-[2-[(2-hydroxyethyl)amino]ethyl]-, monohydrochloride (salt).

Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 1 workers up to 1 hr/da, up to 15 da/yr.

Environmental Release/Disposal. Approximately 15 kg/batch released to sewer water. Disposal by POTW.

P 85-883

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Industrial paint ingredient. Prod. range: 50,000-150,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 47 workers, up to 8 hrs/da, up to 33 da/yr.

Environmental Release/Disposal. 10 to 350 kg/batch released to land. Disposal by incineration and landfill.

P 85-884

Manufacturer. Confidential.

Chemical. (G) Polyether polyurethane.

Use/Production. (G) Industrial coating component. Prod. range: 15,800-47,300 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 46 workers, up to 8 hrs/da, up to 33 da/yr.

Environmental Release/Disposal. 1 to 250 kg/batch released to land. Disposal by incineration and landfill.

P 85-885

Manufacturer. Koppers Company, Inc.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Industrial, commercial and consumer wall panels building and recreational vehicles construction and outdoors signs. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 5 workers, up to 4 hrs/da, up to 13 da/yr.

Environmental Release/Disposal. 1,300 kg/batch released to air. Disposal by incineration.

P 85-886

Manufacturer. Koppers Company, Inc.

Chemical. (G) Brominated unsaturated polyester resin.

Use/Production. (S) Industrial, commercial and consumer wall panels building and recreational vehicle construction and outdoor signs. Prod. range: Confidential.

Toxicity Data. Ames test: Positive.

Exposure. Manufacture: Dermal, a total of 6 workers, up to 4 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. Trace release to air.

P 85-887

Manufacturer. GTE Products Corporation.

Chemical. (S) Indium orthoborate.

Use/Production. (S) Industrial and commerical luminescent chemical (phosphor) to be used in CRT display screens. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. 0.005 kg/batch released to air with 0.002 to 0.003 kg/batch released to water. Disposal by navigable waterway and chemical waste treatment.

P 85-888

Manufacturer. Mazer Chemical, Incorporated.

Chemical. (G) Modified polyglycol polymer.

Use/Production. (G) Metalworking fluid component. Prod. range: Confidential.

Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-889

Manufacturer. Ashland Chemical Company.
Chemical. (G) Copolymer of acrylic acid esters, vinyl acetate, acrylic acid amide, crotonic acid, and fumaric acid ester.
Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 5 workers, up to 4 hrs/da, up to 10-20 da/yr.
Environmental Release/Disposal. Less than 13 kg/batch released to air.

P 85-890

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polypropylene glycol ether.
Use/Production. (S) Industrial frother in coal or mineral flotation processes. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal, a total of 6 workers.
Environmental Release/Disposal. Release to air.

P 85-891

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polypropylene glycol ether.
Use/Production. (S) Industrial frother in coal or mineral flotation processes. Prod. range: Confidential.
Toxicity Data. Acute oral; >3,200 mg/kg; Acute dermal: >2,000 mg/kg Irritation: Skin—Not-irritating, Eye—Slight/moderate.
Exposure. Manufacture; Dermal, a total of 6 workers
Environmental Release/Disposal. Release to air.

P 85-892

Manufacture. The Dow Chemical Company.
Chemical. (G) Polypropylene glycol ether.
Use/Production. (S) Industrial frother in coal or mineral flotation processes. Prod. range: Confidential.
Toxicity Data. Acute oral: Between 1,000-3,200 mg/kg; Acute dermal; >2,000 mg/kg; Irritation: Skin—Not-irritating, Eye—Not irritating.
Exposure. Manufacture: Dermal, a total of 6 workers.
Environmental Release/Disposal. Release to air.

P 85-893

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Polyfluoro substituted alkyl-N-substituted amino alcohol acetate.
Use/Production. (G) Surfactant, industrial non-dispersive. Prod. range: Confidential.
Toxicity Data. Acute oral: 7,500 mg/kg; Irritation: Skin—Slight, Eye—Moderate.
Exposure. Manufacture: Dermal, a total of 3 workers.
Environmental Release/Disposal. Release to land. Disposal by on-site landfill.

P 85-894

Manufacturer. Confidential.
Chemical. (G) Epoxidized natural oil.
Use/Production. (G) Non-dispersive open use. Prod. range: 50,000-200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 1 worker, up to 2 hrs/da, up to 21 da/yr.
Environmental Release/Disposal. 30 kg/batch released to water.

P 85-895

Manufacturer. Mazer Chemicals, Incorporated.
Chemical. (G) Modified polyglycol ether copolymer.
Use/Production. (G) Metalworking fluid component. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-896

Importer. Marubeni America Corporation.
Chemical. (S) Cuprate(3-), [2-[[[[3-[(4,6-dichloro-1,3,5-triazin-2-yl]amino]-2-hydroxy-5-sulfophenyl]azo]phenylmethyl]azo]-4-sulfobenzoato(5-)]-, disodium hydrogen, (SP-3)-.
Use/Import. (S) Commercial dye for cellulosic fibres. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames Test: Negative; TLM 48 hrs (Orange medaka): Above 1,000 parts per million (ppm).
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85-897

Importer. Marubeni America Corporation.
Chemical. (S) 2,8,10-trioxa-5-azadodecanoic acid, 5-[5-chloro-2-methoxy-4-[(5-nitro-2-thiazolyl)azo]phenyl]-9-oxo-, ethyl ester.
Use/Import. (S) Commercial dye for polyester fibres. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames Test: Negative; TLM 48 hrs (Orange medaka): Above 1,000 ppm.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85-898

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, alkyl esters.
Use/Production. (G) Hydrocarbon additive. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal, a total of 22 workers, up to 9.5 hr/da, up to 10 da/yr.
Environmental Release/Disposal. Nil release to air, 56 kg/batch released to water and 20 kg/batch to land. Disposal by POTW.

P 85-899

Manufacturer. The Minnesota Mining and Manufacturing Company.
Chemical. (G) Ethoxylated polyester.
Use/Production. (G) Surface treatment—non-dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin-Non-irritant, Eye—Minimal; Ames test: Non-mutagenic; IC_{50} (Photobacterium phosphoreum): >1,000 mg/l; COD: 0.43, 0.44, 0.48 and 0.49; EC_{50} 48 hr (Daphnia magna): >1,000 mg/L; BOD_5: Nil; IC_{50} (Green algae): >1,000 mg/L; LC_{50} 96 hr (Fathead minnow): >1,000 mg/L.
Exposure. Manufacture: Dermal, a total of 8 workers, up to 8 hrs/da, up to 8 da/yr.
Environmental Release/Disposal. Less than 5 kg released to water. Disposal by navigable waterway.

Dated: May 3, 1985.

James A. Combs,

Acting Director, Information Management Division.

[FR Doc. 85-11263 Filed 5-9-85; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59194; FRL-2833-7]

Certain Chemicals Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: May 28, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59194]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-43

Close of Review Period. June 13, 1985.

Manufacturer. Air Products and Chemicals, Incorporated.

Chemical. (G) Alkylated aromatic diamine.

Use/Production: (G) Polyurethane chain extender. Prod. range: Confidential.

Toxicity Data: Acute oral: Male and female—>500mg/kg; Acute dermal: >1.0 g/kg; Irritation: Skin—Mild; Ames test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

T 85-44

Close of Review Period. June 15, 1985.

Manufacturer. Confidential.

Chemical. (G) Halogen substituted alkyl polyalkyleneoxide.

Use. Confidential. Prod. range: 17,000 lbs/9 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: Dermal and inhalation, a total of 2 to 4 trained personnel, up to 20 min to 2 hrs, up to 9 mos and a total of 35 workers, up to 8 hrs/da, up to 14 da/9 mos.

Environmental Release/Disposal. Negligible release to air and water. Disposal by publicly owned treatment works (POTW), incineration, and deepwell injection.

T 85-45

Close of Review Period. June 15, 1985.

Manufacturer. Confidential.

Chemical. (G) Halogen substituted alkylpolyalkyleneoxy sulfonic acid salt.

Use. Confidential. Prod. range: 17,000 lbs/9 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: Dermal and inhalation, a total of 2 to 4 trained personnel, up to 20 min to 2 hrs, up to 9 mos and a total of 35 workers, up to 8 hrs/da, up to 14 da/9 mos.

Environmental Release/Disposal. Negligible release to air and water. Disposal by publicly owned treatment works (POTW), incineration, and deepwell injection.

Dated: May 6, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-11261 Filed 5-9-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2833-6]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed April 29, 1985 Through May 3, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850182, DSuppl, COE, IL, MO, Mississippi and Illinois Rivers, Pools 24, 25, and 26, Operation and Maintenance, Permits, Pool 26 Shoreline Management Plan for Fleeting, Due: June 24, 1985, Contact: Owen Dutt (314) 263-5711.

EIS No. 850183, Final, AFS, OR, Williamette Pass Alpine Winter Sports Site, Master Plan, Expansion and Development, Williamette and Deschutes National Forest, Lane and Klamath Counties, Due: June 10, 1985, Contact: Connie Frisch (503) 782-2291.

EIS No. 850184, Final, NASA, PRO, FL, Centaur Upper Stage Launch Vehicle, Design, Development and Implementation, Space Transportation System, Due: June 10, 1985, Contact: John Castellano (202) 453-2478.

EIS No. 850185, FSuppl, COE, OH, Cleveland Harbor Navigation Project, Improvement, Cuyahuoga County, Due: June 10, 1985, Contact: William Butler (716) 876-5454.

EIS No. 850186, Final, AFS, SC, Francis Marion National Forest, Land and Resource Management Plan, Berkeley and Charleston Counties, Due: June 24, 1985, Contact: Donald Eng (803) 765-5222.

EIS No. 850187, Final, AFS, CA, Dodge Ridge Ski Resort, Expansion, Stanislaus National Forest, Tuolumne County, Due: June 10, 1985, Contact: Edmund Rosenbaum (209) 965-3434.

EIS No. 850188, Draft, AFS, ID, Clearwater National Forest, Land and Resource Management Plan, Due: August 15, 1985, Contact: James Bates (208) 476-4541.

EIS No. 850189, Draft, COE, ID, Salmon River Flood Reduction Study, Construction, Lemhi County, Due: June 24, 1985, Contact: Witt Anderson (509) 522-6626.

EIS No. 850190, Draft, BLM, NM, New Mexico Statewide Wilderness Study Areas, Wilderness Designation, Due: July 29, 1985, Contact: Joe Sovcik (305) 988-6565.

EIS No. 850191, Draft, BLM, OR, Oregon Wilderness Study Areas, Designation, Due: August 31, 1985, Contact: Jerry Magee (503) 231-6867.

EIS No. 850192, Draft, MMS, MXG, AL, MS, LA, TX, 1986 Cental and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales Nos. 104 and 105, Leasing, Due July 5, 1985, Contact: Joseph Christopher (504) 837-4720.

EIS No. 850193, Final, AFS, AK, Becharof National Wildlife Refuge Comprehensive Conservation Plan, Designation, Due: June 10, 1985, Contact: William Knauer (907) 786-3399.

Amended Notice

EIS No. 850167, Final, NY, Oneida Creek Watershed Flood Control Plan, Madison and Oneida Counties, Due: June 10, 1985, Published FR 5-3-85—Review period reestablished.

Dated: May 7, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-11451 Filed 5-9-85; 8:45 am]

BILING CODE 6560-50-M

[ER-FRL-2833-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 22, 1985 through April 26, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-E65032-00, Rating EC2, Cherokee Nat'l Forest land and Resource Mgmt. Plan, TN and NC. **SUMMARY:** EPA's review identified potential environmental impacts to water quality that should be avoided in order to fully protect the environment. A more thorough description of the mitigation plans for preserving water quality should be included in the FEIS.

ERP No. D-BLM-K67006-CA, Rating EC2, Amselco Colosseum Gold-ore Extraction and Milling Project, Reopening and Expansion, Operating Plan Approval, Mohave Desert, CA. **SUMMARY:** EPA has concerns regarding the potential for contamination of ground water due to the seepage from tailings pond and waste rock piles. EPA also had concerns regarding the effectiveness of the reclamation program.

ERP No. D-FHW-F40282-MI, Rating: Alt. A, B, C, and D=LO2; Alt. E=EO2, US 31 Improvement, US 31 and US 10 Intersection to US 31 North of Scottville, MI. **SUMMARY:** EPA has no objection to the implementation of Alternatives A, B, C, and D. Objection was expressed regarding implementation of Alternative E due to the significant impact on wetlands, woodlands, agricultural lands and unique ecosystems and habitat.

Final EISs

ERP No. RF-CGD-A52156-00, Ballast Tanks and Crude Oil Washing System Stds. Regulatory Impact Analysis, 33 CFR Amend. of Pollution Prevention Regs. to Implement 46 U.S.C. 3705(c) and 3706(d). **SUMMARY:** EPA made no formal comment. EPA had rated the DEIS an LO 1.

ERP No. F-FHW-G40106-TX, Farm to Market Rd. 317, Athens Loop, Construction, TX. **SUMMARY:** EPA has not identified any issues of concern with regard to the proposed action.

ERP No. F-FHW-H40126-KS, Southern Arterial Construction, Ft. Riley Blvd./KS 18 to Tuttle Creek Blvd./US 24, Manhattan, KS. **SUMMARY:** EPA's previous concerns were considered by the FHWA. EPA has not further objections to the project.

Dated: May 7, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-11452 Filed 5-9-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 84-607]

Preparation for an International Telecommunication Union World Administrative Radio Conference for the Mobile Services; Second Notice of Inquiry

Adopted: April 25, 1985.

Released: May 7, 1985.

By the Commission.

Purpose

1. The purpose of this *Second Notice of Inquiry* is to invite public comment on the ITU Radio Regulations that should be on the agenda for the 1987 Mobile Conference, to present the agenda for a forthcoming International Civil Aviation Organization (ICAO) meeting and activity underway in the ICAO Future Air Navigation Systems Committee, to present the results of the 28th session of the Subcommittee on Radiocommunications of the International Maritime Organization (IMO), and proposed changes to the ITU Radio Regulations prepared by the IMO drafting group on operational procedures, all of which impact on our Mobile Services WARC preparatory effort.[1] The discussions concerning these matters are contained in Sections I and II. (Also see Appendices 1, 2, and 3).

Background

2. Although the detailed agenda for the World Administrative Radio Conference for the Mobile Services has not been established by the ITU, the Conference is expected to have jurisdiction to consider and revise many of the provisions of the international Radio Regulations pertaining to the use of radio by the mobile services.[2] Thus, a thorough preparatory review and assessment of United States' options for the conference is necessary. It is important that the process begin expeditiously. There are large sections of the Radio Regulations devoted exclusively to mobile services, and significant portions devoted both to mobile and non-mobile services. To accomplish a review of this magnitude will require extensive effort to ensure that all U.S. interests have been satisfied to the extent practical prior to the submission of U.S. proposals to the Conference.[3] We anticipate that proposals wil be due in Geneva about January 1, 1987.

I. Items for Inclusion on the Mobile WARC Agenda

3. The *First Notice of Inquiry* solicited comments on issues that should or should not be addressed by the Mobile WARC. Appendix 1 to that *Notice* was an initial list of items prepared by the ITU Administrative Council in April 1984, and comments on it were requested.[4] The parties that responded to this request generally supported providing the WARC with authority to revise portions of Article 8 of the ITU Radio Regulations concerning the allocation of frequency bands.

4. Aeronautical Radio Incorporated (ARINC) indicated that allocation authority was needed at 900 and 1600 MHz, which would also have to include authority to modify definitions, Article 1, without affecting the non-mobile radio services. ARINC indicated that such authority was needed in order to

[1] The results of that IMO Sub-Committee on Radiocommunications meeting were agreed during the week of September 17-21, 1984; they were developed by an Ad Hoc Group dealing with Operational matters during the week of September 10-14, 1984. The IMO Drafting Group on operational procedures met January 21 through February 1, 1985.

[2] A list of "Items of Concern for Preparation For The World Administrative Radio Conference For the Mobile Services" was Appendix 1 to our *First Notice of Inquiry*, (General Docket No. 84-607) FCC 84-262, 49 FR 26301 Adopted June 15, 1984, Published June 27, 1984.

[3] As an adjunct to the process, a Federal Advisory Committee was established. See Memorandum Opinion and Order (General Docket No. 84-607) adopted February 22, 1985, Published March 29, 1985.

[4] In Appendix 1 to that *Notice* we indicated that while that list was not the official version, we did not anticipate significant changes from the list that would be forthcoming from the ITU Secretary-General. This has now been confirmed, as we have compared that Appendix 1 list against the ITU Secretary General Circular-Letter No. 42, dated October 18, 1984, a copy of which is being placed in this Docket file. Responses by administrations to this Circular-Letter were due in Geneva not later than February 28, 1985. The response by the United States is attached as Appendix 1.

address the aeronautical public correspondence needs, using either terrestrial or satellite techniques. It went on to say that while the spectrum area at 900 MHz is the primary contender, it may also be possible to satisfy this need in unused portions of the 1535–1660.5 MHz band once air-traffic control and company operational control requirements are satisfied. ARINC further indicated that allocation competency was needed in order to provide for the world-wide implementation of a satellite based radiodetermination-satellite service for the mobile services. ARINC indicated that the 1987 WARC is the only conference on the horizon to provide for these types of services.

5. AT&T indicated that the 4000–4063 and 8100–8195 kHz bands, presently shared between the fixed and maritime mobile services, should be allocated on an exclusive basis to that latter service. AT&T went on to indicate further that if sharing must be employed, then some order of priority between the two services must be developed. The Association of American Railroads (AAR) indicated that the Radio Regulation, in Article 8, Footnote 613, that permits land mobile communications in portions of the 160–162 MHz maritime band, should be maintained.

6. GEOSTAR Corporation (GEOSTAR) indicated that based on the assumption that the FCC will allocate domestic frequencies for a radiodetermination-satellite service, the United States should support the need for the WARC to have allocation authority, permitting worldwide implementation of such a system. GEOSTAR cited several reasons behind this request, namely, that both the 1979 WARC and the 1983 Mobile WARC were limited conferences, that certain existing ITU Radio Regulation Resolutions and Recommendations relate to the need to include radionavigation matters and new technologies on the agenda of the next competent Mobile WARC, that the radiodetermination-satellite service has not been reviewed since 1971 and that the ITU Convention permits a WARC to be competent noting Item 6A in the Appendix 1 list attached to the *First Notice*. GEOSTAR indicated that the radiodetermination-satellite service would not receive international protection without recognition in the ITU Radio Regulations, that such a system presents the possibility for world-wide search-and-rescue systems, and that the radiodetermination-satellite system presents the opportunity for world-wide marketing of such technology. GEOSTAR also indicated that the 1987 WARC will be the last opportunity in this century to effect such changes.

7. RCA Global Communications, Incorporated, (RCA) indicated opposition to sharing of the allocations at 4000–4063 and 8100–8195 kHz unless specific time frames for the use of these bands are established for the maritime mobile and the fixed services. Skylink Corporation, (Skylink), indicated a need to establish an allocation for a mobile-satellite service at 1600 MHz. It indicated that such an allocation is necessary in order to provide for an eventual expansion of the use of the mobile-satellite service at 800 MHz. It also indicated that such an allocation shoud be consistent with that proposed by Canada.

8. The three reply comments were also mainly concerned with allocation issues. ARINC was opposed to the need expressed by Skylink of frequencies at 1600 MHz as this might jeopardize those frequencies that were set aside for a planned aeronautical mobile satellite system. ARINC based its opposition on 3 points: (1) The request is beyond the competence of the 1987 Mobile WARC, as item 6A in Appendix 1 to the *First Notice* indicates a need to review only those matters that were excluded from consideration at the 1979 WARC, and that conference revised the allocations within 1500–1600 MHz. ARINC points out, however that it is not opposed to the consideration of definitions and allocations concerning the radiodetermination-satellite service at the 1987 WARC, since this service has not been reviewed since the early 1970's; (2) significant domestic and international activity has taken place over the past decade to evaluate the need for an aeronautical mobile satellite service at 1600 MHz, and that studies are continuing which may take up to 5 years to complete; and (3) any mobile-satellite use, although perhaps economically beneficial to share a transponder, would mean that the aeronautical service would have to compete for access with such shared use in order to accomplish such functions as safety of life and property.

9. GEOSTAR noted in its reply comments that the NPRM's in Dockets 84–689 and 84–690 has just been released proposing domestic allocations in the bands in the vicinity of 1600, 2500, and 5150 MHz for the radiodetermination satellite service. This, it indicated, means that the United States should propose allocation authority at the 1987 WARC, particularly since there will be no other ITU conference scheduled for this century that might be vested with that authority.

10. The National academy of Sciences, through its Committee on Radio Frequencies (CORF), while presenting no opinion on whether or not the 1987 conference should have allocation authority, is concerned about the impact on radio astronony of new or modified allocations at 1610 and 1660 MHz. CORF, in its reply requirements of all services if allocation authority is given to the 1987 WARC.

11. Additional comments by the Radio Technical Commission For Marine Services was also submitted on February 20, 1985. In those comments RTCM indicated a preliminary list of issues that perhaps should be addressed by the 1987 Mobile WARC. Included on this list was the need for limited allocation authoirty for certain services in bands above 1500 MHz.

12. These comments and reply comments indicate to the Commission that threre is a public consensus that the 1987 Mobile WARC should have some allocation authority. Allocation authority is needed to extend internationally any domestic decisions that may be taken in the Notices of Proposed Rule Makings for the radiodetermination and mobile-satellite services.[5]

13. The allocation authority recommended in Appendix 1 includes the bands 4000–4063 and 8100–8195 kHz where we suggest that the 1987 Mobile WARC should have the authority to examine and, if appropriate, change the status of the allocations so that the maritime mobile service may utilize these bands in a more meaningful way than at present. This point was made in some of the comments mentioned earlier. It is also in line with other comments received from AMCOM Incorporated, Mobile Maritime Radio, Incorporated, the Radio technical Commission for Maritime Services, and WCM Radio Cincinnati, Incorporated.

14. The allocation authority recommended in Appendix 1 also includes that the bands from 1400–2500 MHz and the 5 GHz range may be examined and allocation changes made as necessary to accommodate the needs of the mobile satellite service and the radiodetermination satellite services. This is in line with the comments

[5] *Notice of Proposal Rule Making*, General Docket No. 84–689, and Docket No. 84–690, RM 4426, FCC 84–319 49 FR 36512, adopted July 12, 1984, and *Notice of Proposed Rule Making*, General Docket No. 84–1234, RM–4247, adopted November 21, 1984, published February 28, 1985, 50 FR 8149.

received and the two recent NPRM's that were adopted on these services. See paragraph 12.

15. In addition to these allocation issues, we are requesting comments on which Articles, Chapters, Appendices, Resolutions and Recommendations of the ITU Radio Regulations should be included on the agenda for the 1987 Mobile WARC in order to develop the United States position to the Administrative Council in 1985. Comments should address the United States preliminary view given in Appendix 1, either adding or deleting items from that list. We are not at this time requesting comments on the issues themselves. To provide all parties the opportunity for consideration, comments will be accepted up to June 1, 1985, and reply comments will be accepted up to June 15, 1985. Comment dates for other matters are indicated later in Sections II and III.

II. ICAO and IMO Activities

16. As noted in Appendix 2, the International Civil Aviation Organization will hold a Communications Divisional Meeting, September 4–28, 1985, in Montreal. Agenda Items 8 through 11 of the agenda for that meeting involve matters affecting United States preparation for the 1987 Mobile WARC. Comments are requested on ideas that should be put forward on these agenda items by the United States at that meeting. [6] Also placed in the docket file is the recent FAA submission to the ICAO Future Air Navigation Systems (FANS) Committee. Here, comments/reply comments are also required by June 1, and June 15, 1985, respectively.

17. The International Maritime Organization has also been preparing for the 1987 WARC. The Sub-committee on radiocommunications addressed this matter at its 28th Session, September 17–21, 1985.[7] The Sub-Committee recommended that certain ITU matters be considered for inclusion on the 1987 WARC agenda. The Sub-Committee also requested comments on initial changes to the Radio Regulations that were developed by a drafting group under the Ad Hoc Group on operational matters. These initial changes to the ITU Radio Regulations are intended to implement the Future Global Maritime Distress and Safety System (FGMDSS), and involve essentially a proposed new Chapter to the Radio Regulation. IMO intends to complete this effort at its 30th Session in September, 1985.

18. Appendix 3 includes certain extracts from the result of this last IMO meeting involving the 1987 Mobile WARC. It also includes the results of an IMO Drafting group on operational procedures. Comments are requested. Since however, the 30th Session of the IMO Radio Sub-committee will be held in October, 1985, we request that comments be submitted no later than June 15, and reply comments no later than July 10, 1985.

III. Conclusion/Administrative Matters

19. Comments are requested on the matters raised in this *Second Notice of Inquiry*. Specifically, we request comments on the points indicated in Appendices 1 through 3, and on any other matters relevant to Mobile WARC preparations that parties may wish to address. As we indicated in the *First Notice*, the Commission will develop its proposals for the WARC in coordination with National Telecommunication and Information Administration (NTIA) for eventual forwarding to the Departments of State as recommended United States proposals to be sent to the ITU for consideration at the Mobile WARC. This proceeding was initiated to develop U.S. proposals for the conference. It will not propose any changes to the FCC Rules and Regulations. Subsequent to conference action, however, changes may occur to the FCC Rules and Regulations through further docket proceedings.

20. Pursuant to the authority set forth in sections 4(i), 303, and 403 of the Communications Act of 1934, as amended, it is ordered that a *Second Notice of Inquiry* is hereby adopted.

21. Pursuant to applicable procedures set forth in § 1.430 of the FCC Rules and Regulations, persons interested in submitting comments to this *Notice* may do so as follows:

A. On the issues addressed in Section I, items for inclusion on the Mobile WARC agenda, comments are due on or before June 1, 1985 and reply comments are due on or before June 15, 1985.

B. On the issues addressed in Section II, ICAO matters only, comments are also due on or before June 1, 1985, and reply comments on or before June 15, 1985;

C. On the issues addressed in Section II, IMO matters only, comments are due on or before June 15, 1985, and reply comments are due on or before July 10, 1985.

Although § 1.419 of the Commission's Rules and Regulations requires that an original and five copies of all statements, briefs, or comments be filed in response to this *Notice*, ten additional copies would be useful. All relevant and timely comments and reply comments filed in this proceeding, as well as other pertinent information available to the Commission, will be considered.

20. Point of contact on this matter is Gordon F. Hempton, FCC, at (202) 632–7073.

Note.—The various appendices and attachments of this NOI will not be published herein due to the ongoing effort to minimize printing costs. Copies of the entire text of this NOI may be obtained from the International Transcription Service, 1919 M St., NW., Washington, D.C. 20554; (202) 296–7322. Also, a copy is available for public inspection in the FCC Library, Rm. 639, and the FCC Dockets Branch, Rm. 239, both also located at 1919 M St., NW.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–11403 Filed 5–9–85; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1513]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

May 3, 1985.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Responsibility of the Federal Communications Commission to consider biological effects of radiofrequency radiation when authorizing the use of radiofrequency devices.

Potential effects of a reduction in the allowable level of radiofrequency radiation of FCC authorized communications services and equipment. (Gen Docket No. 79–144)

Filed by: Henry L. Bauman & Barry D. Umansky, Attorneys for National Association of Broadcasters on 4–19–85.

James A. McKenna, Jr., Thomas N. Frohock & William K. Keane, Attorneys for TV Broadcasters All Industry Committee on 2–19–85.

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[6] Some initial work has already been accomplished by an ICAO Frequency Management Study Group (FMSG) at a meeting in March, 1984. The Report of that FMSG meeting (FMSG-Memo/30 of 8/21/84) has been placed in this Docket file.

[7] We note too, that the IMO Sub-Committee on Standards of Training and Watchkeeping is beginning to address matters involving the ITU and the 1987 Mobile WARC. The Report (STW 17/11) of that Sub-Committee meeting of July, 1984, to the IMO Maritime Safety Committee (MSC), has also been placed in this Docket file.

Subject: Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services. (CC Docket No. 81-893)

American Telephone and Telegraph Company, Request for Approval to Supplement the Capitalization of AT&T Information Systems in Connection with the Transfers of Embedded Customer Premises Equipment. (File No. ENF 83-18)

Filed By: James A DeBois & David J. Ritchie, Attorneys for AT&T Information Systems, Inc. on 4-5-85.

Subject: Investigation of Access and Divestiture Related Tariffs. (CC Docket No. 83-1145, Phase I and Phase II, Part I)

Filed by: Robert L. Barada, Maya A. Mathews & Stanley J. Moore, Attorneys for Pacific Bell on 4-22-85.

John A. Ligon, Attorney for ITT Communications Services, Inc., on 4-22-85.

H. Richard Juhnke, Arthur H. Simms & Lawrence P. Keller, Attorneys for Western Union Telegraph Company on 4-22-85.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-11381 Filed 5-9-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Part-Time Career Employment Program

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed commission order.

SUMMARY: The Federal Employees Part-time Career Employment Act (Pub. L. 95-437) requires an agency to publish for comment in the **Federal Register** regulations promoting part-time employment. This notice sets forth the policies and procedures for the establishment of the Federal Maritime Commission Part-time Career Employment Program.

DATE: Comments must be recevied by the Office of the Secretary within thirty (30) calendar days following the date of publication of this notice in the **Federal Register.**

ADDRESS: Send comments (original and 4 copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, Washington, D.C. 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Susan M. Sienkiewich, Office of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5773.

Part-Time Career Employment Program

Section 1. Purpose

1.01 This Order describes the policies and procedures to implement Pub. L. 95-437, the Federal Employee Part-Time Career Employmnent Act of 1978, by establishing a continuing program in the Federal Maritime Commission to provide career part-time employment opportunities.

Section 2. Definitions

2.01 *Part-time career employment* is regularly scheduled work of from 16 to 32 hours per week performed by individuals serving under permanent appointments in the excepted service or career or career-conditional appointments in the competitive service.

Section 3. Policy

3.01 It is Commission policy to employ persons on the basis of merit without regard to political, religious, or labor organization affiliation or nonaffiliation, race, color, religion, sex, national origin, age, or nondisqualifying physical handicap. In keeping with this commitment to eqdal employment opportunity and in accordance with the Federal Employees Part-Time Career Employment Act of 1978, the Commission will provide career part-time employment opportunities in positions up to GS-16 (or equivalent) in the competitive or excepted service, subject to availability of resources, personnel ceilings and mission requirements. Consistent with this policy, managers are encouraged to use part-time employment as an alternative to full-time employment in planning for the accomplishment of the work of their organizations. Such categories as the physically handicapped, persons with family responsibilities, students or others desiring part-time employment to continue their education, older persons and others, as appropriate, will be considered as valuable recruitment sources of part-time employees.

3.02 With the exception of a change to a part-time work schedule at the request of a full-time Commission employee, no occupied position will be abolished in order to make the duties available to be performed on a part-time career employment basis.

Section 4. Responsibilities

4.01 *The Office of Personnel* is responsible for:

(a) Coordinating efforts to determine functions that can be effectively performed by part-time employees;

(b) Identifying and developing recruitment sources;

(c) Designating an individual to coordinate the part-time employment program;

(d) Overseeing the development and implementation of part-time employment goals and timetables;

(e) Providing assistance to managers and supervisors in restructuring jobs and work schedules as appropriate;

(f) Preparing reports on part-time employment for transmittal to the Office of Personnel Management (OPM) and the Congress; and

(g) Notifying the public of vacant part-time positions through the posting of vacancy announcements.

4.02 *Managers and Supervisors at all levels* are responsible for:

(a) Implementing the policies set forth in this Order;

(b) Reviewing positions which become vacant to determine those which could be effectively performed by part-time employees; and

(c) Restructuring jobs and changing work schedules, as necessary, to maximize opportunities for effective use of part-time employees.

Section 5. Procedures for Requesting and Evaluating Conversion to Part-Time Employment

5.01 Employees desiring to change from full-time to part-time career employment should submit a written request to the immediate supervisor stating the reasons for the request and the work schedule desired.

5.02 The immediate supervisor will evaluate the request, taking the following factors into consideration:

(a) Regular and peak workloads which might lend themselves to part-time schedules and the ease of filling the "second half" of the position (part-time employees are counted toward personnel ceilings on the basis of the fractional part of the 40-hour week actually worked);

(b) Adaptability or flexibility of the work to be performed on a part-time basis;

(c) Special space and equipment requirements, if any; and

(d) Benefits to employee e.g., would alleviate child care concerns for parents, would lessen pressure of a full day's work on those with health problems, would allow those near retirement to discontinue work gradually.

5.03 Based on the above considerations, the employee's immediate supervisor will approve or deny the request and forward it to the second level supervisor for review of and concurrence with the decision. There is no employee right of appeal outside the Commission for denial of a request for conversion to a part-time tour of duty. However, an employee may grieve a denial of a request to change work schedules through the Commission's administrative grievance system (C.O. 65, Revised).

5.04 All approved requests for conversion to part-time employment will be forwarded to the Office of Personnel along with a Standard Form 52, "Request for Personnel Action", for processing. These requests will be maintained in the Personnel Office for statistical purposes.

Section 6. Effect on Employee of Appointment or Conversion to Part-Time Employment

6.01 Appointment or conversion to a part-time tour of duty does not change the employee protections from removal (or lack thereof) conveyed by status under a probationary, career-conditional, or career appointment.

6.02 An employee's work schedule has no effect on the classification of a position, since the grade of a position is determined by the level of difficulty of the work.

6.03 Part-time experience is credited on a pro-rata basis according to the relation it bears to a full workweek. In order to be eligible for promotion, such accumulated experience must meet the amount of experience required by the Office of Personnel Management Handbook of Qualification Standards (X-118), which is available for review in the Office of Personnel.

6.04 A part-time employee receives a full year of service credit for each calendar year worked (regardless of tour of duty) for the purposes of computing service for retention, retirement, career tenure, completion of probationary period, within-grade increases, leave accrual rate, and time-in-grade restrictions on advancement.

6.05 The rate of pay is directly proportional to the time scheduled to work. Overtime pay or compensatory time off for an eligible part-time employee is provided only for work in excess of 8 hours a day or over 40 hours in a week. A part-time employee receives straight time pay for work which is in excess of scheduled hours but which does not exceed 8 hours per day or 40 hours per week.

6.06 Annual leave is earned according to the number of hours worked in a pay period. An employee's leave earning category is based on the employee's length of service. Maximum carry-over at the end of a leave year remains the same as for full-time employees. Sick leave is earned at the rate of one hour for every 20 hours in pay status. No leave (annual or sick) is earned for hours worked in excess of 80 in a pay period. A part-time employee accrues Military Leave prorated on the basis of tour of duty. A part-time employee is eligible for other leave categories e.g., Absence Without Leave, Funeral Leave, Court Leave, excused absence, on the same basis as a full-time employee. For all categories of leave for which a part-time employee is eligible, leave is charged only for absences during those hours the employee is scheduled to work.

6.07 Holiday pay is received only if an employee is regularly scheduled to work on that day, and only for the number of hours covered by the employee's regular tour of duty.

6.08 The amount of life insurance carried by a covered employee is based on annual salary and is computed on the basis of hours in the tour of duty times base pay rate. The minimum amount of insurance is $10,000.

6.09 The Government's contribution for the health insurance of an eligible employee who becomes part-time after April 8, 1979, is prorated on the basis of the fraction of a full-time schedule worked. An employee who was working under a permanent part-time schedule on April 7, 1979, receives a full Federal health benefits contribution for as long as the employee remains part-time. In addition, a change in status of employment from full-time to part-time is an event which allows an employee to change health insurance enrollment to another plan and/or option within 31 days from the effective date of change in status.

6.10 Retirement benefits are computed in the same way for all career employees both full-time and part-time. Annuities are based on an employee's length of service and the highest average annual pay received for any three consecutive years.

6.11 In a reduction-in-force, part-time employees compete only for other part-time jobs. A full-time employee may not displace a part-time employee.

Section 7. Job Sharing

7.01 A form of part-time employment in which two employees hold a single full-time position by alternating their work schedules to cover a full 40 hour work week is known as job sharing.

7.02 A variety of different work scheduling arrangements may be used including split days, alternate days or split weeks. However in order to be eligible to earn leave, each job sharer must work at least one hour of regularly scheduled work in each of the two weeks of the bi-weekly pay period.

7.03 Job sharing can provide managers with considerable work scheduling flexibility, since one member of a job sharing team may cover in the absence of the other.

7.04 Each job sharer has his or her own position description which may or may not be identical. Similarly, the duties of job sharers may be the same or different.

7.05 Subject to the approval of the Director, Office of Budget and Financial Management, the work schedules of a job sharing team may occasionally overlap and total more than 40 hours per week. This may be necessary to provide for coverage during periods of heavy workload (without the use of costly overtime) or to allow job sharers to attend meetings or training.

Section 8. Increasing Hours of Part-time Tour of Duty/Converting to Full-Time Employment

8.01 A part-time employee's tour of duty may be changed to meet the needs of the Office. A change must be made in advance of the administrative workweek in which the change is to occur and must be approved by the employee's immediate supervisor. In addition, for fund control purposes, the Director, Office of Budget and Financial Management must be notified prior to increases in tours of duty to assure that funds and work years are available. An increase in the tour of duty of a part-time employee above 32 hours per week is not permitted for more than two consecutive pay periods.

8.02 It is contrary to merit principles to appoint an individual to work part time with the intent to convert the employee to full-time after a brief interval. Unexpected increases in workload may, however, require an agency to change the work schedule of

part-time employees to full time on either a temporary or permanent basis. The Commission will make every effort to accommodate an employee with a part-time tour, particularly if a change to full-time would result in a hardship to the employee. However, if there are no other ways to accomplish the work within available resources, the Commission may require that an employee convert to a full-time tour of duty.

8.03 When the Commission determines that it must change the schedule of a part-time employee to full-time, a minimum of two calendar weeks notice will be given to the employee.

8.04 Procedures for requesting conversion to a full-time tour of duty are the same as described in Section 5.01. There is no guarantee of return to a full-time position once vacated. Conversion to a full-time tour of duty is subject to personnel ceiling controls, availability of funds and the availability of work to support a full-time tour of duty.

Section 9. Position Changes

9.01 A part-time employee is covered by the Commission's Merit Staffing Program (C.O. 61) and is reassigned, detailed and promoted in accordance with and under the same circumstances as other career and career-conditional employees.

9.02 A movement from a part-time to a full-time position is not subject to competition unless required by the Commission's merit staffing procedures.

Section 10. Inquiries

10.01 Any inquiries concerning the provisions of this Order should be directed to the immediate supervisor or the Office of Personnel.

Section 11. Effect on Other Orders

11.01 This is a new Commission Order.

Alan Green, Jr.,

Chairman.

Appendix A

Annual Goals for Establishment of Part-time Positions

Year	Target
1985	.5 percent of the Commission's workforce to be employed on a parttime basis.
1986	1 percent of the Commission's workforce to be employed on a parttime basis.
1987	1.5 percent of the Commission's workforce to be employed on a parttime basis.

[FR Doc. 85-11391 Filed 5-9-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

One Valley Bancorp of West Virginia, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically and questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later that June 3, 1985.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *One Valley Bancorp of West Virginia, Inc.*, Charleston, West Virginia; to acquire 100 percent of the voting shares of Western Greenbrier National Bank, Rainelle, West Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *BOL Banshares, Inc.*, New Orleans, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Louisiana in New Orleans, New Orleans, Louisiana.

2. *Hibernia Crporation*, New Orleans, Louisiana; to merge with Guaranty Commerce Corporation, Alexandria, Louisiana, thereby indirectly acquiring Guaranty Bank & Trust Company of Alexandria, Louisiana, Alexandria, Louisiana.

c. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas, 75222:

1. *Republicbank Corporation*, Dallas, Texas; to acquire 100 percent of the voting shares of Republicbank Countryside, N.A., San Antonio, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 6, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11325 Filed 5-9-85; 8:45 am]

BILLING CODE 6210-01-M

Society Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies: and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) fo the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1985.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Society Corporation*, Cleveland, Ohio; to merge with Centran Corporation, Cleveland, Ohio, thereby indirectly acquiring Central National Bank of Cleveland, Cleveland; Centran Bank of Akron, Akron; The Richland Trust Company, Mansfield; The Franklin Bank, Comumbus; and The Farmers and Savings Bank, Loudonville, all located in Ohio.

Additionally, Society Corporation has applied under section 4(c)(8), to acquire Centran Life Insurance Company, Berea, Ohio (credit reinsurance and underwriting); Security Capital Leasing Inc., of Mississippi, Berea, Ohio (consumer finance activities); and Berea, Ohio (leasing activities); CFS One, Inc., Berea, Ohio (consumer finance business, sale of credit-related property and casualty insurance); CFS One Inc., Protective Loan Corporation, Berea, Ohio (consumer finance activities).

Board of Governors of the Federal Reserve System, May 6, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11326 Filed 5-9-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection package it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 3, 1985.

Social Security Administration

Subject: Certification by Religious Group—SSA-1458-Extension-(0960-0093)

Respondents: Individuals

OMB Desk Officer: Judy A. McIntosh

Public Health Service

Food and Drug Administration

Subject: 21 CFR Part 25—National Environmental Policy Act; Policies and Procedures—Revision (0910-0190)

Respondents: Businesses, federal agencies, small businesses

Subject: Regulations Under the Federal Import Milk Act

Respondents: State/local governments, farms, small businesses

OMB Desk Officer: Bruce Artim

Health Care Financing Administration

Subject: Information Collection Requirements in HSQ-110, Acquisition, Protection and Disclosure of Peer Review Organization Information—42 CFR 476.104, 476.105, 476.116 and 476.134—(HCFA-R-70)—New

Respondents: Peer review organizations, businesses or other for profit, small businesss or organizations

Subject: Preclearance for: Competitive Bidding for Durable Medical Equipment Demonstration (#003)—(HFCA-491)—New

Respondents: Individuals or households, businesses or other for profit, non-profit institutions, small businesses or organizations

Subject: Hospice Request for Certification in the Medicare Program—Extension (0938-0313)

Respondents: Small businesses or organizations

Subject: State Medicaid Manual, Part 3 on Assignment of Rights—(HCFA-R-75)—New

Respondents: Individuals or households, state/local governments

OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503 ATTN: (name of OMB Desk Officer).

Dated: May 7, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-11367 Filed 5-9-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 85E-0156]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tonocard Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the human drug product, Tonocard Tablets, and is publishing this notice of the determination as required by law. This determination follows from the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions shoud be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frank Sasinowski, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (the act) (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed.

Under the act, a product's "regulatory review period" forms the basis for determining the amount of extension an applicant may receive. A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigation of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until permission to market the drug product is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review

period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has determined that the applicable regulatory review period for Tonocard Tablets (tocainide hydrochloride) is 3,956 days. Of this time, 2,169 days occurred during the testing phase of the regulatory review period while 1,787 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act involving this drug product became effective: January 10, 1974.

The applicant claimed December 7, 1973, as the date that commenced the testing phase, however, FDA did not receive the exemption until December 12, 1983. Moreover, under FDA regulations (21 CFR 312.1(b)(4)), the exemption did not become effective until 30 days after the notice of claimed investigational exemption for the drug was received by FDA.

2. The date an application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: Dember 19, 1979.

The applicant claimed that the approval phase of the regulatory review period began on May 20, 1982, when the new drug application that was ultimately approved was submitted for the drug product. However, earlier the applicant had initially submitted a new drug application which was received by FDA on December 19, 1979.

After review of this earlier application FDA declared it nonapprovable in a June 30, 1980, letter to the applicant. This subsequent FDA action on the December 1979 application did not preclude that application's commencement of the approval phase of the regulatory review period, the legislative history to the act explains that "an application * * * is considered to be 'initially submitted' if the applicant has made a deliberate effort to submit an application containing all information necessary for agency review to begin. As long as the application was complete enough so that agency action could be commenced, it would be considered to be 'initially submitted'." (See H. Rept. 98-857, Part 1, 98 Cong., 2d Sess., 44, 1984.)

