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Wednesday
June 25, 1986

Briefings on How To Use the Federal Register—
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

WASHINGTON, DC

WHEN: July 11; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Abram Primus 202-523-3419
Ina Masters 202-523-3419

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium,
Fourth Floor, Federal Building,
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RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Seattle	206-442-0570
Tacoma	206-383-5230
Portland	503-221-2222

SAN FRANCISCO, CA

WHEN: July 24; at 1:30 pm.

WHERE: Room 2007, Federal Building,
450 Golden Gate Avenue,
San Francisco, CA.

RESERVATIONS: Call the San Francisco Federal Information Center, 415-556-6600

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CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Proclamation 5505 of June 21, 1986

National Save American Industry and Jobs Day, 1986

By the President of the United States of America

A Proclamation

The manufacturing industries in the United States have been a major factor in creating a high standard of living for all Americans. These industries now generate and ship more than $1 trillion of our annual gross national product.

Our manufacturing industries have done a magnificent job of meeting the needs of consumers and of the Nation and its allies, and they continue to do so. Those industries have demonstrated their ability to remain competitive in the emerging world marketplace.

American manufacturers are adapting to new economic circumstances by increasing their efficiency, their productivity, and their price-competitiveness. They have retained their share of the gross national product in a dynamic and changing national economy.

It is the policy of this Administration to ensure the right of all American industries to compete fairly in world markets by vigorously enforcing our trading rights worldwide. I am convinced that in an environment of free and fair trade, our manufacturing industries can meet any foreign competitors in price, quality, and reliability.

In recognition of the many accomplishments of our manufacturing industries, their critical role in our economy, and the many contributions of their employees to our national life, the Congress, by Senate Joint Resolution 346, has designated June 21, 1986 as "National Save American Industry and Jobs Day" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 21, 1986 as National Save American Industry and Jobs Day, and I invite the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of June, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-14523
Filed 6-24-86; 10:31 am]
Billing code 3195-01-M

Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations on the establishment, adjustment, and termination of special salary rate schedules. Specifically, we are deleting provisions which require that comments be obtained on proposals to establish, adjust, or terminate special salary rate schedules, and that these schedules be published in the **Federal Register**. These revisions will accelerate the effective date of newly established or increased special salary rates.

EFFECTIVE DATE: July 25, 1986.

FOR FURTHER INFORMATION CONTACT: William M. Gualtieri, (202) 632-7858.

SUPPLEMENTARY INFORMATION:

Law

Section 5303 of title 5, United States Code, authorizes the President to establish special minimum rates of basic pay for one or more grades, occupational groups, series, classes, or subdivisions of classes subject to statutory pay schedules, in one or more areas or locations, when the pay rates in private enterprise are so substantially above the statutory pay rates for the positions concerned as to handicap significantly the Government's recruitment or retention of well-qualified persons.

Executive order

Section 301(a) of Executive Order 11721 of May 23, 1973, as amended, authorizes OPM to exercise the authority conferred upon the President by the provisions of section 5303 of title 5, United States Code, to establish and revise special minimum pay rates and rate ranges and to prescribe conversion rules for adjusting an employee's pay for positions classified under the General Schedule and certain other pay systems.

Regulations

We published interim regulations on April 1, 1986 (51 FR 11007). The regulations revised Subpart C of Part 530 to delete provisions in §§ 530.303(a), 530.304(a), and 530.305 which require that comments be obtained on proposals to establish, adjust, or terminate special salary rate schedules, and that these schedules be published in the **Federal Register**. We also deleted Section 530.307 which lists the special salary rate schedules authorized.

Background

Federal statute (5 U.S.C. 5303) provides a mechanism for the Government to quickly staff its hard-to-fill positions and keep them filled by offering certain employees pay, in most instances, substantially higher than the statutory rates. Before such increases could take effect, however, OPM had to follow the Administrative Procedure Act (APA)—5 U.S.C. 533—to provide notice of proposed rulemaking and to provide interested parties an opportunity to comment. Following the notice-and-comment provisions of the APA has only served to delay the date our special salary rate actions can take effect, needlessly prolonging agency staffing problems.

Further, with the passage of Pub. L. 99-251, "Federal Employees Benefits Improvement Act of 1986," Congress specifically removed the requirement for OPM to follow notice-and-comment procedures when establishing any schedules or rates of basic pay when the underlying procedures, methodology, or criteria used to establish such schedules or rates were earlier codified in accordance with administrative procedure. (Special salary rate criteria appear in 5 CFR 530.303.)

Accordingly, we removed the cited provisions from our regulations so we can expeditiously alleviate agency staffing problems by accelerating the effective date of newly established or increased special salary rates. Moreover, whenever we decide to reduce or terminate special salary rates, employees in the affected positions suffer no loss because our regulations provide that no employee's pay will be reduced because of these actions. Even though the amended regulations took immediate effect, we nonetheless solicited comments on our actions.

Comments

We received two agency comments (one by letter and one by telephone) expressing support for the changes we made in our regulations, to the extent those changes eliminate the delay in effective dates, caused by following 5 U.S.C. 553, when establishing or increasing special salary rates. However, the commenters were also concerned that eliminating the delay in effective dates when terminating or reducing special rates could cause agencies problems when recruiting in situations where agencies are not given sufficient prior notice of the change in rates.

Each special rate authorization is subject to change at any time based on improvement or deterioration of the staffing conditions upon which the authorization is based. Changes may be initiated as a result of the annual review (required by Executive Order 11721) or any interim review or agency request for changes. Any rate changes as a consequence of the annual review are normally effective in the first pay period of each fiscal year and it is our objective to provide agencies with advance notice of these decisioins. Knowing this, agencies should exercise caution when making salary offers to persons who will enter on duty during that pay period. Any rate changes in current authorizations (and in newly established rates) as a consequence of an interim review (or mid-year request) become effective on a date which OPM and agencies mutually agree upon in advance. Therefore, the effective date of such actions should not cause agencies recruitment problems. No changes have been made to the interim regulations as a result of the comments received and we are adopting our interim regulations as final without change.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because it applies only to Federal employees and agencies.

List of Subjects in 5 CFR Part 530

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is adopting its interim rules published on April 1, 1986 (51 FR 11007), as final without change.

[FR Doc. 86-14316 Filed 6-24-86; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 550

Adjustment of Work Schedules for Religious Observances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting, as final, its interim rules governing adjustment of work schedules for religious observances. Proposed changes to the interim regulations appear to be unnecessary. Retaining the existing rules will provide the needed flexibility to cover various unique work-scheduling situations.

EFFECTIVE DATE: July 25, 1986.

FOR FURTHER INFORMATION CONTACT: Dwight W. Brown, (202) 632-4634.

SUPPLEMENTARY INFORMATION: OPM is not adopting the proposed regulations on adjustment of work schedules for religious observances published on October 24, 1983, at 48 FR 49023; instead, we are reconfirming our current regulations on the same subject published on October 6, 1978, at 43 FR 46288. The intent of the proposed regulations was to provide agencies with guidance on situations that warrant denial of an employee's request for an adjustment of work schedules and to establish additional procedures for administering 5 U.S.C. 5550a.

After reviewing the comments we received on the proposed regulations, we have determined that it would not be practical or desirable for OPM to provide a definitive list of situations that warrant denial of an employee's request. This is an agency determination that must be based on the facts and circumstances of each individual request.

In a similar vein, a number of agencies felt the administrative procedures in the proposed regulations were unduly prescriptive and did not provide sufficient flexibility to address unique work-scheduling situations. Therefore, as necessary, additional guidance on administrative procedures will be incorporated in the Federal Personnel Manual, rather than in the regulations themselves. Because the current regulations provide the necessary flexibility to address unique work-scheduling situations, we are adopting them as final rules.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is adopting the interim rules published October 6, 1978 (43 FR 46288), as final with the following amendments:

PART 550—[AMENDED]

1. The authority citation for Subpart J of Part 550 is added as set forth below, and the authority citations following all the sections in Subpart J are removed:

Authority: 5 U.S.C. 5550a.

§ 550.1002 [Amended]

2. Section 550.1002 is amended by removing the word "interim" in the first sentence of paragraph (a) and by removing paragraph (e).

[FR Doc. 86-14314 Filed 6-24-86; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 831

Retirement

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its proposed regulations to list an additional exception to the exclusions from civil service retirement (CSR) coverage for Federal employees and to amend the authority citations in Part 831, in accordance with the new authority citation requirements in 1 CFR 21.43, to place the authority citations at the subpart level. These regulations will correct a discrepancy in current regulations and the Federal Personnel Manual.

EFFECTIVE DATE: July 25, 1986.

FOR FURTHER INFORMATION CONTACT: Doris L. Reeves, (202) 632-1265.

SUPPLEMENTARY INFORMATION: On January 28, 1986, OPM published in the **Federal Register** (51 FR 3470-3471) proposed regulations to clarify that CSR coverage applies immediately upon appointment to a career or career-conditional employee who might otherwise be excluded from such coverage until after he or she achieved competitive status (that is, after completion of a probationary period). These regulations will reconcile a discrepancy in the existing regulations and the longstanding policy and guidance in Federal Personnel Manual Supplement 831-1 that career and career-conditional employees are entitled to automatic immediate coverage under the CSR system, even though they may serve under conditions that would ordinarily exclude them from retirement coverage, such as non-full-time employment without a pre-arranged regular tour of duty.

One employee organization sent written comments and four Federal agencies submitted oral comments during the 60-day comment period. All of the comments expressed support for our proposal to clarify the regulations and make them consistent with the guidance provided to agencies and employing offices in Federal Personnel Manual Supplement 831-1.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Federal employees and agencies.

List of Subjects in 5 CFR Part 831

Administrative practice and procedures, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

PART 831—RETIREMENT

Accordingly, OPM is amending 5 CFR Part 831 as follows:

1. The authority citation for Part 831 is removed and the authorities following all the sections are removed.

2. The authority citation for Subpart A of Part 831 is added to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2).

3. The authority citations for Subparts B, C, D, F, G, H, J through R, and T through U of Part 831 are added to read as follows:

Authority: 5 U.S.C. 8347.

4. In § 831.201 of Subpart B, paragraph (b) is revised to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(b) Paragraph (a) of this section does not deny retirement coverage when:

(1) Employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from service of 3 days or less, except in the case of an alien employee whose duty station is located in a foreign country;

(2) The employee receives a career or career-conditional appointment under Part 315 of this chapter;

(3) The employee is granted competitive status under legislation, Executive order, or civil service rules and regulations, while he or she is serving in a position in the competitive service; or

(4) The employee is granted merit status under 35 CFR Chapter I, Subchapter E.

5. The authority citation for Subpart E of Part 831 is added to read as follows:

Authority: 5 U.S.C. 8347; § 831.502 also issued under 5 U.S.C. 8337; § 831.503 also issued under sec. 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.

6. The authority citation for Subpart I of Part 831 is added to read as follows:

Authority: 5 U.S.C. 8347; Sections 831.903 and 831.904 also issued under 5 U.S.C. 8336.

7. The authority citation for Subpart S of Part 831 is revised to read as follows:

Authority: 5 U.S.C. 8345(k) and 8347.

[FR Doc. 86–14315 Filed 6–24–86; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Grade Standards for American Upland Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the leaf component of all Upland cotton grade standards to reflect the leaf characteristics produced by current harvesting and ginning practices.

AMS is also adopting the tentative Strict Good Ordinary Spotted physical standard and the tentative Strict Good Ordinary Light Spotted descriptive standard as permanent grade standards. These standards more accurately describe a portion of the cotton formerly described as Below Grade. The proposed reduction in the number of grade standards for American Upland cotton will not be made.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: H.H. Ramey, Jr., Chief, Fiber Technology Branch, Cotton Division, AMS, USDA, 4841 Summer Avenue, Memphis, Tennessee 38122. (901) 521–2921.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order.

The Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because the standards are revised to reflect current industry practices, this final rule will not have the requisite economic impact. The changes do not impose any additional costs or duties upon users of the service or any other segment of the cotton industry. Further, the standards are applied equally to all size entities by employees of the Department.

Background

Pursuant to the authority contained in the United States Cotton Standards Act, the Secretary of Agriculture has established the official cotton standards of the United States for the grades of American Upland cotton. These standards are used for the classification of American Upland cotton and provide a basis for the determination of value for commercial purposes.

The existing official cotton standards for the grades of American Upland cotton are listed and described in the regulations at 7 CFR 28.402–28.475. There are 15 physical standards represented by practical forms, and 29 descriptive standards for which practical forms are not made. Six of the descriptive standards describe the poorest quality cotton which make up the Below Grade classification (7 CFR 28.475).

The first grade standards for American Upland cotton were formally promulgated by USDA in 1914. They have been revised several times since, mainly because of changing varietal characteristics and harvesting and ginning practices. The last complete revision of the standards became effective in 1963 (27 FR 5535).

Need for Revising Standards

Studies and surveys of recent crops conducted by Cotton Division, AMS, have shown that the current physical standards for grades of White, Spotted and Tinged cotton do not adequately represent Upland cotton as now being produced in the United States. Twenty-three years have passed since the Upland cotton grade standards were last revised. During this period there have been changes in varieties, cultural practices and the way cotton is harvested and ginned. Many of these changes have had an influence on cotton quality. One noticeable change is in the size of leaf particles remaining in the lint after ginning. The size range of leaf particles contained in the present grade standards is no longer reflective of the range currently found in a typical bale of cotton.

Industry representatives at the May 14, 1985 Standards Matching Conference commented that the leaf component of the currently produced cotton differed from that of the standards. On August 29, 1985 representatives of cotton producers, ginners, merchants and textile manufacturers met with Cotton Division officials and discussed whether the leaf component of Upland cotton grade standards should be revised.

Proposed revised physical grade standards for Upland cotton were shown at a meeting of industry representatives in Memphis, Tennessee on January 29, 1986. They were also shown at several regional meetings of cotton growers, ginners, manufacturers and merchants, and were exhibited at the International Cotton Meeting in Bremen, West Germany this year.

New Standards

Two grade standards, Strict Good Ordinary Spotted and Strict Good Ordinary Light Spotted, were promulgated on a trial basis August 16, 1983 (48 FR 37001). They became effective as tentative standards on August 16, 1984. Since then, the production and trading of cotton in these two grades have yielded quantity and

price data that indicate that they should to be continued on a permanent basis.

Cotton classified as Strict Good Ordinary Spotted and Strict Good Ordinary Light Spotted together made up 2.7 percent of the total cotton crop in each of the 1984 and 1985 seasons. Certain areas have had more significant percentages of the local crop falling into these grades, as in the 1985 season when the Altus, Oklahoma territory classed 8.9 percent Strict Good Ordinary Light Spotted cotton and the Winnsboro, Louisiana territory classed 2.3 percent of their classings as Strict Good Ordinary Spotted.

This was cotton that would otherwise have been classified as Below Grade if the tentative standards were not in use. With the tentative standards in effect, the cotton was distinguished from Below Grade cotton with its inferior fiber qualities and spinning potential. Over the last two crop seasons, the prices paid for cotton within the tentative grades have been higher than prices paid for Below Grade cotton, demonstrating the commercial value of such cotton in the market.

Comments

Proposed rulemaking was published on pages 17193–17196 of the **Federal Register** of May 9, 1986, and invited comments for 30 days ending June 9, 1986. No written comments were received during the comment period. However, the proposed standards changes were presented to cotton industry representatives at the triennial Universal Cotton Standards Conference in Memphis, Tennessee, May 15–16, 1986. Twenty-eight delegates and 10 observers from 14 foreign cotton merchants' or spinners' associations attended the conference in addition to representatives from all segments of the U.S. cotton industry affected by changes in the standards. Representing the shippers and exchanges were 13 members of the American Cotton Shippers Association and nine others from seven cotton exchanges. The American Textile Manufacturers Institute was represented by 19 delegates from the textile industry, and 43 delegates from American cotton producer and ginner organizations were present.

AMS solicited comments from the participants in the conference and answered questions on each of the proposed changes in the standards. Each group of delegates was given an opportunity to view a set of the proposed standards, examine the supporting data, and caucus in order to discuss their position. The following discussion summarizes the comments offered on each of the issues considered at the conference.

Adoption of new physical grade standards with revised leaf component

The cotton producer and ginner representatives indicated that they were in favor of adopting new standards. Ten of the 14 foreign cotton associations concurred, with those opposing the proposal objecting to the changes on the basis that the grade standards should not be changed. However, those opposing the change did acknowledge that a fundamental change in the condition of the cotton crop had occurred. Manufacturer representatives endorsed the concept of adopting a new set of original standards, but they withheld their support after examining the set of proposed standards on display. They believed that the grades of Low Middling and below were objectionable because of the amount of leaf in the standards. Shipper and exchange representatives did not express opposition to the proposed standards, and stated that they would be able to operate with grade standards adopted with the cooperation of USDA and the cotton industry, as long as the best interests of the U.S. cotton trade were being served.

While not all the comments received were in favor of the proposed changes, it has been determined based upon all information available that the proposed changes to the physical standards should be made. A reduction of the size of leaf particles would make the grade standards more nearly representative of currently produced cotton.

Affirmation of the tentative standards

The domestic industry representatives were divided in their support for the proposed change that would make permanent the tentative grade standards, Strict Good Ordinary Spotted and Strict Good Ordinary Light Spotted. The domestic industry had been similarly divided when the standards were first promulgated in 1983. The cotton shipper and exchange delegation opposed the designation of these standards as permanent, stating that such low quality cotton should again be designated Below Grade since it was not marketable. Manufacturer representatives concurred with this view. Cotton producers and ginners were in support of permanent status for the tentative standards. Their position was that such cotton has greater utility than Below Grade cotton and therefore should be identified. Furthermore, producers stated that when such cotton is traded on spot markets, it commands a higher price than Below Grade cotton, and that trading in such cotton has been significant in some markets during the time that the tentative standards have been in effect. The foreign cotton associations took a neutral stance, abstaining on this issue since they consider it to be a purely domestic U.S. matter.

It has been determined based upon all information available that the two tentative standards should be made permanent. Pricing information over the last two crop seasons for the two tentative grades indicated that there are commercial differences in the value of this cotton, thereby demonstrating its commercial value.

Proposed reduction in the number of grade standards

The proposal to reduce the number of grade standards was made on the basis of several cotton industry recommendations since the 1983 Conference, and especially because of a recent recommendation from the National Cotton Council of America to eliminate five rarely used grades of Upland Cotton: Strict Middling Yellow Stained, Middling Yellow Stained, Good Middling Light Spottted, Good Middling Spotted and Strict Middling Tinged. All of these descriptive grade standards, with the exception of Strict Middling Tinged, could have been eliminated without adversely affecting USDA's ability to classify the cotton crop. In addition, there were eight other grades which were proposed to be removed because they were rarely used: Good Middling Light Gray, Strict Middling Light Gray, Middling Light Gray, Strict Low Middling Light Gray, Good Middling Gray, Strict Middling Gray, Middling Gray, and Strict Low Middling Gray. Accordingly, it was proposed to eliminate the descriptive standards for Yellow Stained cotton, Gray and Light Gray cotton, and one each from the Spotted and Light Spotted cotton grades. The Good Middling physical grade standard was also proposed for elimination. Further, it was proposed to convert three physical standards to descriptive standards.

However, support at the conference for any reduction in the number of standards virtually disappeared. Only the producer/ginner group favored the idea, stating their confidence in USDA's ability to eliminate unnecessary standards while protecting the best interests of the entire cotton industry. The foreign cotton associations were against eliminating any of the grade standards, asserting that the existing standards were needed to arbitrate cotton trade disputes. Manufacturer,

shipper, and exchange representatives also opposed the removal of any standards. These groups noted that, although the Tinged and Gray grades were not much used in an average year, they were still useful during some seasons when unusual and adverse weather conditions prevailed. In addition, they objected to the elimination of standards if it meant increased reliance on the general rule (7 CFR 28.480) for grading cotton. As a result of these comments, the proposed reduction in the number of standards will not be made in this final rule.

Conclusion

After carefully evaluating all comments received and all other relevant factors, it has been determined that the Strict Good Ordinary Spotted and Strict Good Ordinary Light Spotted tentative standards will be adopted as permanent standards.

The affirmation of the tentative standards in this document also requires that the description of Below Grade in 7 CFR 28.475 be revised. This is done by removing the designation of "tentative" from the heading of § 28.475.

AMS has also determined that the leaf component of the Upland cotton physical grade standards is to reflect characteristics found in recently produced crops as demonstrated by the proposed revised standards displayed at the conference. Accordingly, a new set of physical grade standards has been selected to be retained in the custody of USDA as the original official U.S. Cotton Standards. The containers are marked with an effective date of July 1, 1987. The descriptions of the physical standards in §§ 28.402, 28.403, 28.405, 28.407, 28.409, 28.411, 28.413, 28.431, 28.432, 28.433, 28.434, 28.442, 28.443, and 28.444 are amended to include the new effective date. Since the proposed reduction in the number of grade standards is not made in this final rule, additional sections are included in this amendment regarding the new effective date.

In § 28.525, the table of symbols and code numbers used in lieu of cotton grade names is revised to reflect the changes in this final rule including the new permanent standards.

The changes made in this final rule will enable AMS to continue to provide accurate and commercially significant distinctions in the range of quality found in the cotton crop. Such changes will enhance the Agency's ability to provide useful and cost-effective classification, standardization and market news services.

Pursuant to the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*), any standard or change or replacement to the standards shall become effective not less than one year after the date promulgated. These changes will become effective on July 1, 1987.

List of Subjects in 7 CFR Part 28

Cotton, Samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

PART 28—[AMENDED]

Accordingly, it is proposed to amend Subpart C, Part 28, Chapter I, Title 7 of the Code of Federal Regulations as shown. The Table of Contents is amended accordingly.

1. (a) The authority citation for Part 28, Subpart C, §§ 28.401 to 28.481 is revised to read as follows:

Authority: Sections 28.401 to 28.481 issued under Sec. 10, 42 Stat. 1519; 7 U.S.C. 61. Interpret or apply Sec. 6, 42 Stat. 1518, as amended; 7 U.S.C. 56.

b. The authority citation for Part 28, Subpart C, § 28.525 is revised to read as follows:

Authority: Section 28.525 issued under Sec. 10, 42 Stat. 1519; 7 U.S.C. 61. Interpret or apply Sec. 6, 42 Stat. 1518, as amended; 7 U.S.C. 56.

2. In §§ 28.402, 28.403, 28.405, 28.407, 28.409, 28.411, 28.413, 28.431, 28.432, 28.433, 28.434, 28.442, 28.443 and 28.444, the date June 15, 1963 is changed to July 1, 1987.

3. The heading of § 28.425 is revised to read as follows:

§ 28.425 Strict Good Ordinary Light Spotted.

* * * * *

4. Section 28.435 is amended by revising the heading and text of the section to read as follows:

§ 28.435 Strict Good Ordinary Spotted.

Strict Good Ordinary Spotted is American Upland cotton which in color, leaf, and preparation is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Good Ordinary Spotted, effective July 1, 1987."

5. Section 28.475 is amended by revising the heading to read as follows:

§ 28.475 Below Grade Cotton.

* * * * *

6. Paragraph (a) of § 28.525 is revised to read as follows:

§ 28.525 Symbols and Code Numbers.

* * * * *

(a) Symbols and Code Numbers for Grades of American Upland Cotton.

Full grade name	Symbol	Code no.
Good Middling	GM	11
Strict Middling	SM	21
Middling Plus	Mid Plus	30
Middling	Mid	31
Strict Low Middling Plus	SLM Plus	40
Strict Low Middling	SLM	41
Low Middling Plus	LM Plus	50
Low Middling	LM	51
Strict Good Ordinary Plus	SGO Plus	60
Strict Good Ordinary	SGO	61
Good Ordinary Plus	GO Plus	70
Good Ordinary	GO	71
Good Middling Light Spotted.	GM Lt Sp	32
Strict Middling Light Spotted.	SM Lt Sp	22
Middling Light Spotted	Mid Lt Sp	32
Strict Low Middling Light Spotted.	SLM Lt Sp	42
Low Middling Light Spotted.	LM Lt Sp	52
Strict Good Ordinary Light Spotted.	SGO Lt Sp	62
Good Middling Spotted	GM Sp	13
Strict Middling Spotted	SM Sp	23
Middling Spotted	Mid Sp	33
Strict Low Middling Spotted.	SLM Sp	43
Low Middling Spotted	LM Sp	53
Strict Good Ordinary Spotted.	SGO Sp	63
Strict Middling Tinged	SM Tg	24
Middling Tinged	Mid Tg	34
Strict Low Middling Tinged	SLM Tg	44
Low Middling Tinged	LM Tg	54
Strict Middling Yellow Stained.	SM YS	25
Middling Yellow Stained	Mid YS	35
Good Middling Light Gray	GM Lt Gray	16
Strict Middling Light Gray	SM Lt Gray	26
Middling Light Gray	Mid Lt Gray	36
Strict Low Middling Light Gray.	SLM Lt Gray	46
Good Middling Gray	GM Gray	17
Strict Middling Gray	SM Gray	27
Middling Gray	Mid Gray	37
Strict Low Middling Gray	SLM Gray	47
Below Grade-(Below Good Ordinary).	BG	81
Below Grade-(Below Strict Good Ordinary Lt Spotted).	BG	82
Below Grade-(Below Strict Good Ordinary Spotted).	BG	83
Below Grade-(Below Low Middling Tinged).	BG	84
Below Grade-(Below Middling Yellow Stained).	BG	85
Below Grade-(Below Strict Low Middling Gray).	BG	87

* * * * *

Dated: 20 June 1986.

James C. Handley,

Administrator, Agricultural Marketing Service.

[FR Doc. 86-14363 Filed 6-24-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 923

[Washington Cherry Reg. 22; Amdt. 2]

Sweet Cherries Grown in Designated Counties in Washington; Amendment of Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule and request for comments.

SUMMARY: This interim final rule changes the row count/row size designations of the pack requirements to more accurately reflect the size of the individual cherries in similarly marked containers, and revises the container requirements for fresh cherries to permit the marketing of "consumer" type containers on a commercial basis. These actions are designed to promote the orderly marketing of cherries in the interest of producers, handlers, and consumers.

DATES: The interim final rule becomes effective June 19, 1986. Comments are due by July 25, 1986.

ADDRESS: Interested persons are invited to submit written comments concerning this action. Comments should be sent in duplicate to the Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register**, and will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Washington, D.C. 20250. Telephone 202–447–5697.

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

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

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

This interim final rule is issued under the marketing agreement and Order No. 923 (7 CFR Part 923), regulating the handling of sweet cherries grown in designated counties in Washington. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the unanimous recommendation and information submitted by the Washington Cherry Marketing Committee, and other information. The interim final rule becomes effective upon signature, and provides a 30-day comment period.

The interim final rule adds additional row count/row size designations to the pack requirements to help assure that the individual cherries in each container are more uniform. The current row count/row size designations are not precise enough to prevent significant diameter variations between the individual cherries within similarly marked containers. This has caused confusion between handlers and the trade. In addition, the interim final rule revises the container requirements to permit the packing of "consumer" type containers on a commercial basis. Specifically, the changes will allow the shipment of containers weighing 12 pounds or less either individually or in master shipping containers. The committee reports that it has approved virtually all "consumer" type package requests under the order's experimental container provisions in recent years and now these types of containers should be authorized for commercial shipment. This action is expected to encourage increased sales and shipments of cherries in the interest of growers and handlers.

After considering all relevent matter presented, the information and the recommendations submitted by the committee, and other available information, the Department has determined that the action hereinafter set forth will tend to effectuate the declared policy of the Act.

In addition, it is found that it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this interim final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The harvest and shipment of Washington sweet cherries has already begun. Hence, this rule should be made effective promptly so that it is applicable to as much of the 1986 crop as possible. Moreover, interested persons will be given an opportunity to comment on the rule through July 25, 1986 because of its future applicability. Handlers have been apprised of the regulatory changes, and are prepared to conduct their packing operations in accordance with such changes, and they will not require any additional time for preparation. Moreover, no useful purpose would be served by delaying the effective date of this action.

List of Subjects in 7 CFR Part 923

Agricultural Marketing Service, Marketing agreements and orders, Cherries, Washington.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR Part 923 continues to read as follows:

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

2. Therefore, § 923.322 is amended by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 923.322 Washington Cherry Regulation 22.

* * * * *

(b) * * *

(1) The net weight of loose packed (jumble-filled) cherries in any container shall be 12 pounds or less, or 20 pounds or more. The net weight of face packed cherries in any container shall be 15 pounds, or 12 pounds or less: *Provided,* That containers with a net weight of 12 pounds or less may be packed together with like containers in a master shipping container.

* * * * *

(c) *Pack.* (1) When containers of cherries are marked with a row count/row size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and at least 90 percent, by count, of the cherries in any lot shall be not smaller than the corresponding diameter shown in Column 2 of such table:

TABLE

Column 1, row count/row size	Column 2 diameter (inches)
9	7 5/64
9½	7 1/64
10	6 7/64
10½	6 3/64
11	6 1/64
11½	5 7/64
12	5 5/64
13	5 3/64

* * * * *

Dated: June 19, 1986.

Thomas R. Clark,

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

[FR Doc. 86–14301 Filed 6–24–86; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 243

Deportation of Aliens in the United States; Expulsion

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This change amends the present rule which established procedures requiring provision by the Immigration and Naturalization Service of a 72-hour surrender notice to aliens under a final order of deportation, prior to their removal from the United States. Statistics generated by the Service indicate general noncompliance with the surrender notice, thus impeding the orderly and just administration of the law by the Immigration and Naturalization Service.

The revision amends the language to provide for detention of such aliens during that period prior to removal. The revision is procedural and not substantive in nature because the regulation addresses itself solely to aliens who have exhausted all due process and appeals, resulting in a final order of deportation. No changes have been made which affect an alien's right to hearing or the appellate procedure.

EFFECTIVE DATE: July 25, 1986.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048

For Specific Information: Walter D. Cadman, Senior Special Agent Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3098.

SUPPLEMENTARY INFORMATION: The regulation 8 CFR 243.3, as presently constituted, requires the Service to provide aliens under a final order of deportation 72 hours advance notice to surrender prior to their expulsion. However, Immigration and Naturalization Service statistics have indicated that a majority of aliens do not comply with the notice to surrender, which has been commonly and derisively referred to as a "run letter". Such aliens abscond instead, in the hope of evading a lawfully issued final order of deportion.

On January 28, 1986 the Service published a rule proposing to revise procedures requiring a 72-hour surrender notice to aliens under a final order of deportation. The proposed revision was published in the **Federal Register** at 51 FR 3471. It is now the Service's intent to proceed with the regulation change with only minor modification.

The purpose of the revision is to provide the Service with an effective tool to enforce final orders of deportation issued by immigration judges, administrative tribunals or courts of appeal in a timely manner. It is necessary due to the present general noncompliance with the surrender notice. Such noncompliance impedes the orderly and just administration of the immigration laws of the United States and encourages disrespect for the immigration system. Continued promulgation of the present rule is both costly and ineffective.

As an alternative, implementation of the revised regulation will institute procedures whereby the Service will assume custody of the alien respondent at the time of issuance of a final order of deportation by the immigration judge, or appellate tribunal or court of last resort. Upon assumption of custody, the respondent will be held a minimum of 72 hours prior to removal by the Service, to ensure that due process is accorded the detainee. At the expiration of this time period, the alien will be removed without further notice.

Public comments were invited with respect to all aspects of the revision at the time of proposed rulemaking. The sixty day comment period closed on March 31, 1986 with a total of 22 written comments received during that period, and one additional written comment received subsequently. All comments were nonetheless considered. They may be summarized into the categories that follow:

(1) *Comment.* The original rule was adopted to afford a deportable alien an opportunity to seek judicial review, if so disposed. Therefore, a regulatory change would inhibit the exercise of an alien's due process rights.

Response. The rule change does not prohibit an alien from retaining counsel or filing appeal during the 72-hour period, which remains objectively the same amount of time. Furthermore, orders of deportation do not become final, by definition, until appeal has either been waived or exhausted. This is frequently, if not in a majority of cases, after counsel has been retained, and a significant amount of litigation has occurred through the ultimate appellate process. Thus, the detention of an alien whose relief has been exhausted in no way impinges on his or her due process.

(2) *Comment.* The notion of arrest and detention without notice does not comport with the civil nature of deportation proceedings, and tends to "criminalize" the process.

Response. The detention of an alien under this regulation is not "without notice" in that it can be relied upon as the rule with few exceptions, in the same manner that detention in exclusion cases constitutes the rule. It should also be noted that promulgation of the rule is a result of the unwillingness to comply with the law which has been exhibited by aliens in the past, when at large. It should also be noted that arrest and detention are not concepts extraneous to, or unknown within, the immigration process: warrants of arrest and deportation are provided for by the statute itself, upon which this regulation is based.

(3) *Comment.* The Service should not assume the burden of detention at added taxpayer expense, since not required by law or constitutional due process; instead, the Service should immediately remove any alien under a final order of deportation.

Response. While true that the requirement is self-imposed, it reflects the fact that, in the case of those aliens who do not initially appeal until the "eleventh hour", there remains a period of time in which to reconsider: 72 hours. At the lapse of this time, appeal not having been pursued, the alien is subject to removal. The Service believes that this time frame is both reasonable and prudent, in order to forestall potentially adverse court decisions relating to the removal process. However, it is equally true that an alien may wish to repatriate immediately, in lieu of remaining in detention for an added 72 hours. Accordingly, the language has been modified to provide for a voluntary relinquishment of the 72-hour period in favor of expeditious removal.

(4) *Comment.* The proposal, as published, did not provide the responsible Service officials a sufficient exercise of discretion in the detention of aliens under a final order of deportation, some of whom may be minors, single parents or guardians of minors, infirm, or otherwise necessitating special consideration.

Response. This concern is legitimate, and has been addressed in amended language incorporated into the final rule, which provides that detention is mandated except in the exercise of discretion by the district director for the same reasons as set forth in 8 CFR 212.5(a), which relates the bases for parole of excludable aliens in lieu of detention.

In accordance with the provisions of 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant ecomonic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 243

Aliens, Expulsion, Transportation, Voluntary departure.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 243—[AMENDED]

1. The authority for 8 CFR Part 243 continues to read as follows:

Authority: Secs. 103, 242, 243, 66 Stat. 173, 208, as amended 212; 8 U.S.C. 1103, 1252, 1253.

2. Section 243.3 is revised to read as follows:

§ 243.3 Expulsion.

(a) *Execution of Order.* Except in the exercise of discretion by the district director, and for such reasons as are set forth in § 212.5(a) of this chapter, once an order of deportation becomes final, an alien shall be taken into custody and the order shall be executed. For the purposes of this part, an order of deportation is final and subject to execution upon the date when any of the following occurs:

(1) A grant of voluntary departure expires;

(2) an immigration judge enters an order of deportation without granting voluntary departure or other relief, and the alien respondent waives his or her right to appeal;

(3) the Board of Immigration Appeals enters an order of deportation on appeal, without granting voluntary departure or other relief; or

(4) a federal district or appellate court affirms an administrative order of deportation in a petition for review or habeas corpus action.

(b) *Service of decision.* In the case of an order entered by any of the authorities enumerated above, the order shall be executed no sooner than 72 hours after service of the decision, regardless of whether the alien is in Service custody, *provided* that such period may be waived on the knowing and voluntary request of the alien. Nothing in this paragraph shall be construed, however, to preclude assumption of custody by the Service at the time of issuance of the final order.

Dated: June 6, 1986.