In this case, while the December 1979 application was not approvable, it was sufficiently complete to permit agency action to begin. Accordingly, the first day of the approval phase of the regulatory review period is December 19, 1979.

3. The application was approved on November 9, 1984.

FDA has verified that NDA 18-257 was approved on November 9, 1984, as stated by the applicant.

This determination of the regulatory review period establishes the maximum potential amount of patent extension. However, the United States Patent and Trademark Office applies several statutory limitations in its calculation of the actual period of patent extension. Accordingly, in its application for patent extension, this applicant seeks 342 days of patent extension.

Anyone with knowledge that any of the dates as published is in error may, on or before July 9, 1985, submit to the Dockets Management Branch written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 6, 1985, for a determination regarding whether the applicant acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an investigation by FDA. (See H. Rept. No. 98-857, Part 1, 98 Cong., 2d Sess., 41-42, 1984.) Petitions should be in the format described in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Received comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 6, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85-11336 Filed 5-9-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85M-0167]

American Medical Optics; Approval of Supplemental Premarket Approval Applications for the Sauflon® 70 (Lidofilcon A) Soft Contact Lens for Daily or Extended Wear

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental applications by American Medical Optics, Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Sauflon® 70 (lidofilcon A) Soft Contact Lens for not-aphakic daily or extended wear. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the supplemental applications.

DATE: Petitions for administrative review by June 10, 1985.

ADDRESS: Written requests for copies of the summaries of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On April 7, 1980, FDA approved an application for premarket approval of the Sauflon® PW (lidofilcon B) Hydrophilic Contact Lens for extended wear. The application was submitted by American Medical Optics, Irvine, CA 92714. In the **Federal Register** of September 16, 1980 (45 FR 61368), FDA announced that the application had been approved. On September 1, 1981, and August 26, 1982, American Medical Optics submitted to CDRH supplemental applications for premarket approval of the Sauflon® 70 (lidofilcon A) Soft Contact Lens for daily and for extended wear. This lens is indicated for both daily and extended wear by not-aphakic persons, in power of −12.50 to +8.00 diopters, for the correction of visual acuity in persons with nondiseased eyes that are myopic or hyperopic and who may have astigmatism of 2.00 diopters or less. On March 26, 1982, and January 28, 1983, respectively, the Ophthalmic Devices Panel reviewed the supplemental applications. On September 23, 1982, and May 9, 1983, respectively, CDRH approved the applications by letters to the applicant from the Acting Director of the then Bureau of Medical Devices and the Associate Director for Device Evaluation of the then Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such contact lenses were regulated as new drugs. Because the amendments broadened the

definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III device (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

The summaries of the safety and effectiveness data on which CDRH based its approvals are on file with the Dockets Management Branch (address above) and are available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Copies of all approved labeling are available for public inspection at CDRH—contact Richard E. Lipman (HFZ–460), address above.

Restrictive labeling has been established for approved contact lenses made of polymers other than PMMA. This restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with contact lenses made of polymers other than PMMA. An applicant who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve these applications. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the applications and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 2, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–11334 Filed 5–9–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0166]

International Hydron Corp.; Premarket Approval of X–70 (Lidofilcon A) Soft Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by International Hydron Corp., Woodbury, NY, for premarket approval, under the Medical Device Amendments of 1976, of the X–70 (lidofilcon A) Soft Contact Lens. The lens is to be manufactured under an agreement with American Medical Optics which has authorized International Hydron Corp. to incorporate by reference information contained in its approved premarket approval application for the Sauflon® 70 (lidofilcon A) Soft (Hydrophilic) Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by June 10, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On July 28, 1983, International Hydron Corp., Woodbury, NY 11797, submitted to CDRH an application for premarket approval of the X–70 (lidofilcon A) Soft Contact Lens. The spherical lens ranges in powers from −12.50 diopters to +8.00 diopters and is indicated for both daily and extended wear of from 1 to 30 days between cleaning and disinfection (as directed by the eye care practitioner), for the correction of visual acuity in persons with nondiseased eyes that are not-aphakic and have myopia or hyperopia. The lens may be worn by persons who have refractive astigmatism of 2.00 diopters or less which does not interfere with visual acuity. The application included authorization from American Medical Optics, Irvine, CA 92714, to incorporate by reference the information contained in its approved premarket approval

application supplements for the Sauflon* 70 (lidofilcon A) Soft (Hydrophilic) Contact Lens for both daily and not-aphakic extended wear (Docket No. 85M-0167). On March 29, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ-460), address above.

The labeling of the X-70 (lidofilcon A) Soft Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. This restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with contact lenses made of polymers other than PMMA. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 2, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 11335 Filed 5-9-85; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of a Virginia State Plan Amendment

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on June 19, 1985, in Philadelphia, Pennsylvania to reconsider our decision to disapprove Virginia State Plan Amendment 84-12.

CLOSING DATE: Requests to participate in the hearing as a party must be received by May 28, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Virginia State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae

must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Virginia's proposals to implement changes to its treatment of real property as a countable resource for purposes of eligibility for Medicaid for the medically needy and to implement changes to treatment of non-real property for purposes of eligibility for Medicaid violate section 1902(f) and 1902(a)(10)(C)(i)(III) of the Social Security Act and Federal regulations at 42 CFR 435.121.

Virginia is a 209(b) State, meaning that it may use more restrictive eligibility criteria for Medicaid than are used by the Supplemental Security Income (SSI) program. However, section 1902(f) of the Social Security Act and 42 CFR 435.121 require that a 209(b) State may not have eligibility criteria which are more liberal than those used by SSI, or more restrictive than those in the State's Medicaid plan on January 1, 1972.

Section 201.5 of Virginia's proposed plan amendment sets forth the conditions under which non-home real property will not be counted as a resource for purposes of eligibility for Medicaid. This section to some extent parallels the "bona fide effort to sell" instruction currently found in the SSI POMS (section 01130.330). To the extent the instruction would permit a blanket exclusion for an asset that is not salable at the asking price or original current market value, the POMS provision is not a correct reflection of SSI resource policy. This policy is reflected in Social Security Administration Ruling (SSR 83-30a) under which there is no "bona fide effort to sell" policy in SSI that would create such a blanket exclusion of resources. Section 201.5 of the proposed plan amendment is more liberal thet the SSI policy. Therefore, HCFA has determined that § 201.5 of the proposed plan amendment is in violation of section 1902(f) and 42 CFR 435.121(b)(i).

Section 300 governs the scope of the other sections in the 300 series (from 301 through 303). Section 301 states that for real property "the regulations in sections 100, 201.2 through 201.5 above apply." Sections 201.2 through 201.5 contain the methodologies for determining countable resources for the aged, blind, and disabled. Under section 1902(a)(10)(C)(i)(III) of the Social Security Act the methodologies used to determine medically needy eligibility must be those employed by the most closely related cash assistance program. For families and children, these would be the AFDC methodologies. The plan proposes using methodologies related to the aged, blind and disabled instead of AFDC's methodologies. Therefore HCFA has determined sections 300 and 301 of the proposed plan violate section 1902(a)(10)(C)(i)(III) of the Act.

The notice of Virginia announcing an administrative hearing to reconsider our disapproval of § 201.5, 300 and 301 of its State plan amendment reads as follows:

Mr. Ray T. Sorrell,

Director, Department of Medical Assistance Services, Richmond, Virginia

Dear Mr. Sorrell: This is to advise you that your request for reconsideration of the decision to disapprove sections 201.5, 300 and 301 of Virginia State Plan Amendment 84-12 was received on April 9, 1985. You have requested a reconsideration of whether this plan amendment, which would implement a number of changes with regard to the State's treatment of real property as a countable resource for purposes of eligibility for Medicaid for the medically needy and would implement several other changes with regard to treatment of non-real property for purposes of eligibility for Medicaid conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on June 19, 1985, at 10 a.m., in Room 3020, 3535 Market Street, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: May 2, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85-11377 Filed 5-9-85; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Poarch Band of Creeks; Establishment of Reservation

Correction

In FR Doc. 85-9416, beginning on page 15502 in the issue of Thursday, April 18, 1985, make the following corrections:

On page 15502, second column:

1. In the twelfth line of the land description under *Elmore County* T. 18 N., R. 18 E., "thence 59°56" East" should have read "thence S 59°56" East";

2. In the nineteenth line, "89°29'W" should have read "80°29'W".

BILLING CODE 1505-01-M

Bureau of Land Management

[F-14908-A]

Alaska Native Claims Selection, Sitnasuak Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of secs. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to Sitnasuak Native Corporeation for approximately 9.031 acres. The lands involved are in the vicinity of Nome.

Portions of Mineral Survey No. 1339 and Mineral Survey No. 410.

A notice of the decision will be published once a week for (4) consecutive weeks, in THE NOME NUGGET. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until June 10, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371,

February 21, 1984) shall be deemed to have waived their rights.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-11405 Filed 5-9-85; 8:45 am]

BILLING CODE 4310-JA-M

Public Lands; Alaska; Acceptance of Mining Claim Recordation Filings

AGENCY: Bureau of Land Management, Interior.

ACTION: Acceptance of Mining Claim Recordation Filings at the Anchorage District Office located at 4700 East 72nd Avenue, Anchorage, Alaska 99507.

SUMMARY: With the recent decentralization of the Bureau of Land Management, Alaska State Office, certain functions are now the responsibility of the Anchorage District Manager. The decentralization has extended the authority to accept mining claim recordation filings to the Anchorage District Office. Mining claim recordation filings can also continue to be filed at the Alaska State Office and Fairbanks District Office

Accordingly, the Branch of Case File Processing will accept all new mining claim recordation affidavits of annual labor or notices of intent to hold mining claims. All future filings and affidavits involving mining claim recordation will be received at the Anchorage District Office during the normal business hours.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra Dunn, Bureau of Land Management, 4700 East 72nd Avenue, Anchorage Alaska 99507.

Wayne A. Boden,

District Manager.

[FR Doc. 85-11406 Filed 5-9-85; 8:45 am]

BILLING CODE 4310-JA-M

Alaska; Filing and Transfer of Mineral Patent Applications and Casefiles to the Anchorage District Office on Forest Service Administered Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing and Transfer of Mineral Patent Applications and Casefiles to the Anchorage District Office on Forest Service Administered Land.

SUMMARY: The filing of mineral patent applications and location of all related casefiles for the Forest Service Administered Lands has been officially transferred to the Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska 99507, (907) 267-1200.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra Dunn, Bureau of Land Management, 4700 East 72nd Avenue, Anchorage, Alaska 99507.

Wayne A. Boden,

District Manager.

[FR Doc. 85-11407 Filed 5-9-85 8:45 am]

BILLING CODE 4310-JA-M

[CA 17208]

Geothermal Resources Lease Sale

Notice is hereby given that approximately 95,201.62 acres of land in 50 parcels within Coso (11,689.83 acres), Dunes (3,280.47 acres), East Brawley (7,253.52 acres), Glamis (17,939.39 acres), Geysers (28,560.05), Lake City Surprise Valley (15,276.44), and Salton Sea (11,201.92) KGRA's in Imperial, Lake, Lassen, Mendocino, Napa, and Sonoma Counties, California, will be offered competitively for lease under the Geothermal Steam Act of 1970 through sealed bids to the qualified responsible bidder of the highest cash amount per parcels. Bids will re received until 10:00 a.m. on June 25, 1985.

For further information contact the California State Office, Division of Operations, Room E-2605, 2800 Cottage Way, Sacramento, California 95825 Phone (916) 484-4492.

Dated: May 3, 1985.

Joan B. Russell,

Chief, Leasible Minerals Section, Branch of Lands and Minerals Operations.

[FR Doc. 85-11404 Filed 5-9-85; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0367, Block 32, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on April 29, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-11328 Filed 5-9-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Land Protection Plans; Availability, Cape Cod National Seashore

May 10, 1985.

AGENCY: Cape Cod National Seashore, Interior.

ACTION: Notice of Availability of Land Protection Plan and Opportunity for Public Participation.

SUMMARY: This notice of May 10, 1985 announces that a Draft Land Protection Plan for Cape Cod National Seashore is available for public review and comment for 45 days beginning with this publication date at the Cape Cod National Seashore headquarters building, Marconi Station, South Wellfleet, Massachusetts 02663.

DATE: May 10, 1985 to June 24, 1985.

Interested persons may review this document and make written comments to the official listed below within the above comment period. Further information concerning this Plan can be obtained for Jim Killian at the above address or telephone (617) 349–3785.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

April 22, 1985.

[FR Doc. 85–10378 Filed 5–9–85; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Postponement of ICC Practitioner Examination

The Commission has voted to postpone the July 1985 ICC Practitioner's Examination.

The examination is a composite of questions submitted by all the bureaus and offices of the Commission. These submissions are reviewed, edited, and put together by the Employee Board on Education and Practice, in conjunction with the Grading Committee. Registration, printing, distribution and administration of the examination are handled by the Office of the Secretary. The examination is administered at various locations throughout the country where applicants are located. Grading of the examinations and determination of passing grades are the functions of the Grading Committee and Employee Board, respectively, under the supervision of the Vice Chairman.

Recent budget problems at the Commission have resulted in furloughs for all employees. The employees who prepare, administer and grade the examination do so on a voluntary basis and must perform these collateral duties with their regular full-time jobs. With the shortened work week, precedence must be given to statutorily mandated work. In addition, current restrictions on employee travel would preclude administration of the examination at the various test sites near the applicants.

Every effort will be made to reschedule the examination as soon as possible after the end of the furloughs. Applicants will be notified to time, date, and test site.

Questions concerning this postponement should be directed to the Commission Service Section (202) 275–7233.

Decided: April 17, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–11378 Filed 5–9–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30648]

Santa Cruz, Big Trees & Pacific Railway Co.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of (1) 49 U.S.C. 10901, the acquisition and operation by Santa Cruz, Big Trees & Pacific Railway Company of 9 miles of track between Santa Cruz and Felton, CA, in Santa Cruz County, CA, and its lease of 0.418 miles of incidental trackage rights in Santa Cruz, and (2) 49 U.S.C. 11301, the issuance by Santa Cruz, Big Trees & Pacific Railway Company of securities in an amount not to exceed $1,750,000.

DATES: These exemptions are effective on May 10, 1985. Petition to reopen must be filed by May 30, 1985.

ADDRESSES: Send pleadings to Finance Docket No. 30648 referring to:

(1) Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: E. Barrett Prettyman, Jr., Hogan & Hartson, 815 Connecticut Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: May 3, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James E. Bayne,

Secretary.

[FR Doc. 85–11379 Filed 5–9–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket Nos. AB–33 and AB–37 (Sub-17x and 31x)]

Union Pacific Railroad Co.—Exemption to Discontinue Operations—First and Second Main Lines at Seattle, WA and Oregon-Washington Railroad & Navigation Co.—Exemption To Abandon First and Second Main Lines at Seattle, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the discontinuance of service by the Union Pacific Railroad Company over, and the abandonment by Oregon-Washington Railroad Navigation Company of, lines of rail known as the First and Second Main Lines, for approximately 1.94 miles in Seattle, King County, WA, from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*, subject to employee protection conditions.

DATES: This exemption will be effective on June 10, 1985. Petitons to stay must be filed by May 20, 1985. Petitons for reconsideration must be filed by May 30, 1985.

ADDRESSES: Pleadings in this matter should all refer to Docket No. AB–33 (Sub-No. 31X) and Docket No. AB–37 (Sub-No. 17X) and be sent to:

(1) Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additonal information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: May 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–11380 Filed 5–9–85; 8:45 am]

BILLING CODE 7035–01–M

Study of the Estimated Traffic Diversion and Viability of the Divestiture Proposals Resulting From the Acquisition of the Consolidated Rail Corporation by Norfolk Southern Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of a study.

SUMMARY: Based on a request from the Honorable James J. Florio, Chairman of the Subcommittee on Commerce, Transportation and Tourism of the Committee on Energy and Commerce of the United States House of Representatives, we are conducting a study. The study will estimate the traffic that would be diverted from other railroads if Consolidated Rail Corporation (Conrail) is sold to Norfolk Southern Corporation (NS). The study will also analyze the viability of Guilford Transportation Industries, Inc. (Guilford), and the Pittsburgh and Lake Erie Railroad Company (P&LE) after they receive the lines of Conrail and NS that the Department of Justice has required Conrail and NS to divest to alleviate the anticompetitive effects of the acquisition.

DATES: 1. On May 15, 1985, all parties that intend to participate in this study must notify the Secretary of the Commission in writing.

2. On May 20, 1985, the Secretary of the Commission will issue a service list of all parties participating in this study.

3. On May 24, 1985, opening statements of (i) those railroads claiming diversion must be filed, and (ii) all parties commenting on the divestiture plans must be filed.

4. On June 7, 1985, reply statements must be filed.

5. On June 19, 1985, (i) parties to the diversion analysis must submit a joint summary indicating those areas of diversion on which they disagree and the reasons for their disagreement, and (ii) parties to the viability analysis must submit a summary (not to exceed 20 pages) of their arguments on the viability of Guilford and P&LE.

6. The staff study will be submitted to the Subcommittee by August 2, 1985.

ADDRESS: Send an original and 15 copies of all statements, referring to this study by placing "Conrail Study" on the outside of all envelopes to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

A. Diversion Analyses

All diversion studies must include the following information: (1) Name of the carrier; (2) origin-destination corridor; (3) commodity; and (4) pre-diversion and post-diversion routing. This data should be arrayed in a manner showing the gateways at which the diversion will occur. *All* system gateways of both Conrail and NS's railroad subsidiaries must be included.[1]

All diversion studies must also specify the year in which the traffic moved. The studies may be based on statistically valid samples. In addition, the studies should summarize the gross revenues to be diverted, and indicate the net revenues that will be lost. All statements of diversion and conclusions on revenue loss for each movement must be justified. In addition, if a sample is used, the validity of the sample must be explained.

The results of the traffic studies should be translated into proposed operational changes anticipated by the railroad, including the impact on equipment, yards, shops, main line traffic densities, financial investment needed to rehabilitate lines if necessary, and the changes in employment by craft.

B. Viability of the Divestiture Analysis

In analyzing the viability of the divestitures, the following information must be provided in the form of sworn statements: (1) The exact lines being acquired; (2) the nature of the acquisition of each line (*e.g.* lease, purchase, etc.); (3) the agreement covering the acquisition of the line; (4) the cost of each line; (5) the means of paying for each line; (6) the proposed marketing [see the information required by 49 CFR 1180.7] and operating [see the information required by 49 CFR 1180.8(a)] plans of Guilford and P&LE; and (7) the projected financial results of the marketing and operating plans, including *pro forma* balance sheets and income statements.[2]

In the foregoing analyses, Guilford and P&LE should show the gains in traffic expected as a result of the acquisition of specific Conrail and NS lines. The condition of lines (including the Federal Railroad Administration class of track) and investment needed to rehabilitate the lines, if necessary, should be presented.

[1] The diversion studies should also specify those instances in which a port will be affected.

[2] The divestiture analyses should also indicate the effect that these divestitures will have on ports.

C. Other Information

Parties may submit any other evidence that they consider relevant on specific estimates of traffic diversion, including the ability to maintain essential services and to remain an effective competitor, or specific aspects of the viability of the P&LE and Guilford after they obtain the divestitures required by DOJ.

D. Procedural Matters

All papers that are submitted in this study must be sent to all parties on the service list. An original and 15 copies must be filed with the Commission. All evidence must be in the form of verified statements. Confidential material must be submitted to the Commission according to the procedures at 49 CFR 1104.14 (1984).

At the conclusion of the evidentiary presentation, the record will be analyzed, and the analyses will be submitted to Chairman Florio.

Authority: 49 U.S.C. 10311, 10321, 11145, and 11701.

Decided: May 3, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Andre, Strerrett, Simmons, Lamboley, and Strenio. Vice Chairman Gradison and Commissioner Strenio dissented with separate expressions. Commissioner Andre would have declined to initiate this proceeding. Commissioner Lamboley would also transmit a copy of the record upon which the staff report is based with appropriate notation of any confidential or privileged material submitted.

James H. Bayne,

Secretary.

Vice Chairman Gradison, Dissenting

By a slim majority, the Commission has elected to participate in a study dealing with the sale of Conrail despite firm notice to the contrary from three Members of Congress. In so doing, this Commission has placed itself squarely in the middle of varying Congressional requests even though we have been advised by these Members that the Commission does not have the legal authority to conduct such a study *and* that such a review would be duplicative, unnecessary and an ill-advised expenditure of scarce resources.

This kind of analysis actually constitutes Commission review of the Secretary's recommendation—a Commission role *not* contemplated by the statute. Subsection (c) of Section 408 of the Regional Rail Reorganization Act of 1978 states:

No transfer of the Corporation's stock or rail properties and freight service

responsibilities under this title shall be subject to judicial review *or to review by the Commission.* (Emphasis added.)

I continue to believe it is essential that we do our utmost to respond to *all* Members of Congress. In this instance we cannot comply until the existing statutory obstacles are removed by the entire Congress. I believe that the Commission is blatantly disregarding the intent of the statute which we are sworn to uphold.

I respeactfully dissent.

Commissioner Strenio, Dissenting

The Commission has made the wrong choice in deciding to institute this investigation at this time. Although I normally would insist that the Commission respond completely to any Congressional inquiry, in this instance the circumstances compel a different result.

Most importantly, these are far from normal times. The Commission is now in the midst of its fourth harsh week of agency-wide furloughs, with no certainty whether or when relief will be forthcoming. Productivity and morale at the ICC have been devastated by the furloughs. As a result, the agency is no longer certain of timely meeting all its existing statutory duties. Under these severe constraints, the Commission can not responsibly undertake any additional projects not clearly required by law. Since a complex investigation of this kind will necessarily draw upon resources now devoted to difficult ongoing Commission proceedings, the result can only be a diminution in the quality and timeliness of the Commission's statutorily-required work.

In addition, Congressional intent here is at least ambiguous. Serious questions have been raised whether the agency could legally conduct the requested study given the restrictions imposed under the terms of the Northeast Rail Service Act of 1981 (NERSA). The Commission is in receipt of a letter from three Congressmen stating that the agency should not perform the proposed analysis because it would be inconsistent with NERSA.

In light of the agency's inability to comply due to the budget crisis, even in the absence of the other issues that have been raised, the proper course of action is clear. Accordingly, the Commission should have decided to regretfully and respectfully reply that it is unable to fulfill this request.

[FR Doc. 85-11488 Filed 5-9-85; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act Program Priorities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Proposed Program Priorities for Missing Children's Assistance Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing for public comment a notice of proposed program priorities for making grants and contracts under the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, in Fiscal Year 1985. Four million dollars have been appropriated for Fiscal Year 1985.

DATE: Comments are due on or before July 9, 1985.

ADDRESS: Send comments to Alfred S. Regnery, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 30531. (202) 724-7751.

FOR FURTHER INFORMATION CONTACT: Alfred S. Regnery, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724-7751.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 406 of the Missing Childrens Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. As required by the Act, the Administrator is announcing his proposed priorities and inviting public comment on these priorities for sixty days.

The proposed priorities follow:

1. National Incidence Study to Determine the Actual Numbers of Missing Children

This study will determine for a given year the actual number of children reported missing each year, the number of children who are victims of abduction by strangers, the number of children who are the victims of parental kidnappings and the number of children who are recovered each year. We will also determine the number of children whose whereabouts are known to their legal custodians because they are runaways, or for other reasons.

2. Law Enforcement Assistance

Law enforcement procedures for handling Missing Children reports and investigative follow-up vary greatly from jurisdiction to jurisdiction. Evaluation of procedures and recommendations on the most effective police methods of handling missing childrens reports and investigative follow-up will help in this area.

Involvement in the Federal Law Enforcement Training Center at Glynco is a way to reach large numbers of law enforcement officers with training in missing children and runaway cases. Model investigative practices can be taught in Glynco courses with an emphasis on citing specific police department examples of successful application.

3. Research

After assessment of what research currently exists, the following three areas will be explored:

a. The relationship between Missing and Abducted Children and Sexual Exploitation—Information is sketchy, but the correlation between abducted, and other missing children and sexual exploitation appears to be high. More factual information on the correlation between missing children and sexual exploitation and, whether children, and which children are abducted for sexual purposes would help in dealing with this phenomenon.

b. Psychological consequences of abduction and sexual exploitation—on the federal level, state level and local level, we are making progress in setting up effective apparatus to attempt to retrieve missing children. But once we retrieve a child, how can we best help parents and child back to normalcy. There is a need to develop treatment for the adverse psychological consequences of abduction and sexual exploitation.

c. The child victim as witness—children are serving more frequently as witnesses in trials of their accused abductors and abusers. Research is needed on the effectiveness of children as witnesses, the negative effects of the proceedings on children as well as other aspects of the child victim as witness.

4. Technical Assistance to PVOS

Private Voluntary Organizations (PVOs) across the country are working to help missing and exploited children. PVOs are, for example sponsoring Child Safety Days in schools, organizing court-watcher groups for trials of abductors and abusers, and working to encourage constructive reform in procedures for retrieving and rehabilitating missing and exploited children.

We recommend assisting these groups in their operation and management, with a number of small grants.

Dated: May 8, 1985.

Alfred S. Regnery,

Administrator, OJJDP.

[FR Doc. 85-11511 Filed 5-9-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Board of the Business Research Advisory Council; Meeting

The spring meeting of the Board of the Business Research Advisory Council will be held at 2:00 p.m., May 30, 1985, in Room S-4215 A,B&C of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C.

The Business Research Advisory Council advises the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry. The agenda for the meeting is as follows:

1. Chairperson's Opening Remarks—William J. Hawkes
2. Commissioner's Remarks—Janet L. Norwood
3. Committee Reports:
   (a) Employment and Unemployment
   (b) Price Indexes
   (c) Occupational Safety and Health Statistics
   (d) Wages and Industrial Relations
4. Other Business
5. Chairperson's Closing Remarks.

This meeting is open to the public. It is suggested that persons planning to attend as observers contact Janice D. Murphey, Liaison, BRAC, on Area Code (202) 523-1347.

Signed at Washington, D.C., this 7th day of May 1985.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 85-11429 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-24-M

Business Research Advisory Council Committees; Meetings and Agenda

The spring meetings of committees of the Business Research Advisory Council will be on May 29 and 30, 1985, in Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda of the meetings are as follows:

Wednesday, May 29

10 a.m.—Committee on Employment and Unemployment Statistics, Room 105, National Archives Building, 8th and Pennsylvania Avenue NW.

1. Local Area Unemployment Statistics Methodology Review
2. Subcommittee Report on the Temporary Help Industry
3. Other Business

2 p.m.—Committee on Price Indexes, Room 2736, GAO Building, 441 G Street NW.

1. Producer Price Index Status
2. Consumer Expenditure Survey Status
3. Consumer Price Index Status
   a. CPI Revision
   b. CPI Futures Market
4. International Price Program Status
5. Other Business

Wednesday, May 29

2 p.m.—Committee on Occupational Safety and Health Statistics, Room 105, National Archives Building, 8th and Pennsylvania Avenue NW.

1. Recordkeeping Guidelines
2. Work Injury Reports and the Development of Standards
3. National Academy of Sciences Committee on National Statistics Study of Survey Quality
4. Recordkeeping Case Studies Project
5. Other Business

Thursday, May 30

9:30 a.m.—Committee on Wages and Industrial Relations Room 105, National Archives Building, 8th and Pennsylvania Avenue NW.

1. Review of Work in Progress
2. Special Research from the Professional, Administrative, Technical and Clerical Pay Survey
3. New Data on Collective Bargaining Settlements for State and Local Governments
4. New Data on Labor Organizations' Membership and Comparison of Union/Nonunion Earnings Data Derived from the Current Population Survey
5. WIR Subcommittee Report on the Treatment of Lump-Sum Payments
6. Other Business.

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area Code (202) 523-1347.

Signed at Washington, D.C. this 7th day of May 1985.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 85-11428 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Federal Supplemental Compensation; Unemployment Insurance Program Letter No. 18-85

Pub. L. 99-15 amended the Federal Supplemental Compensation (FSC) Act of 1982 to provide for continuation of compensation to individuals who received FSC payments for the week which included March 31, 1985. The amendments are effective for weeks beginning after the week which includes March 31, 1985. The Department of Labor has issued instructions to all State employment security agencies for continuing the FSC program as amended by Pub. L. 99-15. The instructions are contained in Unemployment Insurance Program Letter No. 18-85, which is published below:

Dated: May 6, 1985.

Frank C. Casillas,

Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No. 18-85
To: All State Employment Security Agencies
From: Barbara Ann Farmer, Acting Administrator for Regional Management
Subject: Public Law (Pub. L.) 99-15 Amendments to the Federal Supplemental Compensation (FSC) Program

1. *Purpose.* To provide instructions for implementing the Federal Supplemental Compensation Act of 1982, as amended by Pub. L. 99-15. This program letter supersedes the instructions for ending the FSC program in UIPL 11-85.

2. *Reference.* Title VI-A of Pub. L. 97-248, section 310 of Pub. L. 97-448, Title V of Pub. L. 97-424, Title V-A of Pub. L. 98-21, Title I of Pub. L. 98-135; Pub. L. 99-15; UIPL 14-81 and Changes; the Federal-State Extended Unemployment Compensation Act of 1970, as amended; 20 CFR Part 615; GALs 21-81 and 22-81; GAL 1-83 and Changes; and UIPL 7-48.

3. *Background.* The Federal Supplemental Compensation (FSC) Act of 1982 (Pub. L. 97-248) created a temporary, nationwide, federally funded program which provides unemployment compensation to eligible claimants who have exhausted their benefits on regular unemployment compensation claims and, when applicable, extended unemployment compensation (EB) claims. Title I of Pub. L. 98-135 amended the FSC Act of 1982 to extend the FSC program to March 31, 1985.

Pub. L. 99–15 further amended the FSC Act to continue the payment of FSC from previously established individual accounts for the consecutive weeks of unemployment immediately following March 31, 1985, to any individual who "is receiving" FSC for the week which included March 31, 1985.

Recissions: UIPL 11–85
Expiration date: May 31, 1986.

4. *Instructions for the Phaseout of FSC.*

a. *Eligibility for FSC for weeks Beginning After March 31, 1985.* Public Law 99–15 specifies that FSC may continue to be paid to any individual who "is receiving" FSC for the week which includes March 31, 1985. "Is receiving" for purposes of this phaseout amendment to the FSC Act means the individual was eligible for FSC and in active claims status. In other words, FSC may continue to be paid only to the individual who requested payment for the week and who was eligible for FSC payment (payment includes offset of overpayments and deductions for child support) for the week which includes March 31, 1985. The amendments to the Act do not provide for the establishment of any reopened, new or initial (additional) FSC claims for any week of unemployment beginning after the week which includes March 31, 1985. The amendments to the Act do not include a specific date for ending FSC payments, except that the 2-year rule is still in effect. No payment of FSC may be made to any individual for any week of unemployment which begins more than 2 years after the benefit year ending date of the individual's parent claim.

No FSC payments may be made for weeks of unemployment beginning after March 31, 1985 to any individual whose FSC claim was inactive because of employment, an extended benefit claim, or who was ineligible (subject to a denial of FSC payment) for any reason for the week which included March 31, 1985.

Special Eligibility Rule. SESAs shall continue payments of FSC for weeks beginning with the week which immediately follows the week which includes March 31, 1985 only to an individual:

- Who meets the eligibility requirement of the FSC Act and the applicable provisions of State law, and
- Who remains in active claims status for *consecutive* weeks.

An individual's rights to FSC payment shall end with the week ending prior to any week with respect to which the individual's weekly claim series is interrupted or denied for a week because of employment or excessive earnings or for failure to satisfy a condition of eligibility for FSC such as reporting or registering for work, availability for work, or conducting an active search for work. States shall promptly notify eligible FSC claimants of the special eligibility requirement regarding claiming consecutive weeks.

b. *FSC Account-Remaining Balances.* SESAs may continue to make FSC payments to eligible individuals for weeks for unemployment beginning after the week which includes March 31, 1985, only to the extent of the remaining balance in each individual's FSC account. No changes may be made to any individual's FSC account after the week which includes March 31, 1985, based on changes in the insured unemployment rate (IUR) in the State.

The limitation on payments to interstate claimants remains the same, i.e., the claimant is entitled to the lesser of duration in the agent or liable State. This means that a claimant's duration may be increased if he moves to a State with higher duration. (See UIPL 7–84 dated December 29, 1983, *Interstate claimants*, pages 25 and 26 for explanation.)

c. *Effects of Amendments on Prior Issuances.* The amendments to the FSC Act supersede UIPL 11–85 and affect the following sections of UIPL 7–84:

1. *Beginning and Ending of the FSC Program.* By adding the requirement in 4a of this program letter.

2. Section C, *Eligibility Requirements for FSC.* By adding the eligibility requirement in 4a of this program letter, and

3. Section E. *Maximum FSC Benefits Payable.* By adding the limits regarding the remaining balances in FSC accounts in Section 4b of this program letter.

d. *Nonmonetary Determinations.* SESAs shall issue written appealable notices of nonmonetary determination to any individual who is a FSC claimant and who is denied FSC because: (a) he/she was not eligible ("is receiving") for payment for the week which includes March 31, 1985, or (b) the individual's weekly FSC claim series subsequent to March 31, 1985, was interrupted for a week by employment or by a week with excessive earnings. SESAs may report as workload items only those determinations which are denials if all other requirements for reporting a nonmonetary determination are met (week claimed, documentation, etc.) in column 10—Other on the ETA 207 report for FSC.

Only 1 workload item may be reported under the appropriate "issue" column on the ETA 207 when the FSC claims series is interrupted by ineligibility. These notices of determination must inform the individual that as provided by the FSC Act he/she is not eligible for FSC payments following a week of ineligibility for FSC payment for any reason because the individual did not "receive" FSC for consecutive weeks for the weeks immediately following the week which includes March 31, 1985.

5. *Disposal of FSC Records.* Upon a State agency's request, records on a FSC claim may be transferred to a State agency accountability 3 years after final action on the claim, or such records may be transferred in less than the 3-year period if microphotographed. The microphotography of FSC records must be in accordance with appropriate microphotography standards outlined in the *ES Manual*, Part V, Section 9194. After transfer of FSC records, a State agency shall follow its State law for disposal of records. This procedure applies to all FSC claims. The records affected are as follows:

(a) Individual claim files consisting of new, additional, reopened, and continued claims for FSC; determinations of entitlement; reports of interviews; claim record forms; and other related documents, records, and correspondence.

(b) Appeal records consisting of petitions appealing FSC determinations; copies of subpoenas; notices and transcripts of hearings; exhibits; decisions; and other related documents, records, and correspondence.

(c) Claimant payment records consisting of benefit history files (e.g., ledger cards or sheets); cancelled checks, copies of checks, and check registers or similar controls; records of overpayments, and adjustments; and other related documents, records, and correspondence.

(d) Individual claim records relating to administrative penalties and criminal prosecution in cases of fraudulent claims.

For any items above kept on computer, States are requested to create and retain magnetic tapes for the same period of time as for microfilming.

6. *Reporting Procedures.* Reporting should continue for FSC for activity through June 30, 1985, as required in RAL No. 2–82 and its changes. The reports affected are:

ETA 5159, Claims and Payment Activities (OMB Control No. 1205–0010; expires 12/31/87).

ETA 5130, Benefit Appeals (OMB Control No. 1205–0172; expires 7/31/88).

ETA 207, Nonmonetary Determination Activities (OMB Control No. 1205–0150; expires 3/31/86).

ES 218, Benefit Rights and Experience (OMB Control No. 1205–0177; expires 10/31/85).

ETA 227, Overpayments Detection and Recovery Activities (OMB Control No. 1205–0173; currently at OMB for extension of expiration date).

ETA 5210, Weekly Report of Claims-Taking Activities (OMB Control No. 1205–0007; expires 6/30/85).

Any FSC activity after the quarter ending June 30, 1985, may be reported in the comments section of the appropriate report.

7. *Action Required.* SESA Administrators should provide the above information and instructions to appropriate staff.

8. *Inquiries.* Direct questions to the appropriate Regional Office.

[FR Doc. 85–11435 Filed 5–9–85; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–15,430]

Quality Unlimited, Inc., East Newark, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 21, 1984, applicable to all workers of Quality Unlimited, Incorporated, East Newark, New Jersey. The Notice of Certification was published in the **Federal Register** on January 4, 1985 (50 FR 570).

Based on additional information furnished to the Office of Trade Adjustment Assistance on worker separations at the firm prior to the

January 1, 1984 impact date in the certification, findings in the investigation were reviewed to ascertain whether they support an earlier impact date. Those findings support moving the impact date to November 1, 1983 to cover all workers of Quality Unlimited who were affected by the decline in sales or production of women's coats and suits related to increased import competition.

Therefore, the certification for workers at the East Newark plant is amended as follows:

All workers of Quality Unlimited, Incorporated, East Newark, New Jersey who became totally or partially separated from employment on or after November 1, 1983 and before May 31, 1984 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of April 1985.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85-11434 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-84-273-C]

A & F Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

A & F Coal Company, Inc., 205 Ohio Street, Terre Haute, Indiana 47807 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Arclar Mine (I.D. No. 11-02800) located in Gallatin County, Indiana. 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 use of keyed locks to secure battery nips in place on the mine's S & S Scoops.

2. As an alternate method, petitioner proposes to put a bracket on the battery with a set screw type arrangement to lock it down.

3. 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 June 10, 1985. Copies of the petition are available for inspection at that address.

Dated: May 3, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-11432 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-267-C]

Monterey Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Monterey Coal Company, P.O. Box 496, Carlinville, Illinois 62626 has failed a petition to modify the application of 30 CFR 77.216-3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements) to its No. 1 Mine (I.D. No. 11-00726) located in Macoupin County, Illinois. 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 all water, sediment, or slurry impoundments be examined by a qualified person at intervals not exceeding seven days for appearances of structural weakness and other hazardous conditions, and that all instruments be monitored at intervals not exceeding seven days.

2. Petitioner seeks a modification of that portion of the standard which requires the operator to inspect impoundments at intervals not to exceed seven days and to monitor instruments at intervals not to exceed seven days.

3. As an alternate method, petitioner proposes to inspect the impoundments and monitor instruments on a monthly basis in lieu of every seven days. The monthly inspections would be supplemented by additional inspections if major precipitation or runoff occurs.

4. In support of this request, petitioner states that the Smith Reservoir and the Recirculation Pond are engineered structures which were rigidly controlled during their construction. They have not changed in geometry since completion in 1970. The impounding embankments have an excellent vegetative cover and in addition have been riprapped above and below the water line. Weekly inspections over the past 8 years have shown no signs of erosion problems or other signs of instability. Neither miners nor the general public work or live within several miles downstream of these structures.

5. 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 June 10, 1985. Copies of the petition are available for inspection at that address.

Dated: May 3, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-11431 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-27-C]

Powell Mountain Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Powell Mountain Coal Company, Inc., 2537 Fourth Avenue E., Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.316-2(b) (permanent stoppings) to its Pomoco Mine No. 1 (I.D. No. 44-05913) located in Lee County, Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permanent stoppings be erected between the intake and return aircourses in entries and maintained to and including the third connecting crosscut outby the faces of the entries.

2. As an alternate method, petitioner proposes to maintain stoppings to include the fourth open crosscut instead of the third open crosscut outby the working faces.

3. Petitioner is requesting this modification in order that the open crosscut nearest the face could be used for ventilation of the working faces without shuttle cars waiting for change-out, which would restrict ventilation or cause the line curtain to be torn down by the traffic of the shuttle car, thus interrupting ventilation of the face being mined. Two roadways are required for the shuttle cars to operate.

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, 4105 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 10, 1985. Copies of the petition are available for inspection at that address.

Dated: May 3, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances

[FR Doc. 85-11430 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-1-C]

Storm King Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Storm King Mines, Inc., 9137 East Mineral Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Coal Ridge No. 1 Mine (I.D. No. 05-03718) located in Garfield County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries.

2. Petitioner intends to use the hydraulic miging method to cut, mine and transport the coal from the face to the surface. This method consists of cutting coal by powerful jets of water from hydraulic monitors operated by remote control. The coal is cut and flushed away by the water. The broken coal is sized and then transported from the working face to the surface by means of gravity fluming.

3. As an alternate method, petitioner proposes to develop the coal mine with a two-entry system with hydraulic flume system located in the return aircourse.

4. In support of this request, petitioner states that:

a. There are no conveyors anywhere in the mine, which reduces fire risks;

b. There is a minimal amount of electricity and moving equipment in the working area, thereby reducing sparking risks;

c. A minimal amount of dust is generated, thereby simplifying ventilation requirements and reducing explosive hazards;

d. Less methane is liberated because water partially dissolves free methane.

5. 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 June 10, 1985. Copies of the petition are available for inspection at that address.

Dated: May 3, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-11433 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Virgin Islands Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 11, 1973, notice was published in the **Federal Register** (38 FR 24896) of the approval of the Virgin Islands plan and adoption of Subpart S to Part 1952 containing the decision.

TheVirgin Islands plan provides for the adoption of Federal standards as Virgin Islands standards by reference. The authority to adopt such standards is contained in Title 3, Section 940, of the Virgin Islands Code.

In response to Federal standards changes, the State has submitted supplements, and incorporated as part of the plan, State certification documenting promulgation of State standards comparable to Occupational Exposure to Lead, Respirator Fit Testing, Corrections to 29 CFR 1910. 1025 as published in the **Federal Register** (48 FR 9641) dated March 8, 1983; Occupational Noise Exposure; Hearing Conservation Amendment, Corrections to 29 CFR 1910.95 as published in the **Federal Register** (48 FR 29687) dated June 28, 1983; Marine Terminals 29 CFR Part 1917 as published in the **Federal Register** (48 FR 30885) dated July 5, 1983; Hazard Communication, 29 CFR 1910.1200 as published in the **Federal Register** (48 FR 53279) dated November 25, 1983; Servicing Multipiece and Single Piece Rim Wheels, Corrections to 29 CFR 1910.177 as published in the **Federal Register** (48 FR 4338) dated February 3, 1984; Occupational Exposure to Ethylene Oxide 29 CFR 1910.19 and 1910.1047 as published in the **Federal Register** (49 FR 25733) dated June 22, 1984. Virgin Islands has stayed (administratively) enforcement of the Hearing Conservation Amendment pending OSHA appeal of the decision in *Forging Industry Association* v. *Secretary of Labor*, 12 BNA OSHC 1041 (4th Cir., Nov. 7, 1984) (petition for rehearing granted in the Fourth Circuit) which overturned the Federal hearing conservation standard.

2. Decision

Having reviewed the Virgin Islands Regulations providing for the adoption of Federal standards by reference, it has been determined that Virgin Islands Regulations are identical to Federal standards and accordingly should be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during the normal business hours at the following locations: Office of the Regional Administrator, Region II, 1515 Broadway, Room 3445, New York, New York 10036; Office of the Director for Federal Compliance and State Programs, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210; Department of Labor, Government of the Virgin Islands, Dronigans Gade, Charlotte Amalie, St. Thomas, V.I. 00801, and at Hospital Street, Christiansted, St. Croix, V.I. 00820.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which

may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virgin Islands plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal Law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State Law and further participation would be unnecessary.

The decision is effective May 10, 1985.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at New York City, New York, this eleventh day of March 1985.

Gerald P. Reidy,

Regional Administrator.

[FR Doc. 85-11437 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-26-M

Washington State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated May 22, 1984 from Richard E. Martin, Asssitant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, an amendment to revoke State standards comparable to the revocation of 29 CFR 1910.141, Sanitation, as published in the **Federal Register** (43 FR 49726) on October 24, 1978 and subsequent corrections in the **Federal Register** (43 FR 51759) on November 7, 1978.

These State standards which were originally contained in WAC 296-24-210, received OSHA approval, and notice to that effect was published in the **Federal Register** (41 FR 4687) on January 30, 1976. The amendment was adopted as Washington Administrative Order No. 81-32 on November 13, 1980 and became effective on December 13, 1980. Significant differences are as follows: The State has added three rules addressing dust control during cleaning operations, proximity of drinking water to working operations, and lunchroom criteria relating to toxic dusts or materials. Responses to the following revoked Federal standards have been retained by the State: 29 CFR 1910.141 (b)(1)(ii), (b)(1)(iv), (b)(1)(vii), and 1910.141(c)(1)(V).

2. Decision

Having reviewed the State submission in comparison with Federal standards, it has been determined that the State's amendments, including repeals, have no adverse effect on other State and Federal standards. These standards have been in effect since December 13, 1980. During this time OSHA has received no indication of significant objection to the State's different standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different State standards applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA, therefore, approves these standards. However, the right to reconsider this approval is reserved should subtantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washingtonm 98501; or the Office of State Programs, Room N-3476, 200 Constitution Avenue NW, Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are as effective as the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further participation would be unnecessary.

This decision is effective May 10, 1985.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 28th day of March 1985.

James W. Lake,

Regional Administrator.

[FR Doc. 85-11436 Filed 5-9-85; 8:45 am]

BILLING CODE 4510-26-M

Office of the Assistant Secretary for Veterans' Employment and Training

Special Solicitation for Grant Application; Job Training Partnership Act, Title IV, Part C, Program Year 1985

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice.

SUMMARY: This notice sets forth the procedures and schedule for the special Solicitation for Grant Application (SGA) for the operation of veteran's employment and training programs in the States of Alaska, Louisiana, Mississippi, Nevada, and South Dakota in accordance with Title IV, Part C of the Job Training Partnership Act (JTPA). The regulations at 20 CFR Part 635 provide guidance for the development and administration of programs authorized under this part.

DATE: The SGA is available for issuance as of the date of this notice.

The closing date for receipt of grant applications in response to the SGA is June 21, 1985.

ADDRESS: A copy of the SGA may be obtained by written request only, including two self-addressed mailing labels, to the following address: U.S. Department of Labor, Office of Procurement Services, Frances Perkins Building, Room S–5526, 200 Constitution Avenue, NW., Washington, D.C. 20210, Re. SGA—IV–C.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Juarez, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Ave., Rm. S1316, Washington, D.C. 20210, Telephone (202) 523–9110, or the appropriate State Director for Veterans' Employment and Training Service.

SUPPLEMENTARY INFORMATION: On March 1, 1985, the Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, issued SGA #4 for the Job Training Partnership Act Title IV, Part C, Program Year 1985. This part provides for programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service. Notice of the issuance was published in the **Federal Register** on March 12, 1985.

The March 1, 1985 SGA limited eligible applicants to (1) State Governors utilizing the JTPA administrative entity in each State and (2) service delivery area administrative entities as described in Sections 101 and 103 of JTPA including single statewide service delivery. The SGA also stated that if in any State no eligible applicant applied for funds, the definition of eligible applicant would be broadened in those States and a special solicitation would be issued to provide services to targeted veterans in those States.

No eligible applicant applied for funds in the States of Alaska, Louisiana, Mississippi, Nevada, and South Dakota. Accordingly, the Assistant Secretary for Veterans' Employment and Training announces the availability of funds to implement programs in each of these States in the following amounts.

State	Amount available
Alaska	$55,000
Louisiana	123,000
Mississippi	62,000
Nevada	55,000
South Dakota	55,000

Applications for funds based on the SGA will be accepted from public agencies; community-based organizations; units of local and State government; Indian tribes, bands, or groups on Federal or State reservations; Alaskan Native entities; educational institutions, and private for profit and nonprofit organizations. Each applicant, as of the date of this notice and at the time of application, must be geographically located in the State in which the proposed program would be implemented. Further, each applicant must demonstrate that it possesses the requisite understanding and capabilities to conduct an effective program for targeted veterans.

Applications for fund must be received by the appropriate State Director for Veterans' Employment and Training Service (SDVETS) not later than 4:30 p.m., at the SDVETS' address cited below on June 21, 1985.

SDVETS Burton Finley, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 3–7000, Juneau, Alaska 99802, (907) 465–2723

ASDVETS Leonard Walters Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 94094, Room 242, Baton Rouge, Louisiana 70804–9094, (504) 589–2195

SDVETS W.H. (Willie) Cooper, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 1699, Jackson, Mississippi 39205, (601) 961–7588

SDVETS Claude U. Shipley, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 3331, Reno, Nevada 89505, (702) 885–4632

SDVETS Earl R. Schultz, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 1730, Aberdeen, South Dakota 57401, (605) 225–0250, Ext. 289

It is anticipated that grant awards will be made by November 30, 1985.

Consultation and technical assistance relative to the development of an application under the SGA is available upon request from the appropriate State Director for Veterans' Employment and Training.

Signed at Washington, D.C., May 7, 1985.

Donald E. Shasteen,

Deputy Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 85–11438 Filed 5–9–85; 8:45 am]

BILLING CODE 4510–79–M

LEGAL SERVICES CORPORATION

Request for Comments on a Grant Award by the Legal Services Corporation to the Charleston County Bar Association

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is considering awarding a special grant of $135,850 in 1985 to the Charleston County Bar Association (South Carolina) and the Neighborhood Legal Assistance Program, Inc. (Charleston, South Carolina) to provide legal services to minor children in child abuse and/or neglect cases.

DATE: All comments and recommendations must be received by the Office of Field Services/Program Development and Substantive Support Unit within thrity (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Keith Osterhage, Acting Manager, OFS/PDSS, 733 Fifteenth Street, NW., Washington, D.C. 20005, (202) 272–4356.

SUPPLEMENTARY INFORMATION: The area of child abuse and/or neglect litigation has been identified as a high priority in the Charleston County, South Carolina service area. Under the Charleston County Bar Association project, which will be administered by the Neighborhood Legal Assiatance Program, Inc., The Bar Association will contract with area private law firms for the handling of 300 child abuse and/or neglect cases. In addition to providing such legal services to LSC-eligible clients, this project will provide two training sessions for participating attorneys. The training sessions will address the broad spectrum of issues surrounding child abuse and neglect cases. LSC is provding its support to this efforts as a model project.

Interested person are also invited to submit written comments and/or recommendations concerning this grant action to Keith Osterhage.

Dated: May 7, 1985.

Thomas J. Opsut,

Interim President.

[FR Doc. 85–11390 Filed 5–9–85; 8:45 am]

BILLING CODE 6820–35–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection:

10 CFR Part 40—Domestic Licensing of Source Material

10 CFR Part 70—Domestic Licensing of Special Nuclear Material

10 CFR Part 150—Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274

3. The form number if applicable: Not applicable.

4. How often the collection is required:

Licensees under 10 CFR Parts 40 and 150—Annually.

Licensees under 10 CFR Part 70—Semiannually.

5. Who will be required or asked to report: Any licensee authorized to possess more than 1,000 kilograms of uranium or thorium or any combination thereof, and any licensee authorized to possess more than 350 grams of special nuclear material (uranium-235, uranium-233, or plutonium) in any combination.

6. An estimate of the number of responses: 10 CFR Part 40–40; 10 CFR Part 70–400; 10 CFR Part 150–10.

7. An estimate of the total number of hours needed to complete the requirement or request: One hour per response, for a total of 450 hours.

8. An indication of whether Section 3504 (h), Pub. L. 96-511 applies: Not applicable.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 7th day of May 1985.

For the Nuclear Regulatory Commission

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-11444 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-414]

Duke Power Co., North Carolina Municipal Power Agency Number One, Piedmont Municipal Power Agency; Issuance of Amendment to Construction Permit

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to Construction Permit No. CPPR-117 for Catawba Nuclear Station, Unit 2. The amendment modifies the construction permit to reflect issuance, by the Commission, of a limited schedular Exemption dated April 23, 1985, from the requirements of 10 CFR Part 50, Appendix A, General Design Criterion 4 with respect to installation of certain protective devices and consideration of certain dynamic effects. The amendment is effective as of its date of issuance.

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 regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amendment. Prior public notice of this amendment was not required since the Commission has determined that this amendment does not involve a significant hazards consideration.

By June 10, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility construction permit and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in a 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.

Since the Commission has determined that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention

Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor Adensam: 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 Executive Legal Director, U.S. Nuclear Regalartory Commission, Washington, D.C. 20555, and to William L. Porter, Esq., Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause of the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to the action, see (1) the application for amendment dated April 17, 1985, (2) Amendment No. 3 to Construction Permit No. CPPR-117, (3) the Commission's related Safety Evaluation, (4) the Exemption dated April 23, 1985 (50 FR 16758, April 29, 1985), and (5) the Notice of Environmental Assessment and Finding of No Significant Impact dated April 17, 1985 (50 FR 15802, April 22, 1985). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. In addition a copy of items (2), (3), (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 6th day of May 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-11449 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-143, License No. SNM-124, EA 84-60]

Nuclear Fuel Services, Inc., Erwin, TN; Modification of Order Imposing Civil Penalty

I

Nuclear Fuel Services, Inc. (the "licensee") is the holder of Operating License No. SNM-124 issued by the Nuclear Regulatory Commission (the "Commission") which authorizes the licensee to operate the Nuclear Fuel Services, Inc. (NFS), Erwin, Tennessee facility in accordance with the conditions specified therein. The license was issued on March 16, 1979.

II

A safeguards inspection of the licensee's activities was conducted from May 20–24, 1984. As a result of this inspection, it appeared that the licensee had not conducted its activities in full compliance with conditions of its license. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated July 27, 1984. The Notice stated the nature of the violation, the requirements of the Commission that the licensee had violated, and the amount of the civil penalty proposed for the violation in the Notice. The proposed civil penalty was escalated by 20% from the base penalty of Eighty Thousand Dollars to One Hundred Thousand Dollars because multiple examples of the violation were identified. The licensee responded to the Notice by letter dated September 14, 1984. The NRC reviewed the licensee's response and determined that the One Hundred Thousand Dollars ($100,000) proposed civil penalty should be mitigated to Eighty Thousand Dollars ($80,000).

III

On April 1, 1985 NRC staff members met with representatives of NFS to discuss issues relevant to this enforcement action. On April 9, 1985 NRC staff members from Headquarters and Region II visited the licensee's Erwin facility. During the site visit the NRC straff observed the extent of the licensee's corrective actions which not only included physical upgrades but programmatic changes. In addition, the licensee discussed further plans to evaluate and upgrade both the physical security program and the health and safety program.

Because of the extensive nature of the licensee's corrective actions take and planned to further upgrade the physical security program, the Director, Office of Inspection and Enforcement has determined that mitigation of the imposed civil penalty is warranted. Accordingly, the Eighty Thousand Dollars ($80,000) civil penalty imposed by the Order dated January 22, 1985 is to be mitigated to Fifty Thousand Dollars ($50,000).

IV

In view of the foregoing, and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay the civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether on the basis of such violation this Order should be sustained.

Dated at Bethesda, Maryland this 1st day of May 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-11448 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352, 50-353]

Philadelphia Electric Co., Limerick Generating Station, Units 1 and 2; Supplement to Request for Action Under 10 CFR 2.206 Regarding Supplemental Cooling Water for the Limerick Facility

Notice is hereby given by its supplementary letter dated March 28, 1985 that Del-AWARE Unlimited, Inc. supplements its earlier request dated November 21, 1984 to the Director of Nuclear Reactor Regulation regarding the Philadelphia Electric Company's (Licensee) provision of supplemental cooling water for the Limerick Generating Station. The letter requests the Nuclear Regulatory Commission to determine that recent measures by the licensee to secure an interim source of supplemental cooling water would be the appropriate long term solution to the Limerick Generating Stations' needs. The letter also provides other comments regarding alternates to the Point Pleasant Diversion Project, its impact on the Delaware River and the prospects for completing construction of the Point Pleasant Diversion Project.

The letter is being treated as a supplement to the earlier Petition pursuant to 10 CFR 2.206 of the Commission's regulations and, accordingly, appropriate action will be taken on the request within a reasonable time. A copy of the letter is available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington D.C. 20555 and at the local public document room for the Limerick Generating Station located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland, the 6th day of May 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-11450 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Revised Notice of Meeting

The previously announced meeting (Vol. 50, No. 83 Tuesday, April 30, 1985) of the NRC Advisory Committee on Reactor Safeguards with the NRC Commissioners on May 10, 1985 will include a brief report by Committee representatives regarding the status of ACRS activities on consideration of seismic events in connection with emergency planning in addition to the previously noticed item on the ACRS role in the civilian radioactive waste management program.

Dated: May 7, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-11442 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Research Program; Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on June 5, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, June 5, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will continue its discussion of the proposed NRC Safety Research Program and Budget for FY 1987. Also, it will discuss a draft ACRS report to the Commission on the NRC Safety Research Program and Budget for FY 1987.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 6,1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-11445 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on State of Nuclear Power Safety; Meeting

The ACRS Subcommittee on State of Nuclear Power Safety will hold a meeting on May 31, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, May 31, 1985—8:30 a.m. until the conlusion of business

The Subcommittee will begin to discuss reactor safety issues.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange views regarding matters pertaining to the Subcommittee Charter and its activities.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Anthony Cappucci (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m.,

EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 6, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-11446 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-223-SP; ASLBP No. 85-509-02 SP]

Establishment of Atomic Safety and Licensing Board to Preside in Proceeding; University of Lowell

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

University of Lowell

Training and Research Reactor Facility Operating License No. R-125

This Board is being established pursuant to a notice published by the Commission on March 29, 1985 in the **Federal Register** (50 FR 12668-69) entitled, "Consideration of Application for Renewal of Facility License." The proposed renewal would extend the expiration date of Facility Operating License No. R-125 for thirty years from date of issuance in accordance with the licensee's timely application for renewal dated February 14, 1984.

The Board is comprised of the following Administrative Judges:

Herbert Grossman, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Richard F. Cole, Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Ernest F. Hill, Hill Associates, 210 Montego Drive, Danville, California 94526

Dated at Bethesda, Maryland, this 6th day of May 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-11447 Filed 5-9-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-13806]

Application and Opportunity for Hearing; First Bank System, Inc.

May 3, 1985.

Notice is Hereby given that First Bank System, Inc., a Delaware corporation (the "Applicant"), has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Chemical Bank, a New York Corporation ("Chemical") under an Indenture dated as of September 1, 1982, between the Applicant and Chemical Bank, as supplemented by a First Supplemental Indenture dated as of September 15, 1982, and a Second Supplemental Indenture dated as of February 22, 1983 (collectively the "1982 Indenture"), pursuant to which the Applicant's $75,000,000 aggregate principal amount of 13⅛% Notes Due September 15, 1992, (the "1992 Notes"), $100,000,000 aggregate principal amount of 11⅛% Notes Due March 7, 1993 (the "1993 Notes") and $25,000,000 aggregate principal amount of 10% Notes Due March 1, 1986 (the "1986 Notes") are outstanding, and as successor trustee under an Indenture dated as of May 15, 1979, by and between the Applicant and Manufacturers Hanover Trust Company (the "1979 Indenture") pursuant to which the Applicant's $125,000,000 aggregate principal amount of Floating Rate Notes Due 1989 (the "1989 Notes") are outstanding, 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 Chemical from acting as trustee under the 1979 Indenture with respect to the 1989 Notes or from acting as trustee under the 1982 Indenture with respect to the 1992 Notes, the 1993 Notes or the 1986 Notes.

Section 310(b) of the Act, which is included in section 608 of the 1979 Indenture and section 7.08 of the 1982 Indenture, provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within 90 days after ascertaining that it has such a conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Securities and Exchange Commission (the "Commission") and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture 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 such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

(1) On May 15, 1979, the Applicant entered into the 1979 Indenture with Manufacturers Hanover Trust Company ("MHT") as trustee, providing for the issuance, from time to time, of the Applicant's unsecured 1989 Notes. The 1979 Indenture was filed as Exhibit (b)(2) to a registration statement on Form S-16 (File No. 2-64436), which registration statement and Statement of Eligibility and Qualification of the Trustee on Form T-1 (File No. 22-9953) were filed with the Commission on May 11, 1979 and declared effective on May 18, 1979.

In 1982, the Company entered into an Indenture dated as of September 1, 1982 (such Indenture, as supplemented as described below, is hereinafter referred to as the "1982 Indenture"), with Chemical Bank ("Chemical"), as trustee, providing for the issuance, from time to time, of the Company's unsecured notes in one or more series. The 1982 indenture was filed as an exhibit to a registration statement on Form S-3 (File No. 2-791.36), which registration statement and a Statement of Eligibility and Qualification of Trustee on Form T-1 (File No. 22-11850) were filed with the Commission on September 1, 1982 and thereafter declared effective on September 10, 1982. On September 29, 1982, the Company issued a first series $75,000,000 aggregate principal amount of notes designated as "13⅛% Notes Due September 15, 1992" (the "1992 Notes") pursuant to a First Supplemental Indenture to the 1982 Indenture dated as of Sepember 15 1982. The 1982 Notes were offered by a

prospectus dated September 10, 1982, as supplemented by a Prospectus Supplement dated September 22, 1982.

On March 1, 1983, the Applicant issued the 1993 Notes and the 1986 Notes under the Second Supplemental Indenture dated as of February 22, 1983. The 1993 Notes and the 1986 Notes were offered by a prospectus each dated February 23, 1983.

(2) In the event that trustee under the 1979 Indenture develops a conflicts, section 608 of the 1979 Indenture and section 310(b) of the Trust Indenture Act of 1939 require that the trustee either eliminate the cause of such conflict or resign as trustee within 90 days of the development of such conflict. As a result of the fact that MHT has developed a conflict and therefore cannot continue to act as trustee under the 1979 Indenture, the Company has appointed Chemical as trustee under such Indenture effective as of the close of business April 24, 1985.

(3) Section 310(b)(1)(ii) of the Act provides, subject to certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. The substitution of Chemical as trustee under the 1979 Indenture would create a conflict and disqualify Chemical from acting as trustee under either the 1979 Indenture or the 1982 Indenture unless the Commission approves the Company's application hereby to exclude Chemicals's trusteeship under such Indenture from the operation of section 310(b)(1) of the Act pursuant to clause (ii) of subsection (1) of the section. Section 7.08 of the 1982 Indenture and section 608 of the 1979 Indenture contain the provision permitted by the proviso to section 310(b)(1) of the Trust Indenture Act of 1939 with respect to situations in which a trustee shall not be deemed to have a conflicting interest when serving under more than one indenture.

(4) The Applicant is not in default in any request under the 1979 Indenture or the 1982 Indenture.

(5) The Applicant's obligations pursuant to the 1979 Indenture and under the 1982 Indenture are both senior and wholly unsecured and such obligations rank pari passu inter se.

(6) The principal differences between the Indentures or between the above-referenced notes arise from, or are related to, the following causes, none of which raise material conflict of interest concerns:

(a) The denominations, interest rates, interest payment dates, and maturity of the notes differ.

(b) The 1982 Indenture is "open-ended", permitting the issuance thereunder of one or more series of unsecured notes. In contrast, the 1979 Indenture pertains only to the 1989 Notes.

(7) Trusteeships under the 1979 Indenture with respect to the 1989 Notes and under the 1982 Indenture with respect to the 1992 Notes, the 1993 Notes and the 1986 Notes 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 Chemical from acting as trustee under each said Indenture.

Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission.

For a more detailed statement of the matters of fact and law, all persons are referred to said application, which application is a public document on file in the office of the Commission's Public Reference Section 450 Fifth Street, NW., Washington, D.C. 20549.

Notice if further given that any interested person may, no later than May 28, 1985, 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 fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after such 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 the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11374 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6933]

Issuer Delisting; Application To Withdraw From Listing and Registration; Data Architects, Inc.

May 2, 1985

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the Common Stock, $.01 Par Value, of data Architects, Inc. ("Company") from listing and registration on the Boston stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include its stock in the NASDAQ National Market system and, therefore, wishes to remove its security from listing and registration of the Exchange.

Any interested person may, on or before May 23, 1985, submit by letter to the Secretary of the Securities and Exhange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11373 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14494; 812-6068]

Massachusetts Mutual Life Insurance Co. et al.; Application for Orders

April 30, 1985.

Notice is Hereby Given that Massachusetts Mutual Life Insurance Company ("Insurance Company"), a Massachusetts mutual life insurance company and MassMutual Corporate Investors Inc. ("Fund"), registered under the Investment Company Act of 1940 ("Act"), as a non-diversified, closed-end management investment company (together, "Applicants"), 1295 State Street, Springfield, Massachusetts 01111, filed an application on March 1, 1985, and amendments thereto on March 12, 1985, and April 17, 1985, for an order: (1) Pursuant to section 17(d) of the Act, and rule 17d-1 thereunder, permitting the concurrent investment by the Insurance Company and the Fund in certain debt securities of a corporation ("Newco") to be organized to bring about a leveraged buy-out of Knapp King-Size Corp. ("Knapp"); (2) pursuant to section 17(b) of the Act, exempting from the provisions of section 17(a) of the Act the prospective sale by the Insurance

Company to the Fund of thirty percent (30%) of these debt securities in the event that (a) the order requested in clause (1) above is not issued prior to the closing of the Newco private placement, and (b) the Insurance Company purchases at closing the entire lot of securities available for allocation between it and the Fund; and (3) pursuant to section 17(d) of the Act, and Rule 17d–1 thereunder, amending the conditions prescribed in a prior blanket order issued by the Commission on June 4, 1979 (Investment Company Act Release No. 10688), which grants permission, pursuant to section 17(d), and Rule 17d–1, to the Insurance Company to invest concurrently for its general account in each issue of securities it makes available for purchase by the Fund at direct placement. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Applicant states that Newco is a newly-organized corporation formed for the purpose of effectuating the purchase by the management of Knapp of the shoe manufacturing business, and possibly the clothing manufacturing business of Knapp. It is contemplated that Knapp will thereafter be liquidated, and its assets distributed. It is stated that neither the Insurance Company nor the Fund has any interest in Knapp, nor in any of its affiliates, except that the Insurance Company presently holds 41,472 shares of the common stock of Knapp, representing approximately 8.78% of such shares outstanding. The Insurance Company acquired this interest through the exercise of warrants it had acquired in 1970. The Insurance Company expects to receive approximately $3.3 million as a liquidating distribution upon the liquidation of Knapp.

Applicants state that the Insurance Company proposes to purchase $10,000,000 aggregate principal amount of 15½% Subordinated Notes ("Notes"), and of that amount $212,500 principal amount will be convertible into 425,000 shares of Newco common ("Convertible Notes") (42.5% of the shares outstanding) at $0.50 per share ("Convertible Notes"), and the remaining $9,787,500 principal amount will not be convertible ("Non-Convertible Notes"). The Notes mature 13 years from the closing of the purchase, with annual sinking fund payments of $1,250,000 to be made in the sixth through thirteenth years. The Convertible Notes are not callable, while the Non-Convertible become callable after five years, at premiums scaling down from 108.50 in the sixth year to pay in the twelfth or thirteenth years.

Applicants state that the Insurance Company has offered the Fund the opportunity to purchase $5,000,000 principal amount (50%) of the Notes, including $106,250 principal amount (50%) of the Convertible Notes. However, the Fund believes that a purchase of $3,000,000 principal amount (30%) of the Notes, including $63,750 principal amount (30%) of the Convertible Notes, would be more appropriate for its portfolio. Applicants state that unless the requested order is granted, the Fund will be required either to purchase 50% of the Notes, or not to purchase any portion at all.

Applicants state that the purchase of the Notes is expected to close on or about April 24, 1984. Pursuant to paragraph 3 of the 1979 Order, the Insurance Company will purchase the entire investment on the closing date, and if the Commission enters the requested order within three months of the closing date, the Insurance Company will sell to the Fund $3,000,000 principal amount of the Convertible Notes, at the price paid by the Insurance Company, plus accrued interest. If such order is not be granted within three months after such closing date, the Insurance Company's obligation to sell any portion of the Notes to the Fund will terminate.

Applicants submit that the proposed transaction is consistent with the policies of the Fund and with the provisions, policies and purposes of the Act, and will not be on a basis less advantageous to the Fund than to the Insurance Company. They state that the Fund has determined that an investment in the Notes would be appropriate for its portfolio, but believes that the appropriate size for such an investment would be $3,000,000. The Fund will pay the same unit price for the Notes as that paid by the Insurance Company, plus an amount equal to the interest accrued on the Notes between the closing date and the date of resale by the Insurance Company to the Fund. Applicants state that the terms of the proposed resale of the Notes by the Insurance Company to the Fund would therefore be reasonable and fair and would not involve overreaching by or profit to the Insurance Company. Applicants state that if the requested order is denied, the Fund will not be able to participate in an attractive investment opportunity and may suffer disadvantage. Applicants state that the size of the Fund's investment in the Notes will be approved by its board of directors, including a majority of the Directors who are not "interested persons" of the Fund, as defined in the Act, and the Fund's determination and the reasons therefor will be recorded and become a part of the permanent records of the Fund.

Applicants further state that on June 4, 1979, the Commission issued an order, pursuant to section 17(d) of the Act, and Rule 17d–1 thereunder, permitting the Insurance Company, subject to certain conditions, to invest concurrently for its general account in each issue of securities purchased by the Fund at direct placement. The conditions contained in the 1979 Order require, among other things, that the Insurance Company offer one-half of all appropriate direct placement investments to the Fund. If the Fund wishes to participate in such investments, it must participate equally or obtain an order of the Commission allowing it to acquire a lesser (or greater) than equal prcentage than the Insurance Company. According to Applicants, this latter alternative could result in the forfeiture of appropriate business opportunities because of the substantial time and expense involved in obtaining an order. On the other hand, Applicants assert that if the Fund were to be able to participate in direct placement opportunities by purchasing less than the entire amount of securities offered to it by the Insurance Company, the Fund would be able to make investments of a size more appropriate for its portfolio.

In order to allow the Fund to continue to participate in appropriate investments with the Insurance Company, while ensuring that the Fund's investment portfolio remains suitably diversified, Applicants desire to amend the conditions contained in the 1979 Order to allow the Fund to participate in direct placements on a less than equal percentage basis than the Insurance Company. The Insurance Company would continue to be required to offer one-half of all appropriate investments to the Fund, and a special order of the Commission would continue to be required for the fund to acquire a greater percentage of any investment than the Insurance Company. Applicants submit that the order so amended would continue adequately to effectuate the purposes of the Act and Rule 17d–1 thereunder.

Therefore, Applicants request that the 1979 Order be amended to rescind all conditions contained therein, and

substitute, in lieu thereof, the following conditions:

1. Each time the Insurance Company proposes to participate in a direct placement involving its purchase of securities the purchase of which would be consistent with the investment policies of the Fund, the Insurance Company will offer the Fund the opportunity to purchase an amount of each class of such securities equal to the amount of such securities proposed to be purchased by the Insurance Company. The Fund may choose to purchase none of such securities or any amount of such securities up to the entire amount of securities offered to it by the Insurance Company.

2. If the Fund chooses to participate in a direct placement with the Insurance Company, the Insurance Company and the Fund may purchase such securities at the same times and at the same unit prices without further order of the Commission. If the Fund chooses to participate in a direct placement but to purchase less than the entire amount of securities offered to it by the Insurance Company, the Fund's decision must be approved by the board of directors of the Fund, including a majority of the directors who are not "interested directors" of the Fund, as defined in the Act. The Fund's determination to purchase less than all of such securities and the reasons therefor will be recorded and become a part of the permanent records of the Fund.

3. If the Fund chooses not to participate in a direct placement offered to it by the Insurance Company, the Fund's decision must be approved by the board of directors of the Fund, including a majority of the directors who are not "interested persons" of the Fund, as defined in the Act. The Fund's determination not to participate in a direct placement, and the reasons therefor, will be recorded and become a part of the permanent records of the Fund.

4. Unless otherwise permitted by special order of the Commission, neither the Insurance Company nor the Fund will exercise warrants of a class held by both the Fund and the Insurance Company, or conversion privileges, or other rights relating to securities of a class held by the Fund and the Insurance Company, except at the same times and in amounts proportionate to their respective holdings of such securities.

5. Unless otherwise permitted by special order of the Commission, neither the Insurance Company nor the Fund will sell, exchange, or otherwise dispose of any interest in any security of a class held by both the Fund and the Insurance Company unless such dispositions are made at the same times, for the same unit consideration, and in amounts proportionate to their respective holdings of such securities.

6. The expenses, if any, of the distribution of any securities registered for sale under the Securities Act of 1933 and sold by the Insurance Company and the Fund at the same time will be shared by the Insurance Company and the Fund in proportion to the respective amounts they are selling.

For purposes of the order, any securities purchased or held by Applicants which are identical in all respect except for the fact that only the Fund's securities have voting rights shall be considered to be of the same class of securities.

Applicants submit that the proposed amended order will provide the Fund with the necessary flexibility to invest in direct placements on an other than equal basis with the Insurance Company. Applicants submit that it is in the best interest of the Fund to have the flexibility to acquire any percentage between 0% and 50% of all investments offered to it by the Insurance Company. If the fund has the discretion to invest a lesser percentage than the Insurance Company, it may immediately take advantage of such opportunity while ensuring that its investment in any one issuer is prudently proportionate to its own asset base.

Since any decision to invest in a lesser percentage than the Insurance Company must be approved by the board of directors of the Fund, including a majority of the directors who are not "interested persons" of the Fund, as defined in the Act, and since the Insurance Company will always have the same or a greater amount as the Fund "at risk" in each investment, Applicants submit that there are ample safeguards to assure that any participation by the Fund in such direct placements will not be on a basis less advantageous than that of the Insurance Company.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than Man 20, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11371 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IA-970; File No. 803-38]

TCW Asset Managment Company; Application for an Amended Order in Connection With a Performance-Based Investment Advisory Fee

May 3, 1985.

Notice is hereby given that TCW Asset Management Company ("Applicant"), a California corporation registered as an investment adviser under the Investment Advisers Act of 1940 ("Act"), filed an application on March 25, 1985, requesting an order of the Commission pursuant to section 206A of the Act amending an existing order, Investment Advisers Act Release No. 938 (October 12, 1984) (the "Existing Order"), which exempts Applicant from the provisions of section 205(1) fo the Act to the extent necessary to allow it to be compensated on the basis of a share of the profits and losses of a certain limited partnership. Applicant seeks an amended order to allow it to reduce the minimum net worth and minimum investment required of investors wishing to participate in the partnership. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below, to the Act for the text of its relevant provisions, and to the notice of the filing of the application for the Existing Order (Investment Advisers Act Release No. 931; October 12, 1984) for a more complete summary of Applicant's operations.

Applicant states that it and certain of its associated person have established the TCW Special Placements Fund I, a California limited partnership (the "Partnership"). Applicant will manage the Partnership through TCW Partners, a California general partnership which will act as the general partner (the "General Partner") of the Partnership. Applicant will be the managing partner of the General Partner and will have full charge of the overall management, conduct, administration and operation of the Partnership's investments.

On October 12, 1984, the Commission issued the Existing Order permitting a performance-based advisory fee arrangement entered into by the General Partner in connection with the Partnership. The Existing Order requires that the limited partners in the Partnership be sophisticated investors such as pension plan trusts, charitable trusts, foundations and endowments and insurance companies, or sophisticated individual investors who have a net worth (or a joint net worth with their spouses) at the time of investment in excess of $10,000,000 and whose investment in the Partnership represent no more than 15% of the gross value of the assets in which those investors (and spouses) have a beneficial interest. The Existing Order also requires that an investor make a minimum investment of $2,000,000 in the Partnership.

Applicant states that since the issuance of the Existing Order, it has been approached by several financially sophiscated individuals who wish to invest in the Partnership but do not meet the foregoing $10,000,000 net worth test, and who wish to invest less than $2,000,000 in the Partnership. Applicant proposes to change the minimum qualifications for individual investors in the Partnership to allow for sophisticated individual investors who have a net worth (or a joint net worth with their spouses) at the time of investment in excess of $1,000,000 and whose investment in the Partnership would represent no more than 15% of the gross value of the assets in which they have a beneficial interest. Applicant further proposes to set the minimum investment by an investor in the Partnership at $250,000. Applicant believes that these new standards will still ensure that the investors in the Partnership are of such a caliber that they do not need the protection afforded by section 205(1) of the Act. Applicant therefore requests that the Commission issue an order pursuant to section 206A of the Act amending the Existing Order to exempt Applicant from the provisions of section 205(1) of the Act to permit the revised investor suitability requirements set forth above.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 29, 1985, at the 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11372 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23676; 70-6832]

Ohio Power Co. and Central Ohio Coal Co.; Proposed Repayment of Cash Capital Contribution

April 29, 1985.

Ohio Power Company ("OPCo") and Central Ohio Coal Company ("COCCo"), 301 Cleveland Avenue, S.W., Canton, Ohio 44702, subsidiaries of American Electric Power Company, Inc. ("American"), a registered holding company, have filed with this Commission post-effective amendments to the application-declaration in this proceeding pursuant to section 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 46 promulgated thereunder.

By order in this proceeding dated April 12, 1983 (HCAR No. 22911), OPCo was authorized to make an additional investment of $20,000,000 in COCCo, consisting of a cash capital contribution in the amount of $9,120,000 and a loan in the amount of $10,880,000. (COCCo is a subsidiary of OPCo and was organized in 1946 for the purpose of conducting coal mining operations for OPCo.) OPCo made the $20,000,000 investment on May 31, 1983. OPCo's loan to COCCo is evidenced by COCCo's promissory note, which bears interest at 12.93%, and matures December 31, 2012. The loan and the cash capital contribution made by OPCo to COCCo were in the same proportion as the debt-equity ratio of OPCo as of December 31, 1982.

It was anticipated that $9.2 million of the additional investment would be used to finance the rebuilding of COCCo's 220 cubic yard dragline, known as the "Big Muskie Dragline," and that $10.8 million would provide COCCo with an increase in working capital required to operate the mine operations of COCCo at their then current levels. It is now stated, however, that these anticipated cash needs did not materialize. Following the aforementioned additional investment, coal billing revenues from OPCo have continually exceeded the curent cash needs of COCCo. The excess cash generated has been invested by COCCo in short-term commercial paper ($21,575,000 invested at February 28, 1985). It is presently estimated by the companies that these short-term investments will increase by approximately $4 million during the remainder of 1985.

In light of the present level of the short-term investments, it has become apparent to the companies that the financing authorized in this proceeding is no longer needed. Therefore, OPCo and COCCo are planning to discontinue such financing and propose that the $9,120,000 cash capital contribution portion of such investment in COCCo be returned to OPCo. The promissory note from COCCo to OPCo is, by its terms, repayable by COCCo at any time prior to maturity, and, therefore, no approval for the repayment of such by COCo is required.

The amended application-declaration is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or requres a hearing should submit their views in writing by May 28, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a 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 this matter. After said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11384 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22015; File Nos. SR-CBOE-85-14]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc. ("CBOE"); Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Extension of the CBOE's RAES Pilot Program

I. Introduction and Background

On April 29, 1985, the Chicago Board Options Exchange, Inc. ("CBOE"), submitted a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] to authorize CBOE to extend and expand the Exchange's retail automatic execution system (RAES) pilot program, which permits the automatic execution of certain public customer market orders in a limited number of OEX series.[3] The proposal would: (1) Extend the pilot program for 90 days, until August 2, 1985;[4] (2) expand the contract limit for RAES eligible orders from five to ten; and (3) expand the number of OEX series in which options orders would be eligible for RAES from eight to any number of CBOE may choose to so designate.[5]

Currently, the RAES pilot program permits the automatic execution of public customer market orders, for five or fewer contracts, in the four contiguous OEX put and four OEX call series in the nearest term expiration month with the highest public customer volume.[6] As originally approved, the RAES pilot was to be implemented for a three month period, beginning February 1, 1985, and ending on April 30, 1985.

In its filing, CBOE states that the RAES pilot program has been highly successful, and that customer orders on RAES have been handled efficiently and fairly, with customer's brokers receiving execution reports on RAES orders sometimes within the same minute as the order is entered into the System. In addition, CBOE notes that since the inception of the pilot program, RAES has been in operation over 90 percent of the time that OEX has been open for trading. As a result of RAES' operational success, CBOE believes an extended and expanded pilot program is appropriate.

In the January Order, the Commission concluded that the RAES pilot "offers the potential for a significant improvement in the accuracy and efficiency with which small public orders are processed * * *." At the same time, however, the Commission expressed concern about the reduced priority accorded public customer limit orders on the book which may result from the absence of a linkage between RAES and the public customer limit order book.[7] Specifically, when a booked public limit order is at the same price as the best bid or offer, a RAES transaction will still occur at that price, without filling the public limit order, as a exception to the CBOE's priority rule.[8] Nevertheless, the Commission determined to approve RAES, on a pilot basis, in view of the limited nature of the pilot program (*i.e.*, the small number of orders affected, and the short duration of the pilot), as well as the CBOE's commitment "to integrate public customer [limit] orders with RAES should the pilot be extended."[9]

II. Discussion

Since the January Order, the CBOE has had an opportunity to evaluate the initial effects of RAES and the possible near-term alternatives of integrating limit orders on the book with RAES. In brief, the CBOE believes that, in view of the significant efficiency advantages provided by RAES, it would be counterproductive to encumber RAES with a manual interface to facilitate the execution of booked limit orders in light of the fact that "it is extremely unlikely that booked limit orders will remain unexecuted at times when market-makers are effecting trades with RAES orders at the prices of those limit orders."[10] In addition, the CBOE noted that, while it remains committed to the development of an electronic book, such an "effort is fraught with difficulty and uncertainty."[11] Accordingly, it stated that its commitment to implementation of an electronic book and integration of RAES into such a book must be viewed in light of these very real hurdles.[12]

As stated in the January Order, the Commission recognizes that accommodations may be necessary to integrate new trading systems with the existing exchange market, but does not believe that increased efficiency and book priority are mutually inconsistent objectives. Regarding the RAES 90-day extension and expansion, the Commission believes the proposal should provide the benefits of more timely and cost-effective executions of small options orders, as demonstrated in the initial pilot phase, to a greater number of OEX orders.[13]

In addition, in light of the CBOE's representation that, even though RAES may by-pass public customer limit orders at the same price, those limit orders generally are executed, the Commission does not believe that a 90-day extension of the pilot is inappropriate. Nevertheless, the Commission expects that during the extension the CBOE will (1) monitor the execution of booked limit orders to verify that they are, in fact, executed, notwithstanding the expansion of RAES, (2) specify its estimate of the costs associated with a near-term integration of booked limit orders and RAES and (3) clarify its long-term automation plans, to the extent practicable. Accordingly, in light of the CBOE's representations, the Commission finds that the expanded pilot program contemplated by the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the proposal is consistent with sections 6(b)(5) and 11(A) of the Act.

III. Solicitation of Comments

The Commission is publishing this Release to solicit comment on the CBOE proposed rule change. Persons interested in commenting on this

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] For a more complete description of RAES, see the Commission's initial order approving CBOE's implementation of the RAES pilot program in Securities Exchange Act Release No. 21695 (January 28, 1985), 50 FR 4823 (February 1, 1985) (File No. SR-CBOE-84-30) ("January Order").

[4] The RAES pilot program, as originally approved, ended on April 30, 1985.

[5] Currently, RAES eligible orders must be in one of four contiguous call and four contiguous put series in OEX in the nearest-term expiration month. CBOE has the flexibility to determine daily which four contiguous call and put series are most likely to have the highest public customer volume and, therefore, should be included in RAES. The instant proposal similarly would authorize CBOE to make a daily determination as to which OEX series would be included in RAES.

[6] The obligations and responsibilities of CBOE member firms participating in RAES are discussed in detail in the January Order, *supra* note 3.

[7] *See* January Order, *supra* note 3.

[8] *See* CBOE Rule 6.45.

[9] January Order, *supra* note 3, 50 FR at 4823 n.9.

[10] Letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated April 9, 1985, at 2 ("Henry Letter"). The CBOE also questioned whether the Act requires such protection of public limit orders.

[11] *Id.* at 5.

[12] *Id.*

[13] During March 1985, there were approximately 450 transactions in RAES per day, or 7 percent of the public customer orders of member firms on the System. The CBOE estimates that under an expanded RAES "as many as 30% of the public customer orders in OEX will go through RAES." Henry Letter, *supra* note 10, at 1. In addition, as indicated in the January Order, *supra* note 3, by reducing the number of transactions that have to be executed manually on the exchange floor, RAES offers the possibility of increased efficiency in the handling of non-RAES orders.

proposal should submit six copies of their comments within 21 days from the date of publication of the notice in the **Federal Register**. Comments should be sent to the Secretary of the Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the proposed rule change, including amendments, and all documents relating to the proposed rule change, except those that may be withheld from the public pursuant to 5 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filing also are available at the CBOE.

IV. Approval of Proposed Rule Change

Finally, the Commission finds good cause to accelerate approving this proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because (1) the Commission already has approved the temporary operation of the pilot with similar terms; (2) the operation of RAES, to date, has been represented to be successful and without technical or other difficulties; and (3) extending the duration of the pilot and expanding the capacity of RAES, as defined above, would not appear to impose any undue burdens on public customers of OEX, or on any other public customers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

May 6, 1985.

[FR Doc. 85-11383 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22012; Filed No. SR-OCC-85-4]

Self-Regulatory Organizations; Options Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change

On April 22, 1985, the Options Clearing Corporation ("OCC") filed with the Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") to clarify OCC Rule 604 governing use of letters of credit. The Commission is publishing this notice to solicit public comment on the proposal.

OCC Rule 604 allows OCC clearing members to use letters of credit to satisfy OCC margin requirements. Under current Rule 604(c), a clearing member may request in writing that OCC allocate to the clearing member's customers' account at OCC some or all of a letter of credit amount to meet OCC margin requirements. OCC's proposal clarifies Rule 604(c) by specifying that clearing members may make these allocations only when the letter of credit itself does not specify to which account(s) it may be applied. If a letter of credit on its face designates the account(s) to which it may be applied, only the bank issuing the letter of credit can make a designation change.

OCC believes that the proposal enhances the safeguarding of funds in OCC's control by clarifying requirements for letters of credit held by OCC for margin purposes. OCC believe, therefore, that the proposal is consistent with the Act.

OCC's proposal has become effective under section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days fromthe date the proposal was filed, however, the Commission may summarily abrogate the proposal if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Copies of all documents related to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C., and at OCC's principal offices.

Written data, views and arguments concerning the proposal are invited within 21 days from the date this notice is published in the **Federal Register**. Please file six copies of comments, refering to File No. SE-OCC-85-4, with the the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by May 31, 1985.

For the Commission, by the Division of Market Regulations pursuant to delegated authority.

Dated: May 2, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-11382 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14505; File No. 812-6028]

Daily Income Fund, Inc. and Reich & Tang, Inc.; Application and Opportunity for Hearing

May 6, 1985.

Notice is hereby given that Daily Income Fund Inc. (the "Fund"), an open-end management investment company registered under the Investment Company Act of 1940 (the "Act"), and Reich & Tang, Inc., the investment adviser to the Fund (the "Adviser"), both located at 100 Park Avenue, New York, New York 10017 (the Fund and the Adviser collectively referred to herein as "Applicants"), filed an application on January 22, 1985 pursuant to section 17(d) of the Act and Rule 17d-1 thereunder for an order of the Commission to permit the transaction described below. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below, and to the text of the Act and the rules thereunder for the applicable provisions.