Raymond M. Kisor,

Associate Commissioner, Enforcement Immigration and Naturalization Service.

[FR Doc. 86-14300 Filed 6-24-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 309

[Docket No. 50690-5090]

General Requirements for Financial Assistance

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Interim rule.

SUMMARY: This rule amends EDA's regulations at 13 CFR 309.15 on Flood Hazard to reflect a shift in the administration of the Flood Insurance Program from the Department of Housing and Urban Development (HUD) to the Federal Emergency Management Agency (FEMA); and at 13 CFR 309.18 on Environmental Requirements to cite pertinent legal authority.

DATES: *Effective Date.* June 25, 1986.

Comments by: August 25, 1986.

ADDRESS: Send comments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7800B, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Walter Archibald, Director, Office of Compliance Review, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7329, Washington, DC 20230, (202) 377-2710.

SUPPLEMENTARY INFORMATION: 13 CFR 309.15 on Flood Hazard is being amended to include the most recent applicable Executive Order, to substitute FEMA for HUD and to refer to the National Flood Insurance Act of 1968, as amended. 13 CFR 309.18 on Environmental Requirements is being amended to refer to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et. seq.*), the Environmental Quality Improvement Act (42 U.S.C. 4371 *et seq.*), the Clean Air Act, as amended, (42 U.S.C. 7401, *et seq.*), The National Historical Preservation Act of 1966, (16 U.S.C. 470 *et seq.*), The Wild and Scenic Rivers Act, as amended, (16 U.S.C. 1271 *et seq.*), The Flood Disaster Protection Act of 1973, as amended, (42 U.S.C. 4001 *et seq.*), the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 *et seq.*), and the Council on Environmental Quality (CEQ) Regulations (40 CFR Sections 1500-1508).

Because this rule relates to agency grants, benefits and contracts, it is exempt from all requirements of Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. §553). No other law requires that notice and opportunity for comment to be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the APA and other relevant laws.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Because this rule is exempt from the requirements of section 553 of the APA, it can be and is being made immediately effective upon publication. However, because the Department is interested in receiving comments from those who will benefit from the amendment to the rule being issued in final, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address listed in the **"ADDRESS"** Section above.

Comments received by August 25, 1986, will be considered in promulgating a final rule.

Under Executive Order (E.O.) 12291 the Department must judge whether a regulation is "major" within the meaning of Section 1 of the Order and therefore subject to the requirements that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual

industries, federal, state, or local government agencies, or geographic regions; or 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.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act of 1980.

List of subjects in 13 CFR Part 309

Community development, Grant programs—community development, Loan programs—community development, Penalties.

PART 309—[AMENDED]

1. The authority citation for Part 309 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89-136, 79 Stat. 570) (42 U.S.C. 3211). Sec. 1-105 DOC Organization Order 10-4, as amended (40 FR 56702, as amended).

2. 13 CFR Part 309 is amended by revising paragraphs (a) through (c) of § 309.15 and paragraph (b) of § 309.18 to read as follows:

* * * * *

§ 309.15 Flood hazard.

(a) In accordance with Executive Order 11988, all applications for financial assistance will be reviewed by EDA for the purposes of avoiding to the extent possible, the long and short term adverse impacts associated with the occupancy and modification of floodplains, and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, minimizing exposure of the proposed project to potential flood damage; any subsequent need for future Federal expenditures for flood protection and flood disaster relief; and the potential to impact the natural values and functions of the flood-plain under Executive Order 11988.

(b) EDA shall make no initial, interim, or final disbursement of any financial assistance on projects approved on and after March 2, 1974, under Titles I and II of the Act for acquisition or construction purposes for use in any area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, unless the building or any personal property to which such financial assistance relates is, during the anticipated economic or useful life of the project, covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended, whichever is less; provided that if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. Notwithstanding the other provisions of this subsection, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to FEMA.

(c) EDA shall make no initial, interim, or final disbursement of any financial assistance on projects approved on and after July 1, 1975, under Titles I and II of the Act for acquisition or construction purposes for use in any area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

* * * * *

§ 309.18 Environmental requirements.

* * * * *

(b) Environmental assessments of EDA actions are conducted in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et. seq.*), the Environmental Quality Improvement Act (42 U.S.C. 4371 *et. seq.*),

The Clean Air Act, as amended (42 U.S.C. 7401 *et. seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et. seq.*), The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271 *et. seq.*), the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001 *et. seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et. seq.*), and the Council on Environmental Quality (CEQ) Regulations (40 CFR Section 1500-1508), as specified in EDA Directives 17.02-2, 17.02-7, and 17.04, as hereafter amended or superseded. Directives are available from any EDA office.

Dated: February 24, 1986.

Orson G. Swindle III,

Assistant Secretary for Economic Development.

[FR Doc. 86-14172 Filed 6-24-86; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 25015; Amdt. No. 1323]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occuring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8360-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment 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 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on June 13, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49 (b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN: § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; §97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective August 28, 1986

Rota Island, Mariana Is.—Rota Intl, NDB RWY 9, Amdt. 3
Rota Island, Mariana Is.—Rota Intl, NDB RWY 27, Amdt. 3
Mitchell, SD—Mitchell Muni, VOR RWY 12, Amdt. 6
Madisonville, TX—Madisonville Muni, VOR/DME RWY 18, Orig.

. . . Effective July 31, 1986

Birmingham, AL—Birmingham Muni, LOC RWY 23, Amdt. 3
Birmingham, AL—Birmingham Muni, NDB RWY 5, Amdt. 28
Birmingham, AL—Birmingham Muni, NDB RWY 23, Amdt. 14
Birmingham, AL—Birmingham Muni, ILS RWY 5, Amdt. 36
Birmingham, AL—Birmingham Muni, RADAR-1, Amdt. 16
South Lake Tahoe, CA—Lake Tahoe, LDA/DME-1 RWY 18, Amdt. 5
South Lake Tahoe, CA—Lake Tahoe, LDA/DME-2 RWY 18, Orig.
Miami, FL—Dade-Collier Training and Transition, ILS RWY 9, Amdt. 12
Dwight, IL—Dwight, NDB 1 RWY 27, Amdt. 2
Kankakee, IL—Greater Kankakee, VOR RWY 4, Amdt. 4
Kankakee, IL—Greater Kankakee, VOR RWY 22, Amdt. 5
Kankakee, IL—Greater Kankakee, ILS RWY 4, Amdt. 4
Kankakee, IL—Greater Kankakee, RNAV RWY 22, Amdt. 2
Alpena, MI—Phelps Collins, VOR or TACAN RWY 1, Amdt. 13
Alpena, MI—Phelps Collins, VOR RWY 19, Amdt. 13
Drummond Island, MI—Drummond Island, NDB RWY 26, Orig.
Drummond Island, MI—Drummond Island, NDB-A, Orig., CANCELLED
Benson, MN—Benson Muni, NDB RWY 14, Amdt. 4
Madison, MN—Madison-Lac Qui Parle County, NDB RWY 31, Amdt. 3
Morris, MN—Morris Muni, VOR RWY 32, Amdt. 3
Ortonville, MN—Ortonville Muni/Martinson Field, NDB RWY 34, Amdt. 1
Lewistown, MT—Lewistown Muni, VOR RWY 7, Amdt. 10
Cozad, NE—Cozad Muni, VOR RWY 13, Orig.
Charlotte, NC—Charlotte/Douglas Intl, LOC BC RWY 23, Amdt. 5
Charlotte, NC—Charlotte/Douglas Intl, NDB RWY 5, Amdt. 29
Charlotte, NC—Charlotte/Douglas Intl, NDB RWY 23, Amdt. 5
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 5, Amdt. 31
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 18R, Amdt. 4
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36L, Amdt. 9
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36R, Amdt. 1
McMinnville, OR—McMinnville Muni, VOR/DME-B, Amdt 3

McMinnville, OR—McMinnville Muni, NDB RWY 22, Amdt. 1
McMinnville, OR—McMinnville Muni, ILS RWY 22, Amdt. 1
Medford, OR—Medford-Jackson County, VOR/DME RWY 14, Amdt. 1
Andrews, SC—Andrews Muni, NDB RWY 36, Amdt. 3
Georgetown, SC—Georgetown County, NDB RWY 5, Amdt. 3
North Myrtle Beach, SC—Grand Strand, VOR RWY 5, Amdt. 16
Bristol/Johnson/Kingsport, TN—Tri-City Regional, RNAV RWY 5, Amdt. 4, CANCELLED
Dallas-Fort Worth, TX—Dallas-Fort Worth International, ILS RWY 18L, Amdt. 13
Dallas-Fort Worth, TX—Dallas-Fort Worth International, ILS RWY 18R, Amdt. 1
Dallas-Fort Worth, TX—Dallas-Fort Worth International, ILS RWY 31R, Amdt. 5
Dallas-Fort Worth, TX—Dallas-Fort Worth International, ILS RWY 35R, Amdt. 2
Dallas-Fort Worth, TX—Dallas-Fort Worth International, ILS RWY 36L, Amdt. 2
Roanoke, VA—Roanoke Regional/Woodrum Field, LDA RWY 5, Amdt. 5
Portage, WI—Portage Municipal, RNAV RWY 17, Amdt. 2
Racine, WI—Horlick-Racine, VOR RWY 4, Amdt. 5
Racine, WI—Horlick-Racine, VOR RWY 22, Amdt. 7

. . Effective June 9, 1986

Clarksville, TN—Outlaw Field, VOR RWY 35, Amdt. 14
Clarksville, TN—Outlaw Field, LOC RWY 35, Amdt. 4
Clarksville, TN—Outlaw Field, NDB RWY 35, Amdt. 4

. . . Effective June 5, 1986

Washington, DC—Washington National, LDA/DME RWY 18, Amdt. 1
Park Rapids, MN—Park Rapids Muni, VOR/DME RWY 13, Amdt. 5
Park Rapids, MN—Park Rapids Muni, NDB RWY 31, Amdt. 2
Park Rapids, MN—Park Rapids Muni, MLS RWY 31 (Interim), Amdt. 2
Huron, SD—Huron Regional, VOR RWY 12, Amdt. 20
Huron, SD—Huron Regional, LOC/DME BC RWY 30, Amdt. 10
Huron, SD—Huron Regional, NDB RWY 12, Amdt. 19
Huron, SD—Huron Regional, ILS RWY 12, Amdt. 8
Watertown, SD—Watertown Muni, VOR or TACAN RWY 17, Amdt. 14
Staunton/Waynesboro/Harrisonburg, VA—Shenandoah Valley, NDB RWY 5, Amdt. 9
Staunton/Waynesboro/Harrisonburg, VA—Shenandoah Valley, ILS RWY 5, Amdt. 7

. . . Effective June 3, 1986

Lafayette, TN—Lafayette Muni, NDB RWY 19, Amdt. 1

. . . Effective May 30, 1986

Kansas City, MO—Kansas City Downtown, VOR RWY 3, Amdt. 14

. . . Effective May 8, 1986

Wenatchee, WA—Pangborn Field, VOR/DME-C, Amdt. 1

The FAA published an Amendment in Docket No. *24994*, Amdt. No. *1321* to Part 97 of the Federal Aviation Regulations (VOL *51* FR No. *100* Page *18878;* dated *Friday, May 23, 1986*) under section *97.23* effective *July 3, 1986* which is hereby amended as follows:

Jacksonville, FL—Jacksonville Muni, VOR RWY 13, Amdt. 6, CANCELLED should read
Jacksonville, IL—Jacksonville Muni, VOR RWY 13, Amdt. 6, CANCELLED
Jacksonville, FL—Jacksonville Muni, VOR RWY 13, Orig., should read
Jacksonville, IL—Jacksonville Muni, VOR RWY 13, Orig.

[FR Doc. 86-14262 Filed 6-24-86; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 86-120]

Effective Date for Country-of-Origin Marking Requirement on Orange Juice Containers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document informs the public that Customs has made its determination regarding an implementation date for the requirement that labels on frozen concentrated and reconstituted orange juice products which contain imported concentrate be marked to show the foreign country-of-origin of the products. The requirement for marking the products was recently upheld by the Court of International Trade. However, Customs was directed by the Court to seek comments from all interested parties before reaching a decision on an effective date for the requirement. The decision on implementation was made following careful analysis of the comments received in response to a published notice, as well as full consideration of the presentations made in a public hearing held on the subject of implementation.

DATES: This document is effective June 25, 1986. The effective date for implementation of the marking requirement is February 1, 1987.

FOR FURTHER INFORMATION CONTACT: Lorrie Rodbart, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

In response to a formal request, Customs published a ruling dated September 4, 1985, in the Customs Bulletin of September 25, 1985 (C.S.D. 85-47, 19 Cust. Bull. No. 39 at 21), stating that retail packages of orange juice containing imported concentrate must be labeled to comply with the country-of-origin marking requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). The rationale for that decision is discussed in detail in the cited decision. That ruling was to be implemented for affected products entered for consumption or withdrawn from warehouse on or after January 1, 1986.

That implementation date was extended to March 1, 1986, by a notice published in the December 11, 1985, Customs Bulletin (19 Cust. Bull. No. 50 at 15). The extension decision took into account the ruling's perceived economic impact on the manufacturing public, as well as the right of ultimate purchasers of affected juice products to be fully informed about the origin of those products. The March 1, 1986, date was nearly 6 months after the initial ruling had been issued, and was considered reasonable.

In a case brought by the National Juice Products Association, *et al.* challenging C.S.D. 85-47, *National Juice Products Association* v. *United States,* ——— CIT ——, Slip Op. 86-13 (January 30, 1986), the Court of International Trade held that C.S.D. 85-47 was substantively valid. The Court, however, remanded the case to Customs for reconsideration of the effective date. The Court directed Customs to adhere to the notice and comment provisions of § 177.10(c)(2), Customs Regulations (19 CFR 177.10(c)(2)), and to carefully consider all possible issues relating to a reasonable time to implement the new ruling.

Accordingly, by notice published in the **Federal Register** on March 3, 1986 (51 FR 7285), Customs solicited comments related to the earliest practicable implementation date for the requirement that containers of orange juice in frozen concentrated or reconstituted forms, which contain imported concentrate, must be labeled to comply with the country-of-origin marking requirements of 19 U.S.C. 1304. Of particular interest was any information concerning the time it generally takes suppliers to provide new or changed labels and cans to the packagers of orange juice products, as well as the quantity of labels and printed retail containers usually kept in

inventory. We also sought information as to whether the industry had already taken steps to procure new labels which satisfy the requirements of C.S.D. 85–47. The notice also announced that a public hearing was to be held on the implementation date issue at Customs Headquarters on March 28, 1986.

After careful analysis of the comments received in response to the notice, as well as full consideration of the presentations made at the public hearing, a decision has been reached and an appropriate effective date determined. An analysis of the comments follows:

Analysis of Comments

Thirty eight comments were received in response to the notice, including written statements of the 13 witnesses who testified on this issue in the public hearing. Comments submitted on issues other than the effective date of C.S.D. 85–47 are outsdide the scope of the notice and therefore have not been addressed.

Most of the comments came from orange juice processors and label manufacturers. In addition, comments were received from various trade associations, one state agency, and other industry representatives. Although two commenters indicated that the implementation date has been extended enough to give the processing industry necessary lead time to comply with the requirements of C.S.D. 85–47, the remainder of the commenters advocated a substantial additional period of time to comply. The two reasons cited most often are that they need time to exhaust (or at least diminish) large inventories of non-complying packaging to avoid incurring large financial losses, and that they need time to obtain new labels. It is claimed that the necessary lead time to obtain new labels is directly effected by the so-called "supplier bottleneck". It is claimed that this "bottleneck" is created because the numerous firms engaged in orange juice processing in the U.S. use only a handful of labeling and packaging suppliers. Also, every company must change all their orange juice labels at the same time. These two factors are discussed in the following portions of this document.

Inventory

All of the label manufacturers and orange juice processors who commented indicated that they generally maintain substantial inventories of labels and packaging to meet their production needs and obtain quantity discounts. An analysis of the comments indicates that the time necessary to deplete these inventories ranges from about 2 months to one year, and that the cost of the inventory ranges from $20,000 to $9 million. The larger processors, because of their large production volumes, appear to have the largest inventories of non-complying prackaging. It is argued that to the extent that the chosen implementation date does not permit full liquidation of existing inventories, processors' costs, and possibly consumer prices, will be increased.

Lead Time

Although both the label manufacturers and orange juice processors acknowledge that the normal lead time to obtain new labels generally is not more than 3 months (the actual time varying depending on the type of process that is used to manufacture the label; rotogravure used for composite cans requiring the most time, pure-pak containers requiring the least time), it is claimed that two added factors will alter this considerably. The first is that each packager will have to redesign all of its labels at once. While some companies do not use many different labels, other companies, particularly those that distribute their products under private labels, use hundreds of different labels that will have to be changed. For example, one company indicates that it distributes orange juice under private labels to supermarkets across the country and uses 377 different containers. Another company, which sells under both private labels and its own brand name, indicates that it sells juice in 1986 different types of cans and other containers. In order to change every label, it is claimed that a significant amount of time in addition to the normal lead time will be required.

The second factor that commenters indicate will alter the normal lead time is the "supplier bottleneck". It is claimed that there are only four or five suppliers of labels for composite cans (the most widely used type of orange juice container) to service the entire industry. One of these suppliers indicates that it will take at least a year to make the necessary changes on its 225 labels for all its orange juice processor customers, while continuing to service its other customers. Another large label supplier estimates tht it would take 2 years to make all necessary changes on its 525 labels while servicing other customers. Even if these companies were to devote all of their time to servicing their orange juice customers (an option which is claimed to be commercially unfeasible), it is claimed that the process would still take approximately 5 to 7 months to complete. One juice can manufacturer stated that it would require at least a year to change all 400 labels at once. Another packaging company indicated that it currently has a backlog of required sodium label changes and would not be able to start orange juice changes for at least 90 days.

One small orange juice processor expressed concern that it will be hurt unless Customs allows sufficient time for all companies to comply with the ruling. As orange juice processors compete for the attention of their labeling and packaging suppliers, there is speculation that the larger companies would be given priority.

The basic consensus of the commenters, with the exception of the two commenters that would like immediate compliance with the ruling, is that a minimum of one year is required to allow the industry's small number of packaging and labeling suppliers to meet orange juice processors' needs for new packaging bearing the required country-of-origin marking.

Lithographing the Ends of Cans

In order to address the problem of non-complying inventory and the lead time required to design all new labels, Customs, in response to a ruling request, authorized processors to lithograph the top end of the can (*i.e.* the end which is opened by the consumer) with the country-of-origin information. It was our understanding that approval of such an alternative method of marking would shorten the time necessary for compliance. Many commenters addressed this point.

Although most commenters acknowledged that this alternative marking might be a useful short-term solution, they stated that it will not solve all the problems of complying with the ruling. First, some commenters indicated that this method of marking is not suited to certain types of containers (*i.e.* glass, pure-pak and plastic cup containers, and certain 6 and 12-ounce metal cans with adhesive pull tabs). An even greater concern was that such a method was not economically feasible. Although these commenters indicated that the initial start-up costs for lithography are not high, fixed costs would be incurred every time this operation was performed. (One company estimated that it would cost almost $100,000 a year; another company $190,000). Conversely, it is argued that the cost of producing cylinders for new labels is a one time cost which could be amortized over millions of containers. Thus, the major processors indicated that with their large production volumes they would not benefit from this marking alternative. The consensus is that

lithography would be most useful in short-term, small volume situations.

Other Comments

Several commenters indicated that Customs should adopt July 1, 1987, as the implementation date for C.S.D. 85-47. That is the next FDA-mandated "uniform effective date" for food labeling changes.

Finally, many commenters indicated that it would have been unwise to have taken substantial compliance efforts prior to the decision by the Court of International Trade on the legality of C.S.D. 85-47 and until Customs provided the industry with guidelines on some important compliance issues entailed in the September 4, 1985, ruling.

Customs Response

After carefully considering all the comments, we are satisfied that the industry needs additional time to comply with the requirements of C.S.D. 85-47. In view of the limited number of label and packaging suppliers, it would put a tremendous burden on the entire industry to establish an early compliance date. Because label suppliers cannot be expected to service only their orange juice customers, some consideration must be given to the estimates of these suppliers that it would take between 1 and 2 years to service the entire industry. We are also persuaded that lithographing of can lids will not be a long term solution for most companies. Therefore, we recognize that the lead time must take into account the fact that most companies, if not all, must develop, at a substantial cost, new labels for all of their products. Most commenters indicated that this could be accomplished within a year. However, inasmuch as lithography of can tops is a short term marking solution for some smaller companies that may not be serviced immediately by the major label suppliers, it is not necessary to postpone implementation until the label manufacturers can provide every company with new labels.

Based on the data submitted by the commenters, we are also satisfied that orange juice processors as well as label suppliers maintain a large inventory of packaging, and that it would be to everyone's benefit to substantially diminish those stockpiles. The result of forcing the industry to discard this inventory would undoubtedly result in higher consumer prices. It appears that nearly all such inventory will be depleted within a year. In view of the lithography option, it is similarly unnecessary to postpone implementation until *all* non-complying inventory is depleted.

Finally, we are persuaded that the complexity and cost of labeling changes, and impracticability of adhesive labels, precluded the industry from taking final action to comply with C.S.D. 85-47 until the Court of International Trade rendered its opinion on the legality of the ruling. We do not agree that it was necessary to wait until every possible issue concerning compliance was resolved.

Determination

Based on the previously stated considerations, Customs has determined that C.S.D. 85-47 will become effective on February 1, 1987, approximately 1 year from the date the Court of International Trade rendered its decision. If the final repacked product of orange juice contains any foreign concentrate entered for consumption or withdrawn from warehouse on or after this date, the certification requirements of § 134.25, Customs Regulations (19 CFR 134.25), apply. Therefore, effective February 1, 1987, importers of orange juice concentrate must certify to Customs at the time of entry either that the retail package of orange juice will be properly marked with the country of origin, or that he will notify the repacker of the marking requirements.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: June 12, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-14336 Filed 6-24-86; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR PART 162

[T.D. 86-119]

Customs Regulations Amendments Relating to Prior Disclosures of Violations of 19 U.S.C. 1592

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for further clarifications and changes to the regulations relating to prior disclosures of violations of 19 U.S.C. 1592. The document provides that a person is presumed to have knowledge of the commencement of a formal investigation of a violation if, before the claimed prior disclosure of the violation, an import specialist, regulatory auditor, inspector, or other Customs officer, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592, so informed the person concerning the type of or circumstances of the disclosed violation. However, this presumption may be rebutted by evidence that notwithstanding the notice, the person did not have such knowledge.

This change is necessary to provide for more effective enforcement of the regulations concerning 19 U.S.C. 1592 violations.

EFFECTIVE DATE: July 25, 1986.

FOR FURTHER INFORMATION CONTACT: Charles D. Ressin, Commercial Fraud & Negligence Penalties Branch, U.S. Customs Service,1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-8317).

SUPPLEMENTARY INFORMATION:

Background

Section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), provides for penalties and penalties procedures when by fraud, gross negligence or negligence, merchandise is entered, introduced, or attempted to be entered or introduced into the commerce of the U.S., by means of any material false document, written or oral statement or act, and/or any material omission; or when a person aids or abets any other person in the entry, introduction or attempted entry or introduction of merchandise by such means.

Section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), provides for the remission or mitigation of fines, penalties, and forteitures by the Secretary of the Treasury.

By T.D. 84-18, published in the **Federal Register** on January 13, 1984 (49 FR 1672), Customs amended Part 162, Customs Regulations (19 CFR Part 162), relating to section 592 penalty and penalty procedures to, among other things, clarify the requirements and criteria applicable to prior disclosures of violations of section 592. As amended by T.D. 84-18, section 162.74(a), Customs Regulations (19 CFR 162.74(a)), provides that a prior disclosure may be made if the person concerned discloses the circumstances of a violation in writing to the district director before, or without knowledge of, the commencement of a formal investigation, and makes a tender of any actual loss of duties. Experience gained since then, however, reveals that further clarification and changes to section 162.74 are needed.

Section 162.74(f), Customs Regulations (19 CFR 162.74(f)), as amended by T.D. 84–18, provides that a person who claims lack of knowledge of the comencement of a formal investigation has the burden to prove that lack of knowledge. Pursuant to this section, a person is presumed to have had knowledge of the commencement of a formal investigation of a violation of section 592 if before the claimed prior disclosure of the violation:

(1) An investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(2) An investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

The presumption of knowledge may be rebutted by evidence that, notwithstanding the inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

Section 162.74(f) is subject to the interpretation that the presumption of knowledge of the commencement of a formal investigation is limited to those circumstances where a Customs investigation agent, and not other Customs personnel, notifies the person of the type of or circumstances of a violation of section 592. To provide for more effective enforcement of the prior discloure regulations, by notice published in the **Federal Register** on July 8, 1985 (50 FR 27829), Customs proposed that this presumption be extended to those circumstances where an import specialist, regulatory auditor, inspector, or other Customs officer, having reasonable cause to believe that there has been a violation of section 592, so notifies the person(s) concerning the type of or circumstances of the disclosed violation. It was proposed that section 162.47(f) be amended to include this provision.

Section 162.74(g), Customs Regulations (19 CFR 162.74(g)), as amended by T.D. 84–18, provides that a prior disclosure may not be made after a determination by an authorized Customs officer that there is reasonable cause to believe that there has been a violation of section 592 and that a claim for monetary penalty shall be issued without commencement of a formal investigation. Such determination is evidenced by any one or more of the following:

(1) By the issuance of a pre-penalty notice;

(2) By the issuance of a penalty notice if a pre-penalty notice is not required;

(3) In the case of violations involving merchandise accompanying persons entering the U.S. or commercial merchandise inspected in connection with entry, by oral notification to the person of the officer's finding of a violation; or

(4) In the case of the seizure of merchandise under section 592, by the act of seizure.

It was determined that the existing wording of this regulation unduly restricted Customs in the performance of its enforcement duties. The determination as to whether there exists reasonable cause to believe a violation of section 592 has occurred appeared to be limited to only certain authorized Customs officers. Often, however, this determination can be made by any Customs officer. Furthermore, section 162.74(g)(3) was limited to situations which generally involve only inspectors, thus denying other Customs officers who may have detected the violation from providing oral or written notification to the violator.

To remedy this problem, Customs proposed that section 162.74(g) be amended to clarify that a prior disclosure will be precluded, notwithstanding the fact that a formal investigation has not been commenced, after any Customs officer determines that there is a violation of section 592, and gives notice as evidenced by the four outlined circumstances. The violator, however, would still be allowed to make a prior disclosure of the circumstances of a violation which has not been discovered by Customs.

It was also noted in the proposal that section 162.74, as amended by T.D. 84–18, contained an error in paragraph (a)(1), in which parethetical reference was made to section 162.71(e) of "section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592)". It was proposed that the reference to section 592 inside the parenthesis be removed and a reference to Part 162 inserted, in its place. The correct reference in the parenthesis should be to section 162.71 of Part 162.

In response to a request, by notice published in the **Federal Register** on September 9, 1985 (50 FR 36603), the time for the submission of comments on the proposal was extended from September 6, 1985, to October 6, 1985. Thirteen comments were received in response to the notice proposing the changes. A discussion of the comments and our responses follow:

Discussion of Comments

Comment: Eight commenters stated that the proposed section 162.74(g) goes beyond the authority of Customs as established by section 592. They claimed that Customs proposal to disallow a finding of prior disclosure notwithstanding the fact that a formal investigation has not been commenced and to broaden the commencement of a formal investigation to a notice, written or oral, given by any Customs officer who has reasonable cause to believe that a violation of section 592 has occurred, rather than by a Customs agent, is without legal authority. Further, they aver that Congress mandated that a formal investigation is required before the availability of the prior disclosure program is precluded.

Response: After careful consideration of the matter, we have determined not to amend section 162.74(g). Accordingly, it is unnecessary to discuss the comments relating solely to this issue.

Comment: One commenter asked what individuals were included in the phrase "other Customs officers" in proposed section 162.74(f)(1).

Response: The phrase includes the district director, the fines, penalties and forfeiture officer, and any other Customs officer who may be authorized to contact an alleged violator concerning a violation.

Comment: A commenter stated that if a Customs officer determines at the time of importation that there has been a violation of section 592, the importer should be informed and given the opportunity to develop the facts and submit a voluntary disclosure.

Response: We disagree. An importer so informed should not be entitled to the benefits of prior disclosure. However, the importer's cooperation with Customs would be considered as a mitigating factor in any penalty action against the importer.

Comment: Two commenters requested to know by what means a person may be notified by a Customs officer of a violation of section 592, under the provisions of proposed section 162.74(f)(1). Specifically, they wanted to know whether these means were the same as those listed in proposed section 162.74(g) for notifying an alleged violator of a section 592 violation.

Response: Section 162.74(g) states that a prior disclosure of the circumstances of a violation of section 592 is precluded after a determination by any Customs officer that there is reasonable cause to believe that such violation has been committed. This determination is evidenced by (1) the issuance of a pre-

penalty notice; (2) the issuance of a penalty notice if a pre-penalty notice is not required; [3] oral or written notification to the alleged violator by the Customs officer who detected the violation; or (4) the act of seizure, under section 592(c)(5), of the merchandise involved in the violation. Notice under section 162.74(g) is limited to these four means.

However, because section 162.74(f)(1) involves only the circumstance wherein Customs officer may *presume* knowledge on the part of an alleged violator, of the commencement of a formal investigation of the violation, notice under section 162.74(f)(1) can be effected by any means of oral or written communication. In this situation, Customs sees no reason to limit the method of notification.

Comment: It was stated that proposed section 162.74(f)(1) expands the role of Customs officers by making them investigating agents. This curtails the exchange of useful information between Customs officers and importers and is an unnecessary extension of Customs enforcement capabilities.

Response: We disagree. We are unpersuaded that allowing other Customs officers to presume knowledge of a violation of section 592 on the part of an alleged violator, and to notify that violator, curtails the exchange of information between Customs and importers. We believe that the proposal provides more effective enforcement of the regulations.

Comment: Under proposed section 162.74(f)(1), it is claimed that if an import specialist orally informs an importer that certain conduct on his part constituted a violation of section 592, the importer is presumed to have knowledge of the commencement of a formal investigation even though there was no such investigation opened under section 162.74(d). The presumption should begin to operate only if, in fact, a formal investigation has already been commenced.

Response: We disagree. Before a person can be presumed, under section 162.74(f)(1), to have had knowledge of the commencement of a formal investigation, the following events must have occurred:

(1) The violator must have made a disclosure of the circumstances of the violation;

(2) There must have been, prior to the disclosure, a commencement of a formal investigation; and

(3) One of the means of communication set forth in paragrpah (f)(1) concerning the type of or circumstances of the disclosed violation must have occurred. It is not relevant whether the communication of the circumstances of an alleged section 592 violation is made to an importer before or after the commencement of a formal investigation. If the communication took place, there is an inference that the importer should have known, at the time of making the disclosure, that an investigation had commenced, or that there is a likelihood that an investigation would be commenced.

Comment: It was also claimed that if sections 162.74(f) and 162.74(g) were amended as proposed, the two would cease to have any practical distinction. Under proposed paragraph (f)(1), an importer would lose his right to make a prior disclosure if a Customs officer had reasonable cause to believe that there had been a violation of section 592 and so informed the importer. Under proposed paragraph (g)(3), the importer would lose his right to make a prior disclosure if the Customs officer determined that there was reasonable cause to believe that a violation of section 592 had occurred and so notified the importer.

Response: We disagree. We believe there is a distinction between paragraphs (f) and (g). In the commenter's discussion of paragraph (g)(3), the importer would be precluded from making a prior disclosure of the circumstances of a section 592 violation because a Customs officer has (1) made a determination that there is reasonable cause to believe a violation has occurred, (2) determined that a claim for a monetary penalty will be issued, without commencement of a formal investigation, and (3) notified the violator by any of the means set forth therein. In the commenter's discussion of paragraph (f)(1), the importer has made a disclosure of the circumstances of a violation after the investigation has commenced. The violator is only presumed to have knowledge that a formal investigation has been commenced. He may rebut this presumption and still be accorded the benefits of prior disclosure. In addition, Customs must establish that an investigation has commenced. To clarify that issue, we are amending the last sentence of section 162.74(f) to include this new presumption among those subject to rebuttal.

Comment: One commenter raised questions relating to the interpretation of the prior disclosure regulations such as what constitutes constructive knowledge and what constitutes reasonable cause to believe that a violation of section 592 has been committed.

Response: Since these issues are beyond the scope of the proposal, they are not appropriate for our consideration in this document. The information this commenter seeks is available through general legal research. In addition, he may avail himself of Customs legal precedent retrieval system keyword directory, which is available at all district and regional Customs offices.

Determination

After careful analysis of the comments received, and further review of the matter, it has been determined advisable to adopt the proposal with the modifications discussed above.

As discussed in the proposal, section 162.74, as amended by T.D. 84–18, contains an error in paragraph (a)(1), in which parenthetical reference is made to "section 162.71(e) of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592)". The reference to section 592 inside the parenthesis is being removed and a reference to Part 162 inserted, in its place. The correct reference in the parenthesis is to section 162.71 of Part 162.

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), are not applicable to these amendments because they will not have a significant impact upon a substantial number of small entities. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

These amendments do not meet the criteria for a "major rule" as defined by section 1 of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 62

Customs duties and inspection, Administrative practice and procedures, Penalties.

Amendments to the Regulations

Part 162, Customs Regulations (19 CFR Part 162), is amended as set forth below.

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The authority citation for Part 162 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624. Subpart G also issued under 19 U.S.C. 1466, 1584, 1592, 1613, 1618.

2. Section 162.74(a)(1) is amended by removing the words "section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592)" inside the parenthesis, and inserting, in their place, the words "this Part."

3. Section 162.74(f) is revised to read as follows:

§ 162.74 Prior disclosure.

* * * * *

(f) *Proof of lack of knowledge.* A person who claims a lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation:

(1) An import specialist, regulatory auditor, inspector or other Customs officer, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592, so informed the person concerning the type of or circumstances of the disclosed violation; or

(2) An investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(3) An investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

The presumption of knowledge may be rebutted by evidence that, notwithstanding the foregoing notice, inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

William von Raab,

Commissioner of Customs.

Approved: June 9, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-14337 Filed 6-24-86; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 178

[T.D. 86-121]

Customs Regulations Amendment To Listing of OMB Control Numbers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to include the clearance number issued by the Office of Management and Budget (OMB), necessary for certain information collection requirements included in a recent interim amendment to the Customs Regulations. The interim amendment stated that an application for clearance was submitted to OMB. That office has since approved the regulation and issued the clearance number which appears in this document.

EFFECTIVE DATE: July 7, 1986.

FOR FURTHER INFORMATION CONTACT: Larry L. Burton (202-566-8237).