According to the application, in April 1981, a shareholder of the Fund (the "plaintiff") filed a complaint in the United States District Court for the Southern District of New York (the "district court" or the "court") commencing an action captioned *Martin Fox* v. *Reich & Tang, Inc. and Daily Income Fund, Inc.*, 18 Civ. 2602. The plaintiff alleged that the Adviser breached its fiduciary duty to the Fund under Section 36(b) of the Act by charging the Fund excessive fees for the investment advisory services it provided to the Fund. The district court dismissed the action on Applicants' motion holding that, under the Federal Rules of Civil Procedure, the plaintiff should not have brought suit before making a demand on the Board of Directors of the Fund. The plaintiff appealed to the Court of Appeals for the Second Circuit which reversed the district court, holding in the plaintiff's favor. Applicants appealed to the United States Supreme Court, which upheld the decision of the Court of Appeals and remanded the case to the district court for trial.

Applicants state that, in the interim, the same plaintiff, following a demand made on the Board of Directors, filed a second action in the same court in July, 1982, containing essentially the same allegations. That action remained inactive pending the resolution of the first action.

Applicants represent that, after discovery, the parties entered into a proposed stipulation of settlement of both actions, which was submitted to the district court on January 17, 1985. The two actions are being consolidated for purposes of settlement. The Fund will provide to its shareholders a notice, in a form which has been approved by the court, setting out the terms of the proposed settlement and advising the shareholders of their right to file objections to the settlement and to appear at a hearing held by the court to determine the appropriateness of the proposed settlement. At the time of filing of the application it was represented that, at a hearing scheduled for April 8, 1985, the court would consider the proposed settlement and if the settlement was approved a final order would be entered dismissing the action in its entirety with prejudice to the plaintiff and all shareholders of the Fund. Applicants state that under the terms of the proposed settlement the court may award the plaintiff not more than $212,000 for his litigation expenses. The Adviser will be required to pay all of the plaintiff's attorney's fees and expenses awarded by the court and, subject to the receipt of an exemptive order of the Commission, the Fund will reimburse the Adviser for one-half of such expenses. Applicants represent that the maximum amount of the Fund's contribution under the proposed settlement would be $106,000.

Applicants submit that the proposed transaction is consistent with the provisions, policies, and purposes of the Act and that the Fund's participation is not disadvantageous to it. Applicants state that since the Fund, as the beneficiary of a settlement of derivative actions brought on its behalf, would ordinarily be required to pay all of the plaintiff's litigation expenses, the Adviser's agreement to pay one-half of those expenses conveys a direct benefit to the Fund. Applicants submit that since the Fund is bearing no more of the plaintiff's litigation expenses than the Adviser, the Fund's participation is not on a basis that is different from or less advantageous to it than to the Adviser. Applicants further state that the Fund will obtain benefits from the settlement that more than compensate for the expenses it will bear under the fee payment provision. Those benefits include rebates of a portion of its future advisory fees and freedom from the expense, inconvenience and disruption that continued litigation would cause. Applicants further submit that the amount of plaintiff's litigation expenses to be borne by the fund under this arrangement is substantially less than the amount of legal expenses the Fund would have incurred had the litigation continued through a trial and subsequent appeals. Moreover, the disinterested directors of the Fund, as well as the entire Board of Directors of the Fund have unanimously approved the fee payment arrangement described above.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 30, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11425 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14502; File No. 811-3889]

Hartford Government Securities Fund, Inc.; Application and Opportunity for Hearing

May 6, 1985.

Notice is hereby given that Hartford Government Securities Fund, Inc. ("Applicant"), Hartford Plaza, Hartford, CT 06115, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 18, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof. Applicant represents that it has never made a public offering of its securities, has fewer than 100 securityholders for purposes of Section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind. Applicant further states that it has not made any sales of securities of which it was the issuer.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 31, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11426 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14497; File No. 812-5977]

Source Capital, Inc.; Application for Exemptive Order To Permit Odd-Lot Repurchase Offer

May 1, 1985.

Notice is hereby given that Source Capital, Inc. ("Applicant"), 10301 West Pico Boulevard, Los Angeles, CA 90064, registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified management investment company, filed an application on November 2, 1984, and amendments thereto on February 15, and May 1, 1985, for an order, pursuant to section 23(c)(3) of the Act, to permit Applicant to repurchase shares of its common and preferred stock from beneficial and record owners of less than 40 shares at a premium of up to $1.00 per share over the market value of such shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the provisions cited in the application.

Applicant represents that its outstanding shares consist of 6,000,000 shares of common stock ("Common shares") and 2,017,530 shares of

preferred stock ("Preferred shares"). Applicant states that about 112,000 shares, or approximately 2%, of its Common shares are owned of record by approximately 7,000 shareholders who individually own less than 40 Common shares. Applicant states further that about 190,000 shares, or about 9%, of its Preferred shares are owned of record by approximately 12,500 shareholders who individually own less than 40 Preferred shares.

Applicant proposes to offer to its shareholders who own less than 40 shares of its Common shares or Preferred shares as of fixed, but yet to be determined, record dates the opportunity to tender such shares to Applicant for cash ("Odd-Lot Repurchase"). In addition to the payment of the market price (i.e., last reported NYSE sale price) on the first business day following the last day on which shares may be tendered pursuant to the Odd-Lot Repurchase, Applicant proposes to pay a premium of $1.00 per share, but in no event shall the per share price exceed net asset value per share with respect to repurchases of Common shares, or liquidation preference per share with respect to repurchases of Preferred shares.

It is anticipated that the Odd-Lot Repurchase will remain open to eligible shareholders for a minimum of 30 and a maximum of 40 days. Applicant states that securities tendered pursuant to the Odd-Lot Repurchase may be withdrawn at any time until the expiration of ten business days after the commencement of the repurchase program.

Applicant states that the Common shares have historically traded at a discount, although recently such shares were traded at a premium. Applicant represents that no offer would be made to purchase Common shares unless such shares are trading at a discount at the commencement of the Odd-Lot Repurchase. It is stated that the Preferred shares have always traded at a discount from their liquidation preference of $27.50 per share.

Applicant states that its current annual maintenance cost per shareholder account is estimated to be $9.00 regardless of account size. Accordingly, the proportionate expense of maintaining smaller accounts as compared to the investment in Applicant represented by such accounts is greater than that of larger accounts. Applicant asserts that the maximum acceptance rate for the Odd-Lot Repurchase would be about 2% or 112,000 of the total outstanding Common shares and 9% or 190,000 of the total outstanding Preferred shares, covering approximately 19,500 shareholder accounts. In such instance a premium of $302,000 would be payable. Assuming a market price of $31.875 per Common share, a 2% discount from a net asset value of $32.56, and a market price of $19.25 per Preferred share (which were the reported closing prices and net asset value on August 17, 1984), the total cost of implementing the Odd-Lot Repurchase would be $7,500,000 and would be paid from general corporate funds. Applicant states that, if all 19,500 accounts holding less than 40 shares of either class were to be closed, an annual savings of approximately $175,000 would result. Applicant represents that less than two years of such savings would be required to recoup the total premium over market price paid by Applicant for the shares acquired pursuant to the Odd-Lot Repurchase.

Applicant requests an order pursuant to section 23(c)(3) of the Act to permit the Odd-Lot Repurchase. Applicant cannot rely on the exemption from the repurchase prohibition of section 23(c)(3) of the Act provided by Rule 23c–1 thereunder (the "Rule") because each repurchase of Applicant's Common or Preferred shares at a premium over market value would be contrary to the requirement of paragraph (a)(6) of the Rule that such repurchases be made at a price not above the market value, if any, or the asset value of such securities, whichever is lower, at the time of purchase. For purposes of the requested order, Applicant undertakes to otherwise comply with all other applicable provisions of the Rule.

Applicant represents that the Odd-Lot Repurchase will not be made in a manner or on a basis which unfairly discriminates against any holders of its Common or Preferred shares. In support thereof, Applicant asserts that the Odd-Lot Repurchase is voluntary and that no shareholder will be required to tender shares. Applicant states that those eligible shareholders who choose to tender their shares will have the opportunity to sell their small amount of odd-lot Common or Preferred shares to Applicant at up to a $1.00 premium per share, and without incurring brokerage charges, stock transfer fees or stock transfer taxes. It is stated that for those who choose to remain as shareholders, as well as those who are not being offered an opportunity to tender their shares, the purchase of these odd-lots will save Applicant the cost of maintaining a number of small accounts which will reduce expenses for the benefit of remaining shareholders.

Applicant represents that holders of Common shares not participating in the Odd-Lot Repurchase will benefit from increases in the net asset value attributable to such shares to the extent that Common shares are repurchased at less than net asset value or Preferred shares are repurchased at less than liquidation preference. Applicant represents further that the asset coverage of the Preferred shares will remain substantially above the minimum 200% required by section 18(a)(2)(B) of the Act.

With respect to extending the Odd-Lot Repurchase to record and beneficial shareholders, Applicant asserts that, while a reduction in the number of odd-lot beneficial owners of shares held in street name accounts will not reduce Applicant's transfer agency fees, savings will result from reduced requirements for shareholder reports and proxy statements, as well as reduced costs of reimbursing brokers for forwarding such documents to their customers. With respect to limiting the Odd-Lot Repurchase to shareholders owning less than 40 shares, Applicant represents that its board of directors reviewed the estimated costs of the repurchase offer and considered such costs as well as the transaction costs, including the proposed maximum premium, for shares repurchased in determining that the repurchase offer would be in the best interests of Applicant and its shareholders.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 27, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–11303 Filed 5–9–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

May 6, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Apple Computer, Inc.
Common Stock, No Par Value (File No. 7-8416)
Convergent Technologies
Common Stock, No Par Value (File No. 7-8417)
Digital Switch Corp.
Common Stock, $.01 Par Value (File No. 7-8418)
Intel Corporation
Common Stock, No Par Value (File No. 7-8419)
MCI Communications Corp.
Common Stock, $.10 Par Value (File No. 7-8420)
Tandem Computers, Incorporated
Common Stock, $.02½ Par Value (File No. 7-8421)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 28, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11427 Filed 5-9-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/851]

Shipping Coordinating Committee, Committee on Ocean Dumping; Meeting

The Committee on Ocean Dumping, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 1:30 p.m. on May 23, 1985, in room 2409 (Mall) Waterside Mall, Environmental Protection Agency, 401 M Street SW., Washington, D.C.

The purpose of the meeting is to review and discuss the report of the Expert Panel on the Review of Scientific and Technical Considerations Relevant to the Proposal for the Amendment of the Annexes to the London Dumping Convention Related to the Dumping of Radioactive Wastes. This report was prepared for the London Dumping Convention for use in considering a proposal to ban all ocean disposal of radioactive waste. Prior to submission to the London Dumping Convention, the report will be considered at a meeting of the Expanded Panel on Radioactive Waste Dumping, June 3-7, 1985, in London.

For further information, contact Ms. Norma Hughes, Executive Secretary, Committee on Ocean Dumping (WH-556), Environmental Protection Agency, Washington, D.C. 20460, telephone: (202) 755-2927.

The chairman will entertain comments from the public as time permits.

Richard E. Benedick,

Deputy Assistant Secretary, Environment, Health and Natural Resources.

May 1, 1985.

[FR Doc. 85-11416 Filed 5-9-85; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

[Docket 41035]

Dominion Intercontinental Airlines, Inc., Fitness Investigation; Continuing Assignment of Proceeding

The Department's Order 85-5-27, issued May 3, 1985, remanded the proceeding to the Chief Administrative Law Judge for assignment, noting that the Civil Aeronautics Board's Order 84-11-130, adopted on November 30, 1984, remanded the proceeding to the presiding Administrative Law Judge for further hearings and further development of the record. This notice is to advise that this preceeding continues to be assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should continue to be addressed to him at the Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg., 400 7th Street SW., Washington, D.C. 20590, telephone (202) 426-5560.

Dated at Washington, D.C., May 6, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-11329 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-85-9]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 3, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW.,

Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 6, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
24587	Air Wisconsin, Inc.	14 CFR 93.123	To allow petitioner to operate commuter slots at O'Hare International Airport using aircraft with a certificated maximum passenger seating capacity of 56 or more.
24536	Professional Aviator Training	14 CFR 61.63 (d)(2) and (d)(3)	To permit trainees of petitioner who are applicants for a type rating to be added to any grade of pilot certificate, to substitute the practical requirements of § 61.157(a) for those of § 61.63 (d)(2) and (d)(3) to complete a portion of that practical test in a simulator as authorized by § 61.157(d).
24533	Chrysler Aviation, Inc.	14 CFR 61.63 (d)(2) and (d)(3)	To permit trainees of petitioner who are applicants for a type rating to be added to any grade of pilot certificate, to substitute a practical test that includes the items and procedures for testing in an airplane simulator as set forth in the appendix of Part 61, although petitioner does not have an operating certificate issued under Part 121.
24579	Dallah AVCO Trans Arabia	14 CFR 91.303	To allow petitioner to operate a Stage 1 Boeing 707-123B aircraft for a brief time of no more than four weeks duration sometime during the period June through September 1985.
24586	Wendy's International, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24572	E.I. duPont deNemours & Company, Inc.	14 CFR 91.83(c)(1)	To permit petitioner to have lower alternate weather minimums for helicopters.
24589	Department of the Navy, Atlantic Fleet Weapons Training Facility	14 CFR 101.23(b)	To allow petitioner relief from the unmanned rockets in controlled airspace provisions in order to allow for the launching of antisubmarine rockets (ASROC's) in the St. Croix, U.S. Virgin Islands controlled firing area.
24580	Balair AG	14 CFR 91.309	To allow petitioner to operate a Stage 1 DC-8-63 aircraft at Stewart International Airport for a flight on or about November 1, 1985, and December 6, 1985.
24595	Blandin Paper Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24586	Union Camp Corporation	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24590	REB Ltd.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
23717	Garrett Turbine Engine Company	40 CFR 87.21(e) and SFAR 27	To amend Exemption 4228 to include all of petitioner's engine models in the TFE31 series. The original petition specified only Garret's models TFE31-2, -3R, -3A, -3AR, -3B, -3BR, -5 and -5R and allowed partial relief from the specific smoke number required by 40 CFR 87.21(e).
24585	Pacific Northwest Bell	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24575	USAir	14 CFR Appendix H of Part 121	To allow petitioner to continue to conduct Phase IIA training and checking utilizing a Phase I simulator until October 1, 1985, 15½ weeks in excess of the 3½ years as permitted by Appendix H of Part 121.
24576	United Airlines	14 CFR 61.151(a)	To allow W. F. Predhome, Jr., to qualify for an Airline Transport Pilot certificate (simulator-only) and to exercise the privileges of a simulator instructor under § 121.411 for petitioner. Mr. Predhome suffers from diabetes and is not eligible for a medical certificate under Part 67.
24574	McFillen Air Park	14 CFR 135.243	To allow pilots employed by petitioner to haul freight only in instrument flight rule conditions without possessing the necessary experience requirements.
24547	United States Parachute Association	14 CFR 105.43	To allow foreign participants to use parachutes which do not meet the parachute equipment and packing requirements of § 105.43 in the U.S. National Skydiving Championship to be held at Muskogee, Oklahoma, during the period of June 20 through July 17, 1985.
24490	United Technologies	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
17324	Gulf Air Company	14 CFR Portions of Part 21	Extension of Exemption 2468 to allow petitioner to operate two leased U.S.-registered L-1011 aircraft, N92TA and N92TB, using a Federal Aviation Administration (FAA)-approved minimum equipment list and an FAA-approved continuous maintenance program.
23512	Accelerated Ground Training	14 CFR 61.63(d) (2) and (3)	Extension of exemption 3617 to permit trainees of petitioner who are applicants for a type rating to be added to any grade of pilot certificate to substitute the practical test requirements of § 61.157(a) for those of § 61.63(d)(2) and (3) and to complete a portion of that practical test in a simulator authorized by § 61.157(d) subject to certain conditions and limitations.
24582	Armstrong World Industries, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24583	Bunn-O-Matic	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
21882	China Airlines Limited	14 CFR Portions of Part 21	Extension of Exemption 3360 to allow petitioner to operate two Boeing 747-SP aircraft, N4508H and N4522V, using a Federal Aviation Administration (FAA)-approved continuous airworthiness maintenance program.

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought/disposition
24577	Pacific Western Airlines	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1986: B-737-200: CF-TAN. *Granted 4/3/85.*
24342	ERA Helicopters, Inc.	14 CFR SFAR 38 and Part 121	To allow petitioner to operate Boeing Vertol 234 helicopters under the provisions of Part 135. *Granted 4/5/85.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23465	Everts Air Fuel	14 CFR 91.31(a)	To permit it to operate its McDonnel Douglas DC-6B aircraft, S/N 45174, at a 5 percent increased zero fuel and landing weight for the purpose of transporting diesel fuel to isolated native villages and seismic exploration teams in the Alaskan back country in the manner permitted by §§ 121.198 and 129.23. *Granted 4/5/85.*
22558	Boeing Commercial	14 CFR 47.69(b)	Extension of Exemption 3513C to allow the petitioner to continue to conduct Airplane Company flights outside of the United States while the agency considers amending the regulations. *Granted 4/19/85.*
12464	Air France	14 CFR 21.181	Amendment of Exemption No. 1690F to permit petitioner to operate an additional leased U.S.-registered B-747 aircraft using the FAA-approved master minimum equipment list and an FAA-approved continuous airworthiness maintenance program. *Partial Grant 4/11/85.*
23290	Air Transport Assoc. of America	14 CFR 121.391(d) 121.311(f)	To renew the terms of Exemption 3652, which expired 12/31/84. The petition allows certain Part 121 certificate holders to operate B-767 airplanes, with either four or five required flight attendants positioned as follows: one or two flight attendants near the forward floor-level exists, one in the mid-cabin, cross-aisle area, and two near the aft floor-level exits. *Granted 4/9/85.*
24416	Airline Flight Training	14 CFR 61.63(d) (2) (3) and 61.157(d)(1)	To allow petitioner's trainees to complete the practical test for issurance of a type rating to be added to a pilot certificate, regardless of its grade, in an airplane as set forth in Part 61, Appendix A. *Granted 4/11/85.*
24203	Dunn & Bradstreet Corporation	14 CFR 21.181	To allow petitioner to operate a Gulfstream Airspace GIII Model 1159A aircraft utilizing the provisions of a minimum equipment list. *Granted 4/24/85.*
24285	Southern Natural Gas Company	14 CFR 21.181	To allow petitioner to operate Falcon 20C aircraft utilizing the provisions of a minimum equipment list. *Granted 4/24/85.*
23675	Executive Air Fleet Corporation	14 CFR 21.181	To permit petitioner to operate various aircraft using a FAA approved minimum equipment list. *Granted 4/26/85.*
20816	Zephyrhills Parachute Center	14 CFR 91.15(a)(2) 105.43(a)(2) and 91.47	To renew and make permanent the provisions of Exemption 3096. That exemption allows petitioner to carry 40 parachutists in DC-3/C47 aircraft and 20 parachutists in Lockheed L-18 aircraft subject to certain conditions and limitations. *Partial Grant 4/18/85.*
20817	do	14 CFR 91.15(a) and (a)(2) and 105.43(a)	To renew and make permanent the provisions of Exemption 3097. That exemption allows foreign nationals to participate in skydiving events without complying with the parachute equipment and packing requirements of these sections, subject to certain conditions. *Partial Grant 4/18/85.*

[FR Doc. 85-11363 Filed 5-9-85; 8:45 am]
BILLING CODE 4910-13-M

Federal Railroad Administration

[RS&I-Ap-No. 1010]

Iowa Interstate Railroad, and Northeast Illinois Railroad Corp.; Notice of hearing

The Iowa Interstate Railroad Company (IAIS) and the Northeast Illinois Railroad Corporation (NIRC) have petitioned the Federal Railroad Administration (FRA) seeking relief from the requirements of section 236.566 of the Rules, Standards and Instructions (RS&I) (49 CFR 236.566) to the extent that the IAIS be permitted to operate locomotives not equipped with automatic cab signals responsive to the roadway equipment on the trackage of the NIRC between Blue Island, Illinois, and Joliet, Illinois. This proceeding is docketed as FRA RS&I Application No. 1010.

After examining the carriers' proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on June 26, 1985, in the 14th Floor Conference Room of the One North Western Building at 165 North Canal Street in Chicago, Illinois.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FAR Rules of Practice (49 CFR 211.25), by a representative designated by the FAR.

The hearing will be a nonadversary proceeding, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C., on May 6, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-11388 Filed 5-9-85 am]
BILLING CODE 4910-06-M

[FRA General Docket No. H-83-2]

Petitions for Waiver of Compliance

The Federal Railroad Administration's Freight Car Safety Standards (49 CFR Part 215) prohibit a railroad from keeping a freight car in service if it has a defective wheel. Since a wheel that has been thermally abused presents a significant risk of sudden failure and consequent derailment, section 215.103(h) defines such wheels as defective.

FRA recently initiated a rulemaking proceeding to improve the clarity of this provision. In response to the notice of proposed rulemaking issued on June 22, 1984, one commenter suggested that FRA's regulatory approach to thermally abused wheels was intrinsically flawed because it relies on a scientifically unjustified detection methodology. This commenter, the Association of American Railroads (AAR), suggested that FRA consider initiating a test program to obtain data about the thermal abuse of freight car wheels. The test program contemplated by the AAR would involve a waiver of compliance with FRA's regulation to permit one type of freight car wheel, generally described as a "curved plate," "S plate," or "low stess" wheel, to remain in service until that wheel displays clear evidence of thermal abuse such as thermal cracking. The service record of these wheels would then be compared to that of wheels removed from service under FRA's rule so as to validate or invalidate the current industry detection approach, which is premised on visual observation of discoloration criteria.

Eight railroads, Norfolk Southern Corporation (NS), Consolidated Rail Corporation (Conrail), Union Pacific (UP), Athison, Topeka and Santa Fe (ASTF), Missouri Pacific (MoPac), Illinois Central Gulf (ICG), Seaboard

System (SBD), and Burlington Northern (BN) have now filed specific proposals with FRA concerning a suggested test program. The NS and Conrail proposals were described by FRA in a notice that appeared in the March 1, 1985 issue of the **Federal Register** (50 FR 8432), the UP and ATSF proposals appeared in the March 6, 1985 issue (50 FR 9146) and the MoPac and ICG proposals appeared in the March 11, 1985 issue (50 FR 9753). In the recently filed SBD and BN proposals, FRA has been offered additional equipment to be used in any test program that FRA deems appropriate. SBD volunteered the use of a fleet of approximately 20,000 hopper cars notes that these cars are in dedicated service. The commodities normally hauled in these cars include phosphate, aggregate and coal. In addition, BN has offered the use of a fleet of approximately 8,000 freight cars of that includes approximately 2,000 gondola cars, 4,900 hopper cars, 650 ore cars, 400 refrigerated box cars, and 15 flat cars. None of these cars are used to haul commodities that are classified as hazardous materials and they accumulate a large portion of their mileage while operating on BN's own lines.

FRA invites interested parties to participate in this proceeding by submitting written comments, data or views on the appropriateness of initiating any test program concerning this topic; the nature and scope of the test program being requested by these railroads, if a test program is deemed appropriate; and the safeguards or conditions needed to assure the safety of operations during any recommended test program. Interested parties also may desire to attend the public hearing scheduled for May 13, 1985. This hearing was announced in the Federal Register on December 17, 1984 (49 FR 48952) in connection with FRA's pending proposal to clarify its existing regulatory provision on this issue. Although the hearing had to be rescheduled from March 12, 1985 until May due to unforeseen scheduling conflicts, FRA anticipates that persons testifying at this hearing will address the topic of initiating the type of test program sought by these railroads as a means of validating or invalidating FRA's regulatory provision. This hearing is scheduled to begin at 10:00 a.m. on May 13, 1985, in Room 8334 of the Nassif Building located at 400 Seventh Street SW, Washington, D.C.

All communications concerning this proceeding should identify the appropriate docket number (FRA General Docket No. H–83–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before June 21, 1985 will be considered by FRA before taking any further action. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201 of the Nassif Building at the above address.

Issued in Washington, D.C., on May 7, 1985.

Philip Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 85–11387 Filed 5–9–85; 8:45 am]

BILLING CODE 4910–06–M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: (1)—Motor vehicle, (2)—Rail freight, (3)—Cargo vessel, (4)—Cargo-only aircraft, (5)—Passenger-carrying aircraft.

DATE: Comment period closes June 10, 1985.

ADDRESS: *Comments to:* Dockets Branch, Office of Regulatory Planning and Analysis, Material Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9424-N	VTG Vereinigte Tanklager, und Transportmittel GmbH, Hamburg, West Germany.	49 CFR 173.315	To authorize shipment of dichlorodifluoromethane, classed as a nonflammable gas in non-DOT specification IMO-5 portable tanks comparable to DOT Specification 51 except for ASME Code Certification and constructed of German Steel. (Modes 1, 2, 3.)
9425-N	American Chemical & Refining Company, Inc., Waterbury, CT.	49 CFR 177.848(b)	To authorize certain cyanide solutions, classed as poison B and palladium ammonium hydroxide solutions, classed as corrosive material to be transported in the same motor vehicle. (Mode 1.)
9426-N	Rheem Manufacturing Company, Edison, NJ.	49 CFR Part 173, Subpart D, F	To manufacture, mark and sell non-DOT specification six gallon capacity polyethylene containers comparable to DOT Specification 34 except for open head for shipment of certain flammable or corrosive liquids. (Modes 1, 2, 3.)
9427-N	Sherrill Associates, Homewood, IL.	49 CFR 173.242	To authorize shipment of limited quantities of hydrochloric acid, classed as a corrosive material and isopropyl alcohol, classed as a flammable liquid, contained in polyethylene containers overpacked together in a fiberboard box. (Modes 1, 3.)
9428-N	CGTX Inc., Montreal, Quebec, Canada.	49 CFR 179.102-2(a)(30)	To authorize shipment of chlorine, classed as nonflammable gas, in CTC 105A500W tank cars insulated with fiberglass and ceramic fiber. (Mode 2.)
9429-N	Witch Industries, Inc., South Houston, TX.	49 CFR 173.119(a), (m), 173.245(a), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specifications cargo tanks similar to DOT Specification MC-307/312 except for bottom outlet valve variations, for shipment of various flammable or corrosive waste liquids or semi-solids. (Mode 1.)
9431-N	U.S. Department of the Army, Falls Church, VA.	49 CFR 173.87	To authorize shipment of a kit containing 7 different types of class A and B explosives contained in ammo cans cushioned with polypropylene, overpacked in a military specification box. (Modes 1, 2, 4.)
9432-N	HTL Industries, Inc., Duarte, CA.	49 CFR 173.302(a), 175.3, 178.44	To manufacture, mark and sell non-DOT specification cylinders comparable to DOT Specification 3HT for shipment of helium, classed as nonflammable gas. (Modes 1, 2, 4.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9433-N	Aldrich Chemical Company, Inc., Milwaukee, WI.	49 CFR 173.302(f), 173.303, 173.304	To authorize shipment of certain flammable gases, at atmospheric pressure, in glass bulbs not exceeding 1 liter capacity overpacked in a DOT Specification 12A or 12B fiberboard box, cushioned with foam, one bulb per box.
9434-N	Ropak Central, Inc., Elk Grove Village, IL	49 CFR 178.16-19	To authorize shipment of a dry corrosive material in approximately 712 polyethylene containers made to a DOT Specification 35 except for marking (Mode 1.)
9435-N	L'Air Liquide, Paris, France	49 CFR 173-315	To authorize shipment of certain nonflammable pressurized liquids in non-DOT specification portable tanks. (Modes 1, 2, 3.)

This notice of receipt of application for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 3, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation Materials Transportation Bureau.

[FR Doc. 85-11323 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-60-M

Materials Transportation Bureau; Office of Hazardous Materials Regulation; Applications for Renewal or Modification of Exemption or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemption from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes May 28, 1985.

ADDRESS: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
3121-X	U.S. Department of the Army, Falls Church, VA.	3121
3126-X	Hercules, Incorporated, Wilmington, DE [1].	3126
3600-X	U.S. Department of the Army, Falls Church, VA.	3600
4719-X	Dow Chemical U.S.A., Freeport, TX	4719
4990-X	Schenley Distillers, Inc., Lawrenceburg, IN.	4990
5600-X	Amoco Oil Company, Whiting, IN	5600
5600-X	Genus, Material Sciences Division, San Marcos, CA.	5600
5676-X	FMC Corporation, Philadelphia, PA	5676
6122-X	Pennwalt Corporation, Buffalo, NY [2]	6122
6232-X	U.S. Department of the Army, Washington, DC.	6232
6452-X	Pennwalt Corporation, Buffalo, NY	6452
6712-X	Air Products and Chemicals, Inc., Allentown, PA.	6712
6759-X	Austin Powder Company, Cleveland, OH.	6759
6759-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	6759
6762-X	Anderson Chemical Company, Macon, GA.	6762
6769-X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	6769
6800-X	Plasti-Drum Corporation, Lockport, IL [3].	6800
6824-X	GPS Industries, City of Industry, CA	6824
7007-X	Allied Univeral Corporation, Miami, FL.	7007
7051-X	Ozark-Mahoning Company, Tulsa, OK.	7051
7060-X	Federal Express Corporation, Memphis, TN.	7060
7060-X	Central Skyport Inc., Columbus, OH	7060
7458-X	Ekofwerks Company, Eastlake, OH	7458
7555-X	Provost Cartage, Incorporated, Ville d'Anjou, Quebec, NC.	7555
7735-X	Rheem Manufacturing Company, Edison, NJ.	7735
7835-X	Scott Environmental Technology, Incorporated, Plumsteadville, PA.	7835
7857-X	Makhteshim Darom (Ramat Hovav) Ltd., Beer Sheva, Israel.	7857
7886-X	W. M. Barr & Company, Inc., Memphis, TN.	7886
8127-X	Union Explosivos Rio Tinto, S.A., Madrid, Spain.	8127
8131-X	National Aeronautics and Space Administration, Washington, DC.	8131
8156-X	Scott Environmental Technology, Incorporated, Plumsteadville, PA.	8156
8178-X	National Aeronautics and Space Administration, Washington, DC.	8178
8194-X	Pennwalt Corporation, Buffalo, NY	8194
8196-X	GCS Container Service, SA, Chiasso, Switzerland.	8196
8196-X	Allied Chemical, Morristown, NJ	8196
8209-X	Coastal Planes Airways, Incorporated, Warner Robins, GA.	8209
8215-X	Olin Corp., East Alton, IL	8215
8228-X	Bureau of Alcohol, Tobacco and Firearms, Washington, DC.	8228
8232-X	GCS Container Service, SA, Chiasso, Switzerland.	8232
8573-X	Alstar Company, Tracy, CA	8573
8573-X	All Pure Chemical Company, Inc., Tracy, CA.	8573
8573-X	Hasa Chemicals, Inc., Saugus, CA	8573
8621-X	Atlantic & Gulf Stevedores of Alabama, Mobile, AL.	8621
8667-X	Federal Emergency Management Agency, Washington, DC.	8667
8678-X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	8678
8684-X	General American Transportation Corporation, Chicago, IL.	8684
8725-X	CNG Cylinder Corporation, Long Beach, CA [4].	8725
8862-X	ABERCO Inc., Seabrook, MD	8862
8911-X	Olin Corp., East Alton, IL [5]	8911
8912-X	Rheinpfalzische Emballagenfabrik G. Schonung & Co., Weinstrasse, West Germany.	8912
8965-X	Pressed Steel Tank Company, Inc., Milwaukee, WI [6].	8965
8975-X	Baker Brothers Welding, Inc., Norman, OK.	8975
8977-X	Eurotainer, S.A., Paris, France	8977
8986-X	Cook Slurry Company, Salt Lake City, UT.	8986
9023-X	Eurotainer, S.A., Paris, France	9023
9026-X	Continental Fibre Drum, Inc., Lombard, IL.	9026
9030-X	LND Incorporated, Oceanside, NY	9030
9040-X	Continental Fibre Drum, Inc., Lombard, IL.	9040
9062-X	UOP Process Division, Des Plaines, IL.	9062
9069-X	Ford Aerospace & Communications Corp., Palo Alto, CA.	9069
9077-X	Central Vermont Railway, Inc., St. Albans, VT [7].	9077
9138-X	National Aeronautics and Space Administration, Washington, DC.	9138
9332-X	Engelhard Corporation, Edison, NJ [8]	9332

[1] To authorize an alternate vehicle loading configuration.
[2] Request for modification to authorize use of a different style corrugated box for shipment of polyethylene bags containing an organic peroxide.
[3] To authorize shipment of hydrogen peroxide not to exceed 70%.
[4] To authorize reinspection and hydrostatic testing of cylinders every 5 years instead of 3.
[5] To authorize a 62 cubic feet capacity aluminum hopper bottom bin as an additional type container, for shipment of scrap guillotined small arms ammunition.
[6] To authorize a new series of design qualification tests and to extend retest period from 3 years to 5.
[7] To increase number of railway track torpedoes contained in flagging kits from 7 to 18.

* Request an increase of an ammonia solution containing up to a maximum 11% (as platinum) of a soluble explosive platinum salt classed flammable solid.

Application No.	Applicant	Parties to exemption
2709-P	Atlas Powder Company, Dallas, TX	2709
4453-P	Ren-Loi, Inc., Bridgeville, PA	4453
4453-P	Explo, Inc., Bridgebille, PA	4453
4453-P	H. L. & A. G. Balsinger, Inc., Bridgeville, PA.	4453
4453-P	Mountaineer Explosives, Inc., Kingwood, WV.	4453
5206-P	D. C. Guelich Explosive Co., Clearfield, PA.	5206
5206-P	Amos L. Dolby Company, Corica, PA.	5206
6418-P	PureGro Company, West Sacramento, CA.	6418
6418-P	Full Circle, Inc., DBA CENEX Soil Service Center, Connell, WA.	6418
6530-P	Fitch Industrial & Welding Supply, Inc., Lawton, OK.	6530
6614-P	Bison Laboratories, Inc., Buffalo, NY	6614
8283-P	PVS Chemicals, Inc., Detroit, MI	8283
8450-P	Atlantic Research Corporation, Camden, AR.	8450
8554-P	CTL Distribution, Inc., Mulberry, FL	8554
8582-P	Consolidated Rail Corporation, Philadelphia PA.	8562
8627-P	Omega Treating Chemicals, Inc., Midland, TX.	8627
8691-P	Witco Chemical Corporation, Pearsall Division, New York, NY.	8691
8723-P	Atlas Powder Co., Dallas, TX	8723
8723-P	CTL Distribution, Inc., Mulberry, FL	8723
8966-P	Haviland Products Company, Grand Rapids, MI.	8966
9027-P	Witco Chemical Corporation, Melrose Park, IL.	9027
9130-P	Calgon Corporation, St. Louis, MO	9130
9401-P	Parlefer S.A.R.L., Paris, France	9401
9401-P	ATOCHEM, Paris, France	9401

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e).

Issued in Washington, DC, on May 3, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-11324 Filed 5-9-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[Delegation Order 85-14; Docket #85-8]

Delegation of Authority

Pursuant to 12 U.S.C. 1 *et seq.*, 4, and 4a, I hereby delegate to Michael Patriarca, Deputy Comptroller for Multinational Banking, all powers, duties, authorities and responsibilities currently delegated to the Senior Deputy Comptroller for Bank Supervision. Mr. Patriarca is authorized and directed to assume these powers, duties, authorities and responsibilities immediately. Prior subdelegations of any of these powers duties, authorities and responsibilities by the Senior Deputy Comptroller for Bank Supervision that are in force as of this date shall remain in force.

The Comptroller of the Currency reserves the authority to act on any matter delegated herein.

Dated: May 3, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85-11361 Filed 5-9-85; 8:45 am]

BILLING CODE 4810-33-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center, Syracuse, NY; 500-Car Parking Structure; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of a 500-Car Parking Structure and has determined that the potential environmental impacts will be minimal from the development of this project.

The multi-story parking garage will be located on the medical center site.

Because most of the vehicles are presently driven to the site, air pollutants will not significantly increase. This is also true for pollutants that enter the storm system. These pollutants are snow borne de-icing chemicals and dirt carried on automobiles, dropped in the parking lot and conveyed into the storm water.

The land being proposed for the parking structure is presently paved; therefore, there will be no change to the ecosystem. There is no native wildlife in the area that will be adversely affected.

Findings conclude that the proposed action will not cause a significant effect on the physical and human environment.

Mitigating action should include noise abatement measures.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality, (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Susan Livingstone, Director, Office of Environmental Affairs (088A), Room 512, Veterans Administration, 811 Vermont Avenue NW., Washington, D.C. 20420, (202) 389-3717. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: May 6, 1985.

By direction of the Administrator:

Everett Alvarez Jr.,

Deputy Administrator.

[FR Doc. 85-11412 Filed 5-9-85; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Environmental Hazards; Meeting

The Veterans Administration gives notice under Pub. L. 92-463, section 10(a)92), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held at the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420 on June 24 and 25, 1985. The purposes of the Committee are to review the scientific and medical literature relating to the possible health effects resulting from exposure to dioxin and ionizing radiation and to assist in the development of Agency policy with respect to veterans' claims for compensation based upon exposure.

The meeting will convene at 8:00 a.m. both days in the Omar Bradley Conference Room. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Patricia Kane, Veterans Administration Central Office (phone 202/389-2115) prior to June 19, 1985.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Special Assistant to the General Counsel, Room 1034, Veterans Administration Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: May 6, 1985.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-11413 Filed 5-9-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 91
Friday, May 10, 1985

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).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, May 14, 1985, 9:30 AM (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).
3. Processing Charges Raising the Issue of Jurisdiction Over Licensing Agencies.
4. Amendments to EEO–3, Reporting Requirements (Local Union Reports).
5. Proposed Contracts for Expert Services in Connection with Court Cases.
6. Proposed FY 86 Funding Principles for State and Local Fair Employment Practices Agencies.
7. Amendments to the Commission's Section 4(g) of the ADEA 29 U.S.C. Section 623(g).

Closed

1. Litigation Authorization; General Counsel Recommendations.
2. Proposed Commission Decision.
3. Options Paper on Enforcement of an ORA Decision.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated; May 7, 1985.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 85–11439 Filed 5–8–85; 9:10 am]

BILLING CODE 6750–06–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Federal Register Citation of Previous Announcement

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, May 14, 1985.

CHANGE IN THE MEETING: The following matter has been added to the open portion of the May 14, 1985 meeting:

"Proposed FY 86 Funding Principles for State and Local Fair Employment Practices Agencies"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: May 7, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85–11440 Filed 5–8–85; 9:10 am]

BILLING CODE 6750–06–M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Federal Register Citation of Previous Announcement

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, May 7, 1985.

POSTPONEMENT: The following matter has been postponed from the May 7, 1985 open portion of the meeting and added to the May 14, 1985 open session.

"Amendments to the Commission's Regulation Implementing Section 4(g) of the ADEA, 29 U.S.C. Section 623(g)"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: May 7, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85–11441 Filed 5–8–85; 9:10 am]

BILLING CODE 6750–06–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:00 p.m. on Friday, May 3, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Farmers Savings Bank, Massena, Iowa, which was closed by the Superintendent of Banking for the State of Iowa on Friday, May 3, 1985; (2) accept the bid for the transaction submitted by Union National Bank, Massena, Iowa, a newly-chartered national bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 4:01 p.m., and at 7:58 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Farmers State Bank, St. Joseph, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Friday, May 3, 1985; (2) accepted the bid for the transaction submitted by Farmers' State Bank of Buchanan County, St. Joseph, Missouri, a newly-chartered State nonmember bank; (3) approved the applications of Farmers' State Bank of Buchanan County, St. Joseph, Missouri, for Federal deposit insurance, for consent to purchase certain assets of and to assume the liability to pay deposits made in Farmers State Bank, St. Joseph, Missouri, and for consent to establish the sole branch of Farmers State Bank, St. Joseph, Missouri as a branch of Farmers' State Bank of Buchanan County; and (4) provided such financial assistance, pursuant to section 13(c)(2) to the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director

Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 7, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-11369 Filed 5-8-85; 12:19 pm]

BILLING CODE 6714-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 15, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 7, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11424 Filed 5-7-85; 4:07 pm]

BILLING CODE 6210-01-M

federal register

Friday
May 10, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Florida: FL85–3024	Apr. 26, 1985.
Illinois: IL85–5008	Feb. 8, 1985.
Louisiana: LA84–4059	Oct. 5, 1984.
Minnesota:	
MN84–5015	May 25, 1984.
MN85–5000	Jan. 11, 1985.
MN85–5006	Feb. 1, 1985.
Missouri: MO85–4005	Apr. 12, 1985.
New Mexico: NM84–4099	Oct. 19, 1984.
New York:	
NY81–3045	July 17, 1981.
NY83–3027	July 22, 1984.
NY83–3018	May 20, 1983.
Ohio: OH83–5122	Nov. 25, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Kansas:	
KS84–4038 (KS85–4006)	May 25, 1984.
KS84–4039 (KS85–4007)	Do.
KS84–4040 (KS85–4008)	Do.
KS84–4026 (KS85–4009)	Apr. 27, 1984.
New Jersey: NJ82–3013 (NJ85–3027)	Mar. 19, 1982.
New York: NY81–3039 (NY85–3026)	June 12, 1981.
Oklahoma:	
OK84–4049 (OK85–4012	Sept. 7, 1984.
OK84–4050 (OK85–4011	Do.
Texas: TX84–4057 (TX85–4010	Oct. 5, 1984.

New General Wage Determination Decision

Texas, TX85–4013

Signed at Washington, D.C., this 3rd day of May 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510–27–M

DECISION NO. FL85-1024-MOD. #1
(50 FR 16419-April 26,1985)
Cape Canaveral AFS,Patrick AFB,Kennedy Space Flight Center, & Melabar Radar Site in Brevard & Volusia Counties in Florida
BUILDING, HEAVY & HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PIPEFITTERS	$16.00	3.49

DECISION #IA84-4059-MOD.#1
(49 FR 39431-Oct. 5, 1984)
Jefferson, Orleans, St. Bernard, Bossier, Caddo, Calcasieu, Strategic Petroleum Reserve in Cameron Parish, Cameron, Beauregard, Jefferson Davis, Allen, Plaquemines, & St. Charles Parishes, Louisiana

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians:		
Zones 1, 6 & 7:		
Electricians and Cable Splicers	$ 16.45	$1.68+ 9%
Line Construction:		
All Zones:		
Lineman	12.10	1.25+ 3.75%
Groundman	5.85	1.25+ 3.75%
Winch Truck Oper. or Tractor Driver	8.72	1.25+ 3.75%
Hole Digger Oper.	10.47	1.25+ 3.75%
Painters:		
Zones 1, 6, & 7	11.00	2.11
Plumbers & Pipefitters:		
Zones 3, 4, & 5	12.46	3.00

DECISION NO. IL85-5006 - Modification (50 FR 5486 - Feb. 8, 1985)
Adams, Bond, Boone, Brown, Bureau, Calhoun,Carroll, Cass, Clinton, DeKalb, Fulton, Greene, Hancock, Henderson, Henry, Jersey JoDaviess, Knox, LaSalle, Lee, Livingston, Logan, McDonough, Mclean, Macoupin, Marshall, Mason, Menard, Mercer, Monroe, Montgomery, Morgan, Ogle, Pike, Putnam, Randolph, Rock Island, Schuyler, Scott, Stark, Stephenson, Warren, Washington, Whiteside, Winnebago & Woodford Counties, Illinois

	Basic Hourly Rates	Fringe Benefits
ADD:		
BOILERMAKERS:		
Area 3	$18.50	$3.01
CHANGE:		
BRICKLAYERS: Caulkers; Cleaners Pointers & Stonemasons:		
Area 17	16.00	1.87
CARPENTERS: Lathers; Millwright Piledrivermen & Soft Floor Layer		
Area 4:		
Carpenters, Lathers, Piledrivermen,Soft Floor Layer	15.80	3.85
Millwrights	18.045	3.55
Area 5:		
Carpenters, Lathers, Soft Floor Layers	15.805	3.01
Millwrights	16.305	3.01
Area 6:		
Piledriverman	16.305	3.01
Area 8:		
Carpenters, Piledrivermen, Soft Floor Layers	15.30	2.95
Area 13:		
Carpenters, Soft Floor Layer	14.00	1.09
Millwrights, Piledrivermen	14.70	1.08
Area 17:		
Carpenters, Piledrivermen, Soft Floor Layers	14.90	2.60
Millwrights	16.48	3.25
Area 19:		
Millwrights	16.48	3.25
DELT:		
CARPENTERS:		
Areas 14 & 15 (Lathers)		

DECISION NUMBER MO84-5015 - MOD. #5
(49 FR 22184 - May 25, 1984)
Aitkin, Becker,...Wright and Yellow Medicine Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons:		
Area 3	$14.41	6.75
Area 5	14.41	.75
Area 6	16.46	1.90
Area 11	14.41	.75
Area 12	16.46	.75
Area 13	14.76	2.10
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Area 8:		
Carpenters; Piledrivermen	15.86	4.12
Area 19:		
Carpenters; Millwrights; & Piledrivermen	14.93	1.30
Area 20:		
Carpenters	14.93	1.30
Area 21:		
Carpenters; Soft Floor Layers	15.00	1.85
Millwrights	16.04	1.85
Cement Masons; Plasterers:		
Area 4	13.65	.75
Area 5:		
Cement Masons	17.03	2.27
Area 8	13.65	.75
Area 15	13.65	.75
Area 16	15.70	.75
Area 17:		
Cement Masons	15.65	1.90
Ironworkers:		
Area 2	17.10	3.89
Painters:		
Area 4:		
Brush; Drywall Finishers; & Paperhangers	16.00	2.76
Drywall Sanders	12.00	2.76
Sandblaster; Sprey; Steel	16.75	2.76
Area 7:		
Brush; Roller; Wallpaper	16.11	2.93
Sandblast; Spray; Steel	16.86	2.93
Finishers & Tapers	17.04	1.97
Sanders	12.80	1.97
Painters (Cont'd):		
Area 6:		
Brush	$14.61	$2.06
Paperhangers; Spray; Steel & Taping	15.21	2.08
Sheet Metal Workers:		
Area 7:		
Over $250,000.00 H.V.A.C. Contract	15.26	2.79+ d+1
Under $250,000.00 H.V.A.C. Contract	12.00	2.79+ d+1
Area 9:		
Light Commercial ($175,000 and Less H.V.A.C.) Contract	12.35	1.61+ d+1
All Other Work	15.79	1.61+ d+1
Sprinkler Fitters	16.47	3.36
Terrazzo Workers	17.61	2.10
Tile Setters:		
Area 2	16.65	2.57
Power Equipment Operators:		
Class 1	19.09	2.90
Class 2	18.75	2.90
Class 3	17.95	2.90
Class 4	17.34	2.90
Class 5	17.00	2.90
Class 6	16.83	2.90
Class 7	15.32	2.90
Class 8	14.20	2.90
Class 9	13.64	2.90
Delt:		
Area Descriptions:		
Sheet Metal Workers:		
Area 8		
Add:		
Sheet Metal Workers:		
Area 11	17.32	1.78
Area 12:		
Light Commercial ($30,000.00 & Under)	12.765	1.78
All Other Work	17.02	1.78

DECISION NUMBER MN84-5015 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Area Descriptions:		
Sheet Metal Workers:		
Area 8: Cottonwood, Jackson, LeSueur, Lincoln, Lyon, Murray, Nicollet, Nobles, Redwood, & Waseca Cos.		
Area 11: Dodge, Goodhue, Steele, & Wabasha Cos.		
Area 12: Winona Co.		
Footnote:		
1. 2.5% of gross		

DECISION NUMBER MN85-5000 - MOD. #3
(50 FR 1678 - January 11, 1985)
Anoka, Benton, Carlton, Chisago, Cook, Dakota, Hennepin, Lake, Ramsey, St. Louis, Scott, Sherburne, Stearns, Washington, Winona, & Wright Counties, Minnesota

Change:		
Carpenters & Piledrivermen:		
Area 4	$15.50	$1.85
Cement Masons:		
Area 1	17.03	2.27
Area 2	15.70	.75
Ironworkers:		
Area 1	17.10	3.89
Painters:		
Area 1:		
Brush; Roller	16.11	2.93
Sandblaster; Spray; Steel; Swing Stage; & Epoxy	16.86	2.93
Laborers:		
Area 1:		
Class 1	12.75	3.10
Class 2	12.90	3.10
Class 3	12.95	3.10
Class 4	13.10	3.10
Class 5	13.20	3.10
Class 6	13.45	3.10
Laborers (Cont'd):		
Area 2:		
Class 1	$10.25	$3.00
Class 2	10.40	3.00
Class 3	10.45	3.00
Class 4	10.60	3.00
Class 5	10.70	3.00
Class 6	10.95	3.00
Area 3:		
Class 1	12.13	3.25
Class 2	12.28	3.25
Class 3	12.33	3.25
Class 4	12.48	3.25
Class 5	12.58	3.25
Class 6	12.83	3.25
Area 4:		
Class 1	12.93	2.45
Class 2	13.08	2.45
Class 3	13.13	2.45
Class 4	13.28	2.45
Class 5	13.38	2.45
Class 6	13.58	2.45
Area 5:		
Class 1	11.40	1.95
Class 2	11.55	1.95
Class 3	11.60	1.95
Class 4	11.75	1.95
Class 5	12.85	1.95
Class 6	13.10	1.95
Power Equipment Operators:		
Area 1:		
Group 1	16.72	2.90
Group 2	16.17	2.90
Group 3	15.99	2.90
Group 4	15.67	2.90
Group 5	13.58	2.90
Group 6	12.82	2.90
Area 2:		
Group 1	15.96	2.90
Group 2	15.41	2.90
Group 3	15.24	2.90
Group 4	15.11	2.90
Group 5	11.84	2.90
Group 6	12.12	2.90

DECISION NUMBER MN85-5000 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Power Equipment Operators (Cont'd):		
Area 3:		
Group 1	$14.15	$2.90
Group 2	13.22	2.90
Group 3	13.02	2.90
Group 4	12.91	2.90
Group 5	11.35	2.90
Group 6	10.84	2.90

DECISION NUMBER MN85-5006 - MOD. #5
(50 FR 4837 - February 1, 1985)
Anoka, Benton, Carlton, Carver, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis, Scott, Sherburne, Stearns, & Washington Counties, Minnesota

Change:		
Bricklayers; Stonemasons:		
Area 2	$16.46	$3.75
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Building Construction:		
Area 1:		
Commercial:		
Carpenters; Piledrivermen	15.86	4.12
Residential:		
Carpenters	13.91	4.12
Drywall	13.91	4.12
Area 4:		
Commercial inclu. 4-story Apartments:		
Carpenters; Millwrights; & Piledrivermen	14.93	1.30
Residential, inclu. single dwellings, duplexes, row houses, town houses, & walk-up apartments not to exceed 3 stories in height above ground:		
Carpenters	$11.70	$1.30
Area 5:		
Carpenters	14.93	1.30
Area 6:		
Carpenters; Soft Floor Layers	15.00	1.85
Millwrights	16.04	1.85
Carpenters; Piledrivermen: Site Prep., Excav., & Incid. Paving:		
Area 4	15.50	1.85
Cement Masons (Building):		
Area 1	17.03	2.27
Area 2	15.70	.75
Cement Masons (Site Prep., Excav., & Incid. Paving):		
Area 1	17.03	2.27
Ironworkers:		
Area 1	17.10	3.89
Marble Setters; Terrazzo Workers; & Tile Setters:		
Area 1:		
Tile Setters	16.65	2.57
Area 3:		
Terrazzo Workers	17.61	2.10
Painters:		
Area 1:		
Brush; Roller & Wall Paper Hanger	16.11	2.93
Sandblaster; Spray; Steel; Swing Stage & Epoxy	16.86	2.93
Drywall Tapers	17.06	1.97
Sanders	12.80	1.97
Residential of 8 units or less	80%R	2.93
Area 3:		
Commercial Repaint & Residential:		
Brush	12.00	2.08
Paperhanger; Spray; Steel; & Taping	12.60	2.08

DECISION NUMBER MO85-5006 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Painters (Cont'd):		
Area 3 (Cont'd):		
Industrial Repaint:		
Brush	$13.61	$2.08
Paperhanger; Spray; Steel; & Taping	14.21	2.08
New Commercial & New Industrial:		
Brush	14.61	2.08
Paperhanger; Spray; Steel; & Taping	15.21	2.08
Area 4:		
Brush; Drywall Finishers; & Paperhangers	14.00	2.76
Drywall Sander	12.00	2.76
Sandblaster; Spray; Swing Stage, Boatswain Chair, Window Jack, Safety Belt, & Erected Structural Steel	14.75	2.76
Plasterers:		
Area 3	15.70	.75
Sprinkler Fitters	16.47	3.38
Laborers (Site Prep., Excav., & Incid. Paving):		
Area 1:		
Class 1	12.75	3.10
Class 2	12.90	3.10
Class 3	12.95	3.10
Class 4	13.10	3.10
Class 5	13.20	3.10
Class 6	13.45	3.10
Area 2:		
Class 1	10.25	3.00
Class 2	10.40	3.00
Class 3	10.45	3.00
Class 4	10.60	3.00
Class 5	10.70	3.00
Class 6	10.95	3.00
Area 3:		
Class 1	12.13	3.25
Class 2	12.28	3.25
Class 3	12.33	3.25
Class 4	12.46	3.25
Class 5	12.58	3.25
Class 6	12.63	3.25
Laborers (Cont'd):		
Area 4:		
Class 1	$12.93	$2.45
Class 2	13.08	2.45
Class 3	13.13	2.45
Class 4	13.28	2.45
Class 5	13.38	2.45
Class 6	13.58	2.45
Area 5:		
Class 1	10.25	1.65
Class 2	10.40	1.65
Class 3	10.45	1.65
Class 4	10.60	1.65
Class 5	10.70	1.65
Class 6	10.95	1.65
Power Equipment Operators: (Building):		
Group 1	19.09	2.90
Group 2	18.75	2.90
Group 3	17.95	2.90
Group 4	17.34	2.90
Group 5	17.00	2.90
Group 6	16.83	2.90
Group 7	15.32	2.90
Group 8	14.20	2.90
Group 9	13.64	2.90
Power Equipment Operators: (Site Prep., Excav., & Incid. Paving):		
Area 1:		
Group 1	16.72	2.90
Group 2	16.17	2.90
Group 3	15.99	2.90
Group 4	15.87	2.90
Group 5	13.58	2.90
Group 6	12.82	2.90
Area 2:		
Group 1	15.96	2.90
Group 2	15.41	2.90
Group 3	15.24	2.90
Group 4	15.11	2.90
Group 5	12.84	2.90
Group 6	12.12	2.90

DECISION NUMBER MO85-5006 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Power Equipment Operators:		
Area 3:		
Group 1	$14.15	$2.90
Group 2	13.22	2.90
Group 3	13.02	2.90
Group 4	12.91	2.90
Group 5	11.35	2.90
Group 6	10.84	2.90

DECISION NO. MO85-4005 - MOD. #1
(50 FR 14568 - 4/12/85)
Statewide Missouri

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Cement masons - Zone 3	$15.87	2.38

DECISION NUMBER OH83-5122 - MOD. #13
(48 FR 53154 - November 25, 1983)
Statewide, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters & Piledrivermen:		
Area 14:		
Carpenters	$15.76	$3.53+ 3%
Piledrivermen	16.58	3.53+ 3%
Area 15:		
Carpenters	16.20	3.80
Piledrivermen	17.11	3.80

DECISION #NM84-4099-MOD.#4
(49 FR 41140-Oct. 19, 1984)
Statewide (excluding Eddy and Lea Counties for Building Construction in New Mexico)

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Plumbers, Pipefitters, and Leadburners:		
Light Commercial - all S-N type construction work under the uniform building code of a project of 150 fixture units or less; Motels not over two stories in height regardless of type of construction; Refrigeration-limited to 40 tons per unit or less for comfort refrigeration only; Indoor swimming pools in conjunction with work covered above; All utilities except on industrial work; and all remodel work up to $120,000 in volume:		
Bernalillo County	$10.00	$2.31
Remainder of New Mexico	9.00	2.31
All Irrigation and Lawn Sprinkler Work	7.00	2.31

MODIFICATIONS P. 7

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NY81-3045 - MOD. #7 (46 FR 37204 - July 17, 1981) NIAGARA COUNTY, NEW YORK		
CHANGE:		
BRICKLAYERS:		
Remainder of County:		
Bricklayers & Stone Masons	15.00	2.95
IRONWORKERS:		
Jobs on which the total project cost is $3 million or less	15.01	2.62
Jobs on which the total project cost is over $3 million	16.68	2.62
Pre-engineered buildings	11.50	2.62
DECISION NO. NY83-3027 - MOD #1 (48 FR 33622 - July 22, 1983) NASSAU & SUFFOLK COUNTIES, NEW YORK		
CHANGE:		
PLUMBERS:		
Nassau County:	18.57	5.32
Jobbing (repair to present plumbing system that does not change the existing roughing or any other minor alteration job where the change to the existing roughing does not have a labor cost over $1,500	12.35	4.31
Suffolk County:	19.50	6.45
DECISION NO. NY83-3018 - MOD. #10 (48 FR 22870 - May 20, 1983) DUTCHESS, ORANGE, SULLIVAN & ULSTER COUNTIES, NEW YORK		
CHANGE:		
ELECTRICIANS:		
Area 4	18.75	1.65+ 11.65%

	Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: KANSAS

COUNTIES: Barber, Barton, Cheyenne, Clark, Comanche, Decatur, Edwards, Ellis, Ellsworth, Finney, Ford, Gove, Graham, Grant, Gray, Greely, Hamilton, Haskell, Hodgeman, Jewell, Kearny, Kiowa, Lane, Lincoln, Logan, Meade, Mitchell, Morton, Ness, Norton, Osborne, Pawnee, Phillips, Pratt, Rawlings, Rice, Rooks, Rush, Russell, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Thomas, Trego, Wallace and Wichita

DECISION NO.: KS85-4006 DATE: Date of Publication

Supersedes Decision No. KS84-4038, dated May 25, 1934, in 49 FR 22181
DESCRIPTION OF WORK: Highway Projects (does not include Bridges over Navigable Waters, Tunnels; Building Structures in Rest Area Projects; Railroad Construction) and Water and Sewer Line Construction.

AREA I	BASIC HOURLY RATE	FRINGE BENEFITS
Asphalt Paver Screed Operator	$ 6.69	
Asphalt Paving Machine Operator	7.03	
Asphalt Plant Operator	7.82	
Asphalt Raker	6.00	
Backhoe Operator	8.63	
Batching Plant Scaleman	6.29	
Blowing Mechanism or Mulch Seeder Operator	7.00	
Brick, Block and Stonesetter	8.20	
Bulldozer Operator (Push Cat)	7.61	
Carpenter	8.00	
Carpenter (Rough)	6.78	
Concrete Finisher	8.693	
Crane or any Machine Power Swing	8.54	
Crusher and Screening Plant Operator	6.58	
Distributor Operator	6.94	
Electrician	7.94	
Form Liner and Setter	6.49	
Front End Loader Operator	7.45	
Laborer (Construction)	5.91	
Mechanic	8.87	
Mixer, Concrete Portable Operator	7.82	
Motor Grader Operator (Finish)	8.26	
Motor Grader Operator (Rough)	8.21	
Motor Scraper Operator	7.55	
Paving Equipment Operator	9.95	
Post Driver and/or Auger Operators	7.00	
Roller/Compactor Operator (Self-Propelled)	6.28	
Rotary Broom Operator	6.58	

	BASIC HOURLY RATE	FRINGE BENEFITS
Rotomill Operator	$10.60	
Sandblaster (Structural Steel and Bridge)	9.00	
Slurry Machine Operator	7.00	
Spreader Box Operator (Self-propelled)	6.00	
Tractor Operator	7.00	
Trenching Machine Operator	7.35	
Truck Driver (Single Axle)	6.90	
Truck Driver (Tandem Axle)	6.41	
Truck Driver (Triple Axle and Semi)	7.74	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: KANSAS County: Sedgwick

DECISION NO.: KS85-4007 DATE: Date of Publication

Supersedes Decision No. KS-84-4039, dated May 25, 1984, in 49 FR 22183
DESCRIPTION OF WORK: Highway Projects (does not include Bridges over Navigable Waters, Tunnels; Building Structures in Rest Area Projects; Railroad Construction) and Water and Sewer Line Construction.

AREA II	BASIC HOURLY RATE	FRINGE BENEFITS
Asphalt Paver Screed Operator	$ 8.00	
Asphalt Paving Machine Operator	8.25	
Asphalt Raker	7.24	
Backhoe Operator	8.25	
Blowing Mechanism/Mulch Seeder Operator	7.00	
Bulldozer Operator (Push Cat)	8.85	
Carpenter	8.86	
Carpenter (Rough)	7.85	
Concrete Finisher	8.69	
Concrete Saw Operator	7.50	
Crane or any Machine Power Swing	9.02	
Crusher and Screening Plant Operator	9.15	
Distributor Operator	7.88	
Form Liner and Setter	8.08	
Front End Loader Operator	7.91	
Laborer (Construction)	6.36	
Mechanic	9.01	
Motor Grader Operator (Finish)	9.40	
Motor Grader Operator (Rough)	7.87	
Motor Scraper Operator	7.96	
Painters (Structural Steel & Bridges)	8.00	
Paving Equipment Operator	8.23	
Pavement Breaker Tamper Operator(self-propelled)	8.30	
Piledrivermen	6.50	
Roller/Compactor Operator(self-propelled)	8.25	
Sandblaster (Structural Steel & Bridges)	8.00	
Servicemen (Equipment)	7.43	
Slurry Machine Operator	6.60	
Steel Workers	7.70	
Tank Heater Attendant	5.78	
Tractor Operator (80 HP or less)	7.61	
Tractor Operator (80 HP or more)	8.00	
Trenching Machine Operator	7.25	
Truck Driver (Single Axle)	6.69	
Truck Driver (Tandem Axle)	6.54	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii).

STATE: KANSAS

COUNTIES: Allen, Anderson, Atchinson, Bourbon, Brown, Butler, Chase, Chautauqua, Cherokee, Clay, Cloud, Coffey, Cowley, Crawford, Dickinson, Doniphan, Elk, Franklin, Geary, Greenwood, Harper, Harvey, Jackson, Kingman, Labette, Linn, Lyon, Marion, Marshall, McPherson, Montgomery, Morris, Nemaha, Neosho, Osage, Ottawa, Pottawatomie, Reno, Republic, Riley, Saline, Sumner, Wabaunsee, Washington, Wilson, and Woodson
HIGHWAY CONSTRUCTION: Geary, Riley Labette & Saline Cos. only

DECISION NO. KS85-4008 DATE: Date of Publication
Supersedes Decision No. KS84-4040, dated May 25, 1984, in 49 FR 22182
DESCRIPTION OF WORK: Highway Projects (does not include Bridges over Navigable Waters, Tunnels, Building Structures in Rest Area Projects; Railroad Construction) and Water and Sewer Line Construction.

AREA III	BASIC HOURLY RATE	FRINGE BENEFITS
Asphalt Paver Screed Operator	$ 7.61	
Asphalt Paving Machine Operator	9.01	
Asphalt Plant Operator	9.50	
Asphalt Raker	7.33	
Backhoe Operator	7.75	
Batching Plant Scaleman	6.19	
Blowing Mechanism or Mulch Seeder Operator	6.67	
Bulldozer Operator (push cat)	8.52	
Carpenter	8.26	
Carpenter (rough)	7.81	
Concrete Finisher	9.62	
Concrete Saw Operator	7.76	
Crane or any Machine Power Swing	9.53	
Crusher and Screening Plant Operator	6.73	
Distributor Operator	8.05	
Electrician	13.00	
Form Liner and Setter	6.70	
Front End Loader Operator	9.17	
Laborer (Construction)	6.06	
Mechanic	9.72	
Mechanic Helper	6.92	
Mixer, Concrete Portable	8.63	
Motor Grader Operator (finish)	8.52	
Motor Grader Operator (rough)	8.03	
Motor Scraper Operator	7.82	
Painters (Structural Steel & Bridge)	10.00	
Paving Equipment Operator	9.00	
Post Driver and/or Auger Operator	8.64	
Reinforcing Steel Setter	8.18	
Roller/Compactor Operator (self-propelled)	8.42	
Rotary Broom Operator	6.70	
Rotomill Operator	8.58	
Serviceman (Equipment)	$ 8.99	
Tractor Operator	6.90	
Truck Driver (Single Axle)	7.50	
Truck Driver (Tandem Axle)	7.23	
Truck Driver (Triple Axle and Semi)	8.04	
Welder	8.57	

Unlisted Classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

STATE: KANSAS

COUNTIES: Douglas, Jefferson, Leavenworth, Miami and Shawnee

DECISION NO.: KS85-4009

DATE: Date of Publication

Supersedes Decision No. KS84-4026, dated April 27, 1984 in 49 FR 21244.

DESCRIPTION OF WORK: Highway Construction.

AREA IV

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
Zone 1	$11.20	1.80
Zone 2	16.05	2.67
Zone 3	15.14	1.80
CEMENT MASONS:		
Zone 1	15.17	2.73
Zone 2	13.50	1.05
Zone 3	12.20	1.05
ELECTRICIANS:		
Zone 1	16.18	10%+ 2.51
Zone 2	15.55	3%+ 2.13
IRONWORKERS	17.51	3.37
LINE CONSTRUCTION:		
Zone 1:		
Lineman	17.80	8½%+ 1.00
Lineman Operator	16.60	8½%+ 1.00
Groundman Powderman	12.47	8½%+ 1.00
Groundman	11.87	8½%+ 1.00
Zone 2:		
Lineman	16.20	3½% +1.00
Cable Splicers	17.02	3½% +1.00
Groundman	9.71	3½% +1.00
Powderman	13.34	3½% +1.00
Line Truck & Equipment Operator	13.34	3½% +1.00
LABORERS:		
Zone 1		
Group 1	7.65	2.30
Group 2	7.90	2.30

	Basic Hourly Rates	Fringe Benefits
LABORERS (Cont'd):		
Zone 2		
Group 1	69.45	2.30
Group 2	8.70	2.30
Zone 3		
Group 1	8.85	2.25
Group 2	9.10	2.25
Zone 4		
Group 1	7.65	2.30
Group 2	7.90	2.30
POWER EQUIPMENT OPERATORS		
Zone 1: Leavenworth County		
Group 1	15.30	4.07
Group 2	15.05	4.07
Group 3	14.35	4.07
Group 4:		
Oiler	10.33	4.07
Oiler Driver, all types	13.35	4.07
Zone 2: Jefferson, Miami, Douglas & Shawnee Cos.:		
Group 1	12.87	2.70
Group 2	12.62	2.70
Group 3	12.37	2.70
Group 4	12.02	2.70
Group 4A	12.12	2.70
TRUCK DRIVERS		
Zone 1: Leavenworth & Miami Counties:		
Group 1	14.27	4.25
Group 2	14.02	4.25
Group 3	13.71	4.25
Group 4	13.51	4.25
Group 5	13.29	4.25
Zone 2: Douglas Shawnee & Jefferson Cos.		
Group 1	9.40	1.75
Group 2	9.50	1.75
Group 3	9.65	1.75

ZONE DESCRIPTIONS

CARPENTERS AND PILEDRIVERMEN:
Zone 1: Douglas, Shawnee and Jefferson Counties
Zone 2: Leavenworth County
Zone 3: Miami County

CEMENT MASONS:
Zone 1: Leavenworth and Miami Counties
Zone 2: Douglas and Shawnee Counties
Zone 3: Jefferson County

ELECTRICIANS:
Zone 1: Leavenworth County (Delaware, High Prairie & Kickapoo Townships) City of Leavenworth & Fort Leavenworth Military Reservation
Zone 2: Douglas, Jefferson, Miami, Shawnee and the remainder of Leavenworth County

LINE CONSTRUCTION:
Zone 1: Leavenworth County, north of Fairmont, Strainger, and Tanganoxie Townships
Zone 2: Douglas, Jefferson, Miami, Shawnee Counties, and remainder of Leavenworth County

LABORERS:
Zone 1: Jefferson County
Zone 2: Douglas and Shawnee Counties
Zone 3: Leavenworth County
Zone 4: Miami County

TRUCK DRIVERS
Zone 1:
Group 1 - Mechanics and Welders
Group 2 - A-frame lowboy - boom truck drivers
Group 3 - Material Trucks, Tandem Two Teams; Semi-trailers; Winch Trucks-Fork Trucks; Distributor Drivers and Operators; Agitator and Transit Mix, Tank Wagon Drivers, Single Axle; Tank Wagon Drivers; Tandem or Semi-trailer; Isley Wagons; Dump Trucks, Excavator, 5 cu. yds. and over; Dumpsters; Half-tracks; Speedace; Euclids and other similar excavating equipment
Group 4 - One Team; Station Wagons; Pickup Trucks; Material trucks, single axle; Tank Wagon Drivers, single axle
Group 5 - Oilers and Greasers

Zone Description Cont'd

TRUCK DRIVERS: (Cont'd)

Zone 2:

Group 1 - Pickups; Panel Trucks; Station Wagons; Flat Beds; Dump and Batch Trucks, single axle

Group 2 - Tandem Trucks; Warehousemen or Partsmen; Mechanic Helpers and Servicemen

Group 3 - Lowboys; Semi-trailers; all Transit Mixer Trucks (single or tandem axle); A-frame and Winch Trucks when used as such; Euclid, End and Bottom Dump Tournarockers, Athey's, Dumpsters and similar off-road equipment and mechanics on such equipment

CLASSIFICATION DEFINITIONS

LABORERS

1. Board Mat Weavers & Cable Tiers, Georgia Buggy (Manually operated), Mixerman-No Skip Lift, Salamander Tenders, Track Men, Tractor Swamper, Truck Dumper, Wire Mesh Setter, Water Pump up to 4 inches, and all other general laborer including Flagman.

2. Air tool Operators, Cement Handlers (Bulk), Chain Saw, Georgia Buggy (Mechanically Operated), Grademan, Hot Mastic Kettleman, Crusher Feeder, Joint Man, Jute Man, Mason Tender, Material Batch Hopper & Scale Man, Mixer Man, Pier Hole Man (working 10 Feet Deep), Pipelayer - Drainage (Concrete and/or Corrugated Metal, Signal Man (Crane), Truck Dumper - Dry Batch, Vibrator Operator, Wagon & Churn Drill Operator, Asphalt Raker, Barco Tamper, Concrete Saw, Creosote Material - Handling & Applying, Nozzle Burner (Cutting Torch and Burning Bar), Conduit Pipe, Water and Gas Distribution Lines, Tile and Duct Line Setter, Form Setter & Liner on Concrete Paving, Powderman, Sandblasting & Gunite Nozzleman, Sanitary Sewer Pipe Layer, Steel Plate Structure Erectors, Screed Man.

POWER EQUIPMENT OPERATORS

Zone 1: Leavenworth County:

Group 1 - Asphalt Paver and Spreader; Asphalt Plant Console Operator; Auto Grader; Back Hoe; Blade Operator, all types; Boiler, 2; Booster Pump on Dredge; Boring Machine (truck or crane mounted); Bulldozer Operator; Clamshell Operator; Compressor Maintenance Operator, 2; Concrete Plant Operator, Central Mix; Concrete Mixer Paver; Crane Operator; Derrick or Derrick Trucks; Ditching Machine; Dragline Operator; Dredge Engineman; Dredge Operator; Drillcat with compressor mounted on cat; Drilling or Boring Machine; Rotary, self-propelled; High Loader-Fork Lift; Locomotive Operator, standard guage; Mechanics and Welders; Maintenance Operator; Mucking Machine; Pile Driver Operator; Pitman Crane Operator; Pump, 2; Quad-trac; Scoop Operator, all types; Scoops in Tandem; Self-propelled Rotary Drill (Leroy or equal-not

CLASSIFICATION DEFINITIONS (Cont'd)

POWER EQUIPMENT OPERATORS: (Cont'd)

Air Trac]; Shovel Operator; Side Discharge Spreader; Sideboom Cats; Skimmer Scoop Operator; Slip-form Paver (CMI, REX, or equal]; Throttle Man; Truck Crane; Welding Machine Maintenance Operator, 2; Hoisting Engine, 2; Active Drums

Group 2: "A" Frame Truck; Asphalt Hot Mix Silo; Asphalt Plant Fireman, drum or boiler; Asphalt Plant Mixer Operator; Asphalt Plant Man; Asphalt Roller Backfiller Operator; Chip Spreader; Concrete Batch Plant, dry power operated; Concrete Mixer Operator; Skip Loader; Concrete Pump Operator; Crusher Operator; Elevating Grader Operator; Greaser, hoisting engine, 1 drum; Latourneau Rooter; Multiple Compactor; Pavement Breaker, self-propelled of the Hydra-hammer or similar type; Power Shield; Pug Mill Operator; Stump Cutting Machine; Towboat Operator; Tractor Operator, over 50 H.P.

Group 3: Boilers, 1; Chip Spreader (Front Man); Churn Drill Operator; Compressor Maintenance Operator, 1; Concrete Saws, self-propelled; Conveyor Operator; Distributor Operator; Finishing Machine Operator; Fireman, Rig; Float Operator; Form Grader Operator; Pump; Pump Maintenance Operator, other than Dredge; Roller Operator, other than high type asphalt; Screening and Washing Plant Operator; Self-propelled Street Broom or Sweeper; Siphons and Jets; Sub-grading Machine Operator; Tank Car Heater Operator, combination boiler and booster; Tractor, 50 H.P. or less without attachments; Vibrating Machine Operator, not hand; Welding Machine Maintenance Operator, 1

Group 4:
Oilers
Oiler driver, all types

FOOTNOTE:
HOURLY PREMIUMS
FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.25) ABOVE GROUP 1 RATE
Clamshells, 3 yd. capacity or over; crane or rigs, 80 ft. boom or over (including jib); draglines, 3 yd. capacity or over; pile drivers, 80 ft. of boom or over (including jib); shovels & backhoes, 3 yd. capacity or over.

CLASSIFICATION DEFINITIONS (Cont'd)

POWER EQUIPMENT OPERATORS
Zone 2: Jefferson, Miami, Douglas & Shawnee Counties:

Group 1 - Asphalt Paver & Spreader; Backhoe; Boring Machine; Blades, all types; Clamshell; Concrete Mixer Paver Operator; Concrete Plant Operator (automatic); Crane; Truck Crane; Pitman Crane; Hydro Crane or any machine with power swing; Derrick or Derrick Trucks; Dragline Operator; Dredge Operator; Dozer; Ditching Machine; Euclid Loader; Hoist, 2 active drums; Loader, all types; Mechanic or Welder; Mixermobile; Multi-unit Scraper; Piledriver Operator; Power Shovel Operator; Quad Track; Scoop Operator, all types; Sideboom Cat, Cherry Picker; Skimmer Scoop Operator; Pushcat Operators
Group 2 - Asphalt Plant Operator; Elevating Grader Operator
Group 3 - A-frame Truck; Asphalt Roller Operator; Asphalt Plant Boiler Fireman; Backfiller Operator; Barber Green Loader; Boiler, other than asphalt; Bull Float Operator; Churn Drill Operator; Compressor Operator (1); Concrete Central Plant Operator; Concrete Mixer Operator, Skip; Concrete Pump Operator; Crusher Operator; Distributor Operator; Finish Machine Operator, concrete; Fireman, other than asphalt; Flex Plane Operator; Fork Lift; Form Grader Operator; Greaser; Hoist, 1 Drum; Jeep Ditching Machine; Pavement Breaker, self-propelled (of the Hydra Hammer or similar type); Pump Operator, 4" or over, two; Pump Operator, other than Dredge Screening and Wash Plant Operator; Small Machine Operator; Spreader Box Operator, self-propelled; Tractor Operator, over 50 H.P.; Self-propelled Roller Operator, other than Asphalt Siphons and Jets; Subgrading Machine Operator; Tank Car Heater Operator; Combination Booster and Boilers; Towboat Operator; Vibrating Machine Operator, not hand
Group 4 - Concrete Gang Saw, Self-propelled (con-cut); Conveyor Operator; Harrow, disc. Seeder; Oiler; Tractor Operator, 50 H.P. or less without attachments
Group 4A - Oiler; Motor Crane

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NEW JERSEY COUNTIES: OCEAN & MONMOUTH
DECISION NO. NJ85-3027 DATE: Date of Publication
Supersedes Decision Nos. NJ82-3013, dated March 19, 1982, in 47 FR 12028, NJ83-3024 dated July 15, 1983, in 48 FR 32458.
DESCRIPTION OF WORK: Residential Construction Projects Consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	13.80	1.83
CARPENTERS	9.43	
CEMENT MASONS	8.00	
DRYWALL - SHEETROCK MECHANICS	15.00	
ELECTRICIANS	9.09	
INSULATIONS MECHANICS	9.84	
IRONWORKERS, Structural	13.35	3.81
LABORERS:		
Laborers	5.97	
Mason Tenders	9.50	
PAINTERS	12.05	1.30
PLUMBERS & PIPEFITTERS	11.00	1.19
ROOFERS	11.75	1.65
SHEET METAL WORKERS	14.09	28%+ .21
SOFT FLOOR LAYERS	12.73	16%
TILE SETTERS	12.92	.70
POWER EQUIPMENT OPERATORS		
Backhoe	8.00	
Bulldozer	9.00	

WELDERS - Rate for craft to which the welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: NEW YORK COUNTY: MONROE
DECISION NO. NY85-3026 DATE: DATE OF PUBLICATION
Supersedes Decision No. NY81-3039 dated June 12, 1981 in 46 FR 31189.
DESCRIPTION OF WORK: Building (excluding single family homes and apartments up to and including 4 stories), Heavy (except water well drilling) and Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.33	4.09
BOILERMAKERS	18.58	4.79
BRICKLAYERS, STONEMASONS, CEMENT MASONS (Building), & PLASTERERS	15.52	4.45
CARPENTERS, Building Millwrights & Piledriver-men	14.63	4.44
	15.08	4.63+a
CARPENTERS & PILEDRIVERMEN Heavy & Highway	12.74	4.405 +b
CEMENT MASONS Heavy & Highway	13.61	3.20+c
ELECTRICIANS	18.05	3.75+ 3.5%
ELEVATOR CONSTRUCTION: Elevator Constructors	18.03	3.29+ d+e
Helpers	12.62	3.29+ d+e
Probationary Helpers	9.015	
GLAZIERS	14.23	3.43
IRONWORKERS Ornamental, Reinforcing, Stone Derrickmen, Rigger, Rodman, Structural, Machinery Movers, Fence Erectors, Precast Concrete Erector	16.82	3.69
Sheeter	16.27	3.69
Sheeter Bucker-up	16.15	3.69
LABORERS (Building) Common Laborers	11.60	4.63
Blasters	12.97	4.63
Powder Monkey	12.47	4.63
Air Track Drill Asphalt Rakers and Wagon Drill	12.00	4.63
Chuck Tender, all work on hanging or swinging scaffold, work at heights outside the building where safety lines or belts are required, and Bosun Chair	11.80	4.63
Jackhammers, Paving Breakers Mortar Mixers, Concrete Vibrators, Barco Tampers, and Jumping Jacks Pipelayers, Cutters for wrecking and demolition work, burners	11.90	4.63
Concrete Vibrator for Architectural Concrete	12.10	4.63
New Chimney Work: From Base to 100'	12.60	4.63
From 100' to 150'	12.85	4.63
From 150' to 200'	13.10	4.63
From 200' to 250:	13.35	4.63
From 250' and up	13.60	4.63
LABORERS: (Heavy & Highway):		
Class A	10.61	4.63+f
Class B	10.81	4.63+f
Class C	11.01	4.63+f
Class D	11.21	4.63+f
LINE CONSTRUCTION: Substations and switching structures; Pipe type cable installation and maintenance jobs or projects: Railroad catenary installation and maintenance; Bonding of rails:		
Lineman: Technicial	17.75	4.35+g +6.25%
Cable splicer	19.525	4.35+g +6.25%
Groundman digging machine operator; dynamite man	15.936	4.35+g +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+g +6.35%
Mobile equipment operators: groundman truck drivers: mechanic	13.464	4.35+g +6.25%
Groundman	10.098	4.35+g +6.25%

DECISION NO. NY85-3026

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D)		
Overhead transmission line work (where no other work is or has been involved: Overhead & underground distribution work:		
Lineman: Technician	16.83	4.35+g +6.25%
Groundman digging machine operator: groundman dynamite man	15.147	4.35+g +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+g +6.25%
Groundman mobile equipment operator: groundman truck driver: mechanic	13.464	4.35+g +6.25%
Groundman	10.098	4.35+g +6.25%
Overhead transmission line work (where other work is or has been involved):		
Lineman: Technician	19.61	4.35+g +6.25%
Groundman digging machine operator: dynamite man	17.649	4.35+g +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+g +6.25%
Mobile equipment operator: Groundman truck driver: mechanic	15.686	4.35+g +6.25%
Groundman	10.098	4.35+g +6.25%
MARBLE, TILE & TERRAZZO WORKERS	16.91	2.54
MARBLE, TILE & TERRAZZO FINISHERS	13.05	4.38
PAINTERS Brush; Roller; Taper	13.77	4.01
Drywall wiper	13.97	4.01
Wallcovering; Stilts	14.02	4.01
Swing scaffold, window brackets or other hanged scaffold, cherry pickers, mechanical lifts & mechanical aerial ladders on or in building or structures 2 or more stories in height; structural steel or iron up to 40 feet	14.27	4.01

	Basic Hourly Rates	Fringe Benefits
Spray painting, water hydroblasting & metal blasting; Mechanical taper	14.37	4.01
Structural steel and iron 40 ft. and over	14.47	4.01
Sandblasting (from ground or solid platform)	14.52	4.01
Sandblasting (from any hanging platform	14.77	4.01
Steeplejack: Brush & Roll	15.27	4.01
Spray painting	15.87	4.01
Sandblasting	16.27	4.01
Bridges: Brush & Roll	15.27	4.01
Spray	15.87	4.01
Sandblasting	16.27	4.01
PLUMBERS & STEAMFITTERS	17.74	5.845
POWER EQUIPMENT OPERATORS (Building Construction) Group I:		
121 ft. and under	16.04	3.40+h
Between 121 and 151 ft.	16.29	3.40+h
Between 151 and 201 ft.	16.54	3.40+h
Between 201 and 251 ft.	16.79	3.40+h
Between 251 and 301 ft.	17.29	3.40+h
Between 301 and 351 ft.	17.79	3.40+h
Between 351 and 401 ft.	18.29	3.40+h
Between 401 and 451 ft.	18.79	3.40+h
Group II	16.04	3.40+h
Group III	15.61	3.40+h
Group IV	14.13	3.40+h
Group V	11.62	3.40+h
Group VI	16.82	3.40+h
POWER EQUIPMENT OPERATORS (Heavy & Highway Construction - includes excavating for site preparation) Master Mechanic	16.78	4.30+i
Group I	15.81	4.30+i
Group II	15.27	4.30+i
Group III	13.74	4.30+i
Group IV	12.39	4.30+i
ROOFERS	16.69	2.25
SHEET METAL WORKERS	16.43	4.88
SOFT FLOOR LAYERS	14.73	2.665
SPRINKLER FITTERS	16.92	3.23
TRUCK DRIVERS (Heavy & Highway): Class 1	13.24	2.70+j
Class 2	13.29	2.70+j
Class 3	13.34	2.70+j
Class 4	13.49	2.70+j
Class 5	13.64	2.70+j

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WELDERS - Rate for craft to which the welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, Part 5.5(a)(1)(II)).

FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

a. Paid Holiday: D, provided the employee works the regular working day preceding and the regular working day after holiday.

b. Paid Holidays: C and D.

c. Paid Holidays: B, C and D, provided the employee has been on the payroll the week before the holiday and works the day following the holiday.

d. Employer Contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

e. Paid Holidays: A through F, and the day after Thanksgiving.

f. Paid Holiday: A.

g. Paid Holidays: A through F, and Washinton's Birthday, Good Friday, Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

h. Paid Holidays: A through F, provided the employee works on the work day either immediately preceding the holiday or on the scheduled work day immediately following the holiday.

i. Paid Holidays: A through F, provided the employee works the day before and the day after the holiday.

j. Paid Holidays: A through F, provided the employee has worked the working day before and after the holiday.

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CLASSIFICATION DESCRIPTIONS

LABORERS (Heavy and Highway Construction)

Class A: Laborers, drill helpers, outboard and hand boasts.

Class B: Bull float, chain saw, concrete aggregate, bin concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breader, handlers of all steel mesh, small generators for laborers tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1 1/2" and single diaphram), nozzle (asphalt, gunnite, seeding and sandblasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

Class C: All rock or drill machine operators (except quarry master and similar type), acetylene torch operators, asphalt raker, powderman.

Class D: Blasters, form setter, stone or granite curb setters.

POWER EQUIPMENT OPERATORS (Building Construction)

Group I: Cranes (cable and hydraulic, climbing and tower).

Group II: Air tugger, derrick, dredge, big generator plant, cableway, backhoe, clamshell, dragline, shovel and similar machines over 3/8 cubic yards capacity (factory rating), bridge crane (all types), caisson auger and similar type machine, forklift (with factory rating of 15 ft. or more of lift), hoist (on steel erection), mucking machines, ross carrier (and similar types), three drum hoist (when all three drums are in use).

Group III: A-frame truck backfilling machine, hoist (1 or 2 drums) barber green and similar type machine, maintenance engineer (mechanic), mechanical slurry machines (all kinds), belt crete and similar type machines, bituminous spreading machine, post hole digger, bulldozer, carry all type scraper,core drill, pumps (regardless of motive power-no more than (4) in number not to exceed 20 inches in total capacity,) fine grade and finish rollers, side boom tractor, stone crusher, compressor (4 not to exceed 2000 CFM combined capacity or less with more than 1200 CFM, but not exceed 2000 CFM concrete mixer, concrete placer, concrete pumps, tournadozer and similar types, crane-hoe-shovel 3/8 yd. capacity or less (factory rating), tournapull and similar types, dinky locomotives (all types), tower-moble and similar types, elevating grader, elevator, trenching machines, fine grade machines (all elevating grader, elevator, trenching machines, fine grade machines (all kinds), welder, front end loader forklift with factory rating of less than 15 feet or lift, well point system, high pressure boiler.

POWER EQUIPMENT OPERATORS (CONTINUED)
(Building Construction)

Group IV: Any combination (not to exceed 3 pieces of equipment), welding, machine or mechanical conveyor (over 12 ft in length), fireman, belt crete generator, mechanical heater, roller (fill & grade), pumps (regardless of motive power-no more than (3) in number, not to exceed twelve inches total capacity), rubber tired tractor, compressor 3 or less, not to exceed 1200 CFM combined capacity, longitudinal float.

Group V: Truck crane.

Group VI: Master mechanic.

POWER EQUIPMENT OPERATORS (Heavy and Highway Construction)

Group 1: Automated concrete spreader (CMI), automatic finegrader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes, & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated, (gradall or similar), fork lift (factor rated 15 ft. and over), front end loader 4. c.y. and over), head tower (sauerman or equal) hoist (2 or 3 drum, mine hoist, mucking machine or mole, over head crane (gantry or straddle type), piledriver, power grader, quarry master (or equivalent), scraper, shovel sideboom, slip form paver, tractor drawn belt type loader, truck crane, tunnel shovel.