SUPPLEMENTARY INFORMATION:

Background

Parts 4, 6, 24, 111, 123, and 145, Customs Regulations (19 CFR Parts 4, 6, 24, 111, 123, and 145), were amended on an interim basis by T.D. 86-109, published in the **Federal Register** on June 11, 1986 (51 FR 21152). The amendments implement section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (the Act, Pub. L. 99-272), which establishes a schedule of fees chargeable to users of various services provided by the Customs Service in connection with the processing of persons, aircraft, vehicles, vessels, and merchandise arriving in the U.S., as well as for the payment of an annual fee by customs brokers. The Act also sets forth certain limitations or conditions concerning the collection of fees, and authorizes the promulgation of such regulations as necessary to carry out the provisions of the new law. Certain aspects of the interim regulations impose burdens upon segments of the public to make periodic reports and payments to Customs, as well as to maintain records for possible examination.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511, 94 Stat. 2812, 44 U.S.C. 3501 *et seq.*) established policies and procedures for controlling paperwork burdens imposed on the public by federal agencies. Pursuant to this Act, by a document published in the **Federal Register** on March 31, 1983 (48 FR 13666), the Office of Management and Budget (OMB) promulgated rules implementing the Act. The OMB rules are codified at 5 CFR Part 1320 *et seq.*

One aspect of OMB's oversight function is the review and approval of information collections. Generally, information collections include any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. OMB analyzes such requests for three basic requirements. First, the collection of information must be necessary for proper performance of the agency functions. Second, the request for information or records must not duplicate information otherwise accessible to the agency. Third, the information must have practical utility.

When an information collection is approved by OMB, it is issued a control number. The control number provides a simple and effective way to inform the public that a particular information collection has been approved by OMB pursuant to the Paperwork Reduction Act.

In the June 11, 1986, interim regulations, Customs stated that the amendments were subject to the Paperwork Reduction Act, and that an application for approval was submitted to OMB. OMB was able to quickly review the information collection requirements included in T.D. 86-109, and has issued a control number. This document amends Part 178, Customs Regulations (19 CFR Part 178), by including that control number in the list of previously issued OMB numbers.

E.O. 12291, Regulatory Flexibility Act, Inapplicability of Public Notice Requirement

This document merely amends a listing of the status of previously published regulations. Therefore, the requirements of E.O. 12291, the Regulatory Flexibility Act, and the notice and public comment requirements of the Administrative Procedure Act (5 U.S.C. 552) are not applicable.

List of Subjects in 19 CFR Part 178

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

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendment to the Regulations

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

Part 178, Customs Regulations (19 CFR Part 178), is amended as set forth below:

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

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

2. Section 178.2 is amended by inserting, in proper numerical order, the following entries:

§ 178.2 Listing of OMB Control Numbers.

* * * * *

19 CFR Section	Description	OMB control no.
4.98(i)	Users fees for Customs services.	1515-0154
6.1a	do	do
24.22	do	do
111.96	do	do
123.1a	do	do
145.1a	do	do

Dated: June 18, 1986.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 86-14335 Filed 6-24-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors and Disability Insurance; Deductions, Reductions, and Nonpayments of Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: In these final regulations, we are amending our rules on reducing the Social Security benefit amounts of spouses who are receiving Government pensions. The amendments, which implement section 2 of Pub. L. 98-617, provide that, for beneficiaries subject to this reduction, the benefit reduction in all cases will be two-thirds (instead of 100 percent) the amount of the spouse's Government pension. The amendments also extend by one month the periods for meeting the existing exceptions to reduction in cases where an employee's pension eligibility was delayed by one month solely because of a requirement which postponed eligibility for the pension until the month after the month in which all other requirements were met. The changes are effective for benefits payable for December 1984 and later months.

DATES: These rules are effective June 25, 1986. The statutory provisions they reflect became effective for benefits payable to certain spouses for December 1984 and later months.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6785.

SUPPLEMENTARY INFORMATION: The Social Security Amendments of 1977 (Pub. L. 95-216) introduced in section 334 a provision for reducing dollar-for-dollar the Social Security spouse's benefits of a person who is receiving a Government pension based on work not covered by Social Security. That same section also provided for an exception to the reduction if the spouse was eligible for a Government pension for one or more months in the period December 1977 through November 1982 and met certain other requirements. The Social Security Amendments of 1983 (Pub. L. 98-21) changed the amont of the reduction to two-thirds the amount of the Government pension if the person became eligible for the pension after June 1983. Also in 1983, Pub. L. 97-455 provided an alternative exception if the spouse was eligible for a Government pension before July 1983 and met certain other requirements.

Pub. L. 98-617, enacted November 8, 1984, has further amended the exceptions and the amount of reduction. Section 2(a) of that Act provides that for December 1984 and later months, the Social Security benefits of spouses or surviving spouses who do not meet one of the exceptions to reduction will be reduced by two-thirds the amount of the person's Government pension which is based on work not covered by Social Security, regardless of when the person first became eligible for the pension.

Under section 2(b) of Pub. L. 98-617, we will consider a person to be eligible for a pension within the appropriate period if the person was otherwise eligible for the pension except for a special requirement which delayed eligibility by one month. For example, Federal employees whose eligibility for a pension was delayed by legislation one month to December 1982 or July 1983 will be considered to be eligible for the pension in November 1982 or June 1983. Thus, those employees can meet an exception to reduction if they also meet the other requirements of the exception. This provision protects against reduction of Social Security benefits for months after November 1984.

Comments

On December 31, 1985, a Notice of Proposed Rulemaking was published (50 FR 53340) with a 60-day comment period. We received one comment on behalf of a worker who has confused these rules with those we published on December 3, 1985 (50 FR 49558) which explain the effect that a worker's pension based on noncovered employment will have on the worker's Social Security benefits. In either case, we are merely implementing provisions of the Social Security Act. We are, therefore, publishing these final rules without regard to the comment.

Final Rules

In these final rules, we are adding to § 404.408a(d)(2) a provision on rounding. It provides that the amount of the reduction, if not a multiple of 10 cents, will be rounded to the next higher multiple of 10 cents. This change will make this paragraph contain the same rounding provision as is now in paragraph (d)(1) of this section. Except for this change, we are publishing these rules as proposed.

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. We estimate that these provisions of Pub. L. 98-617 will cost the Social Security trust funds $10 million per year in additional benefit payments. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

The regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they involve only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.802 Social Security—Disability Insurance, 13.803 Social Security—Retirement Insurance, 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, survivors, and disability insurance.

Dated: May 13, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: June 11, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Subpart E of Part 404 of chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

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

Authority: Secs. 202, 205, 207, and 1102 of the Social Security Act; 49 Stat. 623, 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 402, 405, 407, and 1302.

2. Section 404.408a is amended by adding a new paragraph (b)(4), and by revising paragraph (d)(2) to read as follows:

§ 404.408a Reduction where spouse is receiving a Government pension.

* * * * *

(b) *Exceptions.* * * *

(4) If you would have been eligible for a pension in a given month except for a requirement which delayed eligibility for such pension until the month following the month in which all other requirements were met, we will consider you to be eligible in that given month for the purpose of meeting one of the exceptions in paragraphs (b) (2) and (3) of this section. If you meet an exception solely because of this provision, your benefits will be unreduced for months after November 1984 only.

* * * * *

(d) *Amount and priority of reduction.* * * *

(2) If you became eligible for a Government pension before July 1983 and do not meet one of the exceptions in paragraph (b) of this section, we will reduce (to zero, if necessary) your monthly Social Security benefits as a spouse by the full amount of your pension for months before December 1984 and by two-thirds the amount of your monthly pension for months after November 1984. If the reduction is not a multiple of 10 cents, we will round it to the next higher multiple of 10 cents.

* * * * *

[FR Doc. 86-14361 Filed 6-24-86; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 168

Extension of Expiration Date for Grazing Permits Issued to Navajo Indians Living on Lands Partitioned to the Hopi Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: By statute, 25 U.S.C. 640d-13(a), the Navajo and Hopi Indian Relocation Commission was to complete its relocation program by July 6, 1986. Pending completion of that program, the Bureau of Indian Affairs has regulations governing the issuance of grazing permits to Navajos living on Hopi Partitioned Land. 25 CFR Part 168. Section 168.6(b)(4) of the regulations provides that all permits issued to Navajo Indians will expire at the end of the relocation period specified in the Navajo-Hopi Settlement Act. That period ends July 6, 1986. The relocation of Navajos from Hopi Partitioned Lands will not, however, be completed by that date. Thus any grazing permits issued pursuant to the regulations will not expire on July 6, 1986, but will continue to be processed and administered in conformance with the regulations until final relocation is completed.

DATE: Effective June 25, 1986.

FOR FURTHER INFORMATION CONTACT: Wayne C. Nordwall, Attorney-Advisor, SOL-IA, Main Interior Building, Room 6457, (202) 343-9331. Daniel Jackson, Attorney-Advisory, SOL-PHX FS, Phoenix, Arizona, (602) 261-4756.

SUPPLEMENTARY INFORMATION: On September 10, 1982, the Department of the Interior, Bureau of Indian Affairs, issued grazing regulations in compliance with an order issued by the United States District Court for the district of Arizona on May 4, 1982, in the case of *Hopi Tribe* v. *Watt,* Civ. 81-272 PCT-EHC. The purpose of the regulations is to regulate the issuance of grazing permits to Navajo Indians living on lands partitioned to the Hopi Tribe pursuant to the Navajo-Hopi Settlement Act, Pub. L. 93-531, until those Navajos have been relocated. In order to avoid an inference that the regulations and any permits issued pursuant to them terminate on July 6, 1986—the date the Commission was to have completed its relocation program—this notice provides notice of the proviso found in Pub. L. 99-190 which prohibits the use of any federal funds for the purpose of relocating Navajos until replacement housing is constructed for them. Inasmuch as replacement housing has not yet been constructed, the effect of the proviso is to extend the date for the completion of the relocation program. Thus, the Bureau of Indian Affairs will continue to grant permits and regulate grazing by Navajos on Hopi Partitioned Lands pursuant to the existing regulations until final relocation is completed.

List of Subjects in 25 CFR Part 168

Grazing lands, Indian Affairs Bureau, Indians—lands, Livestock, Reporting and recordkeeping requirements.

PART 168—[AMENDED]

1. The authority citation for 25 CFR Part 168 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 640d-8, 640d-18.

2. In § 168.6 the third sentence of paragraph (b)(4) is revised to read as follows:

§ 168.6 Grazing on range units authorized by permit.

* * * * *

(b) * * *

(4) * * * All interim permits will expire at the end of the period provided for completion of relocation, Pub. L. 99-190. * * *

* * * * *

Ronald L. Esquerra,

Deputy to the Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 86-14045 Filed 6-24-86; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8091]

Procedure and Administration; Administrative Summonses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to administrative summonses. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulations provide the public with the guidance needed to comply with that Act and affect persons who receive summonses, third party recordkeepers who receive summonses, and persons

with respect to whose tax liability a summons is issued.

DATES: The regulations pertaining to section 7602 of the Code (§ 301.7602-1) are effective after September 3, 1982. The regulations pertaining to section 7609 of the Code (§§ 301.7609-1 through 301.7609-5) apply to summonses served after December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Bruce H. Jurist of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:LR:T) 202-566-3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 1985, the **Federal Register** published proposed amendments (50 FR 24655) to the Procedure and Administration Regulations (26 CFR Part 301) under sections 7602 and 7609 of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to sections 331, 332, and 333 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (96 Stat. 620).

Two written comments responding to the notice of proposed rulemaking were received. No requests for a public hearing were received and accordingly none was held. After consideration of all written comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Public Comments

Under section 7602, no summons may be issued or enforced with respect to any person if a Justice Department referral is in effect with respect to that person. Section 301.7602-1(c)(2)(ii) of the proposed regulations provides that a referral is in effect with respect to any person when the Attorney General, the Deputy Attorney General, or an Assistant Attorney General under the authority of section 6103(h)(3)(B) requests that the Service disclose taxpayer information relating to the person. The request must state that the need for disclosure is for tax administration purposes. One commentator suggested that the rule be clarified so as to state that a referral is in effect only if the request for disclosure is made with respect to a criminal investigation or prosecution. This suggestion is adopted in the final regulations.

The proposed regulations contain a number of examples illustrating that for purposes of the rule prohibiting the issuance of enforcement of a summons if a Justice Department referral is in effect, each taxable period and taxes imposed by different chapters of the Code are treated separately. One comment suggested the addition of an example dealing with tax shelter promoter penalties when a referral relating to income tax is in effect. Accordingly, the final regulations include an example clarifying that the Service may issue an administrative summons with respect to a person's liability under section 6700 (tax shelter promoter penalty) even though a referral is in effect for the taxable year with respect to that person's income tax liability.

One commentator suggested that the time period under section 7609 during which the Service is proscribed from issuing or enforcing summonses be changed from 20 days to 20 business days. In addition, the commentator suggested that the Secretary be required to issue the certificates described in section 7609 (i) (2) rather than being allowed to issue such certificates as a matter of discretion. Because these comments are inconsistent with the language of section 7609, they are not adopted in the final regulations.

Regulatory Flexibility Act and Executive Order 12291

Although a notice of proposed rulemaking soliciting public comments was issued, the Internal Revenue Service has concluded that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The Commissioner of Internal Revenue has determined that these final regulations are not major rules under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Drafting Information

The principal author of these proposed regulations is Bruce H. Jurist of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION REGULATIONS

Paragraph 1. The authority for Part 301 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 301.7602-1 is amended by revising paragraphs (a) and (b) and adding new paragraphs (c) and (d) to read as follows:

§ 301.7602-1 Examination of books and witnesses.

(a) *In general.* For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax (including any interest, additional amount, addition to the tax, or civil penalty) or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, collecting any such liability or inquiring into any offense connected with the administration or enforcement of the internal revenue laws, any authorized officer or employee of the Internal Revenue Service may examine any books, papers, records or other data which may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant to such inquiry.

(b) *Summons.* For the purposes described in paragraph (a) of this section the Commissioner is authorized to summon the person liable for tax or required to perform the act, or any officer or employee of such person or any person having possession, custody, or care of books of accounts containing entries relating to the business of the person liable for tax or required to perform the act, or any other person deemed proper, to appear before a designated officer or employee of the Internal Revenue Service at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. This summons power may be used in an investigation of either civil or criminal tax-related liability. The Commissioner may designate any employee of the Internal

Revenue Service as the individual before whom a person summoned pursuant to section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(e)(2), or 7602 shall appear. Any such employee, when so designated in a summons, is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records, or other data produced in compliance with the summons.

(c) *Proscription on issuing of administrative summons when a Justice Department referral is in effect*—(1) *In general.* The Commissioner may neither issue a summons under this title nor initiate a proceeding to enforce a previously issued summons by way of section 7604 with respect to any person whose tax liability is in issue, if a Justice Department referral is in effect with respect to that person for that liability.

(2) *Justice Department referral in effect.* A Justice Department referral is in effect with respect to any person when:

(i) The Secretary recommends, within the meaning of this paragraph, that the Attorney General either commence a grand jury investigation of or criminal prosecution of such person for any alleged offense connected with the administration or enforcement of the internal revenue laws, or

(ii) The Attorney General (or Deputy Attorney General or Assistant Attorney General) under section 6103(h)(3)(B) requests in writing that the Secretary disclose a return of, or return information relating to, such person. The request must set forth that the need for disclosure is for the purpose of a grand jury investigation of or potential or pending criminal prosecution of such person for any alleged offense connected with the administration or enforcement of the internal revenue laws.

The referral is effective at the time the document recommending criminal prosecution or grand jury investigation is signed by the Secretary or upon the Secretary's receipt of the section 6103(h)(3)(B) request.

(3) *Cessation of Justice Department referral.* A Justice Department referral ceases to be in effect with respect to a person:

(i) When the Secretary receives written notification from the Attorney General that the Justice Department:

(A) Will not prosecute that person for any offense connected with the administration or enforcement of the internal revenue laws that gave rise to the referral under paragraph (2)(i) of this section, or

(B) Will not authorize a grand jury investigation of that person with respect to such offense, or

(C) Will discontinue any grand jury investigation of that person with respect to such offense;

(ii) When a final disposition with respect to a criminal proceeding brought against that person has been made; or

(iii) When the Secretary receives written notification from the Attorney General, Deputy Attorney General, or an Assistant Attorney General, that the Justice Department will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws, based upon a previous request for disclosure under section 6103(h)(3)(B).

(4) *Taxable years and taxes imposed by separate chapters of the Code treated separately*—(i) *In general.* For purposes of this section, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of the Code is treated separately.

(ii) *Examples.* The following examples illustrate the application of this paragraph (c)(4):

Example (1). A Justice Department referral is in effect for D's criminal evasion of income tax for the taxable year 1979. The Commission may issue a summons respecting D's 1980 criminal and/or civil tax liability. The Commissioner may not issue a summons respecting D's 1979 income tax liability.

Example (2). A referral has been made to the Department of Justice for the criminal prosecution of F with regard to F's income tax liability for the taxable year 1978. The Commissioner may issue a summons respecting F's gift tax liability for the taxable year 1978.

Example (3). A referral has been made to the Department of Justice for a grand jury investigation respecting G's 1980 income tax liability. The Commissioner may issue a summons related to an investigation of G's liability for Federal Insurance Contribution Act (FICA) taxes for the taxable year 1980.

Example (4). A referral has been made to the Department of Justice respecting J's criminal evasion of windfall profit tax for all quarters of the calendar year 1982. The Commissioner may issue a summons respecting J's liability for highway motor vehicle use tax covering the same periods.

Example (5). A referral has been made to the Department of Justice for a grand jury investigation respecting L's 1983 income tax liability. The Commissioner may issue a summons related to the investigation of L's liability under sections 6700 (abusive tax shelter promoter penalty) and 7408 of the Code for his conduct during 1983.

(d) *Effective date.* This section is effective after September 3, 1982. For rules effective on or before September 3, 1982, see 26 CFR 301.7602–1 (revised as of April 1, 1984).

Par. 3. Section 301.7609–1 is amended by designating the original text as paragraph (a), revising redesignated paragraph (a), and adding a new paragraph (b) to read as follows:

§ 301.7609–1 Special procedures for third-party summonses.

(a) *In general.* Section 7609 requires the Internal Revenue Service to follow special procedures when summoning the records of persons defined by section 7609(a)(3) as "third-party recordkeepers." Under these special procedures, the person about whom information is being gathered must be notified in advance in many cases. If the person about whom information is being gathered has been given notice, that person has the right to institute, until and including the 20th day following the day such notice was served on or mailed to such notified person, a proceeding to quash the summons. During the time the validity of the summons is being litigated, the statutes of limitations are suspended under section 7609(e). Section 7609 does not restrict the authority under section 7602 (or under any other provision of law) to examine records and witnesses without serving a summons and without giving notice of an examination. Sections 301.7609–1 through 301.7609–5 relate to section 7609; § 301.7609–4 and the institution of a sections 7609(a)(3) and 7609(i) relating to third-party recordkeepers; § 301.7609–3 discusses matters under section 7609(b), relating to intervention rights; § 301.7609–4 and the institutio of a proceeding to quash; § 301.7609–4 discusses matters under section 7609(c), relating to summonses excepted from the section 7609 procedures; and § 301.7609–5 discusses matters under section 7609(e), relating to the suspension of the statute of limitations.

(b) *Effective dates.* This section applies to summonses served after December 31, 1982. For the rules applicable to summonses issued on or after March 1, 1977 and served before January 1, 1983, see 26 CFR 301.7609–1 (revised as of April 1, 1984).

Par. 4. Section 301.7609–2 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 301.7609–2 Third-party recordkeepers.

* * * * *

(c) *Duty of third-party recordkeeper*—(1) *In general.* Upon receipt of a summons, the third-party recordkeeper ("recordkeeper") must begin to assemble the summoned records. The recordkeeper must be prepared to produce the summoned records on the date which the summons states the

records are to be examined regardless of the institution of anticipated institution of a proceeding to quash or the recordkeeper's intervention (as allowed under section 7609(b)(2)(C)) into a proceeding to quash.

(2) *Disclosing recordkeepers not liable*—(i) *In general.* A recordkeeper, or an agent or employee thereof, who makes a disclosure of records as required by this section, in good faith reliance on the certificate of the Secretary (as defined in paragraph (c)(2)(ii) of this section) or an order of a court requiring production of records, will not be liable for such disclosure to any customer, or to any party with respect to whose tax liability the summons was issued, or to any other person.

(ii) *Certificate of the Secretary.* The Secretary may issue to the recordkeeper a certificate stating both:

(A) That the 20-day period, within which a notified person may institute a proceeding to quash the summons, has expired; and

(B) That no proceeding has been properly instituted within that period.

The Secretary may also issue a certificate to the recordkeeper if the taxpayer, with respect to whose tax liability the summons was issued, expressly consents to the examination of the records summoned.

(3) *Reimbursement of costs.* Recordkeepers may be entitled to reimbursement of their costs of assembling and preparing to produce summoned records, to the extent allowed by section 7610, even if the summons ultimately is not enforced.

(d) *Effective dates.* This section, with the exception of paragraph (c), applies generally to all summonses issued on or after March 1, 1977. Paragraph (c) applies only to summonses served after December 31, 1982.

Par. 5. Section 301.7609–3 is amended by revising paragraphs (a), (b), (c), and by adding new paragraph (d) to read as follows:

§ 301.7609–3 Right to intervene; right to institute a proceeding to quash.

(a) *Notified person.* Under section 7609(a), the Internal Revenue Service must give a notice of summons to any person, other than the person summoned, who is identified in the description of the books and records contained in the summons in order that such person may contest the right of the Service to examne the summoned records by instituting a proceeding to quash the summons. Thus, if the Service issues a summons to a bank requesting checking account records of more than one person all of whom are identified in the description of the records contained in the summons, then all such persons are notified persons entitled to notice under section 7609(a). Therefore, if the Service requests the records of a joint bank account of A and B both of whom are named in the summons, then both A and B are notified persons entitled to notice under section 7609(a).

(b) *Right to institute a proceeding to quash*—(1) *In general.* Section 7609(b) grants a notified person the right to institute a proceeding to quash the summons in the United States district court for the district within which the person summoned resides or is found. Jurisdiction of the court is based on section 7609(h). The act of filing a petition in district court does not in and of itself institute a proceeding to quash under section 7609(b)(2). Rather, the filing of the petition must be coupled with notice as required by section 7609(b)(2)(B).

(2) *Elements of institution of a proceeding to quash.* In order to institute a proceeding to quash a summons the notified person (or the notified person's agent, nominee, or other person acting under the direction or control of the notified person) must, not later than the 20th day following the day the notice of the summons was served on or mailed to such notified person:

(i) File a petition to quash in the name of the notified person in a district court having jurisdiction,

(ii) Notify the Service by sending a copy of that petition by registered or certified mail to the Service employee and office designated to receive the copy in the notice of summons that was given to the notified person, and

(iii) Notify the recordkeeper by sending to that recordkeeper by registered or certified mail a copy of the petition.

Failure to give timely notice to either the summoned party or the Service in the manner described in this paragraph means that the notified person has failed to institute a proceeding to quash and the district court has no jurisdiction to hear the proceeding. Thus, for example, if the notified person mails a copy of the petition to the summoned person but not to the designated Service employee and office, the notified person has failed to institute a proceeding to quash. Similarly, if the notified person mails a copy of such petition to the summoned person but, instead of sending a copy of the petition by registered or certified mail to the designated employee and office, the notified person gives the designated employee and office the petition by some other means, the notified person has failed to institute a proceeding to quash.

(3) *Failure to institute a proceeding to quash.* If the notified person fails to institute a proceeding to quash within 20 days following the day the notice of the summons was served on or mailed to such notified person, the Service may examine the summoned records following the 23rd day after notice of the summons was served on or mailed to the notified person (see section 7609(d)(1)).

(c) *Presumption no notice has been mailed.* Section 7609(b)(2)(B) permits a notified person to institute a proceeding to quash by filing a petition in district court and notifying both the Service and the summoned person. Unless the notified person has notified both the Service and the summoned person in the appropriate manner, the notified person has failed to institute a proceeding to quash. If the copy of the petition has not been delivered to the summoned person or the person and office designated to receive the notice on behalf of the Service within 3 days from the close of the 20-day period allowed to institute a proceeding to quash, it is presumed that the notification has not been timely mailed.

(d) *Effective date.* This section applies to summonses served after December 31, 1982. For the rules applicable to summonses issued on or after March 1, 1977 and served before January 1, 1983, see 26 CFR 301.7609–3 (revised as of April 1, 1984).

Par. 6. Section 301.7609–4 is amended by adding new paragraph (c) to read as follows:

§ 301.7609–4 Summons excepted from section 7609 procedures.

* * * * *

(c) *Effective date.* This section applies to all summonses issued after February 28, 1977.

Par. 7. Section 301.7609–5 is amended by revising paragraphs (b) and (c) and by adding new paragraph (d) to read as follows:

§ 301.7609–5 Suspension of statutes of limitation.

* * * * *

(b) *Period during which a proceeding, etc., is pending.* Under section 7609(e), the statute of limitations may be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending. This period begins on the date the petition to quash the summons is filed in district court. The period continues until all appeals are disposed of, or until the expiration of the

period in which an appeal may be taken or a request for a rehearing may be made. Full compliance, partial compliance, and noncompliance have no effect on the suspension provisions. Of course, if the notified person takes no action provided in subsection (b) of section 7609, no suspension of the statutes of limitations takes place. The periods of limitations which are suspended under section 7609(e) are those which apply to the taxable periods to which the summons relates.

(c) *Taking of action as provided in section 7609(b).* Section 7609(b) allows intervention by a notified person as a matter of right upon compliance with the Federal Rules of Civil Procedure. The phrase "takes any action as provided in subsection (b)", found in section 7609(e), includes any intervention, whether or not section 7609(b) is specifically mentioned in the order of the court allowing intervention. The phrase also includes the fulfilling of only part of the requirements of section 7609(b)(2), relating to the right of a person to institute a proceeding to quash. Thus, for instance, if a notified person notifies a person who has been summoned by sending a copy of the petition by registered or certified mail but does not mail a copy of that notice to the appropriate person and office under section 7609(b)(2)(B), the notified person has taken an action under section 7609(e).

(d) *Effective dates.* This section applies to summonses served after December 31, 1982. For the rules applicable to summonses issued on or after March 1, 1977, and before January 1, 1983, see 26 CFR 301.7609-5 (revised as of April 1, 1984).

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: May 28, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-14198 Filed 6-24-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CCGD11-85-06]

Anchorage Regulations; San Diego Harbor, CA

Correction

In FR Doc. 86-12268, beginning on page 19752 in the issue of Monday, June 2, 1986, make the following corrections:

§ 110.90 [Corrected]

1. On page 19753, in the second column, in the sixth line of § 110.90, paragraph (a)(1), "54.4" " should have read "53.4" ".

2. On the same page, in the third column, in § 110.90, in the fifth line of paragraph (a)(4), "40.0" " should have read "41.0" ".

BILLING CODE 1505-01-M

COMMISSION OF FINE ARTS

36 CFR Chapter X (Parts 1000 and 1002)

45 CFR Chapter XXI (Parts 2105 and 2106)

Chapter Vacated; Transfer of Regulations

Editorial Note.—In Title 36, Code of Federal Regulations, Chapter X, Commission of Fine Arts is vacated by transferring existing regulations in Parts 1000 and 1002 to Title 45, Chapter XXI, Commission of Fine Arts.

The regulations formerly codified as Parts 1000 and 1002 in Title 36 are redesignated as Parts 2105 and 2106, respectively, in Title 45, Chapter XXI. All references within the text to former Parts 1000 and 1002 are renumbered as 2105 and 2106, respectively.

This transfer of regulations is made pursuant to 1 CFR 8.2, which authorizes the Director of the Federal Register to rearrange existing assignments in the Code of Federal Regulations in order to provide for its orderly development.

BILLING CODE 1505-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3034-2]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: The intent of today's final rulemaking action is twofold. First, USEPA is approving Wisconsin's general New Source Review (NSR) Program for sources located in attainment and unclassified areas, because it meets the general NSR requirements outlined at 40 CFR 51.18 (a) through (h). On April 17, 1981 (46 FR 22374), USEPA approved portions of the Wisconsin State Statutes, Chapter 144, and the Wisconsin Administrative Code, Chapter NR 154, with respect to the NSR requirements identified at 40 CFR 51.18 (a) through (h) for sources located in nonattainment areas, as well as the detailed major source nonattainment area requirements identified at 40 CFR 51.18(j); however, USEPA did not rulemake on the State's submittal as meeting the NSR requirements identified at 40 CFR 51.18 (a) through (h) for sources in attainment and unclassified areas.

Furthermore, at that time, USEPA was requested by the State of Wisconsin not to rulemake on the Prevention of Significant Deterioration (PSD) requirements, identified at 40 CFR 51.24, for major new sources and major modifications located in attainment and unclassified areas, because the State anticipated further development of the PSD rules. Today, USEPA is approving portions of Chapter 144 and Chapter NR 154 with respect to the general NSR requirements for sources in attainment and unclassified areas (40 CFR 51.18 (a) through (h)). USEPA is not rulemaking on Wisconsin's PSD program, and USEPA's approval of Wisconsin's NSR rules should not be interpreted to apply to PSD, as noted in the codification identified at 40 FR 52.2570.

Secondly, the version of Chapter NR 154 under consideration today has been revised since the April 17, 1981 (46 FR 22374), approval for nonattainment areas. USEPA is approving the revisions to Chapter NR 154 of the Wisconsin Administrative Code that were enacted by Natural Resources Board Order Number A-39-81, and that took effect in Wisconsin on May 1, 1983, with the exception of those revisions upon which USEPA is deferring action. The revisions address permit exemptions for certain categories of sources, specifically the exemption from the requirement to obtain a construction, modification, or operation permit. The revisions also address other air permit program provisions.

USEPA's actions are based upon SIP revision requests that were submitted by the State of Wisconsin on July 12, 1979, and October 13, 1983, and on background information provided by the State. Notices proposing approval of these SIP revisions appeared in the June 15, 1984 (49 FR 24752), and the April 30, 1985 (50 FR 18272), **Federal Registers.**

EFFECTIVE DATE: This final rulemaking becomes effective on July 25, 1986.

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, DC.

Copies of the 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 (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington DC 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

The regulatory requirements related to NSR, and relevant to today's proposal, are contained in 40 CFR 51.18 (a) through (h) for major and minor sources in attainment and nonattainment areas, and in 40 CFR 51.18(j) for sources in nonattainment areas. USEPA wishes to clarify that it is only approving, today, the SIP revisions that meet the NSR requirements of 40 CFR 51.18 (a) through (h). Additionally, USEPA is not approving these SIP revisions with respect to the PSD requirements in 40 CFR 51.24.

This Wisconsin SIP revision contains certain requirements for sources to do air quality modeling. On July 8, 1985, USEPA revised its regulations concerning stack height credits for air quality modeling. In a letter dated November 6, 1985, the Wisconsin Department of Natural Resources (WDNR) committed to: (1) Revise the State regulations to comply with the July 8, 1985 rulemaking; and (2) to implement all air quality modeling analyses to conform with the July 8, 1985 rulemaking until the revised State regulations are enacted.

I. New Source Review Program for Sources in Attainment and Unclassified Areas

On April 17, 1981 (46 FR 22374), USEPA approved the 1979, 1980, and 1981 submittals of portions of Chapter 144 and Chapter NR 154 with respect to major and minor source NSR requirements for nonattainment areas only. USEPA did not take action on the above cited submittals with respect to the general permitting requirements in 40 CFR 51.18 (a) through (h) for attainment and unclassified areas. Today's notice supplements the April 17, 1981, approval by also approving the State submittals of Chapter 144 and revised Chapter NR 154 (the relevant parts of which were submitted on October 13, 1983, as Board Order Number A-39-81) with respect to sources located in attainment and unclassified areas, as proposed on April 30, 1985 (50 FR 18272). The revisions to Chapter NR 154 (Board Order Number A-39-81) were made after the April 17, 1981, approval (46 FR 22374) and are the subject of a June 15, 1984 (49 FR 24752), notice of proposed rulemaking with respect to nonattainment areas. Thus, with the exceptions noted below, the revisions are now approved for attainment, nonattainment, and unclassified areas.

The regulations in the following list contain Wisconsin's authority for its NSR program for both attainment and nonattainment areas. These regulations address all NSR activities in the State of Wisconsin, except for the following: those covering lead sources, which have been approved previously (49 FR 26762); the PSD program, on which USEPA has not taken action per the State's request;[1] and, certain permit exemptions on which USEPA is deferring action (Sections NR 154.01(118), 154.04(3)(a), 154.04(5), and 154.04(6)(b); June 15, 1984; 49 FR 24752).

(1) From Chapter 144:

Section 144.01 (1), (2), (3), (9m), and (12)—Definitions
Section 144.30—Air Pollution; Definitions
Section 144.31—Air Pollution Control; Powers and Duties
Section 144.34—Inspections
Section 144.375—Air Pollution Control; Standards and Determinations
Section 144.38—Classification and Reporting
Section 144.391—Air Pollution Control Permits
Section 144.392—Permit Application and Review
Section 144.393—Criteria for Permit Approval
Section 144.394—Permit Conditions
Section 144.395—Alteration, Suspension and Revocation of Permits
Section 144.396—Permit Duration
Section 144.397—Operation Permit Review (formerly Permit Renewal)
Section 144.398—Failure to Adopt Rule or Issue Permit for Exemption
Section 144.399—Fees
Section 144.402—Petition for Alteration
Section 144.403—Hearings on Certain Air Pollution Actions
Section 144.423—Violations: Enforcement
Section 144.426—Penalties for Violations Relating to Air Pollution
Section 144.98—Enforcement; Duty of Department of Justice; Expenses

[1] The State of Wisconsin is currently operating a PSD program partially delegated to it by USEPA (August 1980).

(2) From Chapter NR 154:

Section 154.01—Definitions
Section 154.04—Permit Requirements and Exemptions (formerly Notice of Intent)
Section 154.05—Action on Applications
Section 154.055—Relocation of Portable Sources
Section 154.06—Operation and Inspection of Sources (Source Reporting, Recordkeeping, Testing, Inspection and Operation)
Section 154.08—Enforcement and Penalties
Section 154.21—Limitations on County, Regional, or Local Regulations
Section 154.24—Procedures for Noncontested Regional Case Public Hearings
Section 154.25—Procedures for Alteration of Permits by Petition

USEPA has reviewed the relevant portions of these statutes and regulations in light of the requirements of 40 CFR 51.18. USEPA has determined that the Wisconsin NSR rules contained in Chapter 144 and revised Chapter NR 154 meet the general permitting requirements identified at 40 CFR 51.18 (a) through (h), as those requirements apply to sources located in attainment and unclassified areas. However, these are two sections of Chapter 144 that USEPA wishes to address separately. Section 144.394(2) addresses variances and Section 144.394(5) addresses emission reduction options. USEPA is approving these sections provided that all variances and emission reduction options are submitted to USEPA as SIP revisions. This provision is noted in the codification identified at 40 CFR 52.2570. Variances and emission reduction options granted by Wisconsin that have not submitted to USEPA and approved as Federal SIP revisions will not be federally recognized.

II. Permit Exemptions for Certain Categories of Sources

On October 13, 1983, the State of Wisconsin requested that USEPA consider several revisions to Chapter NR 154 of the Wisconsin Administrative Code as amendments to the Wisconsin SIP. These revisions pertain primarily to exemptions from the requirements for construction, modification, and operation permits for certain categories of sources, and to other air permit program requirements. These revisions were proposed for approval on June 15, 1984 (49 FR 24752), with some exceptions. Because Chapter 154 was originally approved for nonattainment areas only, the proposed approval of the exemptions (revised Chapter NR 154 as enacted by Board Order (A-39-81) on June 15, 1984, also applied to nonattainment areas only (49 FR 24752). However, revised Chapter NR 154, as proposed for approval on April 30, 1985,

is being approved today for nonattainment, attainment, and unclassified areas, with the exception of sections NR 154.01(118), NR 154.04(3)(a), NR 154.04(5), and NR 154.04(6)(b). USEPA took no action on these sections in the June 15, 1983, notice of proposed rulemaking (49 FR 24752) for reasons explained in detail in that notice. USEPA also took no action on these sections in the April 30, 1985 (50 FR 18272), notice of proposed rulemaking. Because USEPA did not propose action on these sections previously, USEPA cannot take final rulemaking on these sections today. Instead, USEPA will propose action on these four revisions in a separate rulemaking notice in order to give the public an opportunity to comment on the revisions, and on USEPA's proposed action.