Group 2: Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill, truck or tractor mounted), boring machine, cage hoist, central mix plant (non-automated and all concrete batching plants), cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 CFM combined capacity concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lbs. and over), hoist (one drum) Kolman plant loader and similar type loaders, locomotive maintenance/engineer/greaseman/welder, mixer (for stablized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road widener, roller (all above subgrade), tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

POWER EQUIPMENT OPERATOR (CONTINUED)
HEAVY & HIGHWAY

Group 3: A-frame truck, compressor (4 not to exceed 2000 C.F.M. combined capacity; or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), compressors (any size but subject to other provisions for compressors), dust collectors, generators, pumps, welding machines (4 of any type of combination), concrete pavement spreaders and finishers, conveyor, drill-core, drill-well, electric pumps used in conjunction with well point system, farm tractor with accessories, fine grader fork lift (under 15 ft.), gunnite machine, hammers (hydraulic-self-propelled), post hole digger and post driver, power sweeper, roller (grade and fill), submersible electric pump (when used in lieu of well point system), tractor with towed accessories, vibratory compactor, vibro tamp well point.

Group 4: Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), compressor (any size, but subject to other provisions for compressors(, dust collectors, generators, pumps, welding machines (3 or less of any type of combination), concrete paver or mixer (16S and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump, (jacking system), light plants, mulching machine, oiler, parapet-concrete or pavement grinder, power broom (towed), power heaterman, revinius widener, shell winder, steam cleaner, tractor.

TRUCK DRIVERS

Class 1: Warehouseman, yardmen, pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpsters, material checkers and receivers, greasers, truck tiremen, mechanic helpers and parts chaser.

Class 2: Tandems, batch trucks, mechanics and dispatcher.

Class 3: Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

Class 4: Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self-loader, and straddle (ross) carrier

Class 5: Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self-loaded.

SUPERSEDEAS DECISION

STATE: OKLAHOMA

COUNTIES: Adair,Atoka,Bryan,Cherokee, Coal,Craig,Creek,Delaware,Haskell, Hughes,Latimer,LeFlore,McIntosh, Mayes,Muskogee,Nowata,Okfuskee, Okmulgee,Osage,Ottawa,Pawnee, Pittsburg,Pushmataha,Rogers,Sequoyah, Tulsa,Wagoner,Washington

DECISION NO.: OK85-4012

DATE: Date of Publication

SUPERSEDES DECISION NO. OK84-4049, dated September 7, 1984 in 49 FR 35473.

DESCRIPTION OF WORK: BUILDING PROJECTS (excluding single family homes and apartments up to and including 4 stories); and Heavy Construction within the City of Muskogee.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area I	$17.16	$2.76
Area II	17.76	2.33
BOILERMAKERS	16.125	2.95
BRICKLAYERS-STONE-MASONS:		
Area I	16.00	2.35
Area II	15.31	2.25
Area III	14.84	2.34
Area IV	15.31	1.54
Area V	16.90	
Area VI	14.50	1.40
CARPENTERS - AREA I		
Carpenters	11.85	1.70
Millwrights, Pile-drivermen	13.20	1.70
CARPENTERS - AREA II		
Carpenters	12.88	.85
Millwrights, Pile-drivermen	14.33	.85
CARPENTERS - AREA III		
Carpenters	11.95	1.25
Piledrivermen	12.775	1.25
Millwrights	14.38	1.25
CARPENTERS - AREA IV		
Carpenters	14.08	2.02
Millwrights	14.38	2.02
Piledrivermen	14.38	2.02
CARPENTERS - AREA V		
Carpenters	13.50	
Millwrights	16.40	
Piledrivermen	16.10	
CARPENTERS - AREA VI		
Carpenters	12.19	1.87
Millwrights,Pile-drivermen	12.69	1.87
CARPENTERS - AREA VII		
Carpenters	$12.65	$1.40
Millwrights, Piledriver-men	14.33	1.40
Power Saw Operator	12.90	1.40
CARPENTERS - AREA VIII		
Carpenters	12.62	1.50
Millwrights, Piledriver-men	12.87	1.50
CEMENT MASONS:		
Area I	10.80	
Area II	13.83	.85
Area III	15.14	.76
POWER TOOL OPERATOR:		
Area I	11.05	
Area II	14.08	.85
Area III	15.54	.76
ELECTRICIANS:		
Area I - Zone I	14.55	3-1/4% +.80
Zone II	14.95	3-1/4% +.80
Area II	14.90	3.5%+ 2.40
Area III	17.10	9%+.80
Area IV	15.90	3%+ 1.77
CABLE SPLICERS:		
Area I - Zone I	14.95	3-1/4% +.80
Zone II	15.35	3-1/4% +.80
Area II	15.15	3.5% 2.40
Area III	18.81	9%+.80

DECISION NO. OK85-4012

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS:		
Area I		
Journeymen	$15.34	3.00+a
Helpers	70%JR	3.00+a
Probationary Helper	50%JR	
Area II		
Journeymen	15.43	3.00 +a
Helpers	70%JR	3.00 +a
Probationary Helper	50%JR	
GLAZIERS		
Area I	15.72	.30
Area II	15.04	
Area III	14.68	1.96
IRONWORKERS:		
Area I	16.19	2.92
Area II	14.60	2.67
LABORERS - AREA I		
Group I	10.65	1.30
Group II	10.95	1.30
LABORERS - AREA II		
Group I	9.65	1.30
Group II	9.95	1.30
LABORERS - AREA III		
Group I	9.25	1.30
Group II	9.55	1.30
LABORERS - AREA IV		
Group I	9.30	1.30
Group II	9.55	1.30
PAINTERS - AREA I		
Brush,Sheetrock handtools	14.70	.90
Highwork & Stage	15.10	.90
Spray, & Sandblasting, Sheetrock Power Tools	15.70	.90
Hot & Bituminous	16.00	.90
PAINTERS - AREA II		
Brush & Roller	9.90	1.03
Brush, Roller (Strl. Steel)	10.15	1.03
Spray	10.55	1.03
Swing Stage, Bosun Chair	10.15	1.03
Taping & Bedding (hand tools)	10.20	1.03
Sandblasting	10.25	1.03
PAINTERS - AREA III		
Brush,Roller,Tapers & Paperhangers	13.02	.60
Spray,Steamclean,Sand-blast & Pot Tenders	13.52	.60
PLASTERERS - AREA I	15.45	.01
AREA II	13.45	

	Basic Hourly Rates	Fringe Benefits
PLUMBERS & PIPEFITTERS:		
AREA I	$16.62	$2.83
AREA II	17.25	2.35
AREA III	16.64	2.27
AREA IV		
Mechanical Contracts under $150,000.00	14.00	2.475
Mechanical Contracts $150,000.00 & over	15.50	2.475
AREA V	15.20	2.25
ROOFERS	12.40	1.39
SHEET METAL WORKERS:		
AREA I	16.15	3.30
AREA II	16.58	3%+ 1.89
SOFT FLOOR LAYERS:		
AREA I	14.60	2.03
AREA II	13.47	1.88 +b
SPRINKLER FITTERS	16.17	3.23
LATHERS - AREA I	14.25	2.04
AREA II	12.62	1.50
TILE LAYERS, TERRAZZO WORKERS & MARBLE MASONS:		
AREA I	16.84	1.50
AREA II	15.09	3.10
TILE & MARBLE FINISHERS:		
AREA I	13.35	
AREA II	12.72	2.00
TERRAZZO FINISHERS:		
AREA I	14.20	
AREA II	12.72	2.00
TERRAZZO FLOOR MACHINE:		
AREA I	14.50	
AREA II	12.92	2.00
TERRAZZO BASE MACHINE:		
AREA I	14.90	
AREA II	13.26	2.00
LINE CONSTRUCTION (except Braden, Pocola & Spiro Townships in LeFlore Co.):		
Linemen	16.24	3-1/2% +1.25
Cable Splicers	17.54	3-1/2% +1.25
Hole Digger Operator & Heavy Equipment Op. (pole or cat equivalent)	14.41	3-1/2% +1.25
Jack Hammerman	11.50	3-1/2% +1.25

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (Braden, Poccola, and Spiro Townships in LeFlore Co.; that portion east of Brent, Prices Chapel, Rocky Mountain & Sallisaw Townships in Sequoyah Co.:		
Lineman, Heavy Equipment Operator	14.54	1.30+ 3-3/4%
Cable Splicer	14.79	1.30+ 3-3/4%
Powderman	90%JR	1.30+ 3-3/4%
Truck Driver	75%JR	1.30+ 3-3/4%
Groundman	75%JR	1.30+ 3-3/4%
POWER EQUIPMENT OPERATORS:		
Group I	$15.75	$2.18
Group II	15.25	2.18
Group III	14.75	2.18
Group IV	14.50	2.18
Group V	14.25	2.18
Group VI	14.00	2.18
Group VII	13.75	2.18
Group VIII	12.75	2.18
Group IX	13.35	2.18
TRUCK DRIVERS:		
AREA I		
Group I	12.80	
Group II	12.85	
Group III	12.95	
AREA II		
Group I	10.43	
Group II	10.53	
Group III	10.63	
Group IV	10.58	
Group V	10.73	
SOUND AND COMMUNICATION TECHNICIAN	12.07	

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS AS FOLLOWS:

ASBESTOS WORKERS:
AREA I - Coal, Atoka and Bryan Counties
AREA II - Remaining Counties

BRICKLAYERS - STONEMASONS:
AREA I - Wagoner, Cherokee, Adair, Muskogee, Sequoyah, Haskell, LeFlore, Latimer and Pushmataha Counties
AREA II - Hughes, Coal, Atoka and Bryan Counties
AREA III - Creek, Tulsa, Rogers, Mayes, Craign, Ottawa and Delaware Counties
AREA IV - Okfuskee, Okmulgee, McIntosh and Pittsburg Counties
AREA V - Osage, Washington and Nowata Counties
AREA VI - Pawnee County

CARPENTERS - MILLWRIGHTS & PILEDRIVERMEN:
AREA I - Okmulgee, Okfuskee, Pittsburg, Latimer, LeFlore, the western part of McIntosh County - the line running straight south from the east line of Okmulgee County, Haskell County south of Highway #9 and north one-half of Atoka County
AREA II - Pushmataha, Bryan and south one-half of Atoka County
AREA III - Coal and Hughes County
AREA IV - Tulsa, Rogers, Mayes, Creek, Craig and Delaware Counties and that part of Osage Co. South of Hwy.#20, including all of the town of Hominy and that part of Pawnee Col east of State Hwy. #99.
AREA V - Washington, Nowata and Eastern two-thirds of Osage County
AREA VI - Muskogee, Wagoner, Adair, Cherokee, Sequoyah, Eastern part of McIntosh and Haskell County north of Highway #9
AREA VII - Pawnee and western one-third of Osage County
AREA VIII - Ottawa County

CEMENT MASONS - POWER TOOL OPERATORS:
AREA I - Western one-third of Osage County
AREA II - Pawnee County west of a line running due north from the western boundary of Creek County
AREA III - Remaining Counties

ELECTRICIANS - CABLE SPLICERS:
AREA I - Cherokee, Adair, Muskogee, Sequoyah, McIntosh, Haskell, LeFlore, Latimer, Atoka and Pushmataha Counties
ZONE I - 30-mile radius from Post Office of the City of Muskogee
ZONE II - Area outside Zone 1
AREA II - Osage and Pawnee Counties west of Highway #18
AREA III - Bryan County
AREA IV - Washington, Nowata, Craign, Ottawa, Rogers, Mayes, Delaware, Creek, Tulsa, Wagoner, Okmulgee, Okfuskee, Hughes, Pittsburg, Coal, Osage and Pawnee east of Highway #18

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

ELEVATOR CONSTRUCTORS:
AREA I - Osage, Washington, Nowata, Craig, Ottawa, Rogers, Mayes, Delaware, Pawnee, Creek, Tulsa, Wagoner, Cherokee, Adair, Okmulgee, Muskogee, and Sequoyah Counties
AREA II - Remaining Counties

GLAZIERS:
AREA I - Hughes, Coal, Atoka and Bryan Counties
AREA II - Ottawa and that portion of Craig County east of Vineta
AREA III - Remaining Counties

IRONWORKERS:
AREA I - Bryan County
AREA II - Remaining Counties

LABORERS:
AREA I - Creek, Tulsa, Nowata, Craig, Ottawa, Rogers, Mayes, Delaware, Washington and Okmulgee Counties
AREA II - Wagoner, Cherokee, Adair, Muskogee, Sequoyah, Okfuskee, McIntosh, Haskell, LeFlore Counties
AREA III - Hughes, Pittsburg, Latimer, Coal, Atoka, Pushmataha and Bryan Counties
AREA IV - Osage, and Pawnee Counties
GROUP I - All digging and dirt work, firing of salamanders and portable space heaters; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages for stock piling only; wheeling and placing concrete; handling of lumber, steel, cement and distribution of materials; all cleaning, including cleaning of windows; wrecking and razing of building and all structures; cleaning and clearing of debris; loading and unloading of materials, hoist or cages, except when the man is directly tending lathers, masons, or plasterers; water boys, when used; carpenter tender.
GROUP II - All machine tool operators; all sewer and drain tile layers and handling at the ditch, excluding distribution; oprs. of water pumps up to 4 inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers; mortar mixers, hod carriers and dry mixers; high work over 30 ft. from the ground or floors; cement finisher laborer; work on swinging scaffold; all kettle & potmen, tank cleaning, all pipe doping treating & wrapping, including all men working with dope; mortar & plaster mixing machine, pump-crete machines, and gunite mixing machines including placing of concrete; handling creosoted or treated materials, liquid acids, or like materials, when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or buggies; all laborers screening sand, running sand drier, and feeding oper. sandblasterer, except nozzle; and cutting torch oprs. in connection with laborers work; concrete greader.

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

LATHERS:
AREA I - Atoka, Coal and Hughes
AREA II - Ottawa County

PAINTERS:
AREA I - Pawnee, Osage, Washington, Nowata, Rogers, Mayes, Creek, Tulsa, Okfuskee, Okmulgee, Wagoner, Cherokee, Adair, Muskogee, Sequoyah, McIntosh, Haskell, Pittsburg, Latimer, LeFlore, and Pushmataha
AREA II -Hughes, Coal, Atoka and Bryan Counties
AREA III - Craig, Ottawa and Delaware Counties

PLASTERERS:
AREA I - Adair, Cherokee, Craig, Creek, Delaware, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Rogers.Tulsa, Wagoner, Washington, and the northern and western portions of Sequoyah County north and west of a line running southwesterly from the northeastern corner of Sequoyah County including the town of Sallisaw.
AREA II - LeFlore County and the southern and eastern portions south and east of a line running wouthwesterly from the northeast corner of Sequoyah County

PLUMBERS - PIPEFITTERS:
AREA I - Ottawa, Delaware, Craig, Mayes, Nowata, Rogers, Tulsa, Creek and Osage and Pawnee Counties east of Highway #18
AREA II - Adair, Cherokee, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Okfuskee, Okmulgee, Pittsburg, Sequoyah and Wagoner Counties
AREA III - Hughes, Coal, Atoka, Pushmataha and Bryan Counties
AREA IV - Osage and Pawnee Counties west of Highway #18
AREA V - Washington County

SHEET METAL WORKERS:
AREA I - Hughes and Coal Counties
AREA II - Remaining Counties

SOFT FLOOR LAYERS:
AREA I - Hughes, Coal, Atoka and Bryan Counties
AREA II - Remaining Counties

TILE LAYERS & TERRAZZO WORKERS:
AREA I - Bryan County
AREA II - Remaining Counties

TILE & TERRAZZO FINISHERS - TERRAZZO FLOOR MACHINE - TERRAZZO BASE MACHINE:
AREA I - Bryan County
AREA II - Remaining Counties

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS:
GROUP I - All crane type equipment with 300' of boom or over (including jib).
GROUP II - All crane type equipment with 200-300' of boom (including jib).
GROUP III - All crane type equipment with 100-200' of boom (including jib, all tower cranes and all crane type equipment of 3 cu. yards or more).
GROUP IV - Side boom (booms 30' and over); Guy Derrick
GROUP V - Heavy duty mechanic, welder; crane-hook and overhead monorail; whirley; panel board batch plant operator; pile-driver engineer, dragline, shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane, cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade); side boom (under 30').
GROUP VI - Fork lift (35' and over); dozer (engine hp 65 or over); Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller & compactors with dozer blade.
GROUP VII - Locomotive engineer; boring machine; tug boat; mixer 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. & under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment, generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; firemen; boiler operator, crushing plants; oiler distributor; pulvi-mixer; farmer tractor-with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man or large whirleys when and if required; operator for rotary drilling machines when operated from console or machines.
GROUP VIII - Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man.
GROUP IX - Greaser and tilt top trailer operator.

SOUND AND COMMUNICATION TECH. - Classification Area

Coal	Hughes	Okmulgee	Payne 3/	Wagoner 4/
Craig	Mayes	Osage 1/	Pittsburg	Washington
Creek	Nowata	Ottawa	Rogers	
Delaware	Okfuskee	Pawnee 2/	Tulsa	

1/ That portion east of State Highway No. 18
2/ That portion east of State Highway No. 18
3/ Eagle, Indian, Mound and Union Townships
4/ Adams Creek, Cherokee, Coal Creek, Lone Star and Shanhan Townships

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'd):

TRUCK DRIVERS:
AREA I - Osage, Washington, Nowata, Craig, Ottawa, Pawnee, Rogers, Creek, Tulsa, Okmulgee, Okfuskee and Mayes and Wagoner Counties west of Highway #69.
GROUP I - Truck drivers, including pick-up, 1½ tons or 2½ yards up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake body or bus driver.
GROUP II - 3 tons or 4 yards up to but not including 4 tons or 6 yards.
GROUP III - Ready mix concrete truck; tractor-trailer and similar equipment.
AREA II - Bryan, Atoka, Pushmataha, Coal, Hughes, Pittsburg, Latimer, LeFlore, McIntosh, Haskell, Sequoyah, Muskogee, Cherokee, Adair, Delaware, and Mayes and Wagoner Counties east of Highway #69.
GROUP I - Pick-up, 1½ tons or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses.
GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards.
GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole truck, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers
GROUP IV - Ready-mix concrete trucks up to but not including 3 yards.
GROUP V - Ready-mix concrete trucks up to but not including 3 yards and over

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:
a - 6 months to 5 years 6%; over 5 years 8% of basic hourly rate plus seven paid holidays - A through G.
b - 6 paid holidays - A through F plus G

PAID HOLIDAYS:
A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Friday after Thanksgiving Day; G - Christmas Day

SUPERSEDEAS DECISION

STATE: OKLAHOMA

COUNTIES: Alfalfa, Beckham, Blain, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Pottawatomie, Roger Mills, Seminole, Stephens, Tillman, Washita, Woods and Woodward.

DECISION NO. OK85-4011 DATE: Date of Publication

SUPERSEDES DECISION NO. OK84-4010, dated, September 7, 1984 in 49 FR 35477.

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
AREA I	$15.20	2.37
AREA II	17.76	2.33
AREA III	17.16	2.76
BOILERMAKERS	16.125	2.95
BRICKLAYERS, STONEMASONS:		
AREA I	15.48	2.23
AREA II	15.65	
AREA III	13.35	2.17
AREA IV	15.31	2.25
AREA V	14.50	1.40
AREA VI	14.74	2.15
AREA VII	15.48	1.67
CARPENTERS - AREA I		
Carpenters	13.75	2.04
Millwrights	14.25	2.04
Piledrivermen	14.25	2.04
Power saw operator	14.25	2.04
CARPENTERS - AREA II		
Carpenters	10.95	2.04
Millwrights	14.25	2.04
Piledrivermen	14.25	2.04
Power saw operator	14.25	2.04
CARPENTERS - AREA III		
Carpenters	11.25	1.74
Millwrights	11.50	1.74
Piledrivermen	11.50	1.74
CARPENTERS - AREA IV		
Carpenters	12.15	1.80
Millwrights	14.25	2.04
Piledrivermen	14.25	2.04
CARPENTERS - AREA V		
Carpenters	11.95	1.25
Piledrivermen	12.775	1.25
Millwrights	14.38	1.25
CARPENTERS - AREA VI		
Carpenters	12.35	1.59
Piledrivermen	12.85	1.59
Power saw operator	12.475	1.59
CARPENTERS - AREA VII		
Carpenters	12.40	1.67
Millwrights	12.90	1.67
Piledrivermen	12.90	1.67
Power saw operator	12.75	1.67
CARPENTERS - AREA VIII		
Carpenters	11.60	1.10
Millwrights	12.425	1.10
Piledrivermen	12.425	1.10
Power saw operator	11.85	1.10
CARPENTERS - AREA IX		
Carpenters	12.65	1.40
Millwrights	14.33	1.40
Piledrivermen	14.33	1.40
Power saw operator	12.90	1.40
CARPENTERS - AREA X		
Carpenters	12.98	.85
Millwrights	14.33	.85
Piledrivermen	14.33	.85
CEMENT MASONS - AREA I		
Cement Masons	$10.80	
Power tool operator	11.05	
CEMENT MASONS - AREA II		
Cement Masons	15.14	.76
Power tool operator	15.54	.76
CEMENT MASONS - AREA III		
Cement Masons	13.83	.86
Power tool operator	14.08	.85

DECISION NO.: OK85-4011 Page 2

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
AREA I	$15.60	9%+ 1.10
AREA II	14.90	3.5%+ 2.40
AREA III	14.05	3-1/4% +1.50
AREA IV	17.10	9%+.80
AREA V	15.90	3%+ 1.77
CABLE SPLICERS:		
AREA I	15.85	9%+ 1.10
AREA II	15.15	3.5%+ 2.40
AREA IV	18.81	9%+.80
ELEVATOR CONSTRUCTORS:		
Journeymen	15.43	3.00 +a
Helpers	10.80	3.00 +a
Probationary Helper	7.715	
GLAZIERS	15.72	.30
IRONWORKERS:		
AREA I	14.60	2.67
AREA II	13.625	2.95
AREA III	14.30	3.00
AREA IV	16.19	2.92
AREA V	15.29	1.14
LABORERS - AREA I:		
GROUP I	10.65	1.30
GROUP II	10.90	1.30
LABORERS - AREA II:		
GROUP I	8.95	1.30
GROUP II	9.20	1.30
LABORERS - AREA III:		
GROUP I	9.10	1.30
GROUP II	9.35	1.30
LABORERS - AREA IV:		
GROUP I	9.30	1.30
GROUP II	9.55	1.30
LABORERS - AREA V:		
GROUP I	9.25	1.30
GROUP II	9.55	1.30
LABORERS - AREA IV:		
GROUP I	5.35	
GROUP II	6.59	
LATHERS:		
AREA I	$14.25	1.74
AREA II	12.15	1.80
MARBLE MASONS, TILE SETTERS & TERRAZZO WORKERS	16.84	1.50
MARBLE & TILE FINISHERS:		
AREA I	13.35	
TERRAZZO FINISHERS:		
AREA I	14.20	
TERRAZZO FLOOR MACHINE MAN:		
AREA I	14.50	
TERRAZZO BASE MACHINE MAN:		
AREA I	14.90	
PAINTERS - AREA I:		
Brush & Roller	9.90	1.03
Brush & Roller (Strl. steel)	10.15	1.03
PAINTERS - AREA I:		
Spray	10.55	1.03
Swing, stage, bosun chair	10.15	1.03
Taping & Bedding (hand tools)	10.20	1.03
Sandblasting	10.25	1.03
PAINTERS - AREA II:		
Brush	13.55	2.53
Spray under 30 ft.	14.05	2.53
Spray over 30 ft.	14.55	2.53
Paper hanging	14.55	2.53
Tapers using machine tools	14.05	2.53
PLASTERERS:		
AREA I	15.60	.95
AREA II	14.20	
PLUMBERS - AREA I:		
Mechanical contracts under $150,000.00	14.00	2.475
Mechanical contracts of $150,000.00 & over	15.50	2.475
PLUMBERS - AREA II	16.64	2.27
ROOFERS	12.40	1.39
SHEET METAL WORKERS	16.15	
SOFT FLOOR LAYERS	14.60	2.03
SPRINKLER FITTERS	16.17	3.23
LINE CONSTRUCTION:		
Linemen	16.24	3-1/2 +1.25
Cable splicers	17.54	*
Hole digger operator, heavy equipment opr.	14.41	*
Line truck driver (winch operator)	12.69	*
Jackhammerman	11.50	*

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D):		
Powderman	$13.99	3-1/2+ 1.25
Groundman	10.31	*
Truck driver (flat bed, ton-half & under)	10.96	*
POWER EQUIPMENT OPERATORS		
GROUP I	15.75	2.18
GROUP II	15.25	2.18
GROUP III	14.75	2.18
GROUP IV	14.50	2.18
GROUP V	14.25	2.18
GROUP VI	14.00	2.18
GROUP VII	13.75	2.18
GROUP VIII	12.75	2.18
GROUP IX	13.35	2.18
TRUCK DRIVERS - AREA I		
GROUP I	9.70	
GROUP II	9.40	
AREA II		
GROUP I	12.80	
GROUP II	12.85	
GROUP III	12.95	
AREA III		
GROUP I	10.43	
GROUP II	10.53	
GROUP III	10.63	
GROUP IV	10.58	
GROUP V	10.73	
SOUND AND COMMUNICATION TECHNICIAN -	12.62	

	Basic Hourly Rates	Fringe Benefits

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS AS FOLLOWS:

ASBESTOS WORKERS:

AREA I	Harper, Ellis, Roger Mills, Beckham, Greer and Harmon Counties
AREA II	Kay County
AREA III	Remaining Counties

BRICKLAYERS - STONEMASONS:

AREA I	Logan, Payne, Canadian, Oklahoma, Cleveland and McClain Counties
AREA II	Harper, Woods; Alfalfa, Grant, Ellis, Woodward, Major, Garfield, Blaine and Kingfisher Counties
AREA III	Harmon, Jackson, Tillman, Comanche, Cotton and Jefferson Counties
AREA IV	Lincoln, Pottawatomie, Seminole, Pontotoc, Johnston and Marshall Counties
AREA V	Kay and Noble Counties
AREA VI	Caddo, Grady, Stephens, Garvin, Murray, Carter and Love Counties
AREA VII	Roger Mills, Beckham, Greer, Dewey, Custer, Washita and Kiowa Counties

CARPENTERS - MILLWRIGHTS - PILEDRIVERMEN - POWER SAW OPERATORS:

AREA I	Oklahoma, Logan, Canadian, Kingfisher, Pottawatomie, McClain, Cleveland, and Lincoln County south of the Turner Turnpike
AREA II	Dewey, Custer, Washita and Blaine Counties
AREA III	Caddo and Grady Counties
AREA IV	Alfalfa, Grant, Major and Garfield Counties
AREA V	Love, Murray, Carter, Pontotoc, Seminole, Johnston, Garvin and Marshall County west of highway #99
AREA VI	Beckham, Jefferson, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa, Stephens and Tillman Counties
AREA VII	Payne County, Northern Half of Lincoln County and Noble County east of Interstate 35 and south of Black Bear Creek
AREA VIII	Woodward, Woods, Harper, Ellis and Roger Mills Counties
AREA IX	Kay and Noble Counties north of Black Bear Creek and west of Interstate #35
AREA X	Marshall County east of highway #99

CEMENT MASONS - POWER TOOL OPERATOR:

AREA I	Kay County
AREA II	Johnston and Marshall Counties
AREA III	Ellis, Roger Mills, Beckham, Dewey, Custer, Grady, Carter, Oklahoma, Logan McClain, Washita, Blaine, Caddo, Kingfisher, Canadian, Cleveland, Garvin, Lincoln, Payne, Noble, Woodward Murray, Harper, Major, Woods, Alfalfa, Grant Garfield, Harmon, Greer, Kiowa, Jackson, Tillman, Comanche, Cotton, Stephens, Jefferson and Love Counties

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

ELECTRICIANS - CABLE SPLICERS:

AREA I	Oklahoma, Cleveland, Canadian, Grady, McClain, Garvin, Carter, Murray, Johnston, Pontotoc, Seminole, Pottawatomie, Lincoln, Logan, Kingfisher, Garfield, Grant, Alfalfa, Major, Blaine, Caddo, Washita, Custer, Dewey, Woodward, Woods, Harper, Ellis, Roger Mills, Beckham, Love and that portion of Payne County which is closer to Oklahoma City than Tulsa
AREA II	Kay and Noble Counties
AREA III:	Comanche, Jackson Stephens, Harmon, Greer, Kiowa, Tillman, Cotton and Jefferson
AREA IV	Marshall County
AREA V	That portion of Payne County closer to Tulsa than Oklahoma City

IRONWORKERS:

AREA I	Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Custer, Dewey, Garfield, Garvin, Grady, Johnston, Kingfisher, Kiowa, Lincoln, Major, Logan, McClain, Murray, Noble, Oklahoma, Pontotoc, Pottawatomie, Roger Mills, Seminole, Stephens, Washita, Woodward, and western Payne County to a line due north of state highway #177 and #33
AREA II	Beckham, Greer, Harmon, Jackson, Tillman, Cotton, Jefferson and Love Counties
AREA III	Harper and Ellis Counties
AREA IV	Marshall County
AREA V	Alfalfa, Grant, Kay, and Woods Counties

LABORERS:

AREA I	Logan, Canadian, Oklahoma, Lincoln, Cleveland and Pottawatomie Counties
AREA II	Harper, Woods, Alfalfa, Grant, Ellis, Woodward, Major, Garfield, Dewey, Blaine and Kingfisher Counties
AREA III	Roger Mills, Custer, Beckham, Washita, Caddo, Grady, McClain, Harmon, Greer, Kiowa, Comanche, Stephens, Garvin, Tillman, Cotton, Jefferson, Murray, Carter, Love and Marshall Counties
AREA IV	Kay, Noble and Payne Counties
AREA V	Seminole, Pontotoc and Johnston Counties
AREA VI	Jackson County

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

LABORERS (CONT'D):

GROUP I - All digging and dirt work, firing of salamanders and smudge pots; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages of stock piling only; wheeling and placing concrete; handling of lumber, steel, cement and distribution of materials; all cleaning, including cleaning windows; wrecking and razing of building and all structures; cleaning when the manis directly tendering, lathers, masons or plasters; common laborers.

GROUP II - All machine tools operators; all sewer and drain tile layers and handling at the ditch, excluding distribution; operators of water pumps up to 4 inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers, mortar mixers, hod carriers and dry mixers; high work over 30 ft. from the ground or floors; cement finishers laborer; work on swinging scaffold; all kettle and potmen, tank cleaning, all pipe doping treating and wrapping, including all men working with dope; mortar and plaster mixing machine, pump-crete machines, and gunite mixing machines including concrete, creosoted or treated materials, liquid acids, or like materials, when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or plants; all laborers screening sand, running sand drier, and feeding operator sand blasterer, except nozzle; and cutting torch operators in connection with laborers' work; concrete grader.

LATHERS:

AREA I	Oklahoma, Logan, Canadian, Kingfisher, Custer, Washita, Blaine, Pottawatomie, Dewey, Beckham, Caddo, Cleveland, Ellis, Garvin, Grady, Johnston, McClain, Murray, Noble, Pontotoc, Roger Mills, Seminole, Woodward, Lincoln County south of Turner Turnpike and Payne County up to and including the city of Cushing.
AREA II	Alfalfa, Grant, Garfield and Major Counties

PAINTERS:

AREA I	Harmon, Greer, Kiowa, Jackson, Tillman, Comanche, Cotton, Stephens, Jefferson, Carter, Love, Pontotoc, Johnston and Marshall Counties
AREA II	Remaining Counties

PLASTERERS:

AREA I	Ellis, Roger Mills, Beckham, Greer, Harmon, Jackson, Dewey, Custer, Washita, Kiowa, Tillman, Blaine, Caddo, Comanche, Cotton, Kingfisher, Canadian, Grady, Stephens, Jefferson, Logan, Oklahoma, Cleveland, McClain, Gargin, Murray, Carter, Love, Payne, Lincoln, Johnston and Marshall Counties
AREA II	Pontotoc, Pottawatomie and Seminole Counties

PLUMBERS - PIPEFITTERS

AREA I	Kay County
AREA II	Remaining Counties

MARBLE & TILE FINISHERS, TERRAZZO FINISHERS, TERRAZZO FLOOR MACHINE MAN, TERRAZZO BASE MACHINE MAN:

AREA I	Kay, Noble, Payne, Lincoln, Pottawatomie, Seminole, Pontotoc and Johnston

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS:

GROUP I	All crane type equipment with 300' of boom or over (including jib)
GROUP II	All crane type equipment with 200-300' of boom (including jib)
GROUP III	All crane type equipment with 100-200' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or more
GROUP IV	Side boom (booms 30' and over); Guy Derrick
GROUP V	Heavy duty mechanic; welder; crane-hook and overhead monorail; whirley; panel board batch plant operator; piledriver engineer; dragline, shovel; clamshell; backhoe (3/4 yd. and over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' and longer mast); motor patrol (blade); side boom (under 30')
GROUP VI	Fork lift (35' and over); dozer (engine hp 65 or over); Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller and compactors with dozer blade
GROUP VII	Locomotive engineer; boring machine; tug boat; mixer 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. and under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; firemen; boiler operator; crushing plants, oiler distributor, pulvimixer; farmer tractor with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed operator; concrete pump; form grader; screening plant; well point pump operator; signal man on large whirleys when and if required; operator for rotary drilling machines when operated from console or machines

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS CONT'D):

GROUP VIII	Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man
GROUP IX	Greaser and tilt top trailer operator

TRUCK DRIVERS:

AREA I	Alfalfa, Beckham, Blaine, Caddo, Carter, Canadian, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson Johnston, Kingfisher, Kiowa, Logan, Love, Major, McLain, Murray, Oklahoma, Pontotoc, Pottawatomie, Payne, Roger Mills, Seminole, Stephens, Tillman, Washita, Wood and Woodward Counties
GROUP I	Truck drivers for heavy equipment such as lowboys, heavy winch and floats, heavy earth moving equipment such as dump trucks and euclids
GROUP II	Truck drivers and swampers, such as dump trucks, flat beds, stakebodies, and 3/4 and ½ ton pick-up trucks
AREA II	Kay, Noble and Lincoln Counties
GROUP I	Truck drivers, including pick-up, 1½ tons or 2½ yards up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake body or bus driver
GROUP II	3 tons or 4 yards up to but not including 4 tons or 6 yards
GROUP III	Ready mix concrete truck; tractor trailer and similar equipment
AREA III	Marshall County
GROUP I	Pick-up, 1½ tons or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, state bodies and buses
GROUP II	3 tons or 4 yards and up to but not including 4 tons or 6 yards
GROUP III	5 tons or 6 yards and over including heavy equipment such as pole trucks, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers
GROUP IV	Ready-mix concrete trucks up to but not including 3 yards
GROUP V	Ready-mix concrete trucks 3 yards and over

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

FOOTNOTES

a - 6 mos. to 5 yrs. 6%; over 5 years 8% of basic hourly rate plus seven paid holidays - A through G.

PAID HOLIDAYS:

A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Friday after Thanksgiving Day; G - Christmas Day.

SOUND AND COMMUNICATION TECH. Classification Area

Coal	Hughes	Okmulgee	Payne 3/	Wagoner 4/
Craig	Mayes	Osage 1/	Pittsburg	Washington
Creek	Nowata	Ottawa	Rogers	
Delaware	Okfuskee	Pawnee 2/	Tulsa	

1/ That portion east of State Highway No. 18
2/ That portion east of State Highway No. 18
3/ Eagle, Indian, Mound and Union Townships
4/ Adams Creek, Cherokee, Coal Creek, Lone Star and Shanhan Townships

SUPERSEDEAS DECISION

STATE: TEXAS COUNTY: BOWIE
DECISION NO. TX85-4010 DATE: DATE OF PUBLICATION
Supersedes Decision No. TX84-4057, dated 10/5/84 in 49 FR 39440
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway General Wage Determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.71	$2.94
BRICKLAYERS	11.31	
CARPENTERS	12.20	
CEMENT MASONS	8.47	
ELECTRICIANS	14.52	1.50+ 3.25%
GLAZIERS	8.25	A
IRONWORKERS	10.25	
LABORERS:		
General	5.85	
Plasterer Tenders	8.80	1.10
LATHERS	13.16	
PAINTERS	8.50	
PLASTERERS	12.95	
PLUMBERS AND PIPEFITTERS	14.60	1.85
ROOFERS	7.06	
SHEET METAL WORKERS	9.18	
SOFT FLOOR LAYERS	7.50	
TILE SETTERS	12.00	
POWER EQUIPMENT OPERATORS:		
Backhoes	7.00	
Motor Grader Operator	7.00	
WELDERS: receive rate prescribed for craft performing operation to which welding is incidental.		

FOOTNOTE FOR GLAZIERS:
A - 2 weeks paid vacation per year & 6 paid holidays-New Year's Day, Independence Day, Labor Day, Memorial Day, Thanksgiving Day, & Christmas Day.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

NEW DECISION

STATE: Texas COUNTY: Bexar
DECISION NO.: TX85-4013 DATE: Date of Publication
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$14.54	3.24
BRICKLAYERS/STONEMASONS	12.88	2.32
CARPENTERS	10.37	
CEMENT MASONS	11.51	
ELECTRICIANS	12.78	3.00+6%
ELEVATOR CONSTRUCTORS:		
Mechanics	14.59	3.24+a
Helpers	70%JR	3.24+a
Helpers (Prob.)	50%JR	
GLAZIERS	10.93	.32+ 9.5%
IRONWORKERS:		
Structural & ornamental	9.56	
Reinforcing	8.69	
LABORERS:		
Unskilled	6.34	
Mason tenders	8.36	1.78
Plasterers' & lathers' tenders	8.36	1.78
Formsetters	6.53	
LATHERS	15.00	
METAL BUILDING ERECTORS	5.64	
PAINTERS	9.53	

	Basic Hourly Rates	Fringe Benefits
PIPEFITTERS	$17.90	2.03
PLASTERERS	15.00	
PLUMBERS	13.62	1.61
ROOFERS:		
Roofers	8.54	
Waterproofers	7.76	
Kettleman	6.28	
SHEET METAL WORKERS	16.90	2.32+3%
SOFT FLOOR LAYERS	9.10	
SPRINKLER FITTERS	16.17	3.23
TAPERS/DRYWALL FINISHERS	10.34	
TILE SETTERS	13.27	2.27
TILE SETTER FINISHERS	8.57	1.33
TRUCK DRIVERS	5.80	
POWER EQUIPMENT OPERATORS:		
Backhoes	13.20	2.65
Cranes	13.20	2.65
Forklifts	9.15	
Foundation drill op.	13.20	2.65
Front end loaders	13.20	2.65
Oilers	9.35	2.65

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTE FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 mos. - none; 6 mos. to 5 years - 6%; over 5 yrs. - 8% of basic hourly rate. Also 7 Paid Holidays A thru G

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

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federal register

Friday
May 10, 1985

Part III

Federal Emergency Management Agency

44 CFR Part 205
Coastal Barrier Resources Act;
Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Coastal Barrier Resources Act

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as the act applies to disaster assistance granted to individuals and State and local governments under the Disaster Relief Act of 1974 (Pub. L. 93-288). CBRA prohibits new expenditures and new financial assistance for any purpose within the Coastal Barrier Resources System (CBRS) except for certain activities expressly permitted by the CBRA. This rule specifies which disaster assistance actions may or may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by the Federal Emergency Management Agency (FEMA).

DATE: Comment due date: July 9, 1985.

ADDRESS: Send comments to Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Charles Stuart, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW, Washington, D.C. 20472, Telephone (202) 646-3691.

SUPPLEMENTARY INFORMATION: On October 18, 1982, the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) was signed by the President. The purpose of this Act is to minimize the loss of human life, wasteful expenditure of Federal revenues and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts. This purpose is to be achieved by: (1) Restricting future Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers, (2) establishing a Coastal Barrier Resources System, and (3) considering the means and measures by which the long-term conservation of these fish, wildlife and other natural resources may be achieved. The provisions of the Act cover those coastal barriers which, as of October 18, 1982, were undeveloped and unprotected by any Federal, State, or private refuges. The act has established the Coastal Barrier Resources System, which is depicted on 177 maps published by the Department of the Interior (DOI). Any new Federal expenditure or financial assistance for any purpose is prohibited within the System except as otherwise provided in section 6 of CBRA. Section 6 lists certain types of activities that are allowed only after consultation with the Secretary of the Interior. There is a subgroup of those activities that also requires an evaluation of the action's consistency with the purposes of CBRA.

Types of Disaster Assistance

Under Pub. L. 93-288, the Federal Emergency Management Agency (FEMA) may make grants to State and local governments and certain private nonprofit organizations to fund repairs of damages suffered in a Presidentially declared major disaster or emergency. These grants may be of three types: for emergency purposes, for permanent restoration of structures and facilities, and for certain social program needs of individuals and families. Emergency grants are made to save lives and to protect public health and safety or property. Grants may be made to States to provide up to $5,000 to individuals and families to meet expenses relating to restoration of permanent residences. Direct grants may be made to families (as a form of temporary housing) to restore structures to a habitable condition. Grants may also be made to State and local governments and certain private nonprofit organizations to restore facilities to predisaster condition in accordance with current standards. Other grants to States may provide social services such as crisis counseling, legal services, and unemployment assistance.

These last types of assistance, which have a social program orientation, are entirely unrelated to development, because they do not provide assistance for acquisition or construction of property or facilities. For this reason they are excluded from the prohibitions of CBRA [Sec. 3(3)(E)] and are not subject to the substantive and procedural requirements of these regulations. These regulations address the other two types of actions, emergency assistance and permanent restoration assistance, separately, prescribing different criteria and procedures for each.

Prohibitions

The prohibitions of CBRA against new expenditures and new financial assistance apply to all disaster assistance within the CBRS. The requirements of CBRA for consultation with the Secretary of the Interior and for consistency with the purposes of CBRA for certain exceptions also apply to all disaster assistance within the CBRS. There are two exceptions to the prohibitions, which include the majority of disaster assistance actions. The first is that publicly owned or operated facilities may be maintained, replaced, reconstructed, or repaired if they are essential links in a larger network or system or if they are consistent with the purposes of CBRA. The second is that all actions essential to the saving of lives and the protection of property and the public safety and are performed pursuant to Sec. 305 and 306 of the Disaster Relief Act of 1974, Pub. L. 93-288, may be carried out if they are consistent with the purposes of CBRA. As a result of these exceptions, repair, restoration or replacement of publicly owned or operated facilities and emergency assistance will often not be prohibited within the CBRS. Certain disaster assistance actions, however, are absolutely prohibited by CBRA. No new or expanded structures or facilities may be constructed in the CBRS with Federal assistance except for certain types of facilities as provided in Sec. 6 of CBRA.

Disaster assistance for families or individuals is provided in the form of temporary housing and other personal needs. Included in these forms of individual assistance is real property repair/construction which is not included in the exceptions for which Federal expenditures or assistance is allowed by Section 6 of CBRA. Therefore, except for repair/construction assistance when provided under sections 305/306 of Pub. L. 93-288, assistance to individuals or families within a unit of the CBRS is limited to that of a social program nature.

A requirement for all Federal actions within the CBRS is that the responsible agency consult with the Secretary of the Interior before committing funds to the project. That responsibility has been delegated to the Assistant Secretary for Fish and Wildlife and Parks and is accomplished through regional representatives. In addition, some of these actions must be consistent with the purposes of CBRA. A determination of that consistency must be made a part of the consultation process.

Exceptions

The exceptions to the prohibition of new Federal expenditures or financial assistance as contained in Section 6 of CBRA include facilities that may involve FEMA disaster assistance.

The first group of exceptions allows Federal expenditures after consultation with the Secretary of the Interior. The group includes: (1) The maintenance, replacement, reconstruction, or repair but not the expansion of publicly owned or publicly operated roads, structures or facilities that are essential links in a larger network or system, (2) facilities necessary for the exploration, extraction, or transportation of energy resources that can be carried out only on, in, or adjacent to coastal water areas because the facility requires access to the coastal water body, and (3) the maintenance of existing channel improvements and related structures, such as jetties and including disposal of dredge materials related to such improvements. An existing channel improvement or related structure is defined as one for which all or a portion of the funds for such improvement or structure were appropriated before October 18, 1982, the enactment date of CBRA.

The second group of exceptions allows Federal expenditures after consultation with the Secretary of Interior *if the action is consistent with the purposes of CBRA*. This group includes: (1) Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including but not limited to stabilization projects for fish and wildlife habitats and recreational projects; (2) the establishment, operation, and maintenance of air and water navigation aids and devices and for access thereto; (3) facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research and development applications; (4) actions essential to the saving of lives and the protection of property and the public health and safety and performed pursuant to sections 305 and 306 of Pub. L. 93-288 and that are limited to actions that are necessary to alleviate the emergency; (5) nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems; and (6) the maintenance, replacement, reconstruction, or repair but not the expansion of publicly owned or publicly operated roads, structures, or facilities that are not part of a larger network or system.

Emergency Work

As noted before, the major categories of disaster assistance actions are emergency work and permanent restoration work. The emergency assistance granted by FEMA is for the purpose of saving lives and protecting property and public health and safety. These emergency actions that would come under the provisions of CBRA may include, for example, protective measures to prevent injuries or further damage, or clearance of debris from public or private property to allow access for emergency purposes. Another example may be emergency repairs to utilities and other facilities, including residences, to restore service necessary for protecting lives or property or public health and safety. Emergency actions are unique in that they must be performed during or immediately after the disaster event and may be performed without waiting for advance approval. This emergency work is subject to the consultation requirement and also the requirement that the actions be consistent with the purposes of CBRA. Because of the emergency nature of the actions, a consultation procedure different from that for permanent restorative work has to be used.

In an advance consultation carried out with DOI, FEMA has presented a description of the types of emergency work and a determination that the actions are consistent with the purposes of CBRA. In summary, the consultation describes the emergency actions as those necessary to save lives, protect public health and safety, or protect property and necessary to alleviate the emergency. These actions serve only the existing population and do not provide for or encourage expansion of facilities or their use. In general they do not involve work on facilities or the natural features of the land. Emergency assistance may involve grants to State or local governments, to certain private nonprofit organizations, or to individuals. This assistance is limited to that necessary to alleviate the immediate emergency.

The Secretary of the Interior through the Assistant Secretary for Fish and Wildlife and Parks has concurred that emergency assistance actions are consistent with the purposes of CBRA and that these activities may be approved for FEMA grant assistance without further consultation. The procedure established for emergency work is a relatively simple one of identification of the project and site, with appropriate documentation of that data. The information is to be furnished by FEMA to the Regional Director for Fish and Wildlife and Parks.

Permanent Work

FEMA disaster assistance for permanent restorative work involves repairs or replacement of facilities such as roads and bridges, water control facilities, buildings and equipment, utilities, and park and recreational facilities. These facilities may be publicly owned or operated or they may be owned and operated by certain types of private nonprofit (PNP) organizations. Assistance for those PNP facilities owned or operated by eligible private nonprofit organizations is subject to certain additional restrictions. To be eligible for assistance, the PNP facility on a unit of the CBRS must qualify under one of the other exceptions in section 6 of CBRA—those facilities that need not be publicly owned or operated to qualify as exceptions. Briefly, these exceptions are: Energy related facilities, existing channel improvements and structures, facilities for fish and wildlife study and management, air and water navigation aids, facilities for scientific research, nonstructural shoreline stabilization projects, and facilities for which emergency assistance is necessary.

Publicly owned or operated facilities such as roads, utilities, or water control facilities that are essential links in a larger network or system are eligible for assistance for their repair or replacement but not their expansion, after FEMA has consulted with the Secretary of the Interior. An example of an essential link is a road or utility service for which the route through the system unit is the only practicable route. Expansion in this context is interpreted to refer to physical size or capacity of the facility. One intention of the prohibitions in CBRA is to not encourage development on a coastal barrier unit. A replacement facility of greater capacity than the original would encourage development; therefore, such expansion will not be allowed under these regulations. For example, a replacement bridge may not be any wider than the original, because it would have greater capacity. There may be exceptions to this requirement. If an approach road adjacent to the bridge were washed out along with the bridge, it might be less expensive to lengthen the span of the bridge rather than fill in the area for the road. This would not be interpreted as expansion.

Another type of facility that might be eligible for assistance on a unit of the CBRS after FEMA consults with the Secretary of the Interior is a navigation channel along with related structures such as a breakwater. If such a facility were owned or operated by a public entity or an eligible private nonprofit organization and met other programmatic requirements for disaster assistance, it could receive assistance

from FEMA. It must also meet the definition of an existing improvement or structure by having had funds for its construction appropriated in whole or in part before the enactment date of CBRA, October 18, 1982.

Facilities for energy resource exploration, extraction, or transportation that are functionally dependent on the coastal location may receive assistance if they meet other requirements for disaster assistance. The facilities may be owned or operated by a public entity or an eligible private nonprofit organization. FEMA must consult with the Secretary of the Interior before approving assistance for these facilities.

The remaining disaster assistance actions permitted within the CBRS require a determination of the actions' consistency with the purposes of CBRA in addition to the consultation. These are the six types of facilities listed in the third paragraph under Exceptions. A written record of the determination will be included as part of the consultation.

Consultation

The procedure for consultation with the Secretary of the Interior for the above three types of actions is a simple one in which the FEMA Regional Director consults with the Regional Director of the Fish and Wildlife Service. Before approving a grant for permanent restoration, in written communication FEMA will inform DOI of the CBRS unit in which the action is taking place and will provide a description of the facility, the proposed repair or replacement work, and the amount of Federal funding proposed. The description of the facility shall fully justify it as an exception under section 6 of CBRA. This would include a discussion of how a facility was an essential link in a larger network or system or how an energy facility was dependent upon its coastal location in order to function. Information on how a channel facility meets the definition of an existing facility (funds appropriated before October 18, 1982) must also be provided.

The DOI representative will provide technical information to FEMA and an opinion on whether or not the action meets the criteria for an exception and on the consistency of the proposed action with the purposes of CBRA. DOI is expected to respond within 12 working days from the date of the request for consultation. If a written response is not received within the time limit, the FEMA Regional Director will assume concurrence by DOI and will proceed with the approval of the proposed action.

The time provided for this response to a consultation request is necessarily short because of the urgent nature of disaster recovery work. Local applicants frequently rely upon the advance of funds from FEMA (75 percent of the approved amount) in order to start the repair work. FEMA cannot make that advance for a particular project until the project is approved. Delays caused by the consultation process may impose a hardship on many of the smaller applicants for disaster assistance. The short response time is designed to avoid these delays. Conducting the consultation process at the local level will better allow the 12 day time frame to be met. If the DOI regional representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the matter will be referred to the respective national offices. Concurrence by the Secretary of the Interior is not required for FEMA to approve a grant.

Consistency Determination

In making the determination, the Regional Director will identify possible impacts of the proposed action and measures that might mitigate adverse impacts. Impacts to be evaluated will be risks to human life; risks of damage to the facility being repaired or to other facilities; risks of damage to fish, wildlife, and other natural resources; and encouragement of development or redevelopment. The restoration of a facility would be inconsistent with the purposes of CBRA if more lives would be exposed to the flood hazard, or if it encouraged more people to expose themselves to such risks. If the risk of danger to the facility itself cannot be minimized, its restoration would be inconsistent with the purpose of CBRA. The risk of damage to the natural land caused by the facility must be assessed and minimized. The effects of seawalls and groins or erosion and the transport of sand is an example of this.

Most of the units within the Coastal Barrier Resources System are also within the 100-year frequency or base floodplain. Actions within the base floodplain are subject to FEMA's Floodplain Management regulations, 44 CFR Part 9. Those regulations require an impact identification and evaluation process for certain proposed actions in the floodplain. The factors considered in both evaluations are very similar. Where the evaluation for practicability of the floodplain location and for minimization of harm is already required, it may also be used for the CBRA consistency determination. This procedure will avoid a duplication of effort for those actions within the floodplain area of the coastal barrier resources system.

The direct impact of risks to human life, facilities and natural floodplain values in both evaluations are identical. The practicability determination under 44 CFR 9.9 that evaluates these impacts requires that the importance of the floodplain site must clearly outweigh the requirement to minimize the risks and adverse impacts noted above if such impacts cannot be eliminated. In addition, new construction, including replacement, in the coastal high hazards area (V-zone) is prohibited except for facilities that are functionally dependent on a location in close proximity to the water or which facilitate an open space use (44 CFR 9.11). The evaluation under this criteria may therefore result in no Federal assistance for a proposed action in the base floodplain. The evaluation under CBRA may also result in a decision not to provide Federal assistance.

Similar to 44 CFR Part 9, the evaluation for consistency with CBRA includes whether the action does or does not encourage new development on the coastal barrier. Therefore, expansion of public facilities is not allowed, as such action would encourage additional development.

The evaluation under CBRA additionally includes consideration of whether the reconstruction encourages redevelopment of the area. There will have been few residences and businesses in these locations in the first place because of the criteria used in designating the CBRS units. If these existing structures are undamaged or minimally damaged, the owners of those structures will have little alternative to rebuilding. The failure to restore a public road or other facility probably will not prevent that rebuilding. Therefore, the infrastructure should be restored to its predisaster condition so as not to deny Federal assistance to those citizens. On the other hand, if all or most of the development is substantially damaged so that Federal flood insurance will be denied for those structures, the owners may decide not to rebuild. Although not absolutely prohibited, the rebuilding of the infrastructure may be inconsistent with the purpose of CBRA in that it would encourage the redevelopment of the coastal barrier.

If the required evaluation determines an action to be inconsistent with the purposes of CBRA, then FEMA may not grant assistance for that action.

Special Requirements

Actions in the group that require consultation and the consistency detemination discussed above are in two categories. The first group consists of publicly owned or operated roads, structures or facilities that are not essential links in a larger network or system. The second group consists of facilities specifically permitted by Sec. 6 of CBRA that may be either publicly or privately owned. These are facilities for the study, management, or protection of wildlife resources; air and water navigation aids; facilities for scientific research; and nonstructural shoreline stabilization systems.

The publicly owned or operated roads, structures, and facilities may not be expanded beyond their predisaster design when they are being restored after a disaster. The intention of this prohibition is to be consistent with the purpose of CBRA not to encourage development. A change that increased the capacity of the facility would encourage additional users of the facility. Therefore, such change is prohibited. Other changes not affecting capacity may be allowed.

Each of these facilities must also have been an existing completed facility or under construction on October 18, 1982, in order to be eligible for permanent restoration assistance. If work on a facility had progressed beyond clearing of the land, such as grading for a roadbed or excavation for bridge foundations then it would be considered under construction. If a facility, originally built or under construction before October 18, 1982, had been substantially improved after that date, it would then be ineligible for permanent restoration assistance in a subsequent disaster. This prohibition would apply whatever the source of funding for the substantial improvement, even if it were FEMA disaster assistance for an earlier event. Substantial improvement is any repair or other improvement of a structure or facility, the cost of which equals or exceeds 50 percent of the replacement cost of the facility.

These restrictions were imposed to be consistent with the intent and purpose of CBRA. CBRA recognized that the Federal Government had long supported development on coastal barriers both by direct grants for new construction and by flood insurance and disaster assistance programs that substantially reduced property owner's risks. This was in conflict with Federal and other efforts to protect coastal barriers and their valuable natural resources. Therefore, CBRA was intended to stop direct Federal investment in these areas and to stop Federal encouragement of private development. Without these restrictions, a publicly owned or operated facility built or substantially improved after October 18, 1982, and damaged in a declared major disaster could be eligible for restoration assistance. This would be inconsistent with the purposes of CBRA because, in effect, development would be encouraged by making restoration assistance available to facilities the construction of which began after October 18, 1982. It would also be inconsistent with the policy of the National Flood Insurance Program which is to not encourage development within the CBRS. Therefore, such assistance is restricted to facilities built or under construction before October 18, 1982, and not substantially improved after that date.

Of the group of facilities specifically permitted by Sec. 6 of CBRA, facilities for the study, management or protection of wildlife resources; air and water navigation aids; facilities for scientific research; and nonstructural shoreline stabilization systems are not restricted with respect to expansion or the date on which the facility was built. These have been termed special purpose facilities in the regulation. Section 6 of CBRA recognized that these types of facilities could be consistent with the purposes of the Act, although repair of an individual facility must still be determined consistent with CBRA. Because CBRA allows the continued establishment of these types of facilities on coastal barriers, disaster assistance may be granted for facilities built after October 18, 1982. Disaster assistance that involved expansion of one of these special purpose facilities would also be permitted for the same reason.

As noted before, this group of facilities which is permitted by Sec. 6 of CBRA may be either publicly or privately owned. In addition, two other types of facilities permitted by Sec. 6, an existing channel improvement or an energy exploration, extraction, or transportation facility, may be either publicly or privately owned. There is limited FEMA assistance available to private organizations. FEMA may, however, assist certain private nonprofit organizations in the repair of eligible educational, utility, emergency, medical, and custodial care facilities owned by these organizations. However, the facilities must also meet the criteria for exception to the CBRA prohibitions. It is unlikely that many facilities will meet these dual criteria. One example might be a scientific research facility that qualified also as an educational facility owned by a private nonprofit college. The repair of the facility must also be determined to be consistent with the purposes of CBRA. The repair of such facilities will be evaluated for consistency using the same criteria used for the restoration of publicly owned facilities.

Grant-in-lieu and Flexible Funding

The prohibition against expansion of facilities will affect two other features of the disaster assistance program. These are the options in which a grant recipient may construct an enlarged or different facility than that which existed before the disaster.

The first is a grant-in-lieu in which, under regular disaster rules, an applicant may combine the FEMA grant with other funding to construct a facility larger than the one damaged or destroyed by the disaster. The choice of this option could result in Federal participation in a facility expansion that is not allowed by CBRA. Therefore, FEMA may not approve a grant-in-lieu that would expand a facility within the CBRS, unless it is of the type expressly allowed by section 6 of CBRA.

The other option is flexible funding, in which the applicant accepts a grant equal to 90 percent of the estimated cost of permanent restoration of all of its damaged facilities. The applicant may then use that grant to restore some selected damaged facilities and build new facilities in place of others that it determines are no longer needed by the community (Sec. 402(f) of Pub. L. 93–288). If the new facility were built on a system unit, this, in effect, would be new financial assistance, also not allowed by CBRA. Therefore, a new facility on a system unit may not be approved as a project under a flexible funding grant or under the flexible funding feature of small project grants (Sec. 419 of Pub. L. 93–288), unless it is of the type expressly allowed by section 6 of CBRA.

Procedure

Compliance with CBRA in the administration of disaster assistance on a unit of the Coastal Barrier Resources System is designed to be simple and is integrated with other existing procedures where possible. The initial step is a location determination. Is the proposed action on a designated undeveloped coastal barrier? This is answered by consulting the appropriate FEMA Flood Insurance Rate Map (FIRM) issued on or after October 1, 1983, which has boundaries of the CBRS units on it. If the facility is not within or connected to a unit of the CBRS, such as with a bridge or causeway, no further

processing under these regulations is required.

The next step is to determine the category of the action and whether or not it meets the criteria for exception from the prohibitions of CBRA. Actions of a social program orientation that are unrelated to development or construction were discussed earlier and are not subject to CBRA or these regulations. If the action is emergency assistance under section 305 or 306 of Pub. L. 93–288 and it is in the CBRS, then the consultation requirements have already been met, including a determination that the action is consistent with the purposes of CBRA. Those permanent restoration actions subject to CBRA should be identified as to whether they require only consultation with the Secretary of the Interior or also a determination of consistency with the purposes of CBRA. The criteria for assigning these categories has been discussed previously, as has also the process of carrying out the consultation.

Environmental Considerations. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), FEMA has prepared an environmental assessment of the issuance by FEMA of the regulations for the implementation of the Coastal Barrier Resources Act.

The Act prohibits new expenditures and new financial assistance, with certain exceptions, within the Coastal Barrier Resources System. The exceptions include emergency actions essential to the saving of lives and the protection of property and the public health and safety under sections 305 and 306 of the Disaster Relief Act of 1974 (Pub. L. 93–288) that are necessary to alleviate the emergency. Also included is permanent repair or replacement of publicly owned or operated roads, structures, or facilities. Expansion of these facilities is not permitted. The regulations provide that permanent restoration assistance is not permitted for facilities built or substantially improved after October 18, 1982. FEMA's assistance will serve only those facilities that existed prior to October 18, 1982, and will not encourage development of the designated undeveloped coastal barriers. With the exception of roads, structures and facilities that are essential links in a larger system, FEMA's actions must be consistent with the purposes of CBRA.

It has been determined that there will be no significant impact on the environment caused by FEMA's issuance of this regulation to implement the Coastal Barrier Resources Act (44 CFR Part 205, Subpart N). On this basis an environmental impact statement will not be prepared.

Copies of the environmental assessment are available for inspection at: Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, D.C. 20472, Telephone (202) 287–0395.

Executive Order 12291, "Federal Regulations"

This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more.

The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

This rule does not call for the collection of any information.

List of Subjects in 44 CFR Part 205

Disaster assistance, Grant programs, Housing and community development.

Accordingly, Chapter I of Title 44, Code of Federal Regulations is proposed to be amended by adding a new Subpart N to Part 205 as follows:

PART 205—[AMENDED]

* * * * *

Subpart N—Implementation of Coastal Barrier Resources Act

Authority: 16 U.S.C. 3501, 3505; 42 U.S.C. 5201.

Subpart N—Implementation of Coastal Barrier Resources Act

§ 205.501 Purpose of subpart.

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97–348) as the Act applies to disaster relief granted to individuals and State and local governments under the Disaster Relief Act of 1974 (Pub. L. 93–288). CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

§ 205.502 Policy.

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under Pub. L. 93–288.

§ 205.503 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in Part 205 of Subchapter D are applicable to this subject.

(a) "Consultation" means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.

(b) "Essential link" means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.

(c) "Existing facility" means a publicly owned or operated facility on which the start of construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility.

(d) "Expansion" means changing a facility to increase its capacity or size.

(e) "Facility" means "public facility" as defined in § 205.2(a)(16). This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal-aid street, road, or highway; and any other public building, structure,

or system, including those used for educational or recreational purposes or any park.

(f) "Financial assistance" means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.

(g) "New financial assistance" means an approval by FEMA of a project application or other disaster assistance after October 18, 1982.

(h) "Start of construction" for a structure means the first placement of permanent construction such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and filling, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include grading and filling such as for a road.

(i) "Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

(j) "Substantial improvement" means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or replacement cost of the facility (including all "public facilities" as defined in the Disaster Relief Act of 1974) either:

(1) Before the repair or improvement is started, or

(2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred.

If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

(k) "System Unit" means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by section 4 of the CBRA, or as modified by the Secretary in accordance with the Act.

§ 205.504 Scope.

(a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including but not limited to a bridge, causeway, utility, or similar facility.

(b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of these regulations. This assistance includes:

(1) Individual and Family Grants that are not for acquisition or construction purposes;

(2) Crisis counseling;

(3) Legal assistance; and

(4) Disaster unemployment assistance.

§ 205.505 Limitations on Federal expenditures.

Except as provided in §§ 205.506 and 205.507, no new expenditures or financial assistance may be made available under authority of Pub. L. 93–288 for any purpose within the Coastal Barrier Resources System, including but not limited to:

(a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;

(b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

§ 205.506 Exceptions.

The following types of disaster assistance actions are exceptions to the prohibitions of § 205.505.

(a) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for:

(1) Maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and

(3) Maintenance of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.

(b) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA:

(1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 and are limited to actions that are necessary to alleviate the emergency;

(2) Maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities, except as provided below at § 205.508(c)(5);

(3) Repair and maintenance of air and water navigation aids and devices, and of access thereto;

(4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and

(6) Repair of nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

§ 205.507 Applicability to disaster assistance.

(a) Emergency Assistance. The Regional Director may approve assistance pursuant to sections 305 or 306 of Pub. L. 93–288 for emergency actions which are essential to the saving of lives and the protection of property and the public health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:

(1) Removal of debris from public property;

(2) Emergency protective measures to prevent loss of life, prevent damage to improved property and protect public health and safety;

(3) Emergency restoration of essential community services such as electricity, water or sewer;

(4) Restoration of access to private property;

(5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, provision of safe water supply, provision of minimal cooking facilities, or provision of access to a private residence;

(6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);

(7) Minimal repairs to private owner-occupied primary residences to make them habitable;

(8) Housing eligible familes in existing resources in the CBRS; and

(9) Mortgage and rental payment assistance.

(b) *Permanent restoration assistance.* Subject to the limitations set out below, the Regional Director may approve assistance for the repair, reconstruction, or replacement but not the expansion of publicly owned or operated facilities and certain private nonprofit facilities. Such actions, which are subject to these regulations, inlcude but are not limited to the repair, reconstruction, or replacement of:

(1) Roads and bridges;

(2) Drainage structures, dams, levees;

(3) Buildings and equipment;

(4) Utilities (gas, electricity, water, etc.); and

(5) Park and recreational facilities.

§ 205.508 Requirements.

(a) *Location Determination.* For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts the Regional Director shall:

(1) Review a proposed action's location to determine if the action is on or connected to a CBRS unit and thereby subject to these regulations. The appropriate FEMA Flood Insurance Rate Map (FIRM) issued on or after October 1, 1983, will be the basis of such determination.

(2) If an action is determined not to be on or connected to a unit of the CBRS, no further requirements of these regulations need to be met, and the action may be processed under other applicable disaster assistance regulations.

(3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in §§ 205.509 and 205.510.

(b) *Emergency Disaster Assistance.* For each emergency disaster assistance action listed in § 205.507(a), the Regional Director shall perform the required consultation. CBRA requires that the Agency consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of the Act as defined in section 1 of CBRA.

(1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior through the Assistant Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in § 205.507(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

(2) *Notification.* As soon as practicable, the Regional Director will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Associate Director, SLPS, or his or her designee will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:

(i) Identification of the unit in the CBRS;

(ii) Description of work approved;

(iii) Amount of Federal funding; and

(iv) Additional measures required.

(c) *Permanent Restoration Assistance.* For each permanent restoration assistance action including but not limited to those listed in § 205.507(b), the Regional Director shall meet the requirements set out below.

(1) *Essential links.* For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:

(i) No facility may be expanded beyond its predisaster design.

(ii) Consultation in accordance with § 205.509 shall be accomplished.

(2) *Channel improvements.* For the repair of existing channels, related structures and the disposal of dredged materials:

(i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;

(ii) Expansion of the channel or related structures beyond predisaster design is not permitted;

(iii) Consultation in accordance with § 205.509 shall be accomplished.

(3) *Energy Facilities.* For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

(i) No such facility may be repaired, reconstructed, or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;

(ii) Consultation in accordance with § 205.509 shall be accomplished.

(4) *Special-purpose facilities.* For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research and development applications; and, nonstructural facilities that are designed to mimic, enhance, or restore natural shoreline stabilization systems:

(i) Consultation in accordance with § 205.509 shall be accomplished;

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purpose of CBRA in accordance with § 205.510.

(5) *Other public facilities.* For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall within the categories identified in paragraphs (c)(1), (2), (3), or (4) of this paragraph:

(i) No facility may be repaired, reconstructed, or replaced unless it is an "existing facility";

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 205.509 shall be accomplished;

(iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 205.510.

(6) *Private nonprofit facilities.* For eligible private nonprofit facilities as defined in these regulations (44 CFR 205.70 et seq.) and of the type described in paragraphs (c) (1), (2), (3) or (4) above:

(i) Consultation in accordance with § 205.509 shall be accomplished.

(ii) No such facility may be repaired, reconstructed, or replaced unless it is

otherwise consistent with the purposes of CBRA in accordance with § 205.510.

(7) *Grant-in-lieu.* A grant-in-lieu may not be made for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraphs (c) (1), (2), (3), or (4) of this section, then a grant-in-lieu for such facilities is not precluded.

(8) *Flexible funding.* A new or enlarged facility may not be constructed on a unit of the CBRS under the flexible funding provisions of section 402(f) or section 419 of Pub. L. 93–288 unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c) (1), (2), (3), or (4) of this section.

§ 205.509 Consultation.

As required by section 6 of CBRA, the FEMA Regional Director will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

(a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:

(1) Identification of the unit within the CBRS;

(2) Description of the facility and the proposed repair or replacement work; includng identification of the facility as an exception under Sec. 6 of CBRA; and full justification of its status as an exception;

(3) Amount of proposed Federal funding;

(4) Additional mitigation measures required; and

(5) A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with § 205.510.

(b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and provide an opinion on whether or not the action meets the criteria for an exception, and on the consistency of the action with the purposes of CBRA when such consistency is required. DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Director shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.

(c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Director will submit the issue to the FEMA Assistant Associate Director for Disaster Assistance Programs (DAP). In coordination with the Office of General Counsel (OGC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. The comments of the DOI consultation officer will be carefully considered before the Assistant Associate Director, DAP, determines whether or not to approve the proposed action.

§ 205.510 Consistency.

Section 6(a)(6) requires that certain actions be consistent with the purposes of CBRA if they are to be carried out on a unit of the CBRS. The purpose of CBRA as stated in section 2(b) is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts. For those actions where a consistency determination is required the FEMA Regional Director shall evaluate the action according to the following procedure, and it shall be included in the written request for consultation with DOI.

(a) *Impact Identification.* FEMA shall identify impacts of the following types that would result from the proposed action:

(1) Risks to human life;

(2) Risks of damage to the facility being repaired or replaced;

(3) Risks of damage to other facilities;

(4) Risks of damage to fish, wildlife, and other natural resources;

(5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and

(6) Encouragement of new development.

(b) *Mitigation.* FEMA shall modify actions by means of practicable mitigation measures to minimize adverse effects of the types listed in paragraph (a) of this section.

(c) *Conservation.* FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wildlife resources. The Regional Director may require such measures at the expense of the applicant if they are not otherwise eligible for FEMA funding.

(d) *Finding.* For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Director before funding may be approved for that action.

Dated: May 6, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

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Part IV

Department of the Interior

National Park Service

36 CFR Parts 7 and 13

Glacier Bay National Park and Preserve, AK; Protection of Humpback Whales; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 7 and 13

Glacier Bay National Park and Preserve, AK; Protection of Humpback Whales

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is establishing permanent regulations for the protection of the humpback whale, an endangered species, at Glacier Bay National Park and Preserve. These regulations establish a permit system, vessel operating restrictions, and a mechanism for designating whale waters and vessel limits; in addition, they prohibit the harvest of certain species of fish and crustaceans which are prey species of the humpback whale. These regulations replace temporary regulations which expired in 1983. For informational purposes, the National Park Service has included within this rule the 1985 whale season temporary restrictions established pursuant to existing regulations.

EFFECTIVE DATE: May 31, 1985.

FOR FURTHER INFORMATION CONTACT: Michael J. Tollefson, Superintendent, Glacier Bay National Park and Preserve, Bartlett Cove, Gustavus, Alaska 99826, Telephone: (907) 697–2232.

SUPPLEMENTARY INFORMATION:

Background

Glacier Bay, is a marine body of water located within Glacier Bay National Park and Preserve. It has been recognized since the early 1960's as a summer feeding ground for the humpback whale, a declining species placed on the Endangered Species List in 1970. Research conducted in the 1970's established that 10–24 whales used the bay for summer feeding during the several years prior to 1978. This pattern drastically changed in 1978, when approximately 17 of 20 identified whales abandoned the bay shortly after entering it. Only three whales remained for the summer. This reduced level of whale use occured again in 1979. On August 6, 1979, in accordance with the Endangered Species Act, the National Park Service requested a formal consultation with the National Marine Fisheries Service ("NMFS") to assess the problem. NMFS concluded that the uncontrolled increase of vessel traffic, especially erratically traveling craft, may have altered humpback behavior, and that a continued increase in vessel traffic was likely to further jeopardize the existence of the humpback whale in Southeast Alaska. NMFS recommended that vessel traffic be restricted to 1976 levels, additional research be conducted, and regulations be promulgated to address vessel routing, maneuvering, and speed.

Responding to the NMFS opinion, the National Park Service published two sets of regulations in 1980 to protect the humpback whale in Glacier Bay. One set concerned cruise ship activity as well as vessel routing, maneuvering, and speed. See 45 FR 32228 (May 15, 1980) (codified at 36 CFR 7.23 (b)–(d) (1982). In summary, these regulations limited the entry of cruise ships into Glacier Bay to 89 vessels during the whale season (June 1 through August 31), with not more than two entries per day. Regardless of the size or type of vessel, all motorized vessel operators were prohibited from intentionally positioning their vessels closer than one-fourth nautical mile from a whale, or otherwise pursuing or attempting to pursue a whale. In the event of a vessel-whale encounter, these regulations established certain vessel operation requirements to restore the one-fourth nautical mile separation with minimal disturbance to the whale. Finally, the regulations authorized the superintendent to designate areas in Glacier Bay as "whale waters" where vessels were required to maintain a constant speed (not to exceed 10 knots) and course, except to avoid coming within one-quarter nautical mile of a whale. This final rulemaking deletes the last duplicative provision that remains of these former regulations in 36 CFR 7.23.

The second set of regulations addressed small boat activity and a limited category of commercial fishing in Glacier Bay. See 45 FR 32234 (May 15, 1980), 45 FR 85471 (December 30, 1980) (codified at 36 CFR 7.23 (e)–(f)(1982); 46 FR 50370 (October 13, 1981) (codified at 36 CFR 7.23(q)(1982)). These regulations limited small vessel entries into Glacier Bay to 538 (339 private vessels) during the whale season. They also prohibited commercial harvesting of major organisms upon which humpback whales feed.

The National Park Service intended these two sets of regulations to be temporary pending the completion of more conclusive research on the whales at Glacier Bay. Upon completion of the research, the National Park Services intended again to request formal consultation with NMFS and thereafter to propose appropriate changes in the regulations. In order to review the research data, obtain an opinion from NMFS, and develop appropriate regulations, the National Park Service extended the temporary regulations applicable to vessel operations and entries until August 31, 1983, 48 FR 21947 (May 16, 1983). In 36 CFR 13.65, paragraphs (b) through (f) were redesignated from § 7.23 at 48 FR 30294, June 30, 1983, effective October 3, 1983. During the summer of 1984 temporary vessel operating restrictions and entry levels were established pursuant to 36 CFR 13.30. Thus, the National Park Service prevented an "unregulated situation" in Glacier Bay, a situation which NMFS warned could have disrupted the whale's behavior contrary to the mandates of the Endangered Species Act and other law.

On June 22, 1983, NMFS issued its second Biological Opinion which stated in part:

> Based on our recent review of new research as well as additional information, NMFS concludes that current National Park Service operational and total vessel numbers restrictions are not likely to jeopardize the continued existence of the southeast Alaska stock of humpback whales. We also reiterate the conclusion in our 1979 Biological Opinion that if the amount of vessel use were allowed to increase without limit in Glacier Bay, or if present vessel operational restrictions were removed the associated disturbance would be likely to jeopardize the continued existence of the Southeast Alaska humpback whale stock.
>
> The amount of vessel use that would have the effect of total displacement from Glacier Bay cannot now be defined or predicted. We believe some increase in the amount of vessel use can occur without jeopardizing the continued existence of the Southeast Alaska humpback whale stock, provided increases are implemented in a conservative manner and with an appropriate monitoring program.
>
> Consultation must be reinitiated if new information reveals impacts of the proposed activities that may affect the humpback whale, if the identified activities are modified in a manner not considered during the consultation, or if a new species is listed or critical habitat designated that may be affected by the proposed activities.

After reviewing the Biological Opinion, the National Park Service met with NMFS in August, 1983 to clarify certain aspects and to discuss permanent regulations. Based on those meetings, the Biological Opinion itself, and additional research and monitoring conducted by the National Park Service, the National Park Service has concluded that failure to implement protective regulations would be detrimental to the humpback whale in Glacier Bay.

The National Park Service published proposed rules designed to protect the humpback whale on April 18, 1984 (49 FR 15482). The period for public comment closed on May 18, 1984.

The Department of the Interior has determined that good cause exists for establishing an effective date of May 31, 1985, which is less than 30 days after publication of this rulemaking in the Federal Register. This determination is based on the fact that humpback whale protection regulations must be in place and in effect on June 1, which is the beginning of whale season. A later effective date would result in a situation whereby whales could be present in Glacier Bay without appropriate protective programs in effect.

Summary of Comments

The National Park Service received 58 timely comments on its proposals. Of these, 41 comments were from private individuals, 15 comments were from organizations and two were from government agencies.

Public meetings were held in Juneau, Gustavus, Elfin Cove, Pelican, Hoonah, and Anchorage, (47 individuals attended). All meetings were taped and a summary of meetings has been placed in the park file.

The National Park Service has carefully considered each of these comments and has adopted several suggestions made. The National Park Service has also made technical changes to certain regulations in order to clarify their intent. The comments received and the service's reason for accepting or rejecting them are as follows:

Analysis of Comments

Section 13.65(b)(1) Definitions.

Several commenters expressed concern over the new vessel categories in the definition section. One commenter felt the charter vessel size limitation of under 100 tons gross and up to 49 passenger rating could result in larger charter vessels entering Glacier Bay in the future.

The majority of the commenters objected to the 1980 substitution of larger scheduled tour vessel entries for much smaller 6 passenger fishing vessel entries. The National Park Service established separate categories for charter vessels and tour vessels in order to prevent further substitution between significantly different vessel types. The vessel categories have incorporated U.S. Coast Guard vessel size and capacity distinction in order to keep these regulations uniform with other marine regulations. Further control of charter vessel use and size can be incorporated into the concession permits without the need to increase the complexity of these regulations. Future tour vessel use will be established by the superintendent under concession contract and permit provisions.

Comments were evenly divided over the one-half nautical mile distance provision in the definition of "pursue". Some commenters suggested that the one-quarter nautical mile distance referred to in the operating restriction be incorporated into the "pursue" definition. Other comments suggested that one-half mile be the minimum distance allowed between vessels and whales at any time. One commenter recommended that the definition of "pursue" be amended to read "alter or maintain a vessel's course . . ." The National Park Service will leave the definition of "pursue" unchanged. Recent research has indicated that vessel changes in speed and course at distances greater than one-fourth nautical mile can alter whale behavior. However, when vessels pass by humpback whales at distances greater than one-quarter nautical mile without alteration of speed or course, observable changes in whale behavior are infrequent.

Several commenters questioned the need for the "vessel use day" definition. Some commenters objected to vessel use days establishment from 8:00 am to 8:00 am the next day. The National Park Service agrees that the vessel use days should be measured from 12 midnight to 12 midnight the next day. By proposing a motor vessel entrance limit based on the number of motor vessels in the Bay each day rather than merely the number entering each day, the accumulation of vessels should not reach disruptive proportions. The proposed entrance limit would be based on the number of vessels in the Bay. For example, if the limit were 21 vessels, and 21 vessels were already in the bay on a given day, no more would be allowed to enter. NMFS agrees with the approach of limiting the total number of motor vessels in the Bay at any given time.

The term entry is defined in the definition section. For clarification, an entry must meet one of the following criteria: (1) Each time a motor vessel passes the mouth of Glacier Bay on the way into the bay, (2) each time a private motor vessel activates or extends a permit, (3) each time a vessel based at Bartlett Cove leaves the dock, except private vessels based at Bartlett Cove that the gaining access or egress to or from outside the park or (4) the first time a local private motor vessel utilizes a day of the seven use day permit. Further clarification of this definition will be outlined in the park's whale management program.

Several commenters recommended that seaplanes should be included under the operating restrictions section of these regulations. The National Park Service agrees. By changing the definition of "vessel" so that it includes seaplanes on the water, this will be accomplished. This would prohibit a seaplane on the water from intentionally positioning itself within one quarter nautical mile of a whale and would prohibit a seaplane on the water from pursuing a whale. A seaplane on the water, which is accidentally positioned within one quarter nautical mile of a whale, will be required to maintain a one quarter mile separation only when practical for safe take-off requirements. The definition of "motor vessels" will not apply to aircraft.

The definitions of "mouth of Glacier Bay", "large vessels", and "small vessels" were deleted. The definition of "mouth of Glacier Bay" is described as part of the definition of "Glacier Bay". The large and small vessel definitions were deleted because more descriptive definitions are now in use. Large vessels are cruise ships. Small vessels include charters, private and tour vessels.

Sections 13.65(b) (2), (3), and (4) have been reformated to provide a more logical progression in the regulations. These sections are set forth as follows:

(2) Public Use Limits And Temporary Restrictions

(3) Permits

(4) Operating Restrictions

Section 13.65(b)(2)(iv) was removed from the permit section and placed in the public use limits and temporary restrictions section. In order to maintain consistency within 36 CFR, the term "public use limit" is considered synonymous with "vessel entry and use levels". Section 13.65(b)(2) now describes public use limits as defined in § 1.5, as well as whale waters designations and vessel use restrictions.

From this point, the reference to section numbers refers to the section as listed in the final rule.

Section 13.65(b)(2) Public Use Limits and Temporary Restrictions.

Several commenters suggested that § 13.30 did not provide the necessary timeliness in establishing public use limits, whale water designations and operating restrictions. Further the one year limitation on regulatory actions that could be initiated pursuant to § 13.30 was insufficient to address the two year evaluation and monitoring period that has been established as the minimum time period between any increases in entry levels. The National Park Service has determined that the rule making for these regulations meets

the requirements of Alaska National Interest Lands Conservation Act, section 1110(a) (Pub. L. 96-487). Section 13.30 was designed, in part, to address the closure provisions of section 1110(a) of ANILCA and those requirements have been satisfied. Since § 13.30 fails to adequately provide the administrative remedies to protect the whales, the National Park Service has modified the regulations and provided the Superintendent the necessary authority to modify use levels and establish vessel restrictions pursuant to § 13.65(b)(2). For this reason, references to § 13.30 have been removed from § 13.65.

The implementation of § 13.65(b)(2)(i) was clarified to mean that increases can be incremental up to 20%, but that any increase in use levels will be maintained for two years, during which use levels and entries will not be further increased. As a result, the entry and use levels will be set for two years instead of the annual adjustment originally specified. It is not practicable to initiate public hearing or comment regarding the establishment of whale waters and vessel operating restrictions, due to the mobility and unpredictability of the whales and the timeliness of the action required. Public notice, comment, standards and criteria have been established through the public participation process for this rule. However, informational meetings may be conducted to gather data as well as provide information to the general public.

A few commenters objected to a potential 20% increase. They felt it was too high an increase in any one year. Some commenters felt that an increase in vessel use should be allocated to the vessel categories that are less disruptive of whale behavior. The National Park Service will take a conservative approach in setting any percentage increase in vessel entries.

Pursuant to § 13.65(b)(2)(i), the superintendent may increase vessel entry and use levels by up to 20 percent above the 1976 base figures. This regulatory section would establish limitations on any such increase in accordance with the following excerpt from the NMFS Biological Opinion:

> We believe that no additional vessel traffic should be allowed unless the number of individual whales that enter Glacier Bay remain equal to or is greater than the 1982 level. If under these conditions, the National Park Service proposes to increase total vessel use from the present level, NMFS believes that an additional increase of no more than 20 percent for the large ship and small vessel categories would be prudent.

Section 13.65(b)(2)(ii) has been amended to indicate, that an incremental increase may be implemented only if the number of whales entering Glacier Bay remains equal to or greater than the 1982 level. The whale monitoring activity during the whale season in 1982 resulted in the identification of 20 different whales within Glacier Bay. Whale monitoring will continue to occur each year between June 1 and August 31. An increase of 20% could be allowed if 20 different whales are identified and if research indicated the increase would be appropriate. Whale monitoring will also determine the length of stay of whales and which whales are returning from previous years. When determining comparability between the current year and 1982, the National Park Service will consider the length of observational period and observational effort. At this time whale residency will only be used as a secondary factor in determining comparability. The 1982 data was based on daily observations by five biologists between July 9 and August 16. Future year increases beyond this 20 percent level increase will require additional consultation with the National Marine Fisheries Service under section 7 of the Endangered Species Act and notice and comment rulemaking.

Several commenters suggested that mandatory requirements were not established to determine when the superintendent should lower entry and/or use level. Some individuals felt that the superintendent might lower vessel use levels without sufficient cause. Other individuals felt that the superintendent might use discretionary authority too sparingly. The National Park Service will amend the phrase, "that, in the superintendent's judgement" to "that whale research findings demonstrate".

The 1983 Biological Opinion states that "present level of vessel use and operational management of vessels in Glacier Bay are not likely to jeopardize the continued existence of Southeast Alaska humpback whale stock". It is therefore unlikely that any reduction of vessel entries below the 1976 base level will occur unless new research findings and additional consultation with the National Marine Fisheries Service indicate the possibility of jeopardy.

A few commenters suggested that the whale water designation procedures were subject to too much individual interpretation. The National Park Service disagrees. The decision to establish whale waters is based on several considerations. Among them are: (1) Consultation with the National Marine Fisheries Service; (2) actions consistent with the Glacier Bay National Park General Management Plan; (3) consultation with interested public agencies; (4) public comment; (5) vessel use traffic, and (6) research and whale monitoring activity in Glacier Bay. Most elements of the designation process have been utilized previously and worked well.

When considering the designation of whale waters the National Park Service will review the level of recent whale activity in the area, evidence of feeding, historic use of the location by whales, and expected level of vessel traffic in the vicinity. If an established feeding pattern is likely to be disrupted by vessels, whale waters will be designated.

Appropriate vessel use restrictions will be included in designated whale waters to prevent vessels from influencing whale behavior. Typically, these restrictions will require a reduced speed of ten knots or less and a steady, or mid-channel course when operating a vessel in whale waters. As in the past, the National Park Service will attempt to designate the minimum area necessary to provide for whale needs without unnecessarily restricting normal boating activities. When the whale leaves the area, the whale waters designation will be removed. By necessity, the National Park Service must be able to initiate the designation process quickly.

Some commenters suggested that under certain circumstances some of the provisions in the regulations would imperil life and property. The National Park Service recognizes that departure from these whale protection regulations may be necessary to avoid immediate danger to vessel or crew. In complying with the regulation, vessel operators shall give due regard to all dangers of navigation and collision. Vessels may enter sheltered waters in order to seek safe refuge from weather or for problems relating to the safe operation of the vessel.

Section 13.65(b)(3) Permits.

Most commenters recommended the continuation of some form of vessel entry restrictions. A few commenters recommended that private motor vessels be allowed to enter Bartlett Cove without a permit. The National Park Service will continue to impose entry limits on private motor vessels, within the entrance of Glacier Bay, to approximate 1976 entry levels as recommended by the National Marine Fisheries Service. Bartlett Cove cannot be exempted from the permit system since whale activity and feeding regularly occur within the cove. Bartlett Cove is one of the few adequate

anchorages and fuel docks in the region. Within the existing permit system provisions may be made for vessels to enter Bartlett Cove the day prior to issuance of a permit. It should be noted Bartlett Cove can be used as a safe anchorage anytime adverse weather or other circumstances affect the safety of vessel operation.

An error was made in presenting the figures for tour and charter vessels. The number of tour vessels entries should be 230. The original charter vessel entries should have been 217 with an adjusted total 226 as described below.