A. Proposed Revision to NR 154.01

USEPA is approving a revision to NR 154.01, Definitions, that creates an introductory sentence. This sentence states that the definitions provided in NR 154.01 have their designated meaning throughout Chapters NR 154 and NR 155 of the Wisconsin Administrative Code, unless a different meaning is expressly provided.

USEPA also approves the addition of nine definitions to NR 154.01. These State definitions are similar to the Federal defintions, and, therefore, USEPA can approve them as they apply to permit exemptions. However, USEPA is not approving these definitions for PSD permits. These terms will have to be reevaluated for PSD purposes when, and if, a PSD SIP revision is submitted by the State of Wisconsin.

B. Proposed Revisions to NR 154.04

The revision to NR 154.04, Permit Requirements and Exemptions, pertain to sections NR 154.04(2), NR 154.04(3)(b) through NR 154.04(3)(d), and NR 154.04(4). The purpose of section NR 154.04(2) is to provide exemptions from permitting requirements for certain small emission increases that result from new sources, and modifications to existing sources. The State cut-off levels, below which sources are exempted from permitting requirements, are as follows: 5.7 pounds per hour (less than 25 tons per year) for particulates (TSP) and volatile organic compounds (VOC); 9 pounds per hour (less than 40 tons per year) for sulfur dioxide (SO_2), nitrogen oxides (NO_x), and carbon monoxide (CO). It has been determined for the purposes of the general NSR requirements (40 CFR 51.18 (a) through (h)) for all major and minor sources, that exempting sources below the specified cut-off levels is not expected to result in a violation of the air quality standards, or increments. Therefore, USEPA is approving the exemptions contained in NR 154.04(2).

The revisions to sections NR 154.04(3)(b) through NR 154.04(3)(d) pertain to specific exemptions from permitting requirements. Section NR 154.04(3)(b) exempts modifications related to VOC RACT compliance. However, if a VOC RACT modification would result in a major modification of a major source, as defined in 40 CFR 51.18(j), then that source would have to obtain a permit as a condition of the WDNR's approval of the VOC RACT compliance plan. This is clarified by the WDNR in their May 24, 1984, letter. Section NR 154.04(3)(c) allows exemptions for shutdowns, if the source is below the emission cut-off levels, as specified above. These cut-off levels are below the Federal significance levels and, therefore, are not controlled by Federal regulations. Section NR 154.04(3)(d) exempts steam-generating units that use municipal waste as an alternate fuel, and is as stringent as the Federal requirements. USEPA is approving all three of the exemptions described above.

The final revision to NR 154.04 involves section NR 154.04(4). NR 154.04(4), which exempts the relocation of small emission units, is as stringent as the Federal requirements. USEPA is approving this exemption.

C. Proposed Revisions to NR 154.08, NR 154.24, and NR 154.25

The proposed revision to NR 154.08, Enforcement and Penalties, makes the enforcement and penalty provisions of the Wisconsin Administrative Code conform to the enforcement and penalty provisions enacted in the 1979 Wisconsin air pollution control permit legislation. USEPA is approving this revision. Section NR 154.24, Procedures for Noncontested Case Public Hearings, is being created in response to requirements outlined in State statutes 144.392(7)(b), 144.395(5)(b), and 144.397(4)(b). NR 154.24 outlines procedures for requesting and conducting noncontested case public hearings on permit applications and operating permits. USEPA is approving the addition of this revision to the Wisconsin SIP.

Section NR 154.25, Procedures for Alteration of Permits by Petition, is being created to provide procedures for the alteration of air pollution control permits. In the June 15, 1984, notice of proposed rulemaking, USEPA requested further clarification from the State of Wisconsin concerning section NR 154.25 of the Wisconsin Administrative Code. USEPA stated that it would approve NR 154.25, if appropriate clarification were received prior to the close of the public comment period. On July 13, 1984, Wisconsin submitted a letter stating that decisions made pursuant to NR 154.25 would be subject to the permitting criteria outlined in § 144.393 of the Wisconsin Statutes. Since § 144.393 is part of the federally approved Wisconsin SIP for nonattainment areas, and is being approved today for attainment and unclassified areas, this satisfies USEPA's request for a demonstration that permit alteration decisions be based on procedures that are part of the approved SIP. Therefore, USEPA proposed to approve section NR 154.25 for sources located in nonattainment, attainment and unclassified areas on April 30, 1985 (50 FR 18272). Today, USEPA is approving section NR 154.25.

Conclusion

During the public comment period, USEPA received no comments on its proposed actions. Therefore, USEPA is approving Wisconsin's general NSR program for attainment and unclassified areas. USEPA is not approving the NSR rules as they pertain to the PSD program. In effect, USEPA is approving Chapter 144 and revised Chapter NR 154 for the general NSR requirements in 40 CFR 51.18(a) through (h). USEPA is also approving several revisions to NR 154, as specified in Board Order Number A-39-81, with the exception of sections NR 154.01(118), a portion of NR 154.04(3)(a), NR 154.04(5), and NR 154.04(6)(b). USEPA is deferring action on these revisions, but will address these sections in separate rulemaking actions.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. 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 August 25, 1986. 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, Incorporated by reference, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, 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.

Dated: February 24, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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: 42 U.S.C. 7401–7642.

2. Sections 52.2570 is amended by adding new paragraphs (c)(42) and (c)(43) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(42) On July 12, 1979, the State of Wisconsin submitted its new source review (NSR) regulations. Additional information was submitted on September 4, 1979, November 27, 1979, May 1, 1980, and February 18, 1981. USEPA has previously approved these submittals as they relate to the NSR plan for nonattainment areas. See (c)(18). USEPA is now approving these submittals as they relate to the general NSR requirements for attainment and unclassified areas. USEPA is not approving these submittals with regard to the Prevention of Significant Deterioration (PSD) requirements, and USEPA's approval of Wisconsin's NSR rules should not be interpreted to apply to PSD. USEPA is approving §§ 144.394(2) and 144.394(5) of the State Statutes provided that all variances (144.394(2)) and emission reduction options (144.394(5)) are submitted to USEPA as SIP revisions. On November 6, 1985, the State submitted a letter committing to: (1) Revise its regulations to conform with USEPA's July 8, 1985, rulemaking concerning stack height credits for air quality modeling; and (2) implement all air quality modeling analyses to conform with the July 8, 1985, rulemaking until the revised State regulations are enacted.

(i) *Incorporation by reference.* (A) The following Sections of Chapter 144 of the Wisconsin Statutes, entitled "Water, Sewage, Refuse, Mining, and Air Pollution, are incorporated by reference. These sections are located in Subchapter I, "Definitions", Subchapter III, "Air Pollution", and Subchapter VII, "General Provisions, Enforcement and Penalties", of Chapter 144.

Section 144.01 (1), (2), (3), (9m), and (12)—Definitions
Section 144.30—Air Pollution; Definitions
Section 144.31—Air Pollution Control; Powers and Duties
Section 144.34—Inspections
Section 144.375—Air Pollution Control; Standards and Determinations
Section 144.38—Classification and Reporting
Section 144.391—Air Pollution Control Permits
Section 144.392—Permit Application and Review
Section 144.393—Criteria for Permit Approval
Section 144.394—Permit Conditions
Section 144.395—Alteration, Suspension and Revocation of Permits
Section 144.396—Permit Duration
Section 144.397—Operation Permit Review
Section 144.398—Failure to Adopt Rules or Issue Permit or Exemption
Section 144.399—Fees
Section 144.402—Petition for Alteration
Section 144.403—Hearings on Certain Air Pollution Actions
Section 144.423—Violations; Enforcement
Section 144.426—Penalties for Violations Relating to Air Pollution
Section 144.98—Enforcement; Duty of Department of Justice

(B) The following Sections of Chapter NR 154 of the Wisconsin Administrative Code, entitled "Air Pollution Control", are incorporated by reference.

Section 154.01—Definitions
Section 154.04—Permit Requirements and Exemptions
Section 154.05—Action on Applications
Section 154.055—Relocation of Portable Sources
Section 154.06—Operation and Inspection of Sources (Source Reporting, Recordkeeping, Testing, Inspection and Operation)
Section 154.08—Enforcement and Penalties
Section 154.21—Limitations on County, Regional, or Local Regulations
Section 154.24—Procedures for Non-contested Case Public Hearings
Section 154.25—Procedures for Alteration of Permits by Petition

(C) Letter from the State of Wisconsin dated November 6, 1985, committing to implement USEPA's stack height regulations.

(43) On October 13, 1983, the State of Wisconsin submitted revisions to Chapter NR 154 of the Wisconsin Administrative Code that exempt certain sources from the need to obtain construction, modification, and operation permits, and from other permit program requirements. USEPA is approving these permit exemptions for attainment, nonattainment, and unclassified areas, except for those exemptions upon which USEPA is deferring action (Sections NR 154.01(118), NR 154.04(3)(a), NR 154.04(5), and NR 154.04(6)(b)).

(i) *Incorporation by reference.* (A) Sections NR 154.01, NR 154.04, NR 154.08, NR 154.24, and NR 154.25 of Natural Resources Board Order Number A–39–81, which were published in the Wisconsin Administrative Register in April 1983, and which took effect on May 1, 1983, with the exception of sections NR 154.01(118), NR 154.04(3)(a), NR 154.04(5), and NR 154.04(6)(b).

(ii) *Additional material.* (A) Letter from the State dated May 24, 1984, clarifying that major sources, or major modifications of major sources, could not be exempted from the requirement to obtain a permit under sections NR 154.04(2)(a) or NR 154.04(3)(b).

(B) Letter from the State dated July 13, 1984, stating that decisions made pursuant to NR 154.25 would be subject to the permitting criteria in § 144.393 of the Wisconsin Statutes.

[FR Doc. 86–13973 Filed 6–24–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 86–289]

Practice and Procedure; Clarification of Date of Public Notice

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: The Commission has interpreted § 1.4(b) of its rules to clarify that date of "public notice" in rule makings of particular applicability is triggered by the date of **Federal Register** publication whenever the rule making is to be published in the **Federal Register.** Otherwise, the date of "public notice" is triggered by the release date. This clarification is intended to eliminate an ambiguity created by conflicting interpretations of the existing rule.

EFFECTIVE DATE: June 25, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph S. McBride, Administrative Law Division, Office of General Counsel, (202) 254–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Adopted: June 6, 1986 and Released June 10, 1986.

Declaratory Ruling

Section 1.4 of the Commission's rules specifies the date of "public notice" for purposes of calculating the time for filing petitions for reconsideration and appeals of Commission decisions. *See* 47 CFR 1.103(b). It has come to our attention that confusion has arisen concerning the date of public notice for Commission decisions that adopt rules

of particular applicability. More specifically, questions have arisen as to the date of public notice of rate making decisions, which are properly characterized as creating rules of particular applicability, but are the product of notice and comment rule making and often are pubished in the **Federal Register.**

Section 1.4(b) provides, in pertinent part, that:

> . . . the date of public notice commences at 3 P.M. Eastern Time on the day after any of the following dates:
>
> (1) For documents in notice and comment rule-making proceedings, the date of publication in the **Federal Register.**
>
> (2) For other documents released by the Commission (whether or not published in the **Federal Register**), the release date. . . .

Rules of particular applicability[1] are adopted after notice and comment procedures but are not required to be published in the **Federal Register.** *See* 5 U.S.C. 552(a)(1)(D); *American Broadcasting Companies, Inc.* v. *FCC,* 682 F. 2d 25, 31 (2d Cir. 1982). The Commission may decide, however, that **Federal Register** publication is desirable in some instances. In *Western Union Telegraph Co.* v. *FCC,* 773 F. 2d 375, 376–77 (D.C. Cir. 1985), the Commission and all parties assumed that § 1.4(b)(1) governs the date of public notice when rules of particular applicability are published in the **Federal Register.** However, in a *Memorandum Opinion and Order,* CC Docket No. 85–166, Mimeo 2757, released February 21, 1986 at para. 15, the Chief of the Common Carrier Bureau noted that proceedings such as the special access tariff investigation are ordinarily governed by § 1.4(b)(2), in which public notice is triggered by the release date of the decision. The Bureau nevertheless determined, as a matter of discretion, to establish a different public notice date for filing petitions for reconsideration of the January 24, 1986 Commission Order in that Docket,[2] running from the date of **Federal Register** publication.

As a consequence of the *Western Union* and Bureau decisions discussed above, questions have arisen whether rule making decisions which adopt rules of particular applicability are controlled by § 1.4(b)(1) or by § 1.4(b)(2). In the future, the Commission will indicate in its decisions if a rule of particular applicability (or a summary thereof) is to be published in the **Federal Register.** Where the decisions specify **Federal Register** publication, the **Federal Register** publication date will trigger the date on which public notice is given (i.e., the procedure will be identical to that set forth in § 1.4(b)(1)). In all other cases, § 1.4(b)(2) will govern, even if the Commission subsequently decides upon **Federal Register** publication. This will permit interested parties to determine, upon release of the decision, whether the date of public notice is to be triggered by the release date or by the date of **Federal Register** publication.[3]

Accordingly, it is ordered, That § 1.4(b) is clarified as set forth above.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–14272 Filed 6–24–86; 8:45 am]

BILLING CODE 6712–01–M

[1] The Administrative Procedure Act defines "rule" to encompass "an agency statement of general or *particular* applicability . . . [including] the approval or prescription for the future of rates. . . ." 5 U.S.C. 551(4) (emphasis added). *See* U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 28 (1947).

[2] FCC 86–52, released January 24, 1986, 51 FR 15691 (April 25, 1986).

[3] This ruling is not intended to affect the date of public notice for the FCC's January 24, 1986 order in CC Docket No. 85–166, FCC 86–52 (released January 24, 1986). The Bureau order referred to in paragraph 2 above designated **Federal Register** publication as the trigger for public notice of the January 24 order, even though the January 24 order itself did not indicate that it would be published in the **Federal Register.** The Bureau's order may have caused some confusion and uncertainty. We do not here disturb the Bureau's decision to set 3 p.m. following publication in the **Federal Register** as the date of public notice for purposes of filing petitions for reconsideration and judicial review of FCC 86–52. In the future, however, rules of particular applicability will be governed by § 1.4(b)(1) only when the decisional document itself specifies **Federal Register** publication. This will prevent any unnecessary uncertainty.

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 510, 514, 515, 528, 532, and 552

[APD 2800.12 CHGE 26]

General Services Administration Acquisition Regulation; Prompt Payment Discounts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is revised to implement Federal Acquisition Circular (FAC) 84–8. This change deletes material on prompt payment discounts that has been incorporated in the Federal Acquisition Regulation (FAR), provides for the evaluation of prompt payment discounts in Multiple Award Schedule (MAS) contracts, prescribes a Discounts for Prompt Payment clause to be used in MAS contracts in lieu of the FAR clause, provides instructions on modifying the FAR Discounts for Prompt Payment clause with respect to payment due dates, and designates the head of the contracting activity as the official responsible for providing certified copies of bonds in accordance with FAR 28.106–6(c). In addition, the clauses at 552.210–71, Reference to Specifications in Drawings, 552.210–72, Acceptable Age of Supplies, 552.210–73, Age on Delivery, and 552.232–23, Assignment of Claims, are revised. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Sanders, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4754.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1985, the General Services Administration published in the **Federal Register** (50 FR 41180) GSAR Notice 5–108 inviting comments from interested parties on these proposed changes to the regulation and provided a 30-day comment period. No comments were received from the public. Comments from various GSA offices have been reviewed, reconciled, and incorporated, when appropriate, in this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. GSA certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The change deletes material that has been incorporated in the FAR and makes minor revisions in various clauses for clarity. Therefore, no flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 510, 514, 515, 528, 532, and 552

Govermnent procurement.

1. The authority citation for 48 CFR Parts 510, 514, 515, 528, 532, and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

2. Section 510.011 is amended by revising paragraph (c) and removing and reserving paragraph (d), to read as follows:

510.011 Solicitation provisions and contract clauses.

* * * * *

(c) The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.210–72, Acceptable Age of Supplies, or the clause at GSAR 552.210–73, Age on Delivery, in solicitation and contracts if the contractor will be required to furnish shelf-life items within a specified number of months from the date of manufacture or production of the supplies. (See Section 101–27.206–2 of the Federal Property Management Regulation.) The Acceptance Age of Supplies clause at GSAR 552.210–72 should be used when the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. The Age on Delivery clause at GSAR 552.210–73 should be used when the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(d) [Reserved]

* * * * *

3. Section 510.070–1 is revised to read as follows:

510.070–1 Exceptions to mandatory use of Federal specifications.

When an interim Federal specification exists for an item that is also in a Federal specification, contracting activities shall use the interim Federal specification if it is more suitable. In the absence of a Federal specification, an interim Federal specification, if any, shall be used.

PART 514—SEALED BIDDING

4. Section 514.407–3 is revised to read as follows:

514.407–3 Prompt payments discounts.

See GSAR 532.111(a), which prescribes a modification to the contract clause at FAR 52.232–8, Discounts for Prompt Payment, with respect to payment due dates.

5. The table of contents for Part 515 is amended by adding new entries for sections 515.608–70 and 515.608–71 to read as follows:

PART 515—CONTRACTING BY NEGOTIATION

Sec.

Subpart 515.6—Source Selection

* * * * *

515.608–70 Rejection of all proposals.
515.608–71 Discounts for prompt payment.

* * * * *

515.605 and 515.605–70 [Removed]

6. Sections 515.605 and 515.605–70 are removed in their entirety.

7. Section 515.608 is revised and sections 515.608–70 and 515.608–71 are added to read as follows:

515.608 Proposal evaluation.

515.608–70 Rejection of all proposals.

The head of the contracting activity is authorized to reject all proposals received in response to a solicitation pursuant to FAR 15.608(b). This authority may be redelegated. When exercising this authority, the required determination documenting the reasons for rejecting all proposals will be included in the contract file.

515.608–71 Discounts for prompt payment.

(a) Paragraph (c) of FAR 15.608 provides that the requirements of FAR 14.407–3 are applicable to negotiated acquisitions. The policy of not considering discounts in the evaluation of offers applies to situations where there is direct competition between two or more offerors for a single award. The policy does not apply to sole source procurements or procurements where the evaluation process involves a comparison of the offeror's price to the Government with the offeror's price to its other customers. Accordingly, the policy in FAR 14.407–3 does not apply to Multiple Award Schedule solicitations except in those instances where offers are received on identical products.

The clause at 552.232–8, Discounts for Prompt Payment, specifies the extent to which discounts for prompt payment will be considered in the evaluation for Multiple Award Schedules.

(b) The formal for computing the annualized rate of return addressed in the clause at GSAR 552.232–8 is as follows:

$$\text{Discount (\%)} \times \frac{\text{Number of days in a year}}{\text{Total days to due date for payment} - (\text{minus}) \text{ Days to discount due date}} = \text{Rate of return}$$

PART 528—BONDS AND INSURANCE

8. Section 528.106–6 is revised to read as follows:

528.106–6 Furnishing information.

The head of the contracting activity or a designee shall perform the functions outlined in FAR 28.106–6.

PART 532—CONTRACT FINANCING

9. Section 532.111 is amended by revising paragraph (a) to read as follows:

532.111 Contract clauses.

(a) *Discounts for prompt payment.* (1) Section 32.111(c) of the Federal Acquisition Regulation provides for modification of the Discounts for Prompt Payment clause with respect to payment due dates. Accordingly, the contracting officer shall modify the first sentence of paragraph (b) of the FAR clause at 52.232–8, Discounts for Prompt Payment, to read as follows: "In connection with any discount offered for prompt payment, time will be computed beginning with the later of: (1) The date of completion of performance of the services or the date of acceptance of the supplies, as determined in accordance with the payment terms of this contract, (2) the date a proper invoice or voucher is received in the office specified by the Government, or (3) the date a release of claims is received by the contracting officer, if required by the payment terms of this contract." The FAR clause is for use in contracts for supplies other than Multiple Award Schedule contracts, and in contracts for services.

(2) The clause at GSAR 552.232–8 shall be included in Multiple Award Schedule solicitations and resultant contracts, in lieu of the clause at FAR 52.232–8. See GSAR 515.608–71 for an explanation concerning this deviation.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Sections 552.210–71 is amended by revising the date in the title of the clause and revising the text of the clause to read as follows:

552.210–71 Reference to Specifications in Drawings.

* * * * *

References to Specifications in Drawings (Apr 1986)

If military or other drawings are made a part of this contract, any reference in the drawings to Federal Specifications or Standards will be considered to be a reference to the date of such Federal Specification or Standard identified in the contract. If the date of the Federal Specification or Standard is not identified in the contract, the edition, including revisions

thereto, in effect on the date the solicitation is issued will apply.

(End of Clause)

11. Section 552.210–72 is revised to read as follows:

552.210–72 Acceptable Age of Supplies.

As prescribed in GSAR 510.011(c), insert the following:

Acceptable Age of Supplies (Apr 1986)

The supplies furnished under this contract shall not be more than —— months old, beginning with the first full month after the date of manufacture marked on the container. For the purpose of this clause, supplies are considered to be furnished: (1) When they are offered to the Government for inspection and testing, or (2) on the date of shipment if shipment is authorized to be made without prior inspection by the Government. If the age of the supplies furnished under this contract is greater than the specified number of months, the Government may exercise its right to reject the supplies under paragraph (f) of FAR clause 52.246–2, Inspection of Supplies—Fixed Price.

(End of Clause)

12. Section 552.210–73 is revised to read as follows:

552.210–73 Age on Delivery.

As prescribed in GSAR 510.011(c), insert the following clause:

Age on Delivery (Apr 1986)

Included in the description of each shelf-life item is a statement regarding the "age on delivery." The age of the item(s) must not exceed the number of months shown in the item description, counted from the first day of the month after the month of manufacture to the date of delivery to the specified delivery point(s). If the age of the supplies delivered under this contract is greater than the number of months shown, the Government may exercise its right to reject the supplies under paragraph (f) of FAR clause 52.246–2, Inspection of Supplies—Fixed Price.

(End of Clause)

13. Section 552.210–74 is amended by revising the introductory paragraph to read as follows:

552.210–74 Brand Name or Equal.

As prescribed in GSAR 510.011(e) insert the following clause:

* * * * *

14. 552.232–8 is revised to read as follows:

552.232–8 Discounts for Prompt Payments.

As prescribed in GSAR 532.111(a)(2), insert the following clause:

Discounts for Early (Prompt) Payment (Apr 1984) (Deviation FAR 52.232–8)

(a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount" will be considered in evaluating the relationship of the offeror's concessions to the Government vis-a-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low offeror in the situation described in the "Offers on Identical Products" provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the **Federal Register**. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Agencies required to use the resultant schedule will not apply the discount in determining the lowest delivered price pursuant to the FPMR, 41 CFR 101–26.408, if the agency determines that payment will probably not be made within the discount period offered. The same is true if the discount is considered uneconomical at the time of placement of the order.

(e) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract, and discounts offered will be taken by the Government if payment is made within discount period specified.

(f) Discounts that are included in offers become a part of the resulting contracts and are binding on the contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(g) The ending date of the discount period will be determined by applying the number of calendar days specified by the Contractor, beginning with the later of:

(1) The date the supplies are deemed to be accepted by the Government, as determined in accordance with the payment terms of this contract, or

(2) The date a proper invoice or voucher is received in the office specified by the Government.

(h) The date of the check issued in payment, or the date of payment by wire transfer through the Treasury Financial Communications System, shall be considered to be the date payment is made.

(End of Clause)

15. Section 552.232–23 is revised to read as follows:

552.232–23 Assignment of Claims.

As prescribed in GSAR 532.806, insert the following clause:

Assignment of Claims (Apr 1986)

Because this is a requirement or indefinite quantity contract under which more than one agency may place orders, paragraph (a) of the Assignment of Claims clause prescribed in FAR 52.232–23 is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, no claim(s) for all monies due or to become due under this contract, shall be assigned by the Contractor; but it shall be permissible for the Contractor to assign separately to a bank, trust company, or other financing institution, including any Federal lending agency, in accordance with the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), all monies due or to become due under any particular delivery order amounting to $1,000 or more issued by any Government activity or agency under this contract. Any such assignment shall be effective only if and when the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with the officer issuing the delivery order, in addition to complying with the filing requirements set forth in clause 4 of the provision in said Act, as amended. Notwithstanding any other provisions of this contract, payments to an assignee of any monies due or to become due under any delivery order assigned as provided herein, shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

(End of Clause)

Dated: May 8, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86–14283 Filed 6–24–86; 8:45 am]

BILLING CODE 6820–61–03

48 CFR Parts 532 and 552

[APD 2800.12 CHGE 27]

General Services Administration Acquisition Regulation; Payment Due Date Clauses

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to incorporate Acquisition Circular AC–85–1 on payment due dates for construction contracts and consolidate the various Payment Due Date clauses for supply, service, and construction contracts in Section 552.232–70 into two clauses. Miscellaneous other revisions are made in Parts 532 and 552 to clarify the application of the Interest on Overdue Payments clause to utility contracts, to add two new clauses for use in recurring building service contracts to provide for adjusting payments and the submission of a release of claims before making final payment, and to eliminate language in the introductory text prescribing various clauses in Part 552 that repeats the prescriptive language in Part 532. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4765.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 1985, the General Services Administration (GSA) published in the **Federal Register** (50 FR 48447) GSAR Notice 5-84A inviting comments from interested parties on these proposed changes to the regulation and provided a 30-day comment period. Comments received from the Associated General Contractors of America and various GSA offices have been reviewed, reconciled, and incorporated, when appropriate, in this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule will benefit prospective contractors by clearly spelling out when the Government will make payment for the items or services, how payments will be adjusted for performance deficiencies or failures, and the requirements to be met before final payment is made. Therefore, no regulatory flexibility analysis has been prepared. The information collection requirement contained in the clause at GSAR 552.232-79 has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned Control Number 3090-0080.

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

1. The authority for 48 CFR Parts 532 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 532—CONTRACT FINANCING

2. Section 532.111 is amended by revising paragraphs (b), (c), (d)(1), (d)(2), (e), (e)(1), and by adding paragraphs (f) and (g) to read as follows:

532.111 Contract clauses

* * * * *

(b) *Payment due date.* The contracting officer shall insert one of the clauses referenced below in solicitations and contracts under the conditions indicated.

(1) The basic clause at GSAR 552.232-70(a) is for use in solicitations and contracts for supplies, nonpersonal services and for the acquisition of leasehold interests in real property when the lease contemplates alterations will be performed by the lessor during the term of the lease. The Alternate I clause at GSAR 552.232-70(a) is for use in solicitations and contracts for recurring building service contracts that exceed the small purchase limitation. Paragraphs (a) and/or (b) of the basic clause may be modified as appropriate to accommodate purchases where inspection and acceptance occur at the source (f.o.b. origin shipments), contracts for delivery of meat or meat food products or perishable agriculture commodities or other special circumstances.

(2) The clause at GSAR 552.232-70(b) is use in solicitations and contracts for construction, architect-engineer, and other professional or technical services.

(3) The clause at GSAR 552.232-70(c) is for use in solicitations and contracts for the acquisition of leasehold interests in real property.

(c) *Interest on overdue payments.* The contracting officer shall insert the basic clause at GSAR 552.232-71, Interest on Overdue Payments, in solicitations and contracts for supplies, services (except for utility service contracts that include provisions for late payment charges established by tariff or state regulatory commissions), construction, architect-engineer, and other professional or technical services or for the acquisition of leasehold interests in real property. The Alternate I clause is for use in solicitations and contracts for construction, architect-engineer and other professional or technical services.

(d) *Invoice requirements.* (1) The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.232-72 in all solicitations and contracts for supplies, services or for the acquisition of leasehold interests in real property which require the submission of invoices as a prerequisite to payment by the Government.

(2) The first six entries shown in paragraph (a) of the clause are prescribed in OMB Circular A-125. Additional items of information or substantiating documentation should be listed as appropriate. All items required to constitute a "proper invoice" must be listed in the clause, even though the requirement may also be indicated elsewhere in the solicitation/contract, because it is this clause, together with the Payment Due Date clause, that provides a basis for returning a defective or improper invoice within 15 days of receipt without incurring a late payment penalty.

* * * * *

(e) *Method of payment.* The contracting officer shall insert one of the clauses at GSAR 552.232-73 in solicitations and contracts, including leases of real property, when it is anticipated that payments of $25,000 or more may be made under any of the resultant contracts.

(1) The clause at GSAR 552.232-73(a) is for use when payments will be made solely by GSA. However, this clause shall also be used if other agencies are authorized to place orders and make payments under resultant contracts, provided that individual orders placed by such agencies will be for less than $25,000.

* * * * *

(f) *Adjusting payments.* The contracting officer shall insert the clause at GSAR 552.232-78, Adjusting Payments, in all solicitations and contracts for recurring building services expected to exceed the small limitation.

(g) *Final payment.* The contracting officer shall insert the clause at GSAR 552.232-79, Final Payment, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

3. The table of contents for Part 552 is amended by adding new entries for Sections 552.232-78 and 552.232-79 to read as follows:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

Sec.

Subpart 552.2—Text of Provisions and Clauses

* * * * *

552.232-78 Adjusting payments.
552.232-79 Final payment.

* * * * *

4. Section 552.232-70 is amended by revising paragraphs (a) and (b), removing paragraphs (c) through (f) and redesignating paragraph (g) as paragraph (c) and revising the introductory text to read as follows:

552.232-70 Payment due date.

(a) As prescribed in GSAR 532.111(b)(1), insert the following clause:

Payment Due Date (Apr 1986)

(a) Payments under this contract will be due on the ——* calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date the supplies or services are accepted by the Government.

(b) The Government agrees to inspect and determine the acceptability of supplies delivered or services rendered within——** calendar days after the date of delivery of the supplies or completion of services rendered. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the above stated inspection period. However, the Contractor is not entitled to payment of contract amounts or interest unless and until actual acceptance by the Government occurs.

(c) If the supplies are rejected or services deficient, the provisions of paragraph (b) of this clause will apply to the date the Government receives replacement supplies or the date the contractor corrects the deficiencies in services.

(d) To be considered proper, a payment invoice must satisfy the requirements of the "Invoice Requirements" clause of this contract.

(e) For the purpose of determining the date of payment, payment shall be considered to be made the date the check is issued or the date payment by wire transfer is initiated through the Treasury Financial Communications System.

(End of clause)

* The contracting officer shall insert an appropriate number (30 days unless some other number of days is nesessary).

** The contracting officer shall insert a number which is the number of days necessary for inspection, acceptance, and other necessary actions. The number is usually 1 day for recurring building services and 5 days for supplies and other nonpersonal services unless some other number of days is justified in the contract file.

Alternate I (Apr. 1986)

If the contract is for recurring building services expected to exceed the small purchase limitation, add paragraph (b) below to the basic clause and redesignate paragraphs (b), (c), (d), and (e) of the basic clause as paragraphs (c), (d), (e) and (f):

"(b) Final payment will be due on the ——* calendar day after the later of: (a)(1) or (2) above, or the actual date of receipt by the Contracting Officer of a release of all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release."

* The contracting officer shall insert 45 days unless some other number is justified in the contract file.

(b) As prescribed in GSAR 532.111(b)(2), insert the following clause:

Payment Due Date (Apr. 1986)

(a) Payments under this contract, except as provided below, will be due on the ——* calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date the property, other contract deliverables, or services are accepted by the Government.

(b) Progress payments will be due on the ——*** calendar day after the Contracting Officer receives a proper invoice/payment request, which will be payable in an amount approved by the Contracting Officer. If the Government agrees with the amount of the Contractor's payment request, payment will be based on that amount. If the Government does not agree with the amount of the Contractor's request, the Contracting Officer will try to reach agreement with the Contractor on an alternative amount. If timely agreement is not possible, the Contracting Officer will make payment based upon the Government estimate. The term "progress payments," as used here, means payments made as work progresses under the contract based upon costs incurred or the percentage or stage of completion. As used herein, this term does not include partial payments for partial deliveries accepted by the Government under this contract, or partial payments on contract termination claims.

(c) Final payment will be due on the ——* calendar day after the later of: (a)(1) or (2) above, or the actual date of receipt by the Contracting Officer of a release of all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release.

(d) The Government agrees to inspect and determine the acceptability of contract deliverables or work completed within —— *** calendar days after the date of receipt of the deliverable or completion of work. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the above stated inspection period. However, the Contractor is not entitled to payment of contract amounts or interest unless and until actual acceptance by the Government occurs.

(e) If the property, other contract deliverables, or services are rejected, the provisions of paragraph (d) of this clause will apply to the date the Contractor corrects the defects in the property or services, or the date of actual receipt by the Government of corrected contract deliverables.

(f) To be considered proper, a payment invoice/payment request must satisfy the requirements of the "Invoice Requirements" clause of this contract.

(g) For the purpose of determining the date of payment, payment will be considered to be made the date the check is issued or the date payment by wire transfer is initiated through the Treasury Financial Communications System.

(End of Clause)

* The contracting officer shall insert an appropriate number (30 days unless some other number of days is necessary).

** The contracting officer shall insert an appropriate number of days. The number should be the average time required to inspect the work, verify the payment request and process the payment. In establishing the number of days, the contracting officer should consider whether there will be GSA inspectors assigned to the project site. The number of days must not exceed 30 unless a longer period is justified in the file.

*** The contracting officer shall insert a number which is the number of days necessary for inspection, acceptance, and other necessary actions. The number is usually 30 days unless some other number of days is justified in the contract file.

(c) As prescribed in GSAR 532.111(b)(3), insert the following clause:

* * * * *

5. Section 552.232–71 is revised to read as follows:

552.232–71 Interest on overdue payments.

As prescribed in GSAR 532.111(c), insert the following clause:

Interest on Overdue Payments (Apr 1984)

(a) The Prompt Payment Act, Public Law 97–177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract and requires the payment to Contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A–125.

(End of Clause)

Alternate I (Apr 1986)

If a construction, architect-engineer or other professional or technical service contract is involved, add the following paragraph (c) to the basic clause:

"(c) The Contractor shall not be entitled to interest penalties on progress payments and other payments made for financing purposes before receipt of complete delivered items of property or service, or on amounts withheld temporarily in accordance with the contract (e.g., retainage). The Government shall be liable for interest penalties on only the amount of payment past due that represents payment for complete delivered items of property or service accepted by the Government."

6. Section 552.232–72 is amended by revising the introductory paragraph to read as follows:

552.232–72 Invoice requirements.

As prescribed in GSAR 532.111(d), insert a clause substantially as follows:

* * * * *

7. Section 552.232–78 is added to read as follows:

552.232–78 Adjusting payments.

As prescribed in 532.111(f), insert the following clause:

Adjusting payments (Apr 1986)

(a) Under the Inspection of Services clause of this contract, payments may be adjusted if any services do not conform with contract requirements. The Contracting Officer or a designated representative will inform the Contractor, in writing, of the type and dollar amount of proposed deductions by the 10th workday of the month following the

performance period for which the deductions are to be made.

(b) The Contractor may, within 10 working days of receipt of the notification of the proposed deductions, present to the Contracting Officer specific reasons why any or all of the proposed deductions are not justified. Reasons must be solidly based and must provide specific facts that justify reconsideration and/or adjustment of the amount to be deducted. Failure to respond within the 10 day period will be interpreted to mean that the Contractor accepts the deductions proposed.

(c) Payments (except for the final payment) will not be delayed or withheld until disputes over proposed deductions are settled. If the Contracting Officer determines that any or all of the proposed deductions are warranted, the Contracting Officer shall so notify the Contractor, and adjust subsequent payments under the contract accordingly.

(End of Clause)

8. Section 552.232-79 is added to read as follows:

552.232-79 Final payments.

As prescribed in 532.111(g), insert the following clause:

Final Payment (Apr 1986)

Before final payment is made, the Contractor shall furnish the Contracting Officer with a release of all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

(End of Clause)

Dated: May 8, 1986.

Richard H. Hopf, III,

Acting Associate Administrator for Acquisition Policy

[FR Doc. 86-14282 Filed 6-24-86; 8:45 am]

BILLING CODE 6820-61-M

VETERANS ADMINISTRATION

48 CFR Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842 and 852

Acquisition Regulations Concerning Competition in Contracting

AGENCY: Veterans Administration.

ACTION: Interim final rule.

SUMMARY: The VA (Veterans Administration) is issuing an interim final regulation to the VAAR (Veterans Administration Acquisition Regulations) to implement the CICA (Competition in Contracting Act). The regulation is being published as an interim rule in order to implement the CICA and the FAC (Federal Acquisition Circular) 84-5, both of which were effective April 1, 1985. However, this regulation will not become a final regulation until assessment of all comments submitted by August 25, 1986.

The CICA, as implemented by the FAR (Federal Acquisition Regulation), significantly changes the acquisition process. Specifically, a formalized justification and approval process is prescribed for noncompetitive acquisitions; notice requirements for synopsizing in the Commerce Business Daily are established; each agency is required to establish a "Competitive Advocacy" program; an annual report to Congress regarding enhancing competition is required; and major revisions were made to protest procedures. This regulations prescribes necessary procedures and policies for implementing these various CICA provisions.

EFFECTIVE DATE: The interim final regulation is effective April 1, 1985. Written comments should be submitted no later than August 25, 1986, for consideration in the final regulation.

ADDRESS: Interested persons are invited to submit written comments, suggestions or objections to the Administrator of Veterans Affairs (713), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only at the Paperwork Management and Regulations Service, Room 1038, 1425 K Street, NW. Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until September 9, 1986.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Chief, Policy Division, Office of Procurement and Supply, (202) 389-2334.

SUPPLEMENTARY INFORMATION:

I. Background

This interim regulation includes regulatory revisions in implementing the CICA. An Agency competition advocate is designated and competition advocates are established at each VA contracting activity. The designations of the competition advocates are considered consistent with the CICA and should enhance competition for VA acquisitions.

Justification and approval procedures for proposed noncompetitive acquisitions are established consistent with the CICA and the FAR provisions. These procedures are critical in effectively implementing the CICA and will provide the basis for compiling the VA annual report to Congress.

Protest provisions in Part 833 have been significantly revised in order to comply with the stringent time frames required by the CICA and to add a new provision setting forth the requisite information required of a protester.

The regulation also contains several instances of relocation of material and other editorial changes needed to make the VAAR consistent with the new FAR provisions implementing the CICA.

II. Executive Order 12291

This interim final regulation has been reviewed in conjunction with Executive Order 12291, Federal Regulation, and has been determined not to be a "major rule" as defined therein.

III. RFA (Regulatory Flexibility Act)

Because this interim final rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that act. In any case, this change will not have a significant impact on a substantial number of small entities because the provisions implement the requirements of the CICA as required by the FAR. The provisions are primarily internal procedures which will not impact the private sector.

IV. Paperwork Reduction Act

These interim final rules require no additional information collection or recordkeeping requirements upon the public.

List of Subjects in 48 CFR Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842 and 852

Government procurement.

Approved: June 16, 1986.

Thomas K. Turnage,

Administrator of Veterans Affairs.

For reasons set out in the preamble, Chapter 8 of Title 48, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842 and 852 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

PART 801—VETERANS ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

801.201-70 [Removed]

2. Subpart 801.2 is amended by removing 801.201-70.

801.602 [Amended]

3. In 801.602, the introductory paragraph (a) is amended by removing

the phrase "Agency Procurement Executive", which appears in two places, and inserting "Senior Procurement Executive".

801.602-70 [Amended]

4. In 801.602-70, paragraph (a)(1) is amended by removing the words "formally advertised (or Small Business Restricted Advertised)" and inserting the words "sealed bid".

801.602-72 [Amended]

5. In 801.602-72, paragraph (c) is amended by removing the words "determination and findings in the case of negotiated" and inserting the words "justification and approval in the case of noncompetitive".

PART 802—DEFINITIONS OF WORDS AND TERMS

6. Section 802.100 is revised to read as follows:

802.100 Definitions.

(a) In the Veterans Administration, "head of the contracting activity" means the Director, Procurement Service, Central Office; Director, Office of Construction, Central Office; Director, Building and Supply, Central Office; Director, Publications Service, Central Office; Director, Monument Service, Central Office; Chiefs, Marketing Divisions, VA Marketing Center; and the Chief, Supply Service at a field facility.

(b) The Associate Deputy Administrator for Logistics (005) is designated the Senior Procurement Executive for the VA.

PART 805—PUBLICIZING CONTRACT ACTIONS

7. Section 805.202 is revised to read as follows:

805.202 Exceptions.

In accordance with FAR 5.202, the contract actions in 806.302-5 do not require synopsizing. This exemption will be exercised at the discretion of the contracting officer. This exemption does not affect the justification and approval requirements specified in 806.303.

805.207 [Amended]

8. In 805.207, paragraph (a) is amended by inserting the words ", or mailed" after the words "(Veterans Administration Data Transmission System)".

9. Part 806 is added to 48 CFR Chapter 8 to read as follows:

PART 806—COMPETITION REQUIREMENTS

Subpart 806.3—Other Than Full and Open Competition

Sec.

Subpart 806.4—Sealed Bidding and Competitive Proposals

Subpart 806.5—Competition Advocates

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 806.3—Other Than Full and Open Competition

806.302-3 Industrial mobilization; or experimental, development, or research work.

Research authorized to be conducted by the Veterans Administration, in accordance with the provisions of Title 38, United States Code, will be negotiated under the authority of 41 U.S.C. 253(c)(3) (except prosthetics research authorized by 38 U.S.C. 4101, will be negotiated under the authority of 41 U.S.C. 253(c)(5), regardless of the dollar amount. Such acquisitions require justifications and approvals required by sections 806.303 and 806.304.

806.302-5 Authorized or required by statute.

(a) Scarce Medical Specialist contracts negotiated under the authority of 38 U.S.C. 4117 are approved for other than full and open competition *only* when such contracts are with institutions affiliated with the Veterans Administration pursuant to 38 U.S.C. 4114. The justification and approval requirements of 806.303 and 806.304 are not required.

(b) Sharing contracts negotiated under 38 U.S.C. 5053 are approved for other than full and open competition. The justification and approval requirements of 806.303 and 806.304 are not required.

(c) Various other sections of title 38, United States Code, authorize the Administrator to enter into certain contracts, and certain types of contracts, without regard to any other provision of law. The justification and approval requirements specified in 806.303 and 806.304 are still applicable. VA contracting officers entering into contracts using other than competitive procedures for any of the following items or services, estimated to cost in excess of the small purchase limitation, will cite, in addition to 41 U.S.C. 253(c)(5), the appropriate section of title 38, United States Code, as their authority to do so.

(1) Contracts for orthopedic and prosthetic appliances and related services including research. 38 U.S.C. 5023.

(2) Contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service. 38 U.S.C. 4202.

(3) Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 5009(b)(2), provides that—

(i) The establishment, operation and maintenance of such facilities have been authorized by the Administrator or designee; and

(ii) The station director determines in writing that operation by contract or lease is both desirable and warranted. 38 U.S.C. 5009(b)(2).

(4) Contracts for laundry and other common services such as the purchase of steam, may be noncompetitively negotiated with non-profit, tax-exempt, educational, medical, or community institutions, when specifically approved by the Administrator or designee and when such services are not reasonably available from private commercial sources. 38 U.S.C. 5022(c).

(5) Contracts or agreements with public or private agencies for services or translators. 38 U.S.C. 213.

(6) Contracts for nursing home care. 38 U.S.C. 620.

806.302-7 Public interest.

Use of 41 U.S.C. 253(c)(7) to support contract award using other than full and open competition will require a D&F prepared in accordance with FAR Subpart 1.7 and VAAR Subpart 801.7 and signed by the Administrator. The D&F will be prepared by the contracting officer and submitted by the head of contracting activity (Subpart 802.1) to the Agency Competition Advocate (806.501). The submission will include:

(a) The date of expected contract award (*Note: Congress must be notified 30 days prior to award*), and

(b) A justification prepared by the contracting officer in accordance with 806.303.

806.303 Jusifications.

806.303-1 Requirements.

Generally the requester of the goods or services will provide the necessary technical and support data justifying the use of other than full and open competition. Such requester, and as necessary the requester's technical personnel, will certify to the completeness and accuracy of the support data provided.

806.304 Approval of the justification.

(a) Approvals of justifications as specified in FAR 6.304, prepared in accordance with FAR 6.303 and 806.303 will be approved as follows:

(1) For a proposed contract not exceeding $100,000, one contracting level above the contracting officer (see Subpart 801.6). However, if the contracting officer is also the head of the contracting activity approval will be made by:

(i) The medical center Director for acquisitions at DM&S (Department of Medicine and Surgery) medical centers, or

(ii) The Agency Competition Advocate (806.501(a)) in all other cases.

(2) For a proposed contract over $100,000 but not exceeding $1,000,000, by the Contracting Activity Competition Advocate (806.501(b)). However, if the Contracting Activity Competition Advocate is also the contracting officer, approval will be made by:

(i) The medical center director for acquisitions at DM&S medical centers, or

(ii) The Agency Competition Advocate in all other cases.

(3) For a proposed contract over $1,000,000 but not exceeding $10,000,000 by the Agency Competition Advocate (806.501(a)).

(4) For a proposed contract over $10,000,000 by the Senior Procurement Executive (See 802.100).

(b) Class justifications as specified in FAR 6.304(c), will be approved by the Agency Competition Advocate regardless of dollar amount.

Subpart 806.4—Sealed Bidding and Competitive Proposals.

806.401 Sealed bidding and competitive proposals.

Contracting officers shall solicit sealed bids if the contract is expected to exceed the small purchase limitation or expected to exceed $1,000 for contracts made for repairs to property acquired by the VA under 38 U.S.C. Chapter 37 and the criteria in FAR 6.401(a) are met. The contract file shall include any findings by the contracting officer that sealed bidding is not appropriate.

Subpart 806.5—Competition Advocates

806.501 Requirement.

(a) The Deputy Director, Office of Procurement and Supply, is designated as the Agency Competition Advocate.

(b) The Director, VA Marketing Center, or designee, will serve as the Competition Advocate for the Center. Each head of the contracting activity (see Subpart 802.1) or designee will serve as the Contracting Activity Competition Advocate in all other cases.

806.502 Duties and responsibilities

In addition to the responsibilities identified in FAR 6.502(a), the Agency Competition Advocate will coordinate the competition advocacy program as it is implemented at all VA contracting activities. The Agency Competition Advocate will:

(a) Establish program guidelines to be used by contracting activity competition advocates;

(b) Assist contracting activity competition advocates with obstacles to promoting competition;

(c) Utilize supply technical surveys, other facility reports, and the Federal Procurement Data System to monitor contracting activity compliance with the advocacy program;

(d) Prepare the annual report to Congress required by section 21 of the Office of Federal Procurement Policy Act as amended by the Competition in Contracting Act; and

(e) Consolidate the reporting data required by 806.570.

806.570 Planning and reporting requirements.

(a) *General.* In order to provide required data to the Senior Procurement Executive and to consolidate the annual report to Congress, each Contracting Activity Competition Advocate must report their respective actions and accomplishments. While the report must include narrative description of the individual competition plans and the obstacles encountered, it is important that the report be quantified to the maximum extent feasible.

(b) *Competition Plan.* Each Contracting Activity Competition Advocate shall develop an initial Competition Plan for their respective activities by August 15, 1985. The plan should be formally incorporated in the internal operating procedures of the facility or organization in which the contracting activity is located. It is essential that the plan be endorsed and supported by top level management and be clearly understood by the services and offices that the contracting activity support. As a minimum, the plan shall include:

(1) The appoval requirements for other than full and open competition specified in FAR 6.304;

(2) A description of the synopsizing requirements contained in FAR Subpart 5.2 in order that the necessity for Advance Procurement Planning is fully understood;

(3) A description of how the Competition Plan should be integrated into Advance Procurement Planning;

(4) Identification of any known obstacles to competition and a proposal for overcoming them;

(5) A method for otherwise increasing competition for contracts on the basis of cost and other significant factors.

(c) *Reporting requirements.*

(1) Each Competition Advocate will prepare a report on the actions taken to promote competition in the preceding fiscal year. The report will be transmitted to reach the Office of Information Management and Statistics (722) by December 15 of each year. The Office of Information Management and Statistics will compile and provide the entire report to the Agency Competition Advocate. The report will include the following:

(i) The number and dollar value of all contracts proposed to be awarded with other than full and open competition reviewed in accordance with 806.304(a)(1) (less than $100,000).

(ii) The number and dollar value of all contracts less than $100,000 approved for other than full and open competition in accordance with 806.304(a)(1).

(iii) The number and dollar value of proposed contracts to be awarded with other than full and open competition reviewed by the Contracting Activity Competition Advocate (contracts between $100,000 and $1,000,000, 806.304(a)(2)).

(iv) The number and dollar value of approved contracts to be awarded with other than full and open competition which were approved by the Contracting Activity Competition Advocate.

(v) Narrative description, and where possible statistics, describing the success in promoting full and open competition.

(vi) Identification of barriers to full and open competition and plans for overcoming those barriers, for the current fiscal year.

(2) By January 15 of each year the Agency Competition Advocate will prepare the annual report to Congress, based primarily upon the summary of individual competition advocate reports.

The Congressional report will include, as a minimum:

(i) A specific description of all actions that the VA intends to take during the current fiscal year to increase competition and reduce the number and dollar value of noncompetitive contracts.

(ii) A summary of the activities and accomplishments of the agency competition advocates during the previous fiscal year. The Congressional report will be submitted for the signature of the Administrator through the Senior Procurement Executive.

(3) Annual Report on Competition, Reports Control Symbol 90–0658 has been established for this report.

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

808.001 [Amended]

10. In 808.001, paragraph (b) is amended by removing the reference "FAR 15.202" and inserting "FAR 6.302–2".

PART 813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

11. Part 813 is amended by adding Subpart 813.1 to the table of contents to read as follows:

Subpart 813.1—General

Sec.
813.103 Policy.

12. Part 813 is further amended by adding Subpart 813.1, consisting of 813.103, to read as follows:

Subpart 813.1—General.

813.103 Policy.

(a) Procurement of medical services and resources authorized by sections 4117 and 5053 of title 38, United States Code, costing less than the small purchase limitation may be procured under the small purchase authority of 41 U.S.C. 253(c). However, each such contract and revision thereof is subject to the same approval as those costing in excess of the small purchase limitation (815.507–70).

(b) Except as provided in this paragraph, purchases authorized to be acquired under the special procurement authorities contained in title 38, United States Code, will be acquired under the authority of 41 U.S.C. 253(g) when the amount of purchase is not in excess of the small purchase limitation (FAR Part 13). An exception exists in the case of services or supplies purchased in support of property acquired under the Loan Guaranty program. For such purchases, 38 U.S.C. 1820(b) requires sealed bidding if the amount will exceed $1,000.

(c) Procurements of consulting, management, administrative and professional services costing less than the small purchase limitation and made under the authority of 38 U.S.C. 213 are subjects to the controls set forth in Subpart 837.2.

PART 814—SEALED BIDDING

13. Part 814 is amended by revising the title to read as set forth above.

Subpart 814.1—Use of Sealed Bidding

14. Subpart 814.1 is amended by revising the title to read as set forth above.

15. Section 814.103–1 is revised to read as follows:

814.103–1 General.

Contracts in excess of the small purchase limitation or in excess of $1,000 for contracts made for repairs to property acquired by the Veterans Administration under chapter 37, title 38, United States Code, will be made by sealed bidding when all of the elements necessary for sealed bidding as prescribed in FAR 6.401(a) are present.

16. In 814.201, paragraph (f)(3) is revised to read as follows:

814.201 Preparation of invitations for bids.

* * * * *

(f) * * *

(3) Solicitations for construction contracts which solicit prices on an item and alternate item basis (when it is intended that a single aggregate award will be made for all items in the solicitation within certain fiscal limitations) will contain a statement as to the order of priority in which the alternate items will be awarded. This priority will be based on the relative importance of an item, the Veterans Administration's estimate, and the amount of funds available. Such schedules will be substantially as follows:

Item No. 1—Furnish all labor, material, equipment, etc., to paint buildings No. 1, 2, and 3, $———.

Alternate items in order of priority. Furnish all labor, material, equipment, etc., to paint:

Item No. 2—Building No. 1 only $———.

Item No. 3—Building No. 2 only $———.

A single award will be made on Item No. 1, but in the event the offer exceeds the funds available, a single award will be made on Item No. 2, or a combination of Item Nos. 2 and 3. Offerors should quote a price on each item listed.

17. In 814. 203–1, paragraph (b) is revised to read as follows:

814.203–1 Mailing or delivery to prospective bidders.

* * * * *

(b) Presolicitation notices may be issued for construction projects in accordance with 836.302.

814.203–2 [Removed]

18. Subpart 814.2 is amended by removing 814.203–2.

814.205–1 and 814.205–2 [Amended]

19. Sections 814.205–1 and 814.205–2 are amended by removing the words "bidders" or "Bidders" and inserting the words "solicitation" or "Solicitations" in their place.

20. Section 814.404–1 is amended by inserting the paragraph designation "(a)" at the beginning of the existing paragraph and by adding paragraph (b) to read as follows:

814.404–1 Cancellation of invitations after opening.

(a) * * *

(b) The authority to approve cancellation of invitations for bid after opening is delegated to the head of the contracting activity. The contracting officer will submit a D&F prepared as prescribed in Subpart 801.7 to the head of the contracting activity for signature.

814.407–1 [Amended]

21. In 814.407–1, paragraphs (c) and (d) are removed.

814.407–8 [Removed]

22. Subpart 814.4 is amended by removing 814.407–8.

PART 815—CONTRACTING BY NEGOTIATION

23. The table of contents to Part 815 is revised to read as follows:

Subpart 815.8—Price Negotiation

815.800 Scope of subpart.
815.804–2 Requiring certified cost or pricing data.
815.804–70 Preproduction and start-up and other nonrecurring costs.
815.805–4 Technical analysis.
815.805–5 Field pricing support.
815.808 Price negotiation memorandum.

Subpart 815.9—Profit

815.901 General.

Subpart 815.70—Special Negotiation Authorities

815.7001 Personal or professional services.
815.7002 Medical schools and related institutions.

Subparts 815.1, 815.2 and 815.3 [Removed]

24. Part 815 is amended by removing Subparts 815.1, 815.2 ad 815.3.

25. In 815.805–5, paragraph (c)(2) is revised to read as follows:

§ 815.805–5 Field pricing support.

* * * * *

(c) * * *

(2) Prices for a contract modification to a fixed-price contract entered into by sealed bidding have been established and written in the basic fixed-price contract.

* * * * *

26. Part 815 is further amended by adding Subpart 815.70 to read as follows:

Subpart 815.70—Special Negotiation Authorities

815.7001 Personal or professional services.

(a) Contracts with medical schools, clinics, and any other group or individual capable of furnishing such services to provide scarce medical specialist services at Veterans Administration facilities (including but not limited to services of physicians, dentists, podiatrists, optometrists, nurses, physicians' assistants, expanded function dental auxiliaries, technicians, and other medical support personnel) will be negotiated under authority of 38 U.S.C. 4117. Such contracts must provide that services are rendered at Veterans Administration facilities.

(b) Contracts with hospitals (or medical installations having hospital facilities or organ banks, blood banks, or similar institutions) or medical schools, or clinics in the medical community for:

(1) The mutual use, or exchange of use, of specialized medical resources (whether equipment, space or personnel, which, because of cost limited availability, or unusual nature, are either unique in the medical community or are subject to maximum utilization only through mutual use) when such a contract will obviate the need for a similar resource to be provided in a Veterans Administration facility; or

(2) The mutual use, or exchange of use, of specialized medical resources in a Veterans Administration facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity will be negotiated under authority of 38 U.S.C. 5053.

(c) Proposed contracts for the services and resources specified in paragraphs (a) and (b) of this section will be entered into for one year only. When deemed essential to the mission of the stations, proposed renewal contracts will be negotiated for the subsequent year. Except as provided in paragraph (d) of this section, such proposed contracts will be submitted for approval to the Deputy Associate Deputy Chief Medical Director for Operations (10BA), when authority is 38 U.S.C. 5053, or Director, Office of Procurement and Supply (90), when authority is 38 U.S.C. 4117, so as to reach Central Office 60 days prior to effective date of the contract.

(1) Complete justification for all contracts will be submitted, as approval depends on the adequacy of the justification.

(2) Proposed contracts under authority of 38 U.S.C. 4117 will be submitted in five copies, and contracts under authority of 38 U.S.C. 5053 will be submitted in six copies.

(3) The transmittal letter and each supporting document will be submitted in the same number of copies as the contract. As an incomplete submission delays processing of the proposed contract in Central Office, care should be exercised to assure that the proper number of copies are submitted, and that submissions are complete (e.g., complete name and address of the other party or parties to the contract are included).

(4) Proposed contracts of the type specified in paragraphs (b) (1) and (2) of this section will be accompanied by a recommendation of the station director as to the geographical limits to be applied to the medical community.

(5) A copy of all executed sharing contracts, both new and renewal, will be forwarded to the Deputy Associate Deputy Chief Medical Director for Operations (10BA) for review and for purposes of making the annual report to Congress as required by 38 U.S.C. 5057.

(d) Proposed renewal sharing contracts under the authority of 38 U.S.C. 5053 and proposed renewal scarce medical specialist services contracts under the authority of 38 U.S.C. 4117 may be approved by the appropriate Medical District Director when such contract proposals meet the following conditions:

(1) No new services are being added to the sharing contract. (Services may be deleted from the contract without Central Office approval, but only if such deletions do not effectively result in an individual item or total cost increase in excess of 10 percent over the cost in the previous contract.) No individual cost item that is being acquired from the contractor (non-Veteran Administration facility identified in the contract) will increase in cost more than 10 percent over the cost for that same item in the previous contract and there will be no increases in full-time equivalent employee requirements for scarce medical specialist service contracts.

(2) The total cost of a scarce medical specialist services contract will not increase more than 10 percent over the total cost of the previous contract.

(3) The sharing proposal has been reviewed for legal sufficiency by the District Counsel responsible for servicing the Veterans Administration facility involved. The District Counsel shall be sent, along with the sharing proposal, a copy of the previous sharing agreement for the same services so that a comparison can be made of the two documents.

(4) All contract clauses required by Chapters 1 and 8, title 48, Code of Federal Regulations, are included in the proposal.

(5) Equal Employment Opportunity clearance has been obtained, when required (see Part 822).

(6) Certified cost or pricing data was obtained from the contractor when required by FAR 15.804. Cost or pricing data was submitted by the contractor on SF 1411, Contract Pricing Proposal Cover Sheet, in accordance with FAR 15.804–6.

(7) When cost or pricing data was required, an audit was obtained in accordance with FAR 15–805–5 and 815.805–5.

(8) When cost or pricing data was required, a technical analysis has been performed on the contractor's proposal in accordance with FAR 15.805–4 and 815.805–4.

(e) Contracts for professional or technical services with private or public agencies not specifically authorized in any other section of title 38, United States Code, may be acquired under 38 U.S.C. 213 and negotiated under FAR Part 15 when the cost of such services will exceed the small purchase limitation (See FAR Part 13.) (See Subpart 837.2 regarding controls over the procurement of consulting, management, administrative and professional services.)

(f) See 837.104 regarding personal service contracts having an employer-employee relationship.

815.7002 Medical schools and related institutions.

(a) Contracts of the type specified in 815.7001, paragraphs (a) and (b), and 813.103(a) may be negotiated with medical schools and related institutions without competition only to the extent as specified in 806.302–5. Such contracts shall be negotiated under the authority of this 815.7002 and 38 U.S.C. 4117 and

38 U.S.C. 5053, as appropriate, and 41 U.S.C. 253(c)(5).

(b) Scarce medical specialist contracts as specified in paragraph 815.7001(a), which are not negotiated with an institution affiliated with the VA pursuant to 38 U.S.C. 4114, are subject to the requirements for full and open competition as specified in FAR Part 6 and VAAR Part 806. Such contracts shall be competed unless other than full and open competition is justified in accordance with FAR and VAAR and as authorized by FAR 6.302.

(c) The requirements of 815.7001, paragraphs (c) and (d), shall be applicable to all procurement actions specified in paragraphs (a) and (b) of this section.

PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

819.202-70 [Amended]

27. In 819.202-70, paragraph (m) is amended by removing the words "formally advertised procurement" and inserting the words "contract obtained through sealed bidding".

28. In 48 CFR Chapter 8, Part 833 is retitled and revised to read as follows:

PART 833—PROTESTS, DISPUTES, APPEALS

Subpart 833.1—Protests

Subpart 833.2—Disputes and Appeals

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 833.1—Protests

833.102 General.

Solicitations shall instruct interested parties (see 852.233-2) to deliver a copy of any protest filed with the GAO (General Accounting Office) or the GSBCA (GSA Board of Contract Appeals) to the contracting officer and the appropriate Central Office activity as follows:

(a) For contracts to be awarded by the Office of Construction: Director, Office of Construction (08), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) For all other contracts: Director, Office of Procurement and Supply (93B), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

833.103 Protests to the agency.

(a) *Timeliness of protest.* (1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed in writing with the contracting officer prior to bid opening or the closing date for receipt of initial proposals. In negotiated procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (a)(1) of this section, protests shall be filed with the contracting officer no later than 10 workdays after the basis for the protest is known or should have been known, whichever is earlier.

(b) *Filing of protests.* (1) All solicitations will instruct interested parties to deliver a copy of any GAO or GSBCA protest to the contracting officer and the Director, Office of Procurement and Supply (93B), or the Director, Office of Construction (08), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420 as appropriate by adding this requirement to its service of protest provision, FAR 52.233-2.

(2) An interested party may protest to the contracting officer, the Director, Office of Procurement and Supply (93B), or the Director, Office of Construction (08), as appropriate.

(3) Protests must be in writing and addressed as follows:

(i) Contracting officer protests—address where offer/bid is to be submitted;

(ii) Director, Office of Procurement and Supply (93B), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420; or

(iii) Director, Office of Construction (08), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

(4) A protest filed with any of the individuals identified in paragraph (b)(2) of this section will:

(i) Include the name, address and telephone number of the protester;

(ii) Identify the solicitation and/or contract number;

(iii) Set forth a detailed statement of the legal and factual grounds of the protest including copies of relevant documents;

(iv) Specifically request a ruling by the individual upon whom the protest is served; and

(v) State the form of relief requested.

(5) The protester shall furnish a copy of the protest, including relevant documents not issued by the contracting agency, to the individual or location designated by the contracting agency in the solicitation for receipt of protests. If there is no designation in the solicitation, the protester shall furnish a copy of the protest to the contracting officer.

(6) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise, logically arranged and clearly state legally sufficient grounds of protest. An agency protest, however, may be dismissed for failure to comply with any of the requirements of this section.

(7) Protests regarding certain issues may be dismissed by the VA without consideration of the merits or forwarded to another agency for appropriate action. Among these protests are the following:

(i) *Contract Administration.* The administration of an existing contract is within the discretion of the contracting agency. Disputes between a contractor and the agency are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978. 41 U.S.C. 601-613.

(ii) *Small Business Size Standards and Standard Industrial Classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration. 15 U.S.C. 637(b)(6); 13 CFR 121.3-6 (1984).

(iii) *Small Business Certificate of Competency Program.* Any referral made to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act, or any issuance of a certificate of competency or refusal to issue a certificate under such section is not reviewed in accordance with bid protest procedures absent a showing of possible fraud or bad faith on the part of Government officials.

(iv) *Protests under section 8(a) of the Small Business Act.* Since contracts are let under section 8(a) of the Small Business Act to the Small Business Administration at the contracting officer's discretion and on such terms as agreed upon by the procuring agency and the Small Business Administration, the decision to place or not to place a procurement under the 8(a) subcontract are not subject to review absent a showing of possible fraud or bad faith on the part of Government officials or

that regulations may have been violated. 15 U.S.C. 637(a).

(v) *Affirmative Determination of Responsibility by the Contracting Officer.* Because a determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible to reasoned review, an affirmative determination of responsibility will not be reviewed, absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(vi) *Procurement Protested to the General Services Administration Board of Contract Appeals.* Interested parties may protest a procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals. After a particular procurement or proposed procurement is protested to the Board, the procurement may not, while the protest is before the Board, be the subject of a protest to the contracting agency. An interested party who has filed a protest with the Board may not protest the same matter to the contracting agency. 40 U.S.C. 759(h), as amended by section 2713 of the Competition in Contracting Act of 1984, Pub. L. 98–369.

(vii) *Protests not filed with the contracting agency within the time limits set forth in 833.103(a).*

(viii) *Walsh-Healey Public Contract Act.* Challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act is for determination solely by the procuring agency, the Small Business administration (if a small business is involved) and the Secretary of Labor. 41 U.S.C. 35–45.

(ix) *Subcontractor Protests.* The contracting agency will not consider subcontractor protests except where the subcontract is by or for the Government.

(x) *Judicial Proceedings.* The contracting agency will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction.

(c) *Answering protests.* (1) On protests filed with the contracting officer, the contracting officer may make the determination identified in FAR 33.103(a). On protests filed with the Director, Office of Procurement and Supply (93B), or the Director, Office of Construction (08), those individuals are authorized to make the determination identified in FAR 33.103(a). These determinations made under (a) and (b) of this section will be in writing and will be made part of the contract file.

(2) The individuals identified in paragraph (c)(1) of this section will respond to any protests within 25 workdays after receipt of the protest. Preaward protests must be answered prior to contract award. Any delays in answering the protest will be communicated to all interested parties.

(d) *Letter to protester.* When a protest has been lodged with the contracting officer and has been subsequently denied by the contracting officer, the letter to the protester along with copies to interested parties detailing the contracting officer's reasons for denying the protest will conclude with the following statement, naming the appropriate VA officials:

> Should you disagree with this decision, you may file an appeal with either the Director, Office of Procurement and Supply (93B), or the Director, Office of Construction, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, or the Comptroller General, General Accounting Office, ATTN: Bid Protest Control Unit, Washington, DC 20548. Appeals must be received within 10 workdays after receipt of this letter. By filing an appeal with the Director, Office of Procurement and Supply (93B), or the Director, Office of Construction, VA Central Office, you may waive your right of further appeals to the Comptroller General at a later date.

(e) *Requests for GAO advance decisions.* When a written protest has been lodged with the contracting officer and he/she considers it desirable to do so, he/she may request an advance decision from the Comptroller General. The submission to the Comptroller General will be sent through the Director, Office of Procurement and Supply (93B) or the Director, Office of Construction, as appropriate, and will include the material indicated in FAR 33.104(a)(2). The contracting officer will notify the protesting individual or firm promptly in writing of the decision of the Comptroller General.

(f) *Protect after award.* When written protect is lodged with the contracting officer, he/she will review the basis for award.

(1) If the contracting officer determines that the award was proper, he/she will furnish the protester a written explanation of the basis for the award which is responsive to the allegations of the protest. The contracting officer will advise the protester that he/she may appeal the determination to the Director, Office of Procurement and Supply (93B), or the Director, Office of Construction in the case of a Central Office architect-engineer or construction contract, or the Comptroller General as specified in paragraph (d) of this section.

(2) If the contracting officer determines that the award is questionable, he/she will advise the contractor of the protest and invite him/her to submit his/her views and relevant information. At the same time, the contracting officer may seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis or issue a stop-work order in accordance with contract clause, FAR 52.233–3, Protest After Award (June 1985). Whether or not the contractor agrees, the case will be submitted promptly to the Director, Office of Procurement and Supply (93B), or the Director, Office of Construction, in the case of a Central Office architect-engineer or construction contract, who will either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General for his/her decision.

833.104 Protests to GAO.

(a) *General.* (1) When a protest before or after award has been lodged with the General Accounting Office (GAO), the contracting officer will prepare a report to be forwarded to the Director, Office of Procurement and Supply (93B), or the Director, Office of Construction (08), as appropriate, within 5 workdays after receipt of verbal notice of the protest or receipt of a copy of the protest, whichever occurs first, for preparation of the agency report. The report should include a copy of the documentation indicated in FAR 33.104(a)(2).

(2) Contracting officers are responsible for the notification procedures outlined in FAR 33.104(a)(3).

(b) *Protests before award.* When the agency has received notice from the GAO of a preaward protest filed directly with GAO, award shall not be made until the matter is resolved, unless the Director, Office of Procurement and Supply (93B), or the Director, Office of Construction (08), as appropriate, approves the head of contracting activity findings required by FAR 33.104(b)(1) and GAO has been notified pursuant to FAR 33.104(b)(2).

(c) *Protests after award.* Protests after award shall be handled in a manner consistent with procedures identified for protests before award. Although persons involved or affected by the filing of a protest may be limited, at least the contractor shall be furnished the notice of the protest and its basis by the contracting officer. When the VA receives from GAO, *within ten calendar days afterward,* a notice of protest filed directly with GAO, and it is determined

by the head of the contracting activity pursuant to FAR 33.104(c)(2) that contract performance should be authorized, the written findings will first be approved by the Director, Office of Procurement and Supply (93B), and CAO must be notified as required by FAR 33.104(c)(3).

833.105 Protests to the GSBCA.

(a) Contracting officers are required to forward appropriate documentation to prepare the agency's protest file within 3 workdays after receipt of the notice of protest to the Director, Office of Procurement and Supply (93B).

(b) Contracting officers are responsible for the notification procedures outlined in FAR 33.105(a)(2)(i). Confirmation of this notification process will be forwarded to the Director, Office of Procurement and Supply (93B), or the Director, Office of Construction (08), as appropriate, within three workdays after receipt of the protest in order to comply with FAR 33.105(a)(2)(ii).

833.106 Solicitation provision.

The contracting officer shall insert the VAAR provision 852.233-2, Service of Protest, (July 1985) (Deviation FAR 52.233-2) in all solicitations other than small purchases.

Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.

Matters relating to suspected fraudulent claims will be referred to the Assistant Inspector General, Office of Investigations (51) for investigation and referral to the Department of Justice. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General.

833.211 Contracting officer's decision.

(a) When a dispute cannot be settled by agreement and a final decision under the Disputes clause of the contract is necessary, the contracting officer shall furnish the contractor his/her final decision in the matter.

(b) The decision must be identified as a final decision, be in writing, and include a statement of facts in sufficient detail to enable the contractor to fully understand the decision and the basis on which it was made. It will normally be in the form of a statement of the claim or other description of the dispute with necessary references to the pertinent contract provisions. It will set forth those facts relevant to the dispute, with which the contractor and the contracting officer are in agreement, and as clearly as possible, the area of disagreement.

(c) Except as provided in paragraph (d) of this section, the decision shall, in addition to the material required by FAR 33.211(a)(4), contain the following:

The Veterans Administration Board of Contract Appeals (VABCA) is the authorized representative of the Administrator for hearing and determining such disputes. The rules of the VABCA are published in section 1.783, of Title 38, Code of Federal Regulations.

(d) If the decision involves a contract entered into prior to the effective date of the Contracts Disputes Act of 1978, i.e. March 1, 1979, and the decision is on a claim which was pending before the contracting officer, or initiated thereafter, the decision shall contain the following:

The Veterans Administration Contract Appeals Board (VACAB) is the authorized representative for hearing such disputes. The rules of the VACAB are published in section 1.774, of Title 38, Code of Federal Regulations.

The appeal must be filed within 30 days of receipt of the final decision. Any request for an extension of the 30-day appeal period will be denied by the contracting officer. In the alternative, the contractor may elect to proceed under the Contract Disputes Act of 1978, 41 U.S.C. 601-613, in which case, you must within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the Board of Contract Appeals and provide a copy to the contracting officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. Instead of appealing to the Board of Contract Appeals, you may bring an action directly in the U.S. Claims Court (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision. If you appeal to the Board of Contract Appeals, you may, solely at your election, proceed under the Board's small claims procedure for claims of $10,000 or less or its accelerated procedure for claims of $50,000 or less.

(e) The contracting officer's final decison will be forwarded to the contractor by certified mail, return receipt requested.

833.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal in any form has been received by the contracting officer, that officer will endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days, will forward said original notice of appeal and a copy of the contracting officer's final decision letter to the Veterans Administration Board of Contract Appeals (VABCA). Copies of the notice of appeal and the final decision letter will be transmitted concurrently to the Director, Office of Procurement and Supply (93) and the Assistant General Counsel (025). (In cases of construction contracts administered by the Office of Construction, copies of appeal and final decision letter need not be transmitted to the Director, Office of Procurement and Supply (93).)

(b) Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer will assemble and transmit to the VABCA, through the Office of General Counsel (025), an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

29. The table of contents to Part 836 is amended by revising the title to Subpart 836.3 to read as follows:

* * * * *

Subpart 836.3 Special Aspects of Sealed Bidding in Construction Contracting

* * * * *

Subpart 836.3—[Amended]

30. Subpart 836.3 is amended by removing the words "Formal Advertising", which appear in the title, and inserting the words "Sealed Bidding".

PART 842—CONTRACT ADMINISTRATION

842.000 [Amended]

31. Section 842.000 is amended by removing the words "formally advertised" and inserting the words "sealed bid".

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

32. Subpart 852.2 is amended by adding 852.233-2 to read as follows:

852.233-2 Service of protest.

As prescribed in 833.106, insert the following provisions in solicitations for other than small purchases:

Service of Protest (July 1985) (Deviation FAR 52.233-2)

A copy of any protest, as defined in FAR 33.101, that is filed with the GAO (General Accounting Office) or the GSBCA (General Services Administration Board of Contract

Appeals), shall be served on the contracting officer ——* and the ——**. The copy of any such protest must be received in the offices designated above on the same day a protest is filed with the GSBCA, or within 1 day of filing a protest with the GAO. (End of Provision).

**Insert the address of contracting office or refer to the number of the block on the standard Form 33 or 1442, etc., where the address of the contracting office is identified.*

***Insert the full title and address of the appropriate VA Central Office activity designated in 833.102.*

33. In 852.236-88, the introductory paragraph, introductory paragraph (a) and the title to the clause in paragraph (a), and paragraph (b) and paragraph (a) of the clause in paragraph (b) are revised to read as follows:

852.236-88 Contract changes.

The clauses, entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 will be supplemented with the following two clauses. Both clauses shall be included in the contract. The clause in paragraph (a) of this section will apply to negotiated changes exceeding $500,000 and does not provide ceiling rates for indirect expenses. Such expenses will be included as part of the submission of certified cost and pricing data, will be negotiated by the contracting officer and will be audited in accordance with 815.505-5. When the negotiated change will be less than $500,000 the clause specified in paragraph (b) of this section will apply. Proposals over $100,000 and not exceeding $500,000 shall be accompanied by certificates of current cost or pricing data. If cost and pricing data are required for proposals of $100,000 or less, the contracting officer may require that it be certified in accordance with FAR 15.804-2(a)(2). It must be emphasized that the indirect cost rates are ceiling rates only, and the contracting officer will negotiate the indirect expense rates within the ceiling limitations.

(a) Applicable to changes costing over $500,000:

Changes—Supplement (for changes costing over $500,000 (July 1985)

* * * * *

(b) Applicable to changes costing $500,000 or less:

Changes—Supplement (for changes costing $500,000 or less) (July 1985)

The clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

(a) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an intemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data are required under FAR. 15.804 for proposals over $100,000, the cost of pricing data shall be submitted on SF 1411, Contract Pricing Proposal Cover Sheet, in accordance with FAR 15.804-6. No itemized breakdown will be required for proposals amounting to less than $1,000.

* * * * *

[FR Doc. 86-14334 Filed 6-86; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM-188B, Admt. No. 171-87]

Transportation of Hazardous Materials Between the United States and Canada; Response to Petition for Reconsideration

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule; Response to petition for reconsideration.

SUMMARY: The Research and Special Programs Administration (RSPA) recently published amendments to the Department of Transportation's Hazardous Materials Regulations (HMR) in order to permit transportation of hazardous materials between the United States and Canada, with certain conditions and limitations, in accordance with the recently published Canadian Transport of Dangerous Goods Regulations (TDG Regulations). This final rule promulgates a change to those amendments in response to a petition for reconsideration submitted by Air Products and Chemicals, Inc.

EFFECTIVE DATE: July 1, 1986. However, compliance with the amendments published herein is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Marilyn Morris, Regulations Development Branch, Office of Hazardous Materials Transportation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 426-2075.

SUPPLEMENTARY INFORMATION: On October 11, 1985, the RSPA published a final rule in the **Federal Register** under Docket No. HM-188B (50 FR 41516) which permitted, with some conditions and limitations, the transport of hazardous materials between Canada and the United States in conformance with the TDG Regulations recently published by Transport Canada. The amendments to the HMR published in that final rule imposed no requirements on persons offering or transporting hazardous materials and were intended only to grant relief to such persons and to facilitate the transport of hazardous materials between Canada and the United States by allowing, under certain conditions, hazardous materials to be transported within the United States in conformance with the TDG Regulations.

On November 12, 1985, the RSPA received a petition for reconsideration of this final rule filed in accordance with the provisions of 49 CFR 106.35. The petitioner, Air Products and Chemicals, Inc. (APCI), contends that the RSPA's failure to fully recognize the TDG Regulations for certain hazardous materials moving within the United States en route to Canada constitutes an unnecessary burden on United States shippers and requested that the final rule be amended to grant "full reciprocity" to the TDG Regulations by permitting compliance with the TDG Regulations in lieu of the provisions of the HMR for the shipment to Canada of hazardous materials classed in Divisions 2.3 and 2.4 (i.e. poison gases and corrosive gases, respectively) of the TDG Regulations. On December 27, 1985, the RSPA published a notice in the **Federal Register** (50 FR 52925) which requested comments on this petition for reconsideration.

A total of eight comments were received in response to the request for comment on the APCI petition. All of the commenters but one supported the APCI petition for essentially the same reasons stated in the petition.

The majority of the commenters supporting the APCI petition joined APCI in criticizing the RSPA for failing to grant "full reciprocity" to the TDG Regulations in promulgation of the final rule under this docket. The RSPA believes that comments in response to these criticisms are warranted. Webster's Dictionary defines "reciprocity" as follows: "a recognition by one of two countries or institutions of the validity of licenses or privileges issued by the other". This has been RSPA's understanding of the meaning of the word "reciprocity" and this definition is consistent with the

relationship between Canadian and United States hazardous materials transport regulations that existed prior to the implementation of the TDG Regulations. Under this relationship, very simply, the United States recognized the Canadian regulations and Canada recognized the United States regulations.

The RSPA wishes to emphasize that, in the case of materials classed in Divisions 2.3 and 2.4 of the TDG Regulations, the final rule published under this docket *did* grant full reciprocity to the TDG Regulations, and in fact went beyond granting full reciprocity. These amendments permitted certain northbound shipments to be labeled and placarded in accordance with the TDG Regulations thereby minimizing difficulties that would have been encountered as a result of the need to change labels and placards at the border in order to bring shipments into compliance with the TDG Regulations before entering Canada. The problems cited by APCI in their petition are, therefore, not in the view of the RSPA due to a failure of the United States to grant reciprocal recognition of the Canada regulations, but rather are due to the fact that Transport Canada did not grant full recognition to the United States regulations for all shipments moving into Canada. In this regard it could be argued that the APCI petition should more appropriately have been filed with Transport Canada rather than with the RSPA. In any event, for the foregoing reasons, the RSPA does not accept the arguments forwarded by many of the commenters that the RSPA had failed to grant "full reciprocity" with the TDG Regulations as the basis for taking any positive action on the APCI petition.

While the RSPA accepts the APCI's argument that some burden is placed on a shipper when differences in regulations require additional shipping paper descriptions and additional package markings, the RSPA also agrees with many of the points raised by the Association of American Railroads (AAR) in their comments in opposition to the APCI request. In particular, the AAR notes that granting the APCI petition would make it impossible, or certainly very difficult, for the originating rail carrier to carry out an acceptance check of the cargo since the proper shipping name appearing on the shipping paper would not appear in the Hazardous Materials Table (49 CFR 172.101). Furthermore, the RSPA believes that the situation would be made even more complicated for the originating carrier in the United States if the hazard class shown on the shipping paper did not even exist in the classification system used in the HMR (e.g. Division 2.4—corrosive gas).

With regard to shipping paper entries, the APCI petition, and many of the comments received, suggest that the TDG Regulations provide no recognition whatsoever of the shipping paper required by the HMR for gases classed in Division 2.3 or 2.4 by the TDG Regulations. This is untrue. Part IV, paragraph 4.2 of the TDG Regulations in fact fully recognizes the shipping paper required by the HMR for a gas classed in Division 2.3 or 2.4 by the TDG Regulations provided that the shipping paper also contains the proper shipping name and hazard class prescribed for the gas in the TDG Regulations. While the RSPA acknowledges the need to provide such additional information on the shipping paper, this additional requirement of the TDG Regulations can hardly be considered to impose an unwarranted burden on the shipper. Furthermore, in light of the comments submitted by the AAR, the RSPA believes that retention of the DOT proper shipping name and hazard class is necessary in order for the originating carrier to fulfill his responsibilities in accepting the cargo. For these reasons, the RSPA has decided to make no change to the regulations concerning shipping papers in response to the APCI petition.

Concerning the marking of packagings, the RSPA agrees with the statements in the APCI petition that the application of dual markings, or the need to change markings at the border, does impose an unwarranted burden on shippers. This is particularly true for large transport units such as portable tanks, cargo tanks and tank cars. It was for similar reasons that the RSPA decided in the publication of the final rule to allow gases classed in divisions 2.3 or 2.4 of the TDG Regulations to be placarded and labeled with the Canadian placards and labels from their point of origin in the United States when they are being transported into Canada. The RSPA believes that an authorization to mark packagings with the proper shipping name and identification number required by the TDG Regulations from point of origin in the United States would neither compromise safety nor result in confusion for the originating carrier provided that the shipping paper contains an indication that the markings have been applied for the purposes of transport to Canada. The final rule previously published provided that such a statement be included on the shipping paper when the Canadian corrosive and poison gas labels and placards were applied at point of origin in the United States and the RSPA notes that none of the comments submitted took issue with that provision.

The RSPA believes that authorizing use of the required Canadian marking from point of origin in the United States would not compromise safety because the DOT Emergency Response Guide (ERG) already includes the proper shipping names and identification numbers for these gases and would enable appropriate emergency response actions to be initiated based on package markings. Although the shipping paper would contain both the DOT and Canadian proper shipping names and identification numbers, the Canadian information will be clearly identified as being included for the purposes of shipment to Canada which should alleviate any possible confusion on the part of emergency responders. Furthermore, the RSPA believes that even if the Canadian information on the shipping paper is used to initiate response actions, the format and content of the ERG will ensure that the recommended response actions will be no less appropriate than those that would be recommended if the DOT proper shipping name and identification number are used in accessing information in the ERG.

With regard to the issues raised by the AAR in their comments, the RSPA is of the opinion that the authorization to use the Canadian proper shipping name and identification number in package markings will not preclude the originating carrier from performing an acceptance check of the cargo. As long as the shipping paper includes both the basic description required by the DOT regulations and the proper shipping name and hazard class as required in the TDG Regulations, the carrier will still be able to verify the correctness of the packaging, marking, labeling and placarding of the shipment.

For the foregoing reasons, the RSPA has accepted the suggestions regarding the marking of packagings in the APCI petition, and is amending § 171.12a(c) to allow the transport of packagings marked with the proper shipping name and identification number required by the TDG Regulations from their point of origin in the United States into Canada provided that the shipping paper contains an indication that these markings have been applied for the purpose of transport to Canada.

Administrative Notices

A. Executive Order 12291

The RSPA has determined that the effect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures (44 FR 11034) and requires neither a Regulatory Impact Analysis nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). The original regulatory evaluation is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning the size and number of entities likely to be affected, I certify that this final rule will not, as promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Imports, Incorporation by reference.

In consideration of the foregoing, 49 CFR Part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, unless otherwise noted.

2. Paragraph (c) of § 171.12a is revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(c) Notwithstanding the requirements of Part 172 of this subchapter, a hazardous material included in Division 3 or 4 of Class 2 of the TDG Regulations may be transported from its point of origin in the United States to Canada, or through the United States en route to a point in Canada, if—

(1) The package is marked with the proper shipping name and identification number, and the freight container is marked, when appropriate, with the identification number, as required by the TDG Regulations;

(2) The package is labeled, and the freight container, motor vehicle or rail car is placarded, as required by the TDG Regulations; and,

(3) The shipping paper contains an indication that these markings, labels and placards have been applied in conformance with this paragraph for the purpose of transport to Canada.

* * * * *

Issued in Washington, DC on June 17, 1986 under authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86-14277 Filed 6-24-86; 8:45 am]

BILLING CODE 4910-60-M

49 CFR Parts 171, 172 and 174

[Docket No. HM-180, Amdt. Nos. 171-88 172-104 and 174-60]

Placarding of Tank Cars Which Contain Hazardous Material Residue; Disposition of Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; disposition of petitions for reconsideration.

SUMMARY: This final rule amends the Department's Hazardous Materials Regulations (HMR) by changing the definition of "residue" which was promulgated in a final rule under Docket HM-180 on September 26, 1985 [50 FR 39005]. Other changes are also being made to the final rule of HM-180 and the HMR for clarification and to promote compliance. The amendments contained in this rule serve as RSPA's response to eight petitions for reconsideration which were filed as a result of the HM-180 final rule.

EFFECTIVE DATE: October 1, 1986. However, compliance with the regulations as amended herein is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Lee Jackson, Standards Division, Office of Hazardous Materials Transportation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 755-4990.

SUPPLEMENTARY INFORMATION:

I. Background

On March 17, 1986, RSPA published a notice of proposed rulemaking pertaining to disposition of petitions for reconsideration [51 FR 9079]. This notice was prepared in response to eight petitions for reconsideration which were filed as a result of a final rule issued under Docket HM-180 that was published on September 26, 1985 [50 FR 39005]. That final rule amended by the HMR by changing the placarding and shipping paper requirements for "empty" tank cars which contain residues of hazardous materials. Under the final rule of Docket HM-180, a quantitative definition of what constitutes a residue was adopted. Further, the applicable regulations in Parts 172 and 174 were also revised to reflect other amendments which were made in that final rule.

In the March 17, 1986 notice, RSPA proposed to redefine "residue" by restricting the applicability of the definition to liquids and expanding the quantitative limitation from 3% to 4% with a measurement tolerance of plus or minus one percent. RSPA believed that by raising the percentage of residue which may remain in a tank car and providing a tolerance of plus or minus one percent, shippers should have less difficulty in complying with the rule. RSPA also believed that adopting a quantitative limitation was important in order to make the rule effective. RSPA invited the public to submit comments concerning the expanded "residue" definition. RSPA requested that comments, as a minimum, address the maximum amount of residue which can safely remain in a tank car placarded with the RESIDUE placard.

In addition to requesting comments regarding the definition of "residue", RSPA stated in the notice that some of the comments received from the petitioners pointed out how inconsistent it was to require tank cars which contain combustible liquid residue to remain placarded as full loads. Currently, tank cars which contain residue of hazardous material must display the appropriate RESIDUE placards unless (1) the tank car contains the residue of a combustible liquid, or (2) the tank car is reloaded with a non-hazardous material, or (3) the tank car is sufficiently cleaned of residue and purged of vapor to remove any potential hazard. Tank cars which contain residue of a combustible liquid must continue to display COMBUSTIBLE placards. In view of the comments received by the petitioners and to promote consistency in the regulations, RSPA proposed in the notice to require the use of RESIDUE placards on those tank cars which contain combustible liquid residue. RSPA also proposed to amend § 174.93 so that tank cars containing combustible liquid residue would be excepted from the train placement requirements.

RSPA proposed to revise paragraph (c) of § 172.334 to prohibit the display of identification numbers on subsidiary placards such as the POISON placard required by § 172.505. Commenters were also asked to address the placarding requirements for tank cars that carry residues of hazardous materials which meet the criteria specified in the new

§ 173.3a pertaining to inhalation toxicity. As of May 1, 1986, tank cars loaded with hazardous materials which exhibit that criteria must display the POISON placards required by § 172.505 as well as the primary placards required by § 172.504. When unloaded, all tank cars containing residues, except explosives, poison gas, or radioactive material, must have all placards, including the POISON placards required by § 172.505, reversed or changed, as appropriate, to RESIDUE placards. RSPA requested comments and suggestions on alternate or preferred placarding methods that could be employed when placarding tank cars that contain a residue of materials which exhibit inhalation toxicity. RSPA also proposed to make other changes to the regulations for clarification and consistency.

II. Response to Comments Made to the Notice

RSPA received twenty four comments to the NPRM. Comments were received from various chemical companies, several oil companies, two railroads and their association and the Hazardous Materials Advisory Council. A large number of these commenters were opposed to RSPA adopting a quantitative definition for "residue". In addition to these comments, a few of the commenters urged RSPA to develop a separate and distinct placard for those materials which exhibit inhalation toxicity. Several commenters stated that the size of the word "RESIDUE" on the RESIDUE placard was too large and was obscured by the placard holder. Based on the regulatory changes which were being made in the rule, commenters requested a one year extension of the mandatory compliance date of October 1, 1986. Discussion of these points as well as RSPA response to each of these comments follows.

Definition of Residue

RSPA proposed on March 17, 1986, (51 FR 9079) to redefine "residue". RSPA expanded the quantitative limitation in the definition contained in the final rule from 3% to 4%, allowing a tolerance of ±1%. Our intent was to provide shippers greater flexibility in complying with the rule. Although RSPA recognized that it would be difficult to accurately determine exactly the amount of residue which remains in a tank car after unloading, RSPA believed that safety would be enhanced by adopting a quantitative definition. At the very least, emergency responders would have a benchmark on which to base their decisions, should an incident occur that involved a tank car which contained only the residue of a hazardous material.

The majority of comments RSPA received stated that there was no need for a quantitative definition for "residue". Commenters stated that aside from it being difficult to determine exactly how much residue remains in an unloaded tank car, firefighters would follow the same procedures regardless of the amount of residue in a tank car. One commenter stated that it is too difficult to establish a volumetric dividing line between "full" and "residue" for safety purposes, because the hazard posed by a given material varies both by the hazard class of the material and the quantity of material present. A few commenters also suggested that RSPA eliminate the plus or minus allowance from the definition of "residue" because there was no need for the definition to contain such an allowance.

Based on the comments received concerning the definition of "residue" and recognizing the difficulty in determining the exact amount of residue which remains in a tank car once it is unloaded, RSPA has decided to adopt the definition for "residue" which was proposed in the comments submitted by E.I. du Pont de Nemours. The new definition does not quantitatively specify the amount of residue which may remain in a tank car which displays the RESIDUE placard. The new definition for "residue" states that "Residue means the hazardous material remaining in a packaging, including a tank car, after its contents have been unloaded to the maximum extent practicable and before the packaging is either refilled or cleaned of hazardous material and purged to remove any hazardous vapors".

Special Placement Requirements for Placards

Three commenters proposed that RSPA establish special placement requirements for placards, i.e. standardizing the location of the primary and subsidiary placards. Commenters stated that such a system is necessary because of the multiple placarding requirements of HM-196 and the new Canadian regulations which require the use of multiple placards for certain commodities. It was felt that with these new requirements, emergency response efforts may be hampered by confusion between the primary and secondary hazards. Therefore, it was suggested by these commenters that the primary hazard placard always be displayed to the left of any required subsidiary placard.

RSPA believes that imposing a special placard placement requirement may be necessary if problems are encountered discriminating between the primary and subsidiary placard, however, RSPA questions the need at this time to establish such a system. We have not been made aware of any problems or incidents that have taken place which can be attributed to confusion occurring between the placement of the primary and subsidiary hazard placards. Therefore, RSPA is not imposing any additional placement requirements on primary and subsidiary placards in this rule.

Placarding Materials Which Exhibit a Poison-Inhalation Hazard

For those materials which exhibit a Poison-inhalation hazard (§ 173.3a), several commenters suggested that RSPA develop a separate and distinct placard or marking which accurately communicates to the public that such a hazard is present. It was stated that while training and education of emergency response personnel is helpful, there will still be confusion under the current system as to whether or not a material exhibits an inhalation hazard. This is essentially true for materials in tank cars which satisfy the definition for a Poison B and also exhibit a Poison-inhalation hazard. Under HM-196, duplication of POISON placards is not required. Therefore, use of the primary POISON placard satisfies the subsidiary placarding requirement of § 172.505. Commenters pointed out that unless there is a method developed to easily identify those materials which exhibit a Poison-inhalation hazard, especially when Poison B materials are present, the emergency responders will have no way of knowing if a material presents a Poison-inhalation hazard.

RSPA acknowledges that establishment of a separate or distinct placard or marking for materials which exhibit an inhalation hazard may be necessary, however, RSPA believes that establishment of such a placard is beyond the scope of this rulemaking. Further, in developing a new, distinct placard for materials which exhibit an inhalation hazard, a consideration must be given to the format of labels as well as the potential for conflict with existing international requirements. For these reasons, RSPA believes that it would be inappropriate to establish such a placard in this rulemaking.

Lettering Size of the Word "RESIDUE" on the Placard

RSPA received three comments which stated that the size of the lettering of the

word "RESIDUE" on the placard should be changed in 1 inch rather than 1½ inches because the word "RESIDUE" was obscured by the placard holder. RSPA agrees with these commenters. RSPA never intended for the word "RESIDUE" to be partially underneath the lower cross bar of the placard holder. This is why both § 172.525 and Appendix B to Part 172 only require the letters to be "approximately" 1½ inches (40mm) high. Further, since the RESIDUE placard is the only placard which has lettering in the lower triangle of the placard, RSPA did not believe that the RESIDUE placard could be confused with any other placard. Nevertheless, in view of the comments RSPA received on this point, and to ensure by that the word "RESIDUE" appears on the placard clearly and unobscured by the placard holder, RSPA is changing the size of the lettering for the word "RESIDUE" to 1 inch.

RSPA realizes that since the use of RESIDUE placards with 1½ inch lettering has been authorized since November 1, 1985, there may be stocks of these placards on hand. Therefore, RSPA is authorizing the use of RESIDUE placards that have 1½ inch lettering until July 1, 1987. On that date, the use of RESIDUE placards with 1 inch lettering will be mandatory.

Combustible Residue Placard

In the notice, RSPA proposed to require the use of RESIDUE placards on tank cars which contain residues of combustible liquids. Two commenters suggested that if a COMBUSTIBLE RESIDUE placard is required, it should be different from the other RESIDUE placards so RESIDUE placards for combustible liquids would not be confused with other RESIDUE placards (especially the FLAMMABLE RESIDUE placard). RSPA does not believe that taking such action is necessary because the bottom triangle of the COMBUSTIBLE RESIDUE placard will always be white with the word "RESIDUE" in black letters. The bottom triangle of the other RESIDUE placards (including the FLAMMABLE RESIDUE placard) will be black with the word "RESIDUE" in white letters. With these differences, there should not be any confusion between the COMBUSTIBLE RESIDUE placard and the other RESIDUE placards. Therefore, no change has been made to the COMBUSTIBLE RESIDUE placard that was proposed in the notice. It use is required on tank cars which contain the residues of combustible liquids.

The Norfolk Southern Corporation and the Association of American Railroads contended that in the past tank cars which contained residues of combustible liquids required no placards. RSPA diagrees. Prior to the promulgation of HM-180, tank cars containing combustible liquids were required to be placarded with COMBUSTIBLE placards and shipping papers were required. When unloaded, these tank cars were still required to display COMBUSTIBLE placards and have accompanying shipping papers. This is supported by the provisions of both § 172.510(c) and § 174.25(c). These sections prohibited the display of EMPTY placards on tank cars which contain only the residue of a combustible liquid and prohibited the used of the words "Empty" or "Empty: Last Contained" on the shipping papers of those tank cars which last contained combustible liquids. These sections did not state that the use of COMBUSTIBLE placards and shipping papers were no longer required. RSPA understands that the rail industry may have interpreted these exceptions to imply that no placards or shipping papers were required for unloaded (empty) tank cars which last contained combustible liquids. This interpretation was incorrect. RSPA finds nothing in the regulations or the administrative record which indicates that tank cars which contain combustible liquid residues are currently excepted from the requirements to have shipping papers and to display the COMBUSTIBLE placards required by § 172.504 (see also § 173.118a). Nevertheless, to promote consistency in the regulations and to enhance safety, the requirements contained in this rule specify that a tank car which contains the residue of a combustible liquid must have shipping papers and the basic description on the shipping papers must include the words "RESIDUE: Last Contained". Further, tank cars which contain combustible liquid residue must display RESIDUE placards.

Mandatory Compliance Date

Several commenters requested that RSPA extend for one year the mandatory compliance date for the rules promulgated in HM-180. Specifically, the Norfolk Southern Corporation urged RSPA to defer all of the RESIDUE placard requirements and corollary shipping paper requirements. They stated that this extension was needed because of the uncertainty as to the status of the RESIDUE placarding requirements until the issuance of the March 17, 1986 notice, the possible creation and issuance of a new, more unique COMBUSTIBLE RESIDUE placard, and the change that must be made to the size of the lettering of the word "RESIDUE" on the RESIDUE placard. They also stated that this extension was needed to allow ample time for training and compliance planning.

RSPA believes that delaying the effective date of the rule for one year is unnecessary. The only change being made to shipping papers by the rule other than changing the word "empty" to "residue", is that § 174.25(c) now requires the shipping papers (billing) for tank cars which contain the residue of a combustible liquid to contain the words "RESIDUE: Last contained * * *". Previously, § 174.25(c) did not require the shipping paper (billing) for tank cars containing combustible liquid residue to show the words "Empty" or "Empty: Last Contained:". As we have previously stated, there has always been a requirement for shipping papers to accompany all tank cars which contain residues. Further, RSPA does not believe there is a need to establish a more unique COMBUSTIBLE RESIDUE placard. Regarding the change being made to the specification (size) of the word "RESIDUE" on the placard, RSPA believes adequate time (more than a year) is being provided for depletion of on-hand stocks of RESIDUE placards with 1½ inch lettering and procurement of new placards. Although changes are being made to the definition of "residue" by eliminating the quantitative levels specified, this new definition should not impose any additional operational requirements on shippers and carriers. In addition, RSPA believes that providing a grace period of one year before the mandatory compliance date of July 1, 1986 provides ample time for shippers and carriers to deplete their on hand stocks of RESIDUE placards with 1½ inch lettering. Therefore, the amendments contained in this rule are effective October 1, 1986. However, compliance with the regulations as amended herein is authorized immediately. Use of RESIDUE placards with 1½ inch lettering is authorized until July 1, 1987.

Subsidiary Risk Placard

RSPA also received two comments which stated that the subsidiary risk placard should not be reversed to a RESIDUE placard when a tank car is unloaded. In effect, both commenters believed that the ability to communicate the hazard of inhalation toxicity would be lost by subjecting materials regulated under HM-196 to the residue placarding requirements of HM-180. One of these commenters pointed out that it would be possible to use permanent adhesive placards for the supplementary POISON

placards if these placards permanently read POISON. It was stated that if the supplementary placards are required to be changed or reversed to RESIDUE placards, it will be necessary to install additional placard holders. Both commenters stressed how important it is to communicate the unique hazard of materials which exhibit an inhalation toxicity hazard (§ 173.3a).

RSPA believes that the subsidiary risk placard required by § 172.505 should be reversed or changed to a RESIDUE placard when a tank car has been unloaded and only contains residue. This will communicate with greater certainty the fact that only the residue of a material remains in the tank car and will ensure that the RESIDUE placard requirements for all materials remain consistent.

III. Review by Sections

1. Section 171.8 is revised by amending the definition of "residue". The definition, as amended, does not specify quantitatively the amount of hazardous material residue which may remain in a tank car placarded with RESIDUE placards.

2. Paragraph (c) of § 172.334 is revised to prohibit the display of an identification number marking on a subsidiary placard.

3. The first sentence of footnote 4 to Table 2 of § 172.504 is reinstated as it appeared prior to Amendment No. 172–98 and the second sentence of footnote 4 is removed so that a RESIDUE placard must be displayed on a tank car which contains the residue of a combustible liquid.

4. The exception provided for combustible liquid residues in paragraph (c)(1) of § 172.510 is removed for consistency. Tank cars which contain residue of a combustible liquid are now required to display RESIDUE placards. For clarity, paragraphs (c)(2) and (c)(3) are redesignated as (c)(1) and (c)(2).

5. Paragraphs (a)(1) of § 172.525 and (c)(10) of Appendix B to Part 172 are revised by changing the size of the letters in the word "RESIDUE" on the placard from 1½ inches (40mm) to 1 inch (25mm).

6. Paragraph (a)(2) of § 172.525 is revised to authorize identification numbers to be displayed on RESIDUE placards or on orange panels in association with RESIDUE placards.

7. The first sentence which follows paragraph (a)(2) of § 172.525 is amended to include a reference to § 172.544 so that a reference is provided to the COMBUSTIBLE placard. Also, the sentences which follow paragraph (a)(2) and precede paragraph (b) of § 172.525 are codified and designated as a new paragraph (a)(4).

8. Paragraph (a)(3) is added to § 172.525 and requires the lower triangle of the RESIDUE placard for combustible liquid residues to be white and the word "RESIDUE" to be shown in black letters on the COMBUSTIBLE–RESIDUE placard.

9. Section 174.25 is revised for clarification.

10. Section 174.93 is revised to except tank cars which contain combustible liquid residue from the train placement requirements.

IV. Administrative Notice

A. Executive Order 12291. MTB has determined the affect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This rule is not considered to be a significant rule under DOT regulatory procedures [44 FR 11034] and requires neither a Regulatory Impact Analysis, nor an Environmental Impact Statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

B. Information Collection. No change in information collection is anticipated as a result of this rulemaking.

C. Impact on Small Entities. Based on limited information concerning size and nature of entities likely to be affected, I certify this final rule will not, as promulgated have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Placarding.

49 CFR Part 174

Hazardous materials transportation, Railroad safety.

Rules and Regulations

In consideration of the foregoing, Parts 171, 172 and 174 of Title 49 Code of Federal Regulations are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

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

Authority: 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. In §171.8 the definition of "residue" is revised to read as follows:

§ 171.8 Definition and Abbreviations.

* * * * *

"Residue" means the hazardous material remaining in a packaging, including a tank car, after its contents have been unloaded to the maximum extent practicable and before the packaging is either refilled or cleaned of hazardous material and purged to remove any hazardous vapors.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

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

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

4. In § 172.334, paragraph (c) is revised as follows:

§ 172.334 Identification numbers; prohibited display.

* * * * *

(c) Except as required by § 172.332(c)(4) for a combustible liquid, the identification number of a material may be displayed only on the placards required by the tables in § 172.504.

* * * * *

5. In § 172.504, Footnote 4 to Table 2 is revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

Table 2 * * *

⁴ A FLAMMABLE placard may be used on a cargo tank or portable tank during transportation by highway, rail or water, and on a compartmented tank car containing materials classed as flammable liquid and combustible liquid.

* * * * *

6. In § 172.510, paragraph (c)(1) is removed and paragraphs (c)(2) and (c)(3) are redesignated as (c)(1) and (c)(2) and read as follows:

§ 172.510 Special placarding provisions: Rail.

* * * * *

(c) * * *

(1) Is reloaded with a material requiring no placards or different placards; or

(2) Is sufficently cleaned of residue and purged of vapor to remove any potential hazard.

* * * * *

7. In § 172.525, paragraph (a) is revised to read as follows:

§ 172.525 Standard requirements for the RESIDUE placard.

(a) Each RESIDUE placard must be as follows:

(1) Except as provided in paragraph (a)(3) of this section, the lower triangle of the RESIDUE placard must be black and the word "RESIDUE" must be in white letters approximately 1 inch (25mm) high, made with approximately ¼ inch (6mm) stroke. Use of RESIDUE placards displaying the word "RESIDUE" in 1½ inch lettering is authorized until July 1, 1987.

(2) Except for the POISON GAS, RADIOACTIVE, EXPLOSIVES, or subsidiary placard required by § 172.505, the RESIDUE placard may be used to display the appropriate identification number in accordance with the provisions of Subpart D of this part.

(3) For a combustible liquid residue, the lower triangle of the RESIDUE placard must be white and the word "RESIDUE" must be in black letters.

(4) Otherwise, the RESIDUE placard must be as specified in § 172.519 and Appendix B to this Part, and §§ 172.528, 172.530, 172.532, 172.536, 171.540, 172.542, 172.544, 172.546, 172.548, 172.550, 172.552, 172.554 and 172.558, as appropriate for the residue of the hazardous material being transported and required by this subchapter to be placarded. No other placard may be used as a RESIDUE placard.

* * * * *

Appendix B to Part 172—[Amended]

8. Paragraph (c)(10) of Appendix B to Part 172 is amended by changing the reference to the size of the letters in the word "RESIDUE" in the placard from 1½ inches (40mm) to 1 inch (25mm).

PART 174—CARRIAGE BY RAIL

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

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

10. In 174.25, the last entry in the table which follows paragraph (a)(2)(ii) is removed, the following two entries are added to the end of the table, and paragraph (c) is revised to read as follows:

§ 174.25 Additional information on waybills, switching orders and other billings.

(a) * * *

Hazardous material or class	Placard notation	Placard endorsement
*	*	*
Tank cars which contain a residue of a hazardous material other than a combustible liquid.	See Sec. 174.25(c).....	Dangerous.
Tank cars which contain a residue of a combustible liquid.	See Sec. 174.25(c).....	None.

(c) The shipping paper for a tank car that contains only the residue of a hazardous material must contain the words "RESIDUE: Last Contained * * *", followed by the basic description of the hazardous material last contained in the tank car and the placard notation specified in the second column of the table in paragraph (a)(2) of this section followed by the word "RESIDUE". For example, "RESIDUE: Last Contained Petroleum Naptha, Combustible liquid, UN 1255, Placarded: COMBUSTIBLE—RESIDUE". For a tank car that contains a residue that is a hazardous substance, the letters "RQ" must also be entered on the shipping paper either before or after the basic description.

* * * * *

11. Section 174.93 is revised to read as follows:

§ 174.93 Position in train of a tank car displaying RESIDUE placards.

Except for a tank car placarded COMBUSTIBLE—RESIDUE, a tank car displaying RESIDUE placards in a moving or standing train may not be placed nearer than the second car from an engine or occupied caboose.

Issued in Washington, DC, on June 18, 1986, under the authority delegated in 49 CFR Part 106, Appendix A.

M. Cynthia Douglass,

Administrator.

[FR Doc. 86-14276 Filed 6-24-86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 60598-6098]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area; Corrections

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

ACTION: Emergency interim rule; corrections.

SUMMARY: This document corrects several typographical errors and incorrect references in the preamble and the regulatory text of the emergency interim rule that establishes closed areas in the domestic and foreign groundfish fisheries and establishes prohibited species catch limits for certain crab species in the Bering Sea and Aleutian Islands area published June 6, 1986, 51 FR 20652.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Resource Management Specialist), 907-586-7229.

The following typographical corrections are made in the preamble for FR Doc. 86-12774 appearing on page 20654 in the issue of June 6, 1986:

1. In column 2 under the heading "*C. Bairdi Tanner Crabs*", line 22, "5.0 million pounds" is corrected to "4.0 million pounds".

2. In column 2 under the heading "*Red King Crabs*", line 5, "50 percent" is corrected to "58 percent".

The following corrections in FR Doc. 86-12774 are also made:

§ 611.93 [Corrected]

In § 611.93(c)(2)(ii)(G), page 20655, column 3, both references to "§ 675.21(a)" are corrected to read "§ 675.21(b)".

§ 675.7 [Corrected]

In amendatory instruction 4, page 20657, column 1, both expiration dates "September 4, 1986" are corrected to "September 2, 1986".

Dated: June 20, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-14306 Filed 6-20-86; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 611 and 675

[Docket No. 60598-6098]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that vessels of the United States have caught the prohibited species catch (PSC) limits of 80,000 *C. bairdi* Tanner crabs and 135,000 red king crabs while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea subarea south of 58°00' N. latitude and east of 165°00' W. longitude (Zone 1). Therefore, further directed

fishing on yellowfin sole and "other flatfish" by vessels of the United States and by foreign fishing vessels is prohibited in Zone 1 for the remainder of the year, as required by regulations governing the groundfish fishery of the Bering Sea and Aleutian Islands area.

DATES: This notice is effective from 4:00 p.m., Alaska Daylight Time, June 18, 1986, until midnight, Alaska Standard Time, December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act. On June 6, 1986, the Secretary published an emergency interim rule (51 FR 20652) based on Council recommendations which established PSC of 80,000 *C. bairdi* Tanner crabs and 135,000 red king crabs for U.S. fishing vessels fishing for yellowfin sole and "other flatfish" in an area of the eastern Bering Sea described as Zone 1 [§ 675.21(a)(1) and (b)]. The rule provides for prohibiting a directed fishery by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the year if, during the year, the Regional Director determines that these vessels will catch the PSC limit of 80,000 *C. bairdi* Tanner crabs or 135,000 red king crabs while conducting directed fishing for yellowfin sole and "other flatfish" in Zone 1 of the Bering Sea subarea. The Secretary may allow continued fishing by some domestic vessels under certain conditions. Zone 1 is defined as that part of the Bering Sea subarea south of 58°00' N. latitude and east of 165°00' W. longitude. The rule as corrected (published elsewhere in this issue) at § 611.93(c)(2)(ii)(G) also provides for prohibiting foreign directed fishing for yellowfin sole and "other flatfish" in Zone 1 when the domestic fishery for yellowfin sole and "other flatfish" in Zone 1 is prohibited due to attainment of the red king crab PSC limit (§ 675.21(b)).

The 1986 Bering Sea joint venture (JVP) fishery for yellowfin sole and "other flatfish" began in early April. Starting in early May, NMFS has monitored, on a weekly basis, the incidental JVP catches of prohibited species including *C. bairdi* Tanner crab and red king crab in each subarea of the Bering Sea. As of the week ending May 24, less than 54,000 *C. bairdi* and red king crab, respectively, had been taken in Zone 1. However, over 60,000 *C. bairdi* and over 76,000 red king crab were taken in Zone 1 in the subsequent week, resulting in total catches of 115,390 *C. bairdi* and 130,213 red king crabs in Zone 1. The joint ventures operating in Zone 1 voluntarily left the zone during that week.

The Regional Director finds, therefore, that the PSC limits of 80,000 *C. bairdi* and 135,000 red king crabs in Zone 1 has been, or will be, taken and that further domestic directed fishing on yellowfin sole and "other flatfish" in Zone 1 is prohibited for the remainder of the year. Foreign directed fishing for yellowfin sole and "other flatfish" also is prohibited in Zone 1 for the remainder of the year as provided under § 611.93(c)(2)(ii)(G).

In accordance with §§ 611.93(c)(2)(ii)(G), 675.21(a)(1), and 675.21(b) the Secretary issues this closure prohibiting further directed fishing for yellowfin sole and "other flatfish" in Zone 1 from 4:00 p.m., Alaska Daylight Time (2400 GMT), June 18, 1986, until midnight, Alaska Standard Time, December 31, 1986. Fishing for other target species such as pollock, Pacific cod and turbot may continue in that zone.

Classification

This action is required by 50 CFR 675.21(a)(1), 675.21(b) and 611.93(c)(2)(ii)(G) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds that the reasons justifying promulgation of the emergency rule that authorizes this closure also makes it impracticable and contrary to the public interest to provide advance notice and opportunity for comment, or to delay for 30 days the effective date of this closure.

List of Subjects in 50 CFR Parts 611 and 675

Fisheries.

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

Dated: June 20, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–14307 Filed 6–20–86 12:28 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 122
Wednesday, June 25, 1986

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-29]

Proposed Alteration of Houston, TX, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice to alter the Houston, TX, Terminal Control Area (TCA) to fully contain large turbine-powered aircraft executing approaches to and departures from new Runway 9/27, opening in February 1987.

DATES: Comments must be received on or before July 28, 1986. A public meeting will be held on July 15, 1986.

ADDRESSES: The public meeting place is: Houston Police Academy, 17000 Westfield, Houston, TX 77073.

Send comments to the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-29, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-29." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold an informal airspace meeting in order to receive additional input with respect to the proposal. The meeting place and time are listed below. Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The meeting will begin at 7:00 p.m. (local time). There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space-available basis. The FAA representative may accelerate the meeting agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be recorded. A summary of the comments made at the meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting will be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer before distribution. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meeting should not be taken as expressing a final FAA position.

Public Meeting Schedule

The schedule for the meeting is as follows:

Date: July 15, 1986, 7:00 p.m. to 10:00 p.m., c.s.t.

Place: Houston Policy Academy, 17000 Aldine Westfield, Houston, TX 77073

Agenda

7:00 p.m.—7:15 p.m.—Presentation of Meeting Procedures

7:15 p.m.—7:30 p.m.—FAA Presentation of Proposal

7:30 p.m.—10:00 p.m.—Public Presentations and Discussion

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify Areas C and D of the Houston TCA by lowering the base of the TCA from 4,000 feet to 3,000 feet MSL on both the east and west edges of the existing TCA to fully contain all aircraft executing approaches to and departures from new Runway 9/27. This action is necessary to ensure that all turbine-powered aircraft remain within the confines of the TCA while executing approach and departure procedures, and to provide the airspace necessary to conduct simultaneous parallel instrument landing system (ILS) approaches. Runway 9/27 opens in February 1987. Section 71.401(b) of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

§ 71.401 [Amended]

2. Section 71.401(b) is amended as follows:

Houston, TX [Amended]

By removing the present Area C and substituting the following:

Area C. That airspace northwest of IAH extending from 3,000 feet MSL to and including 7,000 feet MSL bounded on the northeast by the IAH VORTAC 313°T(305°M) radial, on the east by the 8–mile DME arc of the IAH VORTAC between the IAH VORTAC 313°T(305°M) radial and a line 2 miles north of and parallel to the IAH Runway 8 centerline extended and the 15–mile DME arc of the IAH VORTAC between a line 2 miles north of and parallel to the IAH Runway 8 centerline extended and the IAH VORTAC 258°T(250°M) radial, on the south by a line 2 miles north of and parallel to the IAH Runway 8 centerline extended between the 8–and 15–mile DME arcs of the IAH VORTAC and the IAH VORTAC 258°T(250°M) radial between the 15–and 20–mile DME arcs of the IAH VORTAC, and on the west by the 20–mile DME arc of the IAH VORTAC, and that airspace east of IAH bounded on the east by the 20–mile DME arc of the IAH VORTAC, on the south by the IAH VORTAC 108°T(100°M) radial, on the west by the 15–mile DME arc of the IAH VORTAC, and on the north by the IAH VORTAC 058°T(050°M) radial.

In Area D after the words "between the 15–and 20–mile radii of the IAH VORTAC" by inserting the words ", excluding that airspace contained within Area C described previously,"

Issued in Washington DC, on June 4, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–13087 Filed 6–24–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 91

[Docket No. 18962; Petition Notice PR 86–10]

Petition of Charles Webber—Delegation of Requirement for Medical Certificate

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for rulemaking.

SUMMARY: This notice publishes for public comment the original and revised petition of Charles Webber dated May 23, 1979, and March 30, 1986, respectively. The petitioner proposes to delete § 61.103(c) of the Federal Aviation Regulations (FAR) which requires a private pilot to hold at least a current third-class medical certificate issued under Part 67. The petitioner challenges the validity of mandatory Class 3 medical certification, and considers the availability of optional Class 3 medical certification to be desirable.

The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Publication of this notice is not intended to affect the legal status of the petition or its final disposition.

DATE: Comments must be received on or before August 22, 1986.

ADDRESS: Send comments on this petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 18962, 800 Independence Avenue, SW., Washington, D.C. 20591, or deliver in triplicate to Room 916, 800 Independence Avenue, SW., Washington, D.C. Comments delivered must be marked: Docket No. 18962. Comments may be inspected in Room 916 weekdays, except federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. William H. Hark, Manager, Aeromedical Standards Division (AAM–200), Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426–3802.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views or arguments on the petition as they may desire. Communications should identify the docket and petition notice number and be submitted in triplicate to the address indicated above. All communications received on or before the closing date will be considered before taking action on the petition. All comments submitted will be available for examination in the FAA docket. Persons wishing the FAA to acknowledge receipt of the comments received in response to this notice should submit a self-addressed, stamped postcard which states "Comment to Docket No. 18962." The postcard will be date/time stamped and returned to the commenter.

Normally, the FAA only summarizes petitions for rulemaking for publication in the **Federal Register.** In the case of the petition by Charles Webber, however, the agency has elected to publish the petition verbatim because the original petition was not published in the **Federal Register** for public comment. The agency determined, at that time, that it would be appropriate to evaluate the petition in parallel with comments received in response to Notice of Proposed Rulemaking (NPRM) 82–15. Subsequently, NPRM 82–15 was withdrawn and, thus, it is necessary to address the petition in a separate document. This action also precludes any loss of thought or meaning which might occur in a summarization of the petition.

This notice sets forth the contents of the petition as amended by the petitioner; however, it should be understood that its publication to receive public comment is in accordance with FAA procedures governing petitions for rulemaking. It does not propose a regulatory rule for adoption, represent a FAA position, or otherwise commit the agency on the merits or factual accuracy of the petition. The FAA intends to proceed to consider the petition under the applicable procedures of Part 11 and reach a conclusion on the merits of the proposal after it has had an opportunity to evaluate the petition carefully in light of the comments received and other relevant matters presented. If the FAA concludes that it should initiate public rulemaking action on the petition, appropriate rulemaking action, including an evaluation of the proposal, will be published.

The petition

Accordingly, the Federal Aviation Administration publishes verbatim for public comment the following petition for rulemaking of Charles Webber, letters dated May 23, 1979, and March 30, 1986, respectively.

Issued in Washington, D.C. on June 16, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

BILLING CODE 4910–13–M

CHARLES WEBBER
4130 Mannes Street
Riverside, California 92509

May 23, 1979

Federal Aviation Administration
Washington, D. C. 20591

AOA-
ACTION INFORMATION:
DUE DATE/SUSP:
FOR SIGNATURE OF:
COORDINATION WITH/THRU:
INFORMATION COPY:

Attention: The Administrator

Dear Sir,

This is a petition for rulemaking as allowed by 14 CFR 11.25, including the current changes being processed.

In compliance with 14 CFR 11.25(c), the following summary is provided that may be published in the Federal Register:

This petition is for the complete repeal of 14 CFR 61.3(c) that requires medical certification in most circumstances. Over fifty years of experience has accumulated with medical certification. In response to an FOIA request, the FAA has provided me with all documentation capable of showing the merits of medical certification, and the meaning of the exemption granted pilots of glider aircraft. The relevant facts are as follows:

1. Approximately 25% of the glider pilots utilized the exemption.

2. Over a half-century of medical certification has shown that

   a. there is not a single instance of a glider accident in which the cause can be related to a medical problem,

   b. the accident rate of glider pilots is essentially the same as for general aviation as a whole,

   c. and there are many documented examples of pilot death following shortly after the pilot has passed a medical examination by an approved examiner.

It can be estimated that the annual expense of medical fees to FAA approved examiners may approach $5,000,000, and the equivalent value of lost productivity and travel expense may double that figure. Furthermore, it goes without saying that the expense to the taxpayers of related FAA activities must be many times those amounts.

Since the statistics have now been derived from the "control group" provided by granting the exemption to the glider pilots, any further continuation of this exemption deprives non-exempt pilots of equal protection under the law and thus makes 14 CFR 61.3(c) a violation of their Constitutional rights and the regulation invalid.

It is doubtful that the above summary can be shortened without losing the reasoning behind my petition. It is hoped that the FAA, in compliance with 14 CFR 11.27(b) will publish it in its entirety. This petitioner will appreciate being notified of its publication in time to solicit proper comments from certain meaningful sources within the time schedule allowed.

In compliance with 14 CFR 11.25(b)(3):

My petition asks that 14 CFR 61.3(c) be repealed in its entirety rather than being amended. Such a repeal would make certain portions of Part 67 superfluous.

The data derived from the statistical control group of glider pilots has certain subtleties. I have been told of many pilots who flew gliders only because of the medical exemption. Many knew they could not even perjure their way through a physical examination by an utter stranger, one who would probably hate to lose the return business. These examinations are conducted largely by the nurse. All this means that the judgment of the pilot has been proven adequate to decide when and under what circumstances it is safe for him to fly. The government should step in and control a situation only when ALL ELSE FAILS! Since it is clearly proven by the FAA's own statistics that the system of no government supervision has the best record, my petition is that the FAA withdraw from the balance, in other words PLEASE GET OUT! Any attempt to codify criteria for the benefit of the insurance companies and the courts will be just as extravagant as the present system. Therefore, it is clear that nothing is required of the government.

In compliance with 14 CFR 11.25(b)(4):

The petitioner's personal interest in the matter is best expressed by the First Amendment to the Constitution. I have a grievance that 14 CFR 61.3(c) is an abuse of public funds, an unreasonable expense and nuisance to myself, and a violation of my Constitutional rights. While the latter factor invalidates the regulation, I am petitioning the government to redress my grievance by wiping that regulation from the books.

In compliance with 14 CFR 11.25(b)(5):

The following represents all information, views, and arguements presently available to this petitioner in support of the action sought. Much of this material is factual having been provided by the FAA, while much of it is conclusory. It is all I have to give. Should the FAA believe that I am withholding information presently available, or desire any elaboration of what has been provided, it is hoped that the FAA will explain its belief or make a request so that I can respond. This petition includes all material available to me when I made my previous petition with this same objective on March 31, 1978. This current petition includes all information and opinions gained since that date. I promise to send any additional material as it becomes available.

I elaborate upon this matter of complying with 14 CFR 11.25(b)(5) because it led to a lawsuit between us. You allowed the Magistrate to hear all the facts. His opinion qualified as that of a legal expert who had heard all the facts. His written opinion was that my petition was proper and your rejection was "wrongful". If nothing more, his considered opinion had located a triable issue. Neither you people, nor your attorneys from the Department of "justice", nor Judge Manuel Real

(pronounced "reel" not "rey-al" as his parents prefer), where willing to respond to my pleas for "enlightenment" so that I could resubmit my petition as I am doing now and have a basis for returning to that court of justice. Making his understatement of the day, Judge Real claimed he was not a lawyer, and without any explanation, overturned the expert opinion of the Magistrate, and dismissed the complaint. It is obvious that getting a day in court against the government as a plaintiff is contrary to the rules, so instead of appealing, I decided to petition once more. I hope Judge Real gets his promotion some day.

The following is a review of the material available to me. Since the factual material was provided by the FAA, I am not elaborating in depth. However, do not hesitate to ask questions.

1. In response to my FOIA requests, the FAA searched throughout its systems of records and elsewhere and was unable to locate any documentation that revealed any public benefit being derived from 14 CFR 61.3(c). This is not surprising. The FAA provided sworn affidavits to this lack of information and the depth of the search by agents Jon L. Jordan, Homer C. McClure, and Ben S. Lee. I am completely satisfied with these responses. Obviously, if the FAA had any data that would demonstrate merits to their expensive program, it would have been to the FAA's advantage to reveal it. I am perfectly satisfied that if data has been discovered since then, it would not imply possible perjury by the affiants.

2. While the above sworn affidavits claimed an inability to locate statistics pertinent to medical certification in glider and soaring activities, Mr. Peter R. Clapper was more successful (letter dated July 12, 1978). He discussed a report to Congress, November 3, 1976, by the Comptroller General recommending that the FAA should do more to detect medical problems. The Federal Air Surgeon informed Mr. Clapper that he had reviewed NTSB glider accident data for medical correlation. While the Surgeon recognizes that "no glider accident is known to have been caused by a medical deficiency", strangely this surgeon concludes that "there is no correlation between the accidents and the medical certification of the pilots." This surgeon had the finest of expensive statistics. Fifty years, a half-century, the passing of the Jubilee of the government's efforts, and not one single accident of a medical nature among those pilots certified, and similar data for those pilots who for reasons not surveyed avail themselves of the exemption, is to me correlation. If this man is a surgeon or a general or both, it does not make for a success as a statistician. That is statistics also.

3. Mr. Clapper also provided me with a remarkable article by Dr. Robert L. Wick, published in the March, 1965 issue of Aerospace Medicine. The important contribution of his studies is given in item 2 of my opening summary.

4. Mr. Clapper also provided certain NTSB accident data. Even though the NTSB compounds the accidents of gliders and balloons, the rates are essentially the same as those of general aviation. Since the glider-balloon accident rate includes no causes of a medical nature, while the general aviation accident rate includes at least those resulting from the examinations themselves, it is difficult not to conclude that at best a negative public benefit is being derived from the FAA's program of medical certification.

5. The financial penalty of any unnecessary continuation of 14 CFR 61.3(c) is not known to me. I would estimate that at least 100,000 medical examinations per year are charged for at an average fee of $35, meaning an annual direct expense to pilots of $3,500,000. In terms of lost productivity and travel costs, the amount is at least doubled, FAA doctors are not distributed evenly over the U. S. the way family physicians are. It is my estimate that the FAA medical budget is $100,000,000, which is largely devoted to perpetrating the medical certification program, and trying to extend it occasionally to include all pilots. Such expenses if superfluous, are not assisting President Carter in his efforts to ease the inflationary pressures and the costs of medicine.

Inasmuch as this petition requires a final "determination" by the FAA, which "determination" would be harmful to me if adverse, it would appear that I have certain civil rights as defined by 5 USC 552a(e)(5) and (g)(1)(C). Therefore, I feel that in making any final determination with regard to my petition, the FAA must maintain records that include a full financial analysis. As allowed by 5 USC 552a(d)(1), I am requesting access to it when it is available.

6. I had an interesting conversation with Paul Bikle (General, USAF, ret.). Paul is still the current holder of world glider altitude record of 46,500 feet ASL. While he did have a current medical at the time because of his non-glider ratings, 14 CFR 61.3(c) would have permitted him to have left the certificate on the ground. It appears that the FAA considered the pressure-oxygen system and the electrically heated socks to be sufficient.

Towards the end of 1961, while he was President of the Soaring Society of America, the FAA contacted Paul concerning the possibility of eliminating the medical exemption granted glider pilots. Paul asked to examine the FAA's analysis revealing how public benfit would be derived from such a change. He was sent a large stack of computer printouts of all airplane and glider accidents for the previous five years. The data was "undigested". Paul's own analysis allowed him to arrive at the same conclusions as Dr. Wick did a few years later. The FAA was informed. There was no response by the FAA. The matter seemed dropped.

Bikle was the civilian head of NASA at Edwards AFB. In early 1969 while at Washington on NASA business, Paul was contacted by the FAA concerning the subject of the exemption of glider pilots from medicals. Since a Doctor Mohlar fails to recall the incident, it may have been Dr. Wick. Bikle made clear that his opinions were even stronger since the FAA had eliminated the family physician . Bikle says he has not had a decent physical from an FAA approved examiner. The matter was dropped again.

Approximately a year ago, the Chief Counsel for the FAA, Onstad, substituted for Bond at an SSA banquet in Washington. His speech brought cheers from his audience since he guaranteed them that they would never be bothered about their exemption again. He said that there was no need to remove their exemption. I asked Mr. Onstad as to what basis and documentation he used to make such a turnabout in FAA goals, but he failed to recall. If memory where a requirement for flying, Onstad would have difficulty getting a third class ticket.

I hope that this petition is more successful than my previous one.

Respectfully submitted,

Charles Webber

CHARLES WEBBER

[FR Doc. 86-14041 Filed 6-24-86; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773 and 778

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control

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

ACTION: Notice of reopening of public comment period and public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) published a proposed rule amending its regulations dealing with the permit approval provisions of section 510(c) of the Surface Mining Control and Reclamation Act of 1977. The proposed rule would define the terms "ownership" and "control," and would expand the scope of the findings which regulatory authorities are required to make prior to permit approval. The comment period on the proposed rule closed June 16, 1986. OSMRE is now reopening and extending the comment period and will conduct a public hearing.

DATES: The comment period on the proposed rule is extended until August 11, 1986. The public hearing is scheduled for July 15, 1986, at 7:00 P.M. in Big Stone Gap, Virginia.

ADDRESS: The public hearing will be held at the following location: Mountain Empire Community College, Dalton Cantrel Building, Route 23, Big Stone Gap, Virginia.

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; Telephone: 202-343-5950 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSMRE published a proposed rule which would amend its regulations dealing with the permit approval process by: (1) Adding definitions for the terms "ownership" and "control" as those concepts are used in the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*; and (2) expanding the scope of the compliance findings which regulatory authorities are required to make prior to permit approval. The proposed rule was published in the **Federal Register** on April 5, 1985 (50 FR 13724). On June 7, 1985, a notice was published extending the comment period to June 28, 1985 (50 FR 24122). On April 16, 1986 (51 FR 12879) a notice was published which reopened and extended the comment period until June 16, 1986. The April 16, 1986 notice also contained examples illustrating how the "Ownership and Control" rule would be used in conjunction with OSMRE's computerized Applicant-Violator System.

Public interest in the proposed rule has continued at a very high level. OSMRE has received several requests to hold a public hearing and to further extend the comment period in order to afford interested parties additional time to comment. As a result, OSMRE is reopening and extending the comment period until August 11, 1986, and has scheduled a public hearing at 7:00 P.M. on July 15, 1986 at Mountain Empire Community College, Dalton Cantrel Building, Route 23, Big Stone Gap, Virginia.

A commenter on the April 16, 1986 notice which reopened the public comment period questioned whether OSMRE intended that notice as a proposed rulemaking which would amend the information collection requirements for permit applications in 30 CFR 778.13 and 778.14. OSMRE intends to publish in the future a separate notice of proposed rulemaking to amend 30 CFR 778.13 and 778.14.

Dated: June 18, 1986.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-14287 Filed 6-24-86; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-235, RM-5110]

Radio Broadcasting Services; Anderson, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Prather-Breck Broadcasting proposing the substitution of Channel 234C2 for Channel 232A and modification of the license of Station KEWB(FM), at Anderson, California.

DATES: Comments must be filed on or before August 11, 1986, and reply comments on or before August 26, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve counsel for petitioner, as follows: Roger J. Metzler, Esq., Farrand, Malti, Cooper & Metzler, 701 Sutter St., San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-235, adopted June 2, 1986, and released June 18, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channnel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 86-14264 Filed 6-24-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-238, RM-5136]

Radio Broadcasting Services; Brenham, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Brenham Bluebonnet Communications proposing the allotment of Channel 231A to Brenham, Texas, as that community's second local FM service. A site restriction of 7.7 kilometers (4.8 miles) west of the community is required.

DATES: Comments must be filed on or before August 8, 1986, and reply comments on or before August 25, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Harry Martin, Esquire, Reddy, Begley & Martin, 2033 M Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–238, adopted June 2, 1986, and released June 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decison may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 86–14270 Filed 6–24–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–234, RM–5263]

Radio Broadcasting Services; Del Rio, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition by Forum Broadcasting, Inc., proposing the substitution of Channel 234C2 for Channel 232A at Del Rio, Texas, and modification of the license of Station KLKE(FM), Channel 232A, Del Rio, Texas, to specify operation on Channel 234C2, as that community's second wide coverage area FM service. A site restriction of 24.1 kilometers (14.9 miles) northwest of the community is required. Also the proposal requires concurrence by the Mexican government.

DATES: Comments must be filed on or before August 11, 1986, and reply comments on or before August 26, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Forbes W. Blair, Blair, Joyce & Silva, 1825 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–234, adopted June 2, 1986, and released June 18, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 86–14265 Filed 6–24–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–239, RM–5330]

Radio Broadcasting Services; Faith, SD

AGENCY: Federal Communications Commmission.

ACTION: Proposed rule.

SUMMARY: This document proposes the allocation of Channel 246 to Faith, South Dakota, at the request of the South Dakota State Board of Directors for Educational Television. The allocation could provide Faith with its first local noncommercial educational service. Petitioner is requested to provide an engineering showing detail the TV Channel 6 interference which it claims would occur from use of channels in the noncommercial educational band or to state whether it intends to apply for the channel if it is ultimately allocated on a non-served basis.

DATES: Comments must be filed on or before August 11, 1986, and reply comments on or before August 26, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Roy R. Russo, Esq., Martin I. Levy, Esq., Cohn and Marks, 1333 New Hampshire, Ave., NW. Washington, DC 20036 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–239, adopted June 2, 1986, and released June 18, 1986. The full text of this Commission decision is availabale for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800,

2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve chanel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.240.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 86-14266 Filed 6-24-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-233, RM-5316]

Radio Broadcasting Services, Fulton, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Class C2 Channel 270 for 269A at Fulton, Mississippi, and modification of the Class A license for Station WFTA (FM), in response to a petition filed by Itawamba County Broadcasting Company, Inc. The allocation could provide Fulton with a first Class C2 channel.

DATES: Comments must be filed on or before August 8, 1986, and reply comments on or before August 25, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Olvie E. Sisk, Sisk Engineering, P.O. Box 549, Fulton, Mississippi 38843.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-233, adopted June 3, 1986, and released June 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 86-14268 Filed 6-24-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-237, RM-5191]

Radio Broadcasting Services; Greeneville, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Burley Broadcasters, Inc., proposing the allotment of FM Channel 290A to Greeneville, Tennessee, as that community's second FM service. A site restriction of 7.2 kilometers (4.5 miles) northwest of Greeneville, is required.

DATES: Comments must be filed on or before August 8, 1986, and reply comments on or before August 25, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Kirk Tollett, National Communications Consultants, First National Bank Building, Liberty Square, Sparta, TN 38583.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-237, adopted June 2, 1986, and released June 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 86-14269 Filed 6-24-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-232, RM-5231]

Radio Broadcasting Services; Omak, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Okanogan Valley Broadcasting, Inc., proposing the substitution of Channel 226C2 for Channel 224A at Omak, Washington, and modification of the license of Station KOMW-FM, Omak, Washington, to specify operation on Channel 226C2, as that community's first wide coverage FM station. A site restriction of 10 kilometers (6.3 miles) southwest of the city is required. Also

the proposal requires concurrence by the Canadian government.

DATES: Comments must be filed on or before August 8, 1986, and reply comments on or before August 25, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitoners, or their counsel or consultant, as follows: Okanogan Valley Broadcasting, Inc., P.O. Box 151, Omak, WA 98841.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–232, adopted June 2, 1986, and released June 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 86–14271 Filed 6–24–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–159, RM–4979]

Radio Broadcasting Services; Redfield, SD

AGENCY: Federal Communications Commission.

ACTION: Dismissal of Proposed Rule.

SUMMARY: Action taken herein rescinds the *Notice of Proposed Rule Making* proposing to substitute Channel 279C2 for Channel 279 at Redfield, South Dakota, at the request of Victoria Broadcasting System, Inc. The *Notice* was issued on the premise that no acceptable application specifying Redfield as the community of license was on file. It has now come to the Commission's attention that the application of Mary Verkest (850712TB) was accepted for tendering.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 86–159, adopted June 9, 1986, and released June 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 86–14267 Filed 6–24–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–236, RM–5187]

Radio Broadcasting Services; Kingston, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by William J. Miller proposing the allotment of Channel 241A to Kingston, Tennessee, as that community's first FM service. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Timothy K. Brady, Attorney at Law, 1116 Weisgarber Road, P.O. Box 10566, Knoxville, TN 37939–0566.

DATES: Comments must be filed on or before August 8, 1986, and reply comments on or before August 25, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–236, adopted June 2, 1986, and released June 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 86–14274 Filed 6–24–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

[BMCS Docket No. MC–123; Notice No. 86–6]

Safety Fitness Determination

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 215 of the Motor Carrier Safety Act of 1984 directs the Secretary of Transportation, in

cooperation with the Interstate Commerce Commission, to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers. The notice of proposed rulemaking (NPRM) proposes to revise the existing safety rating procedures and add a new procedure that would apply to every motor carrier operating in interstate or foreign commerce who has not previously been assigned a safety rating or who intends to enter the motor carrier industry. Comments are requested regarding the proposed changes. Specific issues where comments are requested are outlined in the "Supplementary Information" section of the preamble to the NPRM.

DATE: Comments must be received on or before August 11, 1986.

ADDRESS: All written comments should refer to the docket number that appears at the top of this document and should be submitted preferably in triplicate to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street SW., Washington, DC 20590. The comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary E. Curtis, Bureau of Motor Carrier Safety, (202) 426–1724; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426–0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except for legal holidays.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2829)(the Act). The Act was signed into law by the President on October 30, 1984.

This rulemaking action addresses section 215 of the Act, which provides that the Secretary of Transportation, in cooperation with the Interstate Commerce Commission (ICC), shall by rule, after notice and opportunity for comment, establish a procedure to determine the safety fitness of owners and operators of commercial vehicles, including persons seeking new or additonal operating authority as motor carriers. The proposed procedure would apply to every motor carrier operating in interstate or foreign commerce.

For those carriers that seek ICC authority, the Act also provides that the ICC shall find any applicant for motor carrier operating authority unfit if the applicant does not meet the safety fitness requirements established in this rulemaking and shall deny such application.

The FHWA proposes to make revisions to certain sections of the current Part 382 for clarity, to collect safety-related information for all unrated motor carriers, and generally to facilitate implementation of these changes to the Safety Fitness provisions. In addition, FHWA requests comments on whether a separate system should be set-up for ICC applicants particularly those with no previous operating history.

New Program Emphasis for BMCS

The new requirements proposed in this regulation are part of recent enhancements in the Department's motor carrier safety program. BMCS has begun to implement program changes that will significantly broaden its safety monitoring of motor carriers. To better identify problem and high risk motor carriers, BMCS will analyze the available computerized data such as accident reports required to be filed by the carriers with BMCS, and information from: state enforcement audits and roadside inspections of vehicles; contacts and interviews with the carriers by BMCS field personnel, BMCS enforcement actions; and through a questionnaire that will be sent to all unrated carriers. This questionnaire should provide a significant source of information on the estimated 185,000 motor carriers that have never been audited and rated. All unrated carriers will be required to submit the questionnaire as the initial step in the BMCS safety review process to rate and monitor motor carriers.

BMCS will computerize and integrate all the available data from Federal, State, and local sources on the carriers' safety records to assess and monitor the safety performance of all motor carriers—including those that are currently rated and those that are not. BMCS safety specialists will contact and/or visit all unrated carriers whose safety records indicate there may be a safety problem or noncompliance with the safety regulations. This initial contact will be a compliance review of the carrier's safety and maintenance systems—not an indepth audit of specific records, although examples of records may be requested during a compliance review. As a result of the compliance review, BMCS safety specialists will be able to identify and provide close monitoring and technical assistance to high risk and problem carriers with the objective of achieving full compliance. Following the on-site visit and based on all available safety information on the carrier, BMCS will assign a safety rating to the carrier. The compliance review and the results of technical assistance and monitoring will also determine if enforcement action is necessary. A separate indepth audit of the carriers' records will be done to collect evidence for an enforcement action when necessary.

These improvements to the motor carrier program rely heavily on data availability. The Department has proposed to Congress to increase significantly the grant funds available to the States to enhance their motor carrier safety programs. Under this grant program, the Motor Carrier Safety Assistance Program (MCSAP), the States agree to enforce federal or compatible State motor carrier and hazardous materials regulations. This grant program will increase significantly the number of roadside insepctions of motor carriers nationwide and will be a major source of standardized, uniform data for BMCS' rating and monitoring processes. A signifcant part of this program is the electronic sharing of data among States and the BMCS.

Over the next several years a majority of the States will implement fully their enhanced, uniform motor carrier safety programs, set up their computer systems, and make safety data available to BMCS. In the interim, BMCS proposes to issue a one-time questionnaire to collect data on the operations of the unrated carriers. BMCS currently has very little data on the unrated carriers. The questionnaire will help to identify all unrated carriers and provide information on the scope and nature of their operations. The information gathered will be entered into the data system and integrated with any other information on the carrier already in the system to assess and monitor the safety performance of the carrier.

Safety Rating: Current Procedure

The current Part 385, of Title 49, Code of Federal Regulations (cited as 49 CFR Part 385), titled "Safety Ratings," provides that motor carriers, whether or not they are seeking ICC operating authority, are currently assigned a safety rating based upon safety management audits, investigations, and other factors reflecting upon a carrier's compliance with the Federal Motor Carrier Safety and Hazardous Materials Regulations. The rating assigned is primarily based upon evidence of the carrier's current degree of compliance. Consideration is also given to the

carrier's past compliance record, including improvement or lack of improvement over previous audits and roadside inspections, the recommendation of the Federal Highway Administration field staff, the carrier's accident record, and violations of state-related statutes or regulations. In evaluating the foregoing factors, consideration is also given to violations rates, vehicle out-of-service rates, and accident ratios as compared with the average rates for similar motor carriers.

Safety ratings are assigned on a case-by-case basis. While the total number of violations is a factor in assigning safety ratings, greater weight is given to the nature and extent, severity, motive, and the consequences, or possible consequences, of those violations.

Program Goals

Under provisions proposed below, the Bureau of Motor Carrier Safety (BMCS) will begin to acquire information on every motor carrier's operation by requiring each unrated motor carrier to complete a safety fitness questionnaire on a class-by-class basis within the next 3 years. The questionnaire, together with other available information on the carrier's safety record and practices, would help BMCS to assess the safety performance and monitor those carriers and eventually assign them a safety fitness rating.

The goal with respect to the rating scheme is for every motor carrier to have a safety rating assigned following a personal visit and review of its safety procedures and operating results.

The questionnaire is but one part of a broader program to monitor closely motor carriers' compliance through data on the carrier obtained from many sources. This program would be implemented in three phases, as follows: (1) Continue the assignment of safety ratings using information from compliance reviews, enforcement audits, accident reports, and roadside inspection and accident data from the states and BMCS; (2) review the responses to the questionnarie and prioritize BMCS activities toward unrated motor carriers; and (3) enhance and integrate available motor carrier data from all sources for the purpose of continually monitoring the safety records of all carriers.

Proposed Questionnarie

The questionnaire was developed to take advangage of BMCS' analysis of the safety data in its records of the approximately 32,000 motor carriers that have been rated in the past. Using the data on the rated carriers, BMCS is developing safety problem indicators that are a function of the size of the carrier, total mileage traveled, type of cargoes transported, and accident and violation histories. These indicators will identify carriers whose safety performance is outside the norm (in either direction) for their type, size and location of operation. Based on its program experience, BMCS believes that the information sought will help BMCS establish priorities for on-site compliance reviews of the carriers' safety and maintenance systems. Specific comments are requested on all aspects of the questionnaire, which is attached.

Some of the information requested on the form, such as reportable accidents, is requried under the current regulations to be filed with BMCS. Past accident information outside the norms is an indicator of possible systemic problems that could impair a carrier's safety fitness. This information also will bring the carriers that have not previously filed accident reports current with BMCS, and verify the accident history of carriers that have been filing reports. Note, however, that submission of false information on the questionnaire would subject violators to criminal prosecution, and BMCS intends to take action if comparison of the questionnaire data with other information on file indicates such falsification may have taken place.

From a list in the questionnaire, the carrier would check the states in which it operates, the principal types of cargoes and, if applicable, classes of hazardous materials transported. Operational data is requested for each of 3 prior years pertaining to: average number of drivers and power units used, annual commercial vehicle mileage, accident data, number of reportable hazardous materials incidents, citations drivers received for traffic violations, and out-of-service actions against drivers and vehicles by federal, state, or local officials. The annual commercial vehicle mileage and number of accidents meeting the reporting requirements of 49 CFR Part 394 are considered the most critical in this series of data elements. The accident ratio per million miles of travel can be computed from this data and would be an important criterion in establishing the priorities for compliance reviews.

Comments are requested particularly with respect to the reliability of self-reported accident, violation, and mileage data. BMCS intends to make a check of its own and of state files where available to make an independent determination, but there will be cases in which the self-reported information will be the only data available. The recent accident and violations record will be used principally to determine the priority for the carrier receiving a compliance review. Too many accidents and/or violations, compared to the norm for the carriers' type of operation, could indicate deficiencies in safety systems; too few reported accidents might indicate lack of understanding of or compliance with reporting requirements. No carrier would be rated solely on the basis of this self-reported information, but one whose self-reported record fell outside the norms for its type of operation will receive a higher priority for compliance review. Comments are requested on the value and probable reporting authenticity of these data elements, especially the mileage and accident data. Are there other statistics that should be collected? How can exposure and operational information be gathered in the future? How difficult will it be for a motor carrier to supply this information from its files? Commenters also should suggest alternative methods that could achieve the desired results. In addition, commenters should address whether all carriers, including those already rated, should be required to file the questionnaire.

BMCS is also considering granting some form of amnesty to carriers that provide accident history information in response to the questionnaire to encourage accuracy. This amnesty could be for prior failure to file the required reports. An amnesty provision would "cure" past violators for failure to file the reports. However, it also could affect other enforcement aspects of the BMCS program and commenters should address whether such a provision is appropriate. In addition, the Department also will consider changes to the accident reporting requirements in a separate rulemaking to improve the incidence of accident reporting. Other possible means are available to encourage the submission of accurate reports such as rating a carrier as "unsatisfactory" if it fails to file or giving that carrier a higher priority for a compliance review. In addition, the motor carrier identification number, discussed below, could be used or displayed to indicate that the carrier has filed the questionnaire. Further, and as discussed below, the insurance industry also may provide a source of incentives for carriers to file accurate responses to the questionnaire. Commenters should address these approaches and possible problems or benefits of each and also submit other viable suggestions.

The filing entity is queried about the present amount of financial

responsibility (insurance) in effect to cover public liability, property damage, and environmental restoration. The minimum amount of financial responsibility required can be determined by referring to the types of cargoes transported and the type of motor carrier. Financial responsibility coverage is a prerequisite to commencing and continuing operations. Comments are requested on the necessity and appropriateness of this inquiry and also as to the desirability of requiring carriers to submit copies of their current form MCS–90 or MCS–82 showing compliance with 49 CFR Part 387.

A motor carrier will be required to respond to this questionnaire only one time. After all currently unrated motor carriers have responded to the questionnaire, it will be used only to register and evaluate new entrants into the motor carrier industry.

The BMCS safety specialists will be located in FHWA's Regional and Division field offices. Each safety specialist will be assigned a caseload of motor carriers to track and monitor their compliance. All of the BMCS activities for an individual carrier, such as compliance reviews, complaint investigations, enforcement actions or accident investigations would be channeled through the safety specialist. In addition, as accident data, MCSAP roadside inspection data and other information is collected and analyzed at headquarters, the information pertaining to each safety specialist's caseload will be sent to the safety specialist. This procedure will also give the motor carriers a specific local person to contact with questions or for information on safety regulations and requirements.

If the questionnaire and other information on the carrier indicates a possible safety problem or the need to clarify any information, the carrier would be contacted by the safety specialist. Carriers which appear to have safety problems would be prioritized for compliance review. Other carriers also would be subject to appropriate review.

It is proposed that carriers be classified according to principal cargo transported and assigned a priority basis for receiving the questionnaire. Carriers would generally be assigned to groups based on their potential for a catastrophic accident, the type of commodity being transported and the accident risk factor involved in transporting certain commodities. These accident risks factors were determined from analysis of BMCS accident reports. In some instances, a small segment of carriers would arbitrarily be included with some other group to maintain the average size of each group. The following groups of carriers have been established in priority order for purposes of receiving the questionnaire.

Group 1 (approximately 21,500)

Carriers Transporting

Hazardous materials:
  In packages
  In bulk
Chemicals, N.O.S.
Passengers
Household goods
New furniture
Motor Vehicles
Mobile Homes
Driveaway-towaway

Group 2 (approximately 14,300)

Carriers Transporting

Produce, fruits
Livestock
Beverages
Meat Products
Grain, feed, hay

Group 3 (approximately 16,100)

Carriers Transporting

Machinery, large
Metal
Building Materials
Oil field equipment
Coal

Group 4 (approximately 16,000)

Carriers Transporting

General freight
Non-refrigerated food
Paper products
Logs, poles, beams
U.S. Mail

Groups 5 through 10

All other categories

Would receive a questionnaire in 6 groups of approximately 20,000 carriers per group.

When the final rule is published in the **Federal Register,** notification will be provided to the first group of carriers required to file the questionnaire. Once the process is implemented, subsequent notices will be issued to notify the industry which group or segment of carriers will next be required to submit the questionnaire. BMCS will send these notices to all known carriers within each grouping and all carriers will be required to file the questionnaire with their appropriate group even if they do not receive a questionnaire from BMCS. For each class of carrier, BMCS also will publish a notice in the **Federal Register** and in other publications to notify carriers of their responsibility to file the questionnaire. Thus, even carriers that do not receive a questionnaire from BMCS will be obligated to file the questionnaire with the appropriate group. Copies of the form will be available from the state BMCS office. It is suggested that motor carriers be allowed 60 days to complete and return the questionnaire to the BMCS. Since filing the questionnaire is the first step in the BMCS safety review process, we anticipate that carriers that do not respond to the questionnaire could encounter problems with state police, state motor carrier enforcement personnel, insurance companies, and shippers, as well as potential action by BMCS. Comments are requested concerning how we ensure that all carriers become aware of the requirement and file the questionnaire to avoid these problems. We are particularly interested in responses from the insurance industry and state insurance regulatory bodies concerning what steps can and will be taken to help insure that the trucking companies applying for insurance have filed the proposed questionnaire with FHWA. We also are concerned in general about the insurance implications for those carriers that do not respond to the questionnaire, or falsify their responses, or that are rated "unsatisfactory." We anticipate that these carriers may have additional problems with insurance companies and may not be able to meet, where applicable, DOT minimum insurance requirements. Commenters should address the general insurance implications and problems carriers may encounter if they fail to file the questionnaire or falsify responses.

Motor Carrier's Identification Number

Currently when the BMCS discovers and positively identifies a motor carrier operation or a shipper of hazardous materials subject to federal regulation, that entity is immediately entered in the BMCS Computerized Management Information System. The entity is assigned a carrier census identification number (ID Number) or identifier. The ID number serves to provide positive unique identification of the entity and distinguishes among entities having the same or similar names or trade names. This number has previously been used only for internal BMCS recordkeeping. BMCS is proposing using the carrier census number as an industry wide number for all federal and state motor carrier enforcement and monitoring. Comments are requested on this proposal.

The carrier ID number will appear on the questionnaire mailed to a carrier. It would also be shown on each document sent to a carrier. While BMCS will address vehicle identification in a separate rulemaking, comments are

requested on the feasibility and effectiveness of requiring carriers to include the ID number in some fashion, either on certain documents or, where applicable, the exterior of each power unit with its ID number. This would be especially beneficial in coordinating violation data recorded by state and local government enforcement officials. It could serve to authenticate the offender and prevent the violations from being recorded against an innocent carrier. Further, this number could aid in the proper identification of carrier's accidents reported through state or local police to the MCSAP data system. Currently, police accident reports only include the driver's name and it has been difficult in some cases to identify the carrier.

Applicants to ICC for New or Additional Authority

Section 215(d) of the Motor Carrier Safety Act of 1984 requires that the Interstate Commerce Commission (ICC) shall find any applicant for authority to operate as a motor carrier to be unfit if the applicant does not meet established safety fitness requirements and shall deny the application.

For unrated motor carriers applying to ICC for new or additional operating authority, BMCS is considering evaluation of their safety fitness in accordance with the procedures outlined above. That is, such carriers will be required to submit the questionnaire. BMCS also will review information gathered from the BMCS accident reporting system and the states, and in evaluating a carrier's safety fitness.

There are, however, two problem situations on which comments are specifically requested. First, there may be entities applying for new ICC authority who are just starting in business as motor carriers and who may have neither a prior performance record nor a current operation for BMCS to review.

If BMCS required these entities to first obtain a fitness rating this could delay the ICC in granting a safe carrier authority to operate. Such an occurrence would tend to inhibit new entry, and thus be counter to the basic objective of economic deregulation. To break the impasse, BMCS is considering reviewing such an entity's proposed operation along with the experience and qualifications of its management and personnel in order to judge its prospects for becoming a safe motor carrier. BMCS could then make a recommendation to ICC that the entity be issued temporary authority subject to a compliance review after the carrier has been in operation long enough to make such review meaningful. An applying entity whose proposed operation had safety flaws could be assisted by the BMCS safety specialist to remedy the problem so that a favorable recommendation to the ICC could be made at a later time. Comment is requested on the safety and operational ramification of this concept. Is the number of such new entries likely to be large enough to warrant special treatment? Are they likely to pose sufficient safety problems to warrant such treatment? How could BMCS evaluate their prospects for safety before commencing operations? Should the questionnaire be modified for such carriers, and if so, how? Comments are also requested on whether BMCS should be obligated to complete its initial assessment of the carriers' safety prospects quickly, e.g., within 30 days, to avoid posing an unnecessary barrier to entry.

A second problem area would exist only in the next few years when the questionnaires are being distributed to carriers on a class-by-class basis and BMCS safety specialists are conducting compliance reviews for those carriers identified as presenting the greatest safety risk based on the questionnaire response.

An unrated carrier applying for new or additional ICC authority would also require a high priority for compliance review in order to obtain a safety fitness rating. Would this place them at a competitive disadvantage against the existing carriers in their class who would not yet have been required to answer the BMCS questionnaire? Should such a carrier, particularly one whose class for distribution of questionnaires had not yet come up, be advanced in priority ahead of those carriers who might pose greater safety risks? Should BMCS provide some form of expedited or interim system so that it does not impede safe new entrants from providing service? Should BMCS recommend that ICC grant temporary authority to such carriers based on available information, pending input of additional information? If the ICC is not willing to grant temporary authority, what other approach should BMCS pursue?

Comments are also requested on the feasibility of the ICC issuing limited-term authority conditioned upon the applicant subsequently obtaining a safety rating of satisfactory. After the temporary grant, these carriers would be placed on a priority list for a safety compliance review. If the carrier was subsequently assigned an unsatisfactory safety rating, the operating authority could then be revoked or permanent authority would not be issued. Comments on this are particularly desired, including whether these procedures should apply to a grant of temporary authority, and opinions as to an appropriate length of time for which temporary authority could be granted. Comments are also requested on whether BMCS should be obligated to conduct a compliance review of such carriers within a short time period, such as 3 months from the carrier's commencement of operations.

In the above discussion, BMCS is considering requiring carriers who seek ICC authority to first obtain a satisfactory rating from BMCS. The proposed rule prohibits carriers who receive an unsatisfactory rating from operating (until they perform remedial action). It does not, however, prohibit other carriers from operating, including the large number of carriers who have not yet been rated. Upon submitting the questionaire, when due for their class, these carriers could fully comply with the proposed rule, and hence could receive ICC operating authority under section 215(d). BMCS invites comments on whether applicants for ICC authority should be subject to additional restrictions by requiring them to first obtain a satisfactory safety rating. Comments who advocate subjecting these carriers to such a restriction should explain why they feel a safety rating should be required and discuss the competitive effects on the industry of such a requirement.

The FHWA and the ICC established a joint working group to implement section 215 of the Motor Carrier Safety Act of 1984 (the Act). Three members of each agency were designated for this task.

In subsequent meetings and exchange of correspondence, the two agencies provided each other information for use in the rulemaking on safety fitness as well as the ICC's rulemaking under section 226 of the Act concerning certificates of registration for foreign carriers.

The ICC staff has indicated that the filing of a questionaire with the BMCS for the purpose of obtaining safety rating may create problems in the timely issuance of emergency temporary authorities (ETA's) where the immediacy of transportation need is greatest. The ICC staff are of the opinion that safety rating procedures potentially could impede licensing in a manner not contemplated by the Motor Carrier Safety Act of 1984. The ICC staff suggests that a resaonable accommodation of this concern would be exclusion of ETA applicants from the

safety fitness determination requirements.

Although the BMCS recognizes the urgency and necessity of issuing ETA's in a timely manner, it is of the opinion that an ETA should not be issued, any more so than any other authority, unless the motor carrier is willing and able to conduct a safe operation, nor that the Congress intended otherwise. Therefore, comments are being requested on this issue, and whether there are alternatives that should be considered.

A summary of the revisions referred to above follows: It is proposed that existing Part 385 be given a new heading, Safety Fitness Determination. All proposed sections would be renumbered.

Section-by-Section Discussion

Section 385.1 Purpose and scope, would be a new section containing a brief statement of the purpose of the regulation and a description of the motor carriers to which it applies.

Section 385.3 Definitions. The proposed definition for a safety rating of "conditional" was rewritten for clarification.

The proposed definition for a safety rating of "unsatisfactory" was rewritten to prohibit further operations in interstate or foreign commerce until remedial action has been taken. The carrier is required to certify before operating to the BMCS the remedial action taken and may not operate until such remedial action is taken and certified to BMCS. BMCS states its intention to reaudit a carrier within 6 months of the assignment of an unsatisfactory safety rating to verify compliance with applicable regulations. Operating prior to completing remedial action and notifying BMCS will subject the carrier to criminal or civil sanctions.

Section 385.5. Questionnaire. This is a new section requiring all unrated carriers to file a questionnaire as a first step in the BMCS safety review process. This information will be used to prioritize unrated carriers for compliance reviews leading to safety ratings. The questionnaire will not be incorporated in Part 385; instead, it is attached to this NPRM for the purpose of obtaining comments on the questionnaire from interested parties. Comments are invited on the information that should be solicited in the questionnaire.

Section 385.7 Factors to be considered in determining ratings. This section is amended to include data collected by state enforcement programs and data collected during BMCS compliance reviews. In addition, any failure to file a questionnaire or falsify answers to the questionnaire will be considered in determining a rating. Comments are invited on the factors proposed for consideration in determining safety.

Section 385.11 Notification of safety ratings. The paragraph advising that carriers would not be furnished notices of their safety ratings except upon request would be deleted since this is covered in § 385.28. The requirement that a requester identify a carrier by its ICC docket number would only apply to ICC authorized carriers.

Section 385.15 Penalty provisions. Carriers must file the questionnaire within 60 days of notification by BMCS, or by the timetable published in the **Federal Register** for that carriers' class, whichever date is sooner. Carriers will be divided into categories based on their principal cargo and will be notified on a staggered schedule over a three year period. Carriers not on record with BMCS must also file the questionnaire even if a form is not sent to them.

Regulatory Evaluation

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, it has been determined that this rulemaking is a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the total estimated indirect benefits. It is anticipated that the direct cost of this rulemaking to the individual applicants will be minimal, since the FHWA proposes to require the reporting of minimum information necessary to make a determination of potential safety fitness. All of the information that will be requested in the questionnaire is information that carriers are already required to keep in their records under current regulations. Commenters should address how easy, difficult, time consuming or expensive the information sought would be to compile and whether any of the proposed questions are ambiguous. The benefits provided by this proposed rule would be lower accident rates and consequently lower insurance premiums. The economic and safety impacts of this proposed rule are further discussed and analyzed in a draft Regulatory Evaluation and initial Regulatory Flexibility Analysis which have been prepared and are available for inspection in the public docket and may be obtained by contacting Mr. Gary E. Curtis at the address provided under the heading "For Further Information Contact".

Regulatory Flexibility Act

With regard to the assessment of the impact this rule will have on small entities pursuant to the Regulatory Flexibility Act (Pub. L. 96–354), the reasons for, objectives, and legal basis of this action have been previously explained in this notice. In consideration of the potential benefits, it does not appear that this proposed action would have an adverse or disproportionate effect on a number of small entities.

The collection of information requirements contained in this proposed rule is being submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h).

List of Subjects in 49 CFR Part 385

Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety).

In consideration of the foregoing, the FHWA proposes to revise 49 CFR Part 385 to read as set forth below.

Issued on: June 18, 1986.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

PART 385—SAFETY FITNESS DETERMINATION

Subpart A—Safety Ratings

Sec.

Authority: Sec. 215, Pub. L. 98–554, 98 Stat. 2829; 49 U.S.C. 504(b) and 3102; 49 CFR 1.48 and 301.60.

Subpart A—Safety Ratings

§ 385.1 Purpose and scope.

This subpart prescribes procedures that apply to the Federal Highway Administration's Bureau of Motor Carrier Safety (BMCS) when:

(a) Assigning safety ratings to motor carriers, including but not limited to applicants for new or additional operating ICC authority who are currently operating as motor carriers

(b) Reporting to the Interstate Commerce Commission (ICC) upon the safety fitness of motor carriers on record with the BMCS having an assigned safety rating of satisfactory, conditional,

insufficient information, or unsatisfactory.

§ 385.3 Definitions of motor carrier safety rating.

For the purposes of this subpart:

Conditional means records indicate noncompliance with one or more safety requirements, but the lack of compliance and the carrier's safety record does not warrant an unsatisfactory rating. The carrier has been informed of areas of noncompliance. The carrier may continue to operate in interstate or foreign commerce but should immediately remedy the deficiencies, and certify to the BMCS the action taken, within 90 days. Continued noncompliance may result in an unsatisfactory rating.

Insufficient information means insufficient information available upon which any other determination can be made.

Questionnaire means a document required to be completed by all unrated motor carriers, including applicants for new or additional operating authority from the Interstate Commerce Commission, as the initial step in the safety review process for obtaining a safety fitness rating.

Satisfactory means records indicate substantial compliance with safety requirements.

Unstisfactory means records indicate evidence of substantial noncompliance with safety requirements. The entity has been warned of areas of concern. A carrier receiving an unsatisfactory safety rating is prohibited from operating in interstate or foreign commerce until it has taken, and certified to BMCS that it has taken, remedial action. Violators of this requirement will be subject to criminal and/or civil sanctions. BMCS intends to reaudit a carrier within 6 months of the assignment of an unsatisfactory safety rating to verify compliance with applicable federal regulations.

§ 385.5 Questionnaire.

(a) All unrated motor carriers are required to file a questionnaire as the initial step in the BMCS review process. BMCs will use the information submitted in the questionnaire to establish priorities for on-site compliance reviews of the carriers' safety and maintenance systems.

(b) The questionnaire must be in the form and content prescribed by BMCS.

(c) The fully completed questionnaire, form MCS–150, must be filed with the Director, Bureau of Motor Carrrier Safety, 400 Seventh Street, SW, Washington, D.C. 20590.

(d) The Chief, Safety Fitness and Enfrocement Division, may request clarification of any entry in the questionnaire.

§ 385.7 Factors to be considered in determining ratings.

In determining a carrier's safety rating, the following applicable factors will be considered:

(a) An evaluation of the efficacy of the carrier's systems for assuring safe operation and compliance with the FMCSR, as determined through BMCS carrier compliance reviews.

(b) Violations discovered in BMCS safety management audits during the past 5 years. The BMCS will base its evaluation on the ratio and severity of violations discovered to the extent of the carrier's operation audited, the number of drivers and vehicles checked for compliance, and a comparison of the carrier's record with the records of similar carriers and national data.

(c) Violations discovered during BMCS and state roadside driver/vehicle inspections in the past 5 years. The BMCS will determine and consider the number of out-of-service violations per inspection in comparison with the records of similar carriers and the national average.

(d) The carrier's improvement or lack of improvement over the last 5 years.

(e) Federal violations involving falsification of required safety records.

(f) Federal violations involving failure to submit required reports or to maintain required records.

(g) The recommendations made by the Office of Motor Carrier Safety for the Region in which the motor carrier maintains its principal office address.

(h) The carrier's accident record during the previous 5 years. The BMCS will examine the carrier's reportable accident ratio per million miles of operation in comparison to the accident ratios of similar carriers.

(i) Violations of state safety rules, regulations, standards, and orders applicable to commerical motor vehicle safety when compatible with federal rules, regulations, standards and orders.

(j) Failure to file the questionnaire or falsifying responses to the questionnaire required by this part.

§ 385.9 Determination of safety ratings.

(a) Ratings will be determined by the Chief, Fitness and Enforcement Division, Bureau of Motor Carrier Safety, using the factors established in § 385.5.

(b) The Chief, Fitness and Enforcement Division, will select comparative carriers based on one or more of the following identifiers:

(1) Commodity transported,

(2) Type of operation, and/or

(3) Size of carrier by number of power units operated or drivers used.

§ 385.11 Notification of safety ratings.

(a) Ratings will be made available to the ICC by remote computer terminals by entry of the motor carrier's name or ICC assigned docket number. If the rating is "satisfactory" no written confirmation will be furnished. If the rating is "conditional," "unsatisfactory," or "insufficient information," written confirmation will be furnished to the ICC upon its request.

(b) Anyone wishing to obtain a carrier's safety rating must submit a written request to the BMCS identifying the carrier by name, principal office address, and if holding authority from the ICC, the ICC assigned docket number. The BMCS will provide a written response to each request within ten business days. The BMCS will not respond to nonwritten requests. Requests must be addressed to the Director, Bureau of Motor Carrier Safety, Federal Highway Administration, HMC–12, 400 Seventh Street, SW., Washington, DC 20590.

§ 385.13 Review of safety ratings.

(a) Any carrier may petition the Director, BMCS for a review of its safety rating. The petition for review must be accompanied by data the carrier is relying on as the basis for its petition for a change in safety rating.

(b) The Director shall notify the carrier in writing of a decision on a petition for review of the safety rating.

(c) The Director may request the carrier to submit additional data and attend a conference to discuss the safety rating. Failure to provide information in response to any reasonable or lawful request, or failure to attend the conference will result in dismissal of the petition for review of the carrier's safety rating.

§ 385.15 Penalty provisions.

Failure to file the questionnaire within 60 days of receipt, or furnishing misleading information or making false statements upon the questionnaire will subject the offender to the penalities prescribed in Title 49, United States Code, sections 521(b) or 522(b).

Appendix

Form MCS–150 (6/9/86)

Note.—The following appendix will not appear in the Code of Federal Regulations.

Bureau of Motor Carrier Safety, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

Questionnaire

I. Filing entity

Legal Name ———

Trade Name (If any) ———

Business Address (Street/P.O. Box/Route Number) ———

City———

State ———

Zip code———

Business phone (Include Area Code) ———

Person to contact for safety compliance information:

Name ———

Title ———

Do you conduct commercial motor carrier operations in interstate or foreign commerce? Yes ——— No ———.

How long have you conducted commercial motor carrier operations in interstate or foreign commerce?

—— Years.

Pursuant to Section 215 of the Motor Carrier Safety Act of 1984 and the regulations codified in Title 49 C.F.R. Part 385, you are required to complete this questionnaire within 60 days. The purpose of this questionnaire is to provide the Federal Highway Administration (FHWA) information on your motor carrier operation.

*New carriers should base answers on anticipated activities and should not answer questions marked with an *.*

If you have any questions on this form or questions concerning safety in general please contact your nearest BMCS office. Attached to this form is a list of the addresses and phone numbers of the BMCS offices nationwide.

If you no longer conduct operations in interstate or foreign commerce please complete Section I, sign the verified statement at the end of the form, and return this survey in the enclosed envelope. Your name will be deleted from the motor carrier census of active carriers.

II. Background

In which states do you operate in interstate or foreign commerce?

15. Scope of carrier operations (circle):

United States: (U.S.) or possessions: AL AK AZ AR CA CO CT DE DC FL GA HI ID IL IN IA KS KY LA MA MD ME MI MN MO MS MT NC ND NE NH NJ NM NV NY OH OK OR PA RI SC SD TN TX UT VT VA WA WV WI WY GU PR VI AS —

Canada: AB BC MB NB NF NT NS ON PE PQ SK YT —

Mexico: BN CH CI DF DG NL SO — — — —

16. Carrier operates:

A. Inter & intrastate
B. Interstate only
C. Intrastate only

17. ICC Docket Nos.:

A. ———

B. ———

C. ———

Which cargoes do you transport? (circle):

18. Cargo classifications:

A. General freight
B. Household goods
C. Metal: sheets, coils, rolls
D. Motor vehicles
E. Driveway/towaway
F. Logs, poles, beams, lumber
G. Bldg. materials
H. Mobile homes
I. Machinery, large objects
J. Produce, fruit, seafood
K. Liquid or gas in cargo tanks
L. Intermodal containers
M. Passengers
N. Oilfield equip. or service
O. Livestock
P. Grain/feed/hay
Q. Coal/coke
R. Suspended meat
S. New furniture or fixtures
T. U.S. mail
U. Chemicals
V. Commodities in dry bulk
W. Non-refrigerated foods
X. Beverages
Y. Paper products
Z. Other

III. Carrier historical data:

For each of the past three calendar years beginning with the current calendar year, complete the following sections (A, B & C) for your operations and including those vehicles and drivers that are leased to you:

A. Operational data:

Average number of drivers used: (1) ——— (2) ——— (3) ———.

Average number of power units over 10,000 pounds: (1) ——— (2) ——— (3) ———.

Total annual commercial vehicle miles: (1) ——— (2) ——— (3) ———.

*B. Accident data:

Number of accidents that meet the minimum reporting requirements for the FMCSR: (1) ——— (2) ——— (3) ———.

Number of incidents involving hazardous materials that are reportable to DOT under 49 C.F.R. 171.16: (1) ——— (2) ——— (3) ———.

Number of accidents where your drivers or vehicles were cited for contributory violations or were declared at fault: (1) ——— (2) ——— (3) ———.

*C. Violation data:

Number of state and local traffic violations (other than violations involving only parking) for which your trucks or drivers were cited: (1) ——— (2) ——— (3) ———.

Number of times your trucks were placed out of service by federal, state, or local officials: (1) ——— (2) ——— (3) ———.

Number of times your drivers were placed out of service by federal, state, or local officials: (1) ——— (2) ——— (3) ———.

Do you have proof of financial responsibility for the insurance policy(s)? (Check).

—— An endorsement for the policy(s) of insurance on Form MCS–90 (90B).

—— A surety bond on Form MCS–82(82B).

—— Other.

Verified statement:

I, ———, certify under penalty of perjury under the laws of the United States of America, that the information submitted in this questionnaire and all other evidence filed or to be filed is true and correct. Further, I certify that I know that willful misstatements or omissions of material constitutes federal criminal violations punishable under 49 U.S.C. 522(b) by fines up to $5,000. Additionally, I know that these misstatements may be punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to five years for each offense.

Signature

Date

(Title of authorizing official)

[FR Doc. 88–14121 Filed 6–24–86; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. T86–01; Notice 1]

Motor Vehicle Theft Prevention; Insurer Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is issued pursuant to section 612 of the Motor Vehicle Information and Cost Savings Act which requires each subject insurer to furnish annual reports to NHTSA. That section requires NHTSA to periodically compile and publish the information provided by the insurers in these reports. These insurer reports are intended to aid the agency in implementing the anti-motor vehicle theft provisions of Title VI, including the requirement in section 614 that the agency submit one report to Congress not later than October 1987 and another not later than October 1990. The October 1990 report is required to include a detailed evaluation of the effectiveness of the Federal motor vehicle theft prevention standard (49 CFR Part 541) and an assessment of whether that standard should be extended to other classes of motor vehicles, such as trucks, vans, and motorcycles.

To carry out these intended purposes, this notice proposes to require that certain insurers report annually on the thefts and recoveries of stolen vehicles that they insure, the rating rules and plans they use to establish the premiums

charged for comprehensive insurance coverage and the premium penalties for vehicles considered more likely to be stolen, the actions undertaken by them to reduce the premiums they charge for comprehensive insurance coverage because of a reduction in motor vehicle thefts, and the activities undertaken by them to assist in deterring or reducing motor vehicle thefts. With the exception of a requirement for information concerning discounts offered for vehicles with anti-theft devices, all of the proposed requirements are mandated by Title VI.

The agency has attempted to minimize the number of insurance companies subject to the proposed reporting requirement to the number necessary to provide sufficient information to implement Title VI. Section 612 allows the agency to exempt small insurers from the reporting requirements, if the agency determines that the exemption will not significantly affect the validity or the usefulness of the information collected in these reports, either nationally or on a State-by-State basis. NHTSA is proposing to use this authority to exempt all but 31 insurance companies from these reporting requirements. The 31 insurance companies that would be subject to these reporting requirements do not qualify as small insurers, as that term is defined in section 612.

DATES: Comments on this notice must be received by this agency not later than July 25, 1986. The final rule on this subject will be effective on September 30, 1986, and the first reports under this rule will be due in October 1986.

ADDRESS: Comments should refer to Docket No. T86-01; Notice 1, and be submitted to: Docket Section. NHTSA, Room 5109. 400 Seventh Street, S.W., Washington, D.C. 20590. (Docket hours are 8:00 am to 4:00 pm. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Market Incentives, NHTSA. 400 Seventh Street, S.W., Washington D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Pursuant to Title VI, NHTSA promulgated a vehicle theft prevention standard mandating the marking of the major parts of frequently stolen vehicles. (October 24, 1985; 50 FR 43166).

Section 612 of the Cost Savings Act requires the submission of annual reports by insurers to this agency and specifies minimum content requirements for those reports. Section 612(b) requires NHTSA to periodically compile and publish the information set forth in the insurer reports, in a form that will be helpful to the public, including Federal, State, and local police and the Congress. These insurer reports are intended to aid the agency in implementing Title VI, including the requirement in section 614 that the agency submit a report to Congress not later than October 1987 and another not later than October 1990. Section 614 requires that the October 1990 agency report include a detailed evaluation of the effectiveness of the Federal motor vehicle theft prevention standard (49 CFR Part 541) and an assessment of whether that standard should be extended to other classes of motor vehicles, such as trucks, vans, and motorcycles.

The required contents of the insurer reports are set forth in section 612(a)(2) of the Cost Savings Act. That section specifies that they must include—

(A) the thefts and recoveries (in whole or in part) of motor vehicles;

(B) the number of vehicles which have been recovered intact;

(C) the ratings rules and plans, such as loss data and rating characteristics, used by such insurers to establish premiums for comprehensive insurance coverage for motor vehicles, including the basis for such premiums, and premium penalties for motor vehicles considered by such insurers as more likely to be stolen;

(D) the actions taken by insurers to reduce such premiums, including changes in rate levels for automobile comprehensive coverages, due to a reduction in thefts of motor vehicles;

(E) the actions taken by insurers to assist in deterring or reducing thefts of motor vehicles; and

(F) such other information as the [NHTSA] may require to administer this title and to make the reports and findings required by this title.

The Legislative Intent Underlying Section 612

The agency believes that the legislative intent underlying the insurer reporting requirements of section 612 is best represented by the following passage from the House Report:

"The Committee anticipates that much of the information required by this provision is already provided by the insurance industry to States and that the generation of new data in new formats will not be necessary where this is the case. Of course, DOT will have to examine the matter to ensure that these requirements are fully met. The Committee urges the [NHTSA] to devise a reporting system for insurance information with an eye toward imposing requirements which will be low cost and of minimal burden to the industry, but which will provide *all* of the data required by this section." (emphasis added) H.R. Rep. No. 1087, 98th Cong., 2d Sess., at 21 (1984). The corollary to the first quoted sentence is the possibility that some of the required information is not already provided by the insurers and therefore the generation of new data or the provision of data in new formats will be necessary in those instances. The last quoted sentence makes clear that NHTSA has no discretion regarding the collection of all of the information specified in section 612.

Based on the language of section 612 and this statement of legislative intent, the agency is proposing to consciously tailor the reporting requirements so that:

(1) they require insurers to report only information that is essential to the purposes of Title VI and do not require information that is not related to the agency's tasks under the title;

(2) they impose the smallest burdens both in terms of time and money on the reporting insurers that is consistent with the agency's informational needs under Title VI; and

(3) they require insurers to report only data already gathered by insurers for their own purposes to the maximum extent possible, and only require generation of new data when these new data must be reported to satisfy the explicit requirements of section 612.

Who Must Report

Section 612 defines the term "insurers" very broadly, and requires all such parties to file annual reports with the agency unless exempted by the agency. There are two groups which fall within that term. First, every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer under section 2(12) of the Cost Savings Act (15 U.S.C. 1901), regardless of the size of the business. Second, section 612(a)(3) specifies that, for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by an insurer.

Congress did not intend, however, that every insurer be required to submit reports. If every insurer were required to do so, NHTSA would receive thousands

of reports each year. Congress recognized that it is possible for the agency to draw valid conclusions about the anti-theft program based on data gathered from only a representative sample of insurers. This principle is generally accepted and is used by groups like polling organizations and this agency in all of its studies. Accordingly, Congress included two provisions in section 612 authorizing the agency to exempt certain insurers, particularly the smaller ones, from these reporting requirements.

The first exemption provision is section 612(a)(5) of the Cost Savings Act. Subject to several limitations noted below, section 612(a)(5)(A) requires the NHTSA to exempt, by rule, small insurers from the requirements of section 612. Section 612(a)(5)(C)(i) defines a "small insurer" as one whose