One commenter stated that the limit of 217 charter vessel entries during the whale season was inaccurate in that it did not include all of the actual charter vessel entries during June, July, and August of 1976 (the base period). The National Park Service reviewed the specific information provided and determined nine additional entries had been made during the base period by charter vessels based outside of Glacier Bay. Currently, 33 of the 217 charter vessel entries are allocated to vessels based outside of Glacier Bay. These nine entries allocated to vessels based outside of Glacier Bay bring the totals to 42 of the 226 total charter vessel entries.

Section 13.65(b)(3) of the regulations requires the superintendent to establish a permit system, requiring all motor vessel operators (except commercial fishing vessels engaged in fishing and official vessels of the State or Federal Government) to obtain a permit prior to entering Glacier Bay. The permit system would explain how permits could be obtained, and whom the vessel operator must contact upon entering, as well as outlining the number of vessels in the bay at any given time when whales are present.

One commenter suggested that kayaks be placed under the private permits. Another commenter suggested that sailboats and jet boats be excluded from the private permit. The National Park Service will continue to require permits for all motor vessels but not for nonmotorized vessels. The vessel operating restrictions apply to non-motorized vessels and should adequately limit the number and severity of interactions between whales and non-motorized vessels. Kayaks have not been shown to have disruptive effects on whales and they generally travel in areas infrequently used by whales.

Most commenters supported the exemption of commercial fishing vessels from the private permit system. A few commenters objected to this exemption because fishing boat design is similar to many private vessels that require permits. It was also suggested that commercial fishing vessels be restricted to 1976 levels. The National Park Service will continue to exempt commercial fishing vessels from the private permit system. The State limited entry requirements for many commercial fishing activities tend to limit total vessel numbers. The result is that vessel use in Glacier Bay during past summers has remained below 1976 levels. The only exception is the commercial halibut fishery where vessel use has increased in recent years. The commercial halibut season may occur during whale season. In the event that commercial fishing vessel levels approach the 1976 use levels a permit system will be established. Although some fishing vessels are identical in design to private vessels that require permits, most fishing activities require slow vessel operation that has little likelihood of being disruptive to whales.

Several commenters recommended that the vessel categories refer to number of "vessels per day" rather than "vessel entries per day" for cruise ships and tour boats in § 13.65(b)(3)(ii). The National Park Service agrees and has changed the wording so that the entries from a previous day would not create a situation where more than two cruise ships and three tour boats could be in the bay on a given day. Cruise ships are currently limited in their concession permits to a 14-hour stay per entry.

Section 13.65(b)(4) Operating Restrictions.

Several commenters recommended language changes in the operating restrictions section. The National Park Service, in reviewing this section, made several changes. The phrase "without changing into a reverse gear" was changed into "without shifting gears", thus eliminating the need for the fourth sentence of this section. The third sentence was amended to read "The vessel must be maintained on as steady a course as practicable away from the whale until one-quarter nautical mile of separation is established". Research has noted a close correlation between sudden changes in sound intensity and onset of whale behavior changes. Many of the sudden changes in sound intensity were the result of changes in engine speed or propeller pitch.

Several commenters objected to the fact that commercial fishing vessels which are actively trolling or setting long lines would be allowed to operate within one-fourth mile of a whale. Other commenters supported this exception and also recommended the "pulling long lines" be included. The National Park Service amended the regulations to include "setting or pulling long lines". These types of fishing methods involve operation of a vessel generally in a very slow, steady speed on a straight course without extreme fluctuation of engine RPM. Previously all fishing vessels were allowed within ¼ mile of a whale regardless of their fishing methods. Fishing methods other than trolling and setting or pulling long lines may involve erratic actions that might disrupt whales located within a one-quarter nautical mile radius of the activity. Another commenter objected to research vessels operating within one-quarter mile of a whale. Whale research vessels minimize operation time within close vicinity of whales to that which is necessary to sample whale prey or identify whale flukes. Vessel operation generally flows a slow and steady speed similar to trolling vessels.

Several commenters recommended that vessels be required to maintain a one-half mile distance from whales at all times. The National Park Service will retain the one-quarter mile distance requirement. The one-quarter mile distance was selected for three reasons: (1) Beyond this distance it is less likely that a vessel (especially smaller craft) will elicit strong behavioral responses from whales; (2) this distance is sufficient to allow vessel operators both to account for most sudden whale movements and to navigate safely away from a closing situation with whales; and (3) this is a distance which most vessel operators with average navigational ability can estimate. As discussed previously, the definition of pursue does incorporate a one-half nautical mile distance. Pursue means to alter a vessel's course or speed in a manner which results in retaining a vessel at a distance of less than one-half nautical mile from a whale.

Section 13.65(b)(5) Restricted Commercial Fishing Harvest.

A few commenters suggested that all commercial fisheries be restricted within Glacier Bay proper. The National Park Service feels that such a broad restriction is not justified by the result of currently available research with regard to humpback whale protection. Several small inlets within Glacier Bay National Park were designated by the Alaska National Interest Lands Conservation Act as wilderness waters and will be closed to commercial fishing harvest in accordance with the Wilderness Act.

The proposed regulation lists the various genera which have been identified as whale prey at some time in their life cycle. This list is not all inclusive, but represents those genera

which could be pursued by fishermen with consequent impact upon the whale's food supply. Pollock have been shown to be a significant humpback whale food item in Southeast Alaska. Therefore, pollock (Theragia), has been added to those genera that cannot be "actively fished for or retained if accidently caught" in Glacier Bay.

Numerous commenters supported the closure of Glacier Bay to shrimp harvest by trawling. However, many of the commenters recommended that Glacier Bay be opened to the commercial harvest of shrimp by shrimp pots. Although there is limited scientific evidence to determine the importance of various Pandalus species as whale food, it was generally suggested that the species caught by shrimp pots represent a sporadic food source for humpback whales.

The National Park Service will continue to restrict commercial harvest of Pandalopsis and Pandalus shrimp by any method. Some species of shrimp that actively swarm most of their life cycle are a food source for humpback whales. Bottom dwelling shrimp that tend to be caught by pot shrimping are free swimming during juvenile stages of their life cycle and could be food source for humpback whales. Also, studies have shown that baleen whales occasionally feed on bottom organisms. It should also be noted that whales in Glacier Bay frequently feed in shallow waters adjacent to the shoreline.

The National Park Service must manage conservatively because of the endangered species status of humpback whales. Commercial shrimp pot harvest tends to deplete shrimp stocks rapidly and requires frequent movement of pots to new areas. The restriction of commercial harvest of Pandalopsis and Pandallus applies only to Glacier Bay proper, where commercial harvest activity of shrimp was very limited in the past. Protection of marine species will allow researchers to study the relationship among natural food cycles, food availability, and whale behavior in Glacier Bay more accurately.

Temporary Restrictions

Several commenters recommended that motor vessel use limits and whale waters should be implemented through permanent rather than temporary regulations. The National Park Service will continue to develop, announce, and implement temporary restrictions as appropriate during a specific whale season. This will allow the superintendent to make appropriate adjustments to vessel use levels or whale water designations based on new research findings and whale monitoring observations.

Several commenters supported the issuance of permits based on seven vessel use days rather than seven calendar days for individuals from local communities. Some of these commenters indicated that all individuals residing in the Icy Strait region should be included and not just the four listed communities. The National Park Service will amend the temporary restrictions to read "those individuals living in or near Gustavus, Hoonah, Pelican, Elfin Cove, and Excursion Inlet". Individuals living adjacent to the boundaries of these communities could also be provided permits based on actual vessel use days. Much of the past local use has been sport fishing activity that has involved sporadic single day entries into the bay. This type of local use was not adequately recorded in 1976 vessel counts but is now included under the vessel entry restrictions. The allocation of vessel use days for local residents will result in increased permit availability for private vessel operators from more distant locations without increasing the total vessel use days beyond 1976 levels.

One commenter suggested that charter boat entries of local charter operators be altered by changing the accompanying calendar days to use days. The National Park Service disagrees with this suggestion. The charter boat entries are established by concession permit and reflect the actual entries in 1976.

Several commenters suggested that vessel use should have been allowed to increase in 1984. They felt vessel limits are currently too restrictive. Some individuals also felt that the limits may not accurately reflect actual use in 1976. The National Park Service does not agree with these comments except as previously noted for charter boats. The vessel entry levels were determined from the best available historic use data for 1976.

The National Park Service Organic Act, 16 U.S.C. 1, the Endangered Species Act, 16 U.S.C. 1536(a), and the Marine Mammal Protection Act, 16 U.S.C. 1361(2) and 1382(a), mandate the National Park Service to take actions necessary and appropriate to conserve the humpback whale within Glacier Bay. Because scientific data indicate that humpback whales react adversely to interactions with some vessels the National Park Service deems it necessary and appropriate to impose the regulations.

In establishing temporary restrictions, the National Park Service will be guided by consultation with NMFS, input received during public hearings on the development of these regulations, as well as during the development of the General Management Plan, and ongoing research and whale monitoring. Moreover, the National Park Service must review and evaluate whale activity for the full preceding season before considering adjusting entry limits. For these reasons, the National Park Service expects to set entry and use levels for those classes of vessels that have met the two year mandatory period or are otherwise eligible for an entry adjustment as a result of not previously benefiting from an increased entry allocation. The date of September 30 would allow 30 days from the end of whale season for the National Park Service to analyze research, compile data and make the necessary determinations. In addition, it would allow eligible permittees time to make known their needs for the season.

The National Park Service is currently considering fair and equitable methods for allocating possible additional vessel entries in future years. Vessel noise is a major concern in the management of the humpback whale environment in Glacier Bay. A 20 decibel sound level spread exists between the quietest and the loudest cruise ships. A 20db gain would be equivalent to a hundred-fold increase. Smaller boat sound signatures also vary significantly.

Several commenters recommended that any additional authorized entries should be allocated to the quieter vessels within each class. If expanded acoustical and behavioral research supports such actions, the National Park Service may indeed give preference to quieter vessels in the future.

Two commenters felt that the whale water designation "between the mouth of Glacier Bay and a line drawn from the northern tip of Strawberry Island to the northern tip of Lars Island" should be expanded to include more of Glacier Bay. Additional commenters suggested that whale water designations be included as a part of the final rule instead of as a temporary restriction. Other individuals recommended that no "season-long" whale water designation be established in the temporary restrictions. They suggested the whale waters be designated only after repeated sightings of whales. For 1985, the National Park Service will leave whale water designations unchanged. The designated area is based on frequent and consistent historic use by humpback whales. This area includes the entrance of Glacier Bay where all whales must pass before dispersing to

various locations within the Bay. Additional whale waters can be added during the whale season if necessary in accordance with 36 CFR 13.65(b)(2).

Provisions for monitoring are an administrative rather than a regulatory concern. The National Park Service recognizes that this is an issue of the utmost gravity and will pursue its monitoring responsibilities with vigor and diligence. Whale monitoring will be conducted from vessel and shore stations to determine how many individual whales enter Glacier Bay during the season and how long they remain. Whale monitoring will occur during the whale season, June 1 to August 31. The only way to obtain the information accurately is by fluke photo-identification. The amount of time needed for an experienced whale biologist to conduct whale monitoring activities is somewhat dependent on: (1) how many whales enter, (2) where whales spend most of their time and their mobility, and (3) weather and sea conditions.

Several commenters objected to the 10 knot speed limit designated in whale waters. They stated the 10 knot speed hampered commercial fishing vessel transiting and tour vessel scheduling. The National Park Service will maintain the 10 knot speed limit in effect for the 1985 restrictions. Acoustical research has shown that vessels operating at 10 knots were 7 to 11 db quieter than at 15 or more knots. Radiant noise from ships has been found to contribute significantly to underwater sound levels.

Although whale vocalization is infrequent in Glacier Bay, the possibility of limited masking of whale vocalizations by similar frequency sounds from vessels exists. If expanded acoustical and behavioral research indicated that noise duration is more important than noise level, future regulations may allow faster travel through the lower bay.

One commenter objecting to the speed limit alleged that such speed would reduce planing hull vessel efficiency and maneuverability. If vessel safety is endangered then vessel operation can be modified. However, discussions with the United States Coast Guard indicate that a speed limit of 10 knots relative to the water will not normally endanger vessel safety.

Open skiffs are common up to 18 feet in length. For this reason the exception to the mid-channel rule in whale waters has been increased from 16 to 18 foot vessels.

Trawling Within the Waters of Glacier Bay

On April 6, 1983 the National Park Service published regulations that proposed to close certain areas within Glacier Bay National Park to the use of aircraft, motorboats and snowmobiles. Included within these proposed regulations was a proposal to prohibit trawling within the waters of Glacier Bay. This proposal was subject to public review and hearing during the comment period which began on April 6, 1983 and ran for 120 days until August 6, 1983. Since the prohibition on trawling is not related to the other access issues the National Park Service has determined that it is necessary and appropriate to set forth the final rule in this rulemaking.

The regulation is designed to protect the bottom environment of the bay and those small crustaceans which are a food source of the endangered humpback whale. It was originally proposed as § 13.65(a)(6). Public comment on the proposal was limited and failed to provide convincing rationale that the proposal should be modified or withdrawn. Therefore, National Park Service has adopted the regulation and it will be codified at § 13.65(b)(6).

Bottom trawling is a fishing method which disrupts feed beds and changes the contour of the bottom of the bay, causing serious resource damage to the bottom ecosystem. Non-commercial, non-targeted species are frequently taken by bottom trawling and the fishing method causes unnatural changes in bottom habitat. These unnatural changes include the selective destruction of sessile organisms such as sea pens and their replacement by more motile organisms. Even in midwater trawling, non-targeted, incidental species are frequently taken. These include significant numbers of shrimp (Pandalidae), a food source of the humpback whale. In summary, the National Park Service has determined that the closure is essential to protect the bottom ecosystem of the bay and those organisms which serve as a food source for the endangered humpback whale and other species.

Temporary Restrictions for June 1–August 31, 1985

The following temporary restrictions are established pursuant to the authority of 36 CFR 13.30. These are presented for informational purposes and as an example of future restrictions that may be imposed under the authority of § 13.65(b)(2). The National Park Service announced its 1985 vessel entry and use levels, whale water designations, and permit system details through publication in the state and local media and public meetings. The temporary restrictions were also subject to public meetings on October 2 and 3, 1984, in Juneau and Gustavus.

In accordance with NMFS biological opinion the temporary restrictions reflect an increase in vessel traffic for 1985.

The following temporary restrictions are to be applied for 1985 in conjunction with permanent regulations set forth in 13.65(b). These temporary restrictions describe activities that are prohibited.

I. Permit System Details for 1985

A. The number of cruiseship, tour vessel, and charter vessel entries into Glacier Bay will be limited by means of concession agreements.

B. Private motor vessels will be limited by vessel permits within Glacier Bay.

1. Private motor vessel permits will be issued up to 60 days in advance on a first come basis for up to seven calendar days. Only two consecutive permits may be issued to any motor vessel operator, except between July 1 and July 15 when only one permit will be issued. Five entry permits may be issued each day between June 14 and August 15, and three permits may be issued each day during the remainder of whale season. Motor vessel operators must confirm their permits 48 hours in advance of their scheduled entry.

Unconfirmed reservations will be canceled. Permits can be obtained by contacting Glacier Bay National Park and Preserve, Gustavus, Alaska 99826. Phone (907) 697–2268.

2. Local private vessels—those individuals living in or near Gustavus, Hoonah, Pelican, Elfin Cove, and Excursion Inlet—may be issued entry permits in accordance with the private vessel permit system. These permits for local private motor vessels will be valid for seven use days rather than seven calendar days.

C. Prior to entry into or departure from Glacier Bay, all motor vessel operators must notify the park office by phone at (907) 697–2268 or marine radio, channel 16, KWM20, Bartlett Cove.

II. Motor Vessel Entry and Use Levels for 1985

A. Cruiseship entries into Glacier Bay are limited:

1. To two cruiseships per day;

2. To no more than two vessels in the bay on any given day;

3. To a total of 102 use days.

B. Tour vessel entries into Glacier Bay are limited:

1. To three tour vessels per day;

2. To no more than three vessels in the bay on any given day;

3. To the 229 use days currently authorized by concession agreements.

C. Charter vessel entries into Glacier Bay are limited:

1. To the 271 authorized in concession agreements;

2. To no more than five vessels in the bay any given day;

3. To a total of 511 use days.

D. Private motor vessel entries into Glacier Bay are limited:

1. To 407 vessel entries per whale season;

2. To 25 vessels in the bay on any given day;

3. To 1714 vessel use days during whale season.

III. Whale Water Designation

A. Whale Waters

Designated whale waters are located between the mouth of Glacier Bay and a line drawn from the northern tip of Strawberry Island to the northern tip of Lars Island, including Bartlett Cove and Beardslee Entrance.

B. Vessel Operations

Operators of motorized vessels in these whale waters will maintain speeds of ten knots or less through the water. Operators of motorized vessels over 18 feet in length, that are not engaged in fishing or under sail, will navigate as close to the mid-channel course as possible between the northern and southern limits of these whale waters. Where possible, motor vessels shall remain at least one mile from the shoreline at all times.

Drafting Information

The primary authors of these regulations are Michael J. Tollefson and Gary W. Vequist, Glacier Bay National Park and Preserve.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501, et seq., and assigned clearance number 1024–0016.

Compliance With Other Laws

The National Park Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193, February 19, 1981). In accordance with the Regulatory Flexibility Act (94 Stat. 1164, 5 U.S.C. 601 et seq.), the National Park Service has determined that these regulations will not have a significant economic effect on a substantial number of small entities, nor do they require the preparation of a regulatory analysis. The National Park Service makes this finding because the proposed regulations will impose no significant costs on any class or group of small entities.

As required by the National Environmental Policy Act (42 U.S.C. 4322, *et seq.*), the National Park Service has prepared an environmental assessment and a Finding of No Significant Impact. Copies of these documents are available at the address listed at the beginning of this rulemaking. In addition the National Park Service has consulted with NMFS as required by section 7 of the Endangered Species Act.

List of Subjects

36 CFR Part 7

National Parks.

36 CFR Part 13

Aircraft, Alaska, National parks, Penalties, Vessel traffic regulations.

In consideration of the foregoing, 36 CFR chapter I is amended as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. Revise the authority citation to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; § 13.65(b) also issued under 16 U.S.C. 1361, 1531.

2. Add a new § 13.65 as follows:

§ 13.65 Glacier Bay National Park and Preserve.

(a) [Reserved]

(b) *Whale Protection*—(1) *Definitions.* As used in this section:

"Charter Vessel" means any motor vessel under 100 tons gross that is rated to carry up to 49 passengers for hire on an unscheduled basis.

"Commercial Fishing Vessel" means any motor vessel conducting fishing activities under the appropriate commercial fishing licenses as required and defined by the State of Alaska.

"Cruise Ship" means any motor vessel at or over 100 tons gross carrying passengers for hire.

"Entry" means each time a motor vessel passes the mouth of Glacier Bay on the way into the bay; each time a private motor vessel activates or extends a permit; each time a vessel based at Bartlett Cove leaves the dock, except a private vessel based at Bartlett Cove that is gaining access or egress to or from outside the park; or the first time a local private motor vessel utilizes a day of the seven use day permit.

"Glacier Bay" means all marine waters within Glacier Bay National Park north of the mouth of Glacier Bay, defined as an imaginary line between Point Gustavus and Point Carolus.

"Motor Vessel" means any vessel, other than a seaplane, propelled or capable of being propelled by machinery (including steam), whether or not such machinery is the principal source of power.

"Private Vessel" means any motor vessel used for recreation that is not engaged in commercial transport of passengers, commercial fishing, or official business.

"Pursue" means to alter a vessel's course or speed in a manner which results in retaining a vessel at a distance less than one-half nautical mile from a whale.

"Tour Vessel" means any motor vessel under 100 tons gross that is rated to carry more than 49 passengers for hire or any smaller motor vessel regularly scheduled for hire.

"Vessel" includes every type or description of craft used as a means of transportation on the water, including a buoyant device permitting or capable of free flotation and a seaplane while operating on the water.

"Vessel Use Day" means any continuous period of time that a vessel is in Glacier Bay between the hours of 12 midnight on one day to 12 midnight the next day.

"Whale" means any humpback whale (*Megaptera novaeangliae*).

"Whale Season" means the period from June 1 through and including August 31 of each year.

"Whale Waters" means any portion of Glacier Bay, designated by the Superintendent, having a high probability of whale occupancy, based upon recent sighting and/or past patterns of occurrence.

(2) *Public Use Limits and Temporary Restrictions*—(i) *Authority.* Consistent with the Biological Opinion issued on June 22, 1983, or as such may be modified or supplemented by the National Marine Fisheries Service the superintendent may:

(A) Increase the vessel entry and use levels incrementally by up to 20% above the 1976 levels for any or all categories of vessels as listed in paragraph (b)(3)(ii) of this section.

(B) Designate whale waters and establish temporary vessel use restrictions upon a determination that such action is necessary to conserve the humpback whale and the supporting habitat.

(ii) An incremental increase authorized pursuant to paragraph (b)(2)(i)(A) of this section may be implemented only if the number of whales entering Glacier Bay remains equal to or is greater than the 1982 level and only following public notice and hearing in the vicinity and other areas as appropriate. An increase allocated to any class of vessels shall be followed by two years during which entry and use levels for the affected class of vessels remain at or below the increased allocation. The superintendent shall lower entry and or use levels by any percentage necessary to achieve a level

that whale research findings demonstrate will not be detrimental to the humpback whale.

(iii) The superintendent shall base the establishment of public use limits, the designation of whale waters and the establishment of temporary vessel use restrictions on the following factors:

(A) Consultation with the National Marine Fisheries Service;

(B) Glacier Bay National Park and Preserve General Management Plan;

(C) Consultation with interested public agencies;

(D) Research and monitoring of whale activity in Glacier Bay;

(E) Public and vessel operators comments;

(F) Vessel traffic patterns; and

(G) Such other considerations as may be deemed appropriate.

(iv) Maps of designated whale waters and notices of applicable vessel use restrictions shall be made available to the public at park offices at Bartlett Cove and Juneau, Alaska, and shall be submitted to the U.S. Coast Guard for publication as a "Notice to Mariners".

(v) Failure to comply with public use limits, designated whale waters, or vessel use restrictions established pursuant to paragraph (b)(2)(i) of this section is prohibited.

(3) *Permits.* (i) The superintendent shall develop, and implement a motor vessels permit system which details:

(A) How permits can be obtained;

(B) Whom the operator must contact when entering and leaving Glacier Bay;

(C) The maximum number of motor vessel entries to be allowed each day during the whale season;

(D) The maximum number of motor vessels to be allowed in Glacier Bay on any given day during the whale season;

(E) The maximum number of motor vessel use days for the whale season;

(F) The allocation of entry permits among commercial and private motor vessels; and

(G) The maximum length of stay in Glacier Bay for motor vessels.

(ii) The superintendent shall base the permit system on the following base figures derived from 1976 motor vessel use:

(A) Cruise ships are limited to two vessels within Glacier Bay on any given day with a total of no more than 89 vessel use days during the whale season.

(B) Tour vessels are limited to three vessels within Glacier Bay on any given day with a total of no more than 230 vessel use days during the whale season.

(C) Charter vessels are limited to five vessels within Glacier Bay on a given day with a total of no more than 226 entries and 426 vessel use days during whale season.

(D) Private vessels are limited to 21 vessels within Glacier Bay per day with a total of no more than 339 entries and 1428 vessel use days during whale season.

(iii) Operating a motor vessel in Glacier Bay without a permit issued pursuant to this section is prohibited, except:

(A) A commercial fishing vessel engaged in commercial fishing within Glacier Bay, *provided* that commercial fishing vessel use levels remain at or below their 1976 use levels; or

(B) A motor vessel engaged in official business of the State or Federal government.

(4) *Operating Restrictions.* Except for a vessel being used in conjunction with official whale research or monitoring for the Federal government or a commercial fishing vessel actively trolling or being used to set or pull long lines, the following are prohibited:

(i) Operating a vessel within one-quarter nautical mile of a whale. The operator of any vessel accidentally positioned within one-quarter nautical mile of a whale shall slow the vessel to ten knots or less without shifting gears unless impact is likely. The operator shall then maintain the vessel on as steady a course as possible away from the whale until one quarter nautical mile of separation is established.

(ii) Pursuing or attempting to pursue a whale.

(5) *Restricted Commercial Fishing Harvest.* Fishing for, or retaining if accidentally caught, herring (Clupea), capeline (Mallotus), sandlance (Ammodytes), pollock (Theragra), euphausids (Thalasia), or shrimp (Pandalus and Pandalopsis) within Glacier Bay is prohibited.

(6) Trawling within Glacier Bay is prohibited.

(7) The information collection requirements contained in paragraph (b)(3) of this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1024–0016. The information is being collected to allow the superintendent to issue permits to allow vessels into Glacier Bay during the whale season. This information will be used to grant administrative benefits.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

§ 7.23 [Reserved]

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

4. Remove and reserve § 7.23.

Dated: April 8, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–11249 Filed 5–9–85; 8:45 am]

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federal register

Friday
May 10, 1985

Part V

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 540

Nicaraguan Trade Control Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 540

Nicaraguan Trade Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On May 1, 1985, the President issued Executive Order 12513, declaring a national emergency with respect to Nicaragua, invoking the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), ordering specified controls with respect to Nicaragua, and delegating his authority under that Act to the Secretary of the Treasury. In implementation of that order, the Treasury Department is issuing the Nicaraguan Trade Control Regulations. These Regulations: (a) prohibit imports into the United States of goods and services of Nicaraguan origin; (b) prohibit exports from the United States of goods to Nicaragua, except those for the organized democratic resistance; (c) prohibit vessels of Nicaraguan registry from entering U.S. ports; (d) prohibit transport by Nicaraguan air carriers to or from the United States; and (e) prohibit transactions relating to the preceding prohibitions.

EFFECTIVE DATE: 12:01 a.m. Eastern Daylight Time, May 7, 1985.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0395.

SUPPLEMENTARY INFORMATION: 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. The information collection requests contained in this document are being submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Notice of OMB action on these requests will be published in the **Federal Register.**

List of Subjects in 31 CFR Part 540

Foreign trade, Nicaragua, Penalties.

Accordingly, 31 CFR Chapter V is amended by adding a new Part 540 to read as follows:

PART 540—NICARAGUAN TRADE CONTROL REGULATIONS

Authority: Secs. 201-207, 91 Stat. 1626 (50 U.S.C. 1701-1706); E.O. 12513.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 540.101 Relation of this part to other laws and regulations.

(a) This part is independent of Parts 500, 505, 515, 520, and 535 of this chapter. Those parts do not relate to Nicaragua. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. In addition, licenses or authorizations contained in or issued pursuant to any other provision of law or regulations do not authorize any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations. For example, no license or authorization contained in or issued pursuant to this part authorizes the export of goods or the export of technical data for which a validated license would be required under the Export Administration Regulations (15 CFR Part 368 *et seq.*) in the absence of such validated license.

Subpart B—Prohibitions

§ 540.204 Prohibited imports of goods and services from Nicaragua.

Except as authorized by regulations, rulings, instructions, licenses, or otherwise, the following may not be imported into the United States:

(a) Services of Nicaraguan origin; or

(b) Goods of Nicaraguan origin.

§ 540.205 Prohibited exports of goods to Nicaragua.

Except as authorized, no goods may be exported from the United States either to or destined for Nicaragua, except those for the organized democratic resistance, and except donated articles such as food, clothing, and medicine, intended to be used to relieve human suffering.

§ 540.206 Prohibited transactions with Nicaraguan vessels.

Vessels of Nicaraguan registry are prohibited from entering into United States ports.

§ 540.207 Prohibited transactions with Nicaraguan air carriers.

Nicaraguan air carriers are prohibited from providing air transportation to or from points in the United States.

§ 540.208 Prohibited related transactions.

(a) No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data subject to the prohibitions of this part, with knowledge or reason to know that a violation of the International Emergency Economic Powers Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to such commodity or technical data.

(b) Payments are not prohibited if the transaction to which they relate is not prohibited.

§ 540.209 Evasions; effective date.

(a) Any transaction for the purpose of, or which has the effect of, evading or avoiding any of the prohibitions set forth in this subpart is hereby prohibited.

(b) Unless otherwise specified, the prohibitions in this part shall be effective from 12:01 a.m., Eastern Daylight Time, May 7, 1985.

Subpart C—General Definitions

§ 540.301 Effective date.

The term "effective date" means 12:01 a.m., Eastern Daylight Time, May 7, 1985.

§ 540.302 Nicaragua; Nicaraguan.

The term "Nicaragua" means the country of Nicaragua and any Nicaraguan territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof, or any territory which is controlled or occupied by the military, naval or police forces or other authority of Nicaragua. The term "Nicaraguan" means pertaining to Nicaragua as defined in this section.

§ 540.308 Person.

The term "person" means an individual, partnership, association, corporation or other organization.

§ 540.316 Nicaraguan origin.

The term "goods or services of Nicaraguan origin" includes:

(a) Goods produced, manufactured, grown, or processed within Nicaragua;

(b) Goods which have entered into Nicaraguan commerce; and

(c) Services performed in Nicaragua or by a Nicaraguan national. However, the term "services of Nicaraguan origin" does not include diplomatic and consular services performed on behalf of the Nicaraguan Government.

§ 540.321 United States.

The term "United States" means the United States and all areas under the jurisdiction or authority thereof, including the Trust Territory of the Pacific Islands.

Subpart D—Interpretations

§ 540.401 Offshore transactions.

(a) The prohibitions contained in section 540.204 do not apply to the importation into locations outside the United States of goods or services of Nicaraguan origin.

(b) The prohibitions contained in § 540.205 do not apply to the export of goods to or destined for Nicaragua from locations outside the United States.

§ 540.402 Technical data.

The term "goods" shall include, *inter alia*, technical data in tangible form including, but not limited to, a model, prototype, blueprint, drawing, operating manual, computer software, tape recording, microfiche, or other material in machine readable form. The term "goods" does not apply to oral transmission of technical data in the course of performance of services, telephone communications, lectures, seminars, or plant visits.

§ 540.403 Imports of services of Nicaraguan origin.

(a) Services of Nicaraguan origin are imported into the United States when:

(1) Such services are performed in Nicaragua and are contracted for, or on behalf of, a person within the United States and for the benefit of a person within the United States; or

(2) Such services are performed in the United States by a national of Nicaragua who is in the United States for purposes of performing such services as an employee or contractor of a business or governmental entity located in Nicaragua.

Example #1: A company located in the United States requests an opinion from a Nicaraguan accounting firm. Section 540.204 prohibits the U.S. firm from contracting for and receiving such an opinion.

Example #2: A company located in the United States contracts with an airline company located in Nicaragua to provide maintenance personnel for the U.S. company's aircraft in the United States. Section 540.204 prohibits the U.S. company from contracting for and receiving such services.

(b) Services of Nicaraguan origin are not imported into the United States when such services are provided in the United States by a Nicaraguan national who, during indefinite residency in the United States, works as, for example, a teacher, athlete, restaurant or domestic worker, or a person employed in any other regular occupation.

(c) Section 540.204 does not prohibit a U.S. person from obtaining technical, custodial, legal, accounting, banking, shipping, or other services from Nicaragua when they are to be rendered outside the United States, including in Nicaragua.

§ 540.404 Transshipment through United States prohibited.

(a) The prohibitions in § 540.205 apply to the import into the United States, for transshipment or transit, of goods which are intended or destined for Nicaragua.

(b) The prohibitions in § 540.204 apply to the import into the United States, for transshipment or transit, of goods of Nicaraguan origin which are intended or destined for third countries.

§ 540.405 Imports from third countries; transshipments.

(a) Imports into the United States from third countries of goods containing raw materials or components of Nicaraguan origin are not prohibited if those raw materials or components have been incorporated into manufactured products or otherwise substantially transformed in a third country.

(b) Imports into the United States of goods of Nicaraguan origin that have been transshipped through a third country without being incorporated into manufactured products or otherwise substantially transformed in a third country are prohibited.

§ 540.406 Exports to third countries; transshipments.

(a) Exports from the United States to third countries of goods to be incorporated into products for re-export to Nicaragua are not prohibited where the exporter has reasonable cause to

believe that the goods will be incorporated into manufactured products or otherwise substantially transformed before shipment to Nicaragua.

(b) Exports from the United States to third countries are prohibited where the exporter has reason to believe that the goods will be transshipped to Nicaragua without being incorporated into manufactured products or otherwise substantially transformed in a third country.

§ 540.407 Imports into bonded warehouse or foreign trade zone.

The prohibition in § 540.204 applies to imports into a bonded warehouse or foreign trade zone of the United States.

§ 540.408 Release from bonded warehouse or foreign trade zone.

Section 540.204 does not prohibit the release from a bonded warehouse or a foreign trade zone of goods of Nicaraguan origin imported into a bonded warehouse or a foreign trade zone prior to the effective date.

§ 540.409 Import and export of goods in transit before the effective date.

(a) Section 540.204 does not apply to goods: (1) If imported by vessel, where the vessel arrives within the limits of a port in the United States prior to the effective date with the intent to unlade such goods; or (2) if imported other than by vessel, where the goods arrive within the Customs territory of the United States before the effective date.

(b) Section 540.205 does not apply to goods: (1) If exported by vessel or airline, where the goods are laden on board before the effective date; or (2) if exported other than by vessel or airplane where the goods have left the United States before the effective date.

(c) Payments relating to goods described in paragraph (a) and (b) of this section are authorized, even where such related payments occur after the effective date.

§ 540.410 Transactions relating to unprohibited offshore transactions.

The prohibitions in Subpart B do not extend to transactions by a person located in the United States relating to transactions outside the United States which are themselves not prohibited by Subpart B, such as financial, service or brokerage transactions involving offshore transactions with Nicaragua.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 540.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Secretary of the Treasury pursuant to section 203 of the International Emergency Economic Powers Act, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless such license or other authorization specifically so provides.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Treasury Department and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transactions prohibited by any provision of Parts 500, 505, 515, 520, or 535 of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction or license authorizing a transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions in Subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 540.503 Exclusion from licenses and authorizations.

The Secretary of the Treasury reserves the right to exclude any person from the operation of any license or from the privileges therein conferred or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof.

§ 540.504 Imports paid for prior to May 1, 1985.

(a) Goods of Nicaraguan origin that were entirely paid for prior to May 1, 1985, may be imported into the United States after the effective date, upon certification by the importer to U.S. Customs of the prior full payment.

(b) Upon application to the Office of Foreign Assets Control, specific licenses may be issued authorizing the importation into the United States after the effective date of:

(1) Goods of Nicaraguan origin that were partially paid for prior to May 1, 1985; and

(2) Services of Nicaraguan origin that were fully or partially paid for prior to May 1, 1985.

§ 540.505 Exports pursuant to prior contractual commitments.

(a) Goods that were in transit to Nicaragua before the effective date may be exported in accordance with the provisions of § 540.409.

(b) Specific licenses will normally be granted authorizing the export of goods from the United States to Nicaragua after the effective date and before November 1, 1985, provided the exporter demonstrates that it has a legal obligation to export the goods to Nicaragua under a contract entered into prior to May 1, 1985, and either that:

(1) The exporter's obligation is guaranteed under an outstanding performance bond which can successfully be invoked by the Nicaraguan importer; or

(2) The exporter is unable to sell the goods to any other purchaser without incurring a loss.

§ 540.533 Certain exports authorized.

(a) All transactions ordinarily incident to the exportation of any item, commodities, or products from the United States to or destined for Nicaragua are authorized if such exports are authorized under one or more of the following regulations administered by the Department of Commerce:

(1) 15 CFR 371.6, General license BAGGAGE: accompanied and unaccompanied baggage;

(2) 15 CFR 371.13, General license GUS: Shipments to personnel and agencies of the U.S. Government;

(3) 15 CFR 371.18, General license GIFT: Shipments of gift parcels;

(4) 15 CFR 379.3, General license GTDA: technical data available to all destinations;

(5) 15 CFR 371.19, General license GATS: relating to foreign-registry civil aircraft (except that transactions relating to Nicaraguan-registered air carriers are not authorized), and to U.S. air carrier aircraft and other U.S.-registry civil aircraft.

(b) All transactions are authorized ordinarily incident to the exportation from the United States to or destined for Nicaragua of the following items described as cited:

(1) 15 CFR 399.1, Commodity Control List, Group 5, CCL No. 7599I: microfilm

that reproduces the content of certain publications, and similar materials.

(2) 15 CFR 399.1, Commodity Control List, Group 9, CCL No. 7999I: certain publications and related materials.

§ 540.534 Certain imports for diplomatic or official personnel authorized.

All transactions ordinarily incident to the importation of any goods or services into the United States from Nicaragua are authorized if such imports are destined for official or personal use by personnel employed by Nicaraguan diplomatic missions or Nicaraguan missions to international organizations located in the United States, and such imports are not for resale.

§ 540.535 Certain services relating to participation in various events authorized.

The importation of services of Nicaraguan origin into the United States is authorized where a Nicaraguan national enters the United States on a visa issued by the State Department for the purpose of participating in a public conference, performance, exhibition or similar event.

§ 540.536 Import of publications authorized.

The importation into the United States is authorized of all Nicaraguan publications, including books, newspapers, magazines, films, phonograph records, tape recordings, photographs, microfilm, microfiche, posters, and similar materials.

§ 540.537 Import of certain gifts authorized.

The importation into the United States is authorized for goods of Nicaraguan origin sent as gifts to persons in the United States where the value of the gift is not more than $100.

§ 540.538 Import of accompanied baggage authorized.

Persons entering the United States directly or indirectly from Nicaragua are authorized to import into the United States personal accompanied baggage normally incident to travel.

§ 540.539 Commercial exports of certain medical supplies.

Commercial exports to Nicaragua of medicines and supplies intended strictly for medical purposes are authorized.

§ 540.540 Exports for humanitarian, educational, and religious purposes.

Applications for specific licenses to export goods to Nicaragua for humanitarian, educational, or religious purposes will be considered on a case-by-case basis.

§ 540.541 Certain exports by intergovernmental organizations.

Applications by intergovernmental organizations in the United States for exportation of U.S. goods to Nicaragua will be considered on a case-by-case basis.

§ 540.542 Telecommunications and mail transactions authorized.

All transactions of common carriers incident to the receipt or transmission of telecommunications and mail between the United States and Nicaragua are authorized.

Subpart F—Reports

§ 540.601 Required records.

Every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each transaction in which he engages, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least two years after the date of such transaction.

§ 540.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Secretary of the Treasury may, through any person or agency, investigate any such transaction or property or any violation of the provisions of this part regardless of whether any report has been required or filed in connection therewith.

Subpart G—Penalties

§ 540.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act, which provides in part:

> A civil penalty not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.
>
> Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000 or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

This section of the International Emergency Economic Powers Act is applicable to violations of any provision of this part and to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act.

(b) Attention is also directed to 18 U.S.C. 1001, which provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

§ 540.702 Detention of shipments.

Import shipments into the United States of goods of Nicaraguan origin in violation of § 540.204 and export shipments from the United States of goods to or destined for Nicaragua in violation of § 540.205 shall be detained. No such import or export shall be permitted to proceed, except as specifically authorized by the Secretary of the Treasury. Such shipments shall be subject to licensing, penalties, or forfeiture action, under the Customs laws or other applicable provision of law, depending on the circumstances.

Subpart H—Procedures

§ 540.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in Subpart B of this part. All such licenses are set forth in Subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses.

(b) *Specific licenses.*— (1) *General course of procedure.* Transactions subject to the prohibitions contained in Subpart B of this part which are not authorized by general license may be effected only under specific licenses. The specific licensing activities of the Office of Foreign Assets Control are performed by its Washington Office and by the Federal Reserve Bank of New York.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transaction prohibited by or pursuant to this part are to be filed in duplicate with the Federal Reserve Bank of New York. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, and there is no requirement that any other person having an interest in such transaction shall or should join in making or filing such application.

(3) *Information to be supplied.* The applicant must supply all information specified by the respective forms and instructions. Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. If an applicant or other party in interest desires to present additional information or discuss or argue the application, he may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition upon the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or by the Federal Reserve Bank of New York, acting in accordance with such regulations, rulings and instructions as the Secretary of the Treasury or the Office of Foreign Assets Control may from time to time prescribe, in such cases or classes of cases as the Secretary of the Treasury or the Office of Foreign Assets Control may determine, or licenses may be issued by the Secretary of the Treasury acting directly or through any designated person, agency, or instrumentality.

§ 540.803 Decisions.

The Office of Foreign Assets Control or the Federal Reserve Bank of New York will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute a final agency action.

§ 540.805 Amendment, modification, or revocation.

The provisions of this part and any rulings; licenses, whether general or specific; authorizations; instructions; orders; or forms issued hereunder may be amended, modified, or revoked at any time.

§ 540.806 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. Except to the extent that there is involved any military, naval, or foreign affairs function of the United States or any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, and except when interpretative rules, general statements of policy, or rules of agency organization, practice, or procedure are involved or when notice and public procedure are impracticable, unnecessary or contrary to the public interest, interested persons will be afforded an opportunity to participate in rulemaking through submission of written data, views, or arguments, with oral presentation in the discretion of the Director. In general, rulemaking by the the Office of Foreign Assets Control involves foreign affairs functions of the United States. Wherever possible, however, it is the practice to hold informal consultations with interested groups or persons before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment or repeal of any rule.

§ 540.807 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12513 or the International Emergency Economic Powers Act may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 540.808 Customs procedures: merchandise specified in § 540.204.

(a) With respect to merchandise specified in Section 540.204 appropriate Customs officers shall not accept or allow any:

(1) Entry for consumption or warehouse (including any appraisement entry, any entry of goods imported in the mails, regardless of value, and any informal entries);

(2) Entry for immediate exportation;

(3) Entry for transportation and exportation;

(4) Withdrawal from warehouse;

(5) Entry, transfer or withdrawal from a foreign trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign trade zone, unless either:

(i) The merchandise was imported prior to 12:01 a.m., May 7, 1985, or

(ii) A specific license pursuant to this part is presented, or

(iii) Instructions from the Office of Foreign Assets Control, either direct or through the Federal Reserve Bank of New York, authorizing the transaction are received.

(b) Whenever a specific license is presented to an appropriate Customs officer in accordance with this section, one additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise involved shall be filed with the appropriate Customs officers at the port where the transaction is to take place. Each copy of any such entry, withdrawal or other appropriate document, including the additional copy, shall bear plainly on its face the number of the license pursuant to which it is filed. The original copy of the specific license shall be presented to the appropriate Customs officers in respect of each such transaction and shall bear a notation in ink by the licensee or person presenting the license showing the description, quantity and value of the merchandise to be entered, withdrawn or otherwise dealt with. This notation shall be so placed and so written that there will exist no possibility of confusing it with anything placed on the license at the time of its

issuance. If the license in fact authorizes the entry, withdrawal or other transaction with regard to the merchandise the appropriate Customs officer, or other authorized Customs employee, shall verify the notation by signing or initialing it after first assuring himself that it accurately describes the merchandise it purports to represent. The license shall thereafter be returned to the person presenting it and the additional copy of the entry, withdrawal or other appropriate document shall be forwarded by the appropriate Customs officer to the Office of Foreign Assets Control.

(c) Whenever a person shall present an entry, withdrawal or other appropriate document affected by this section and shall assert that no specific Foreign Assets Control license is required in connection therewith, the appropriate Customs officer shall withhold action thereon and shall advise such person to communicate directly with the Federal Reserve Bank of New York, Foreign Assets Control Division, to request that instructions be sent to the Customs officer to authorize him to take action with regard thereto.

§ 540.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as Part 1 of this Title 31 of the Code of Federal Regulations.

(b) Any form issued for use in connection with the Nicaraguan Trade Control Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220, or the Foreign Assets Control Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

Dated: May 8, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved.

John M. Walker, Jr.,

Assistant Secretary, Enforcement & Operations.

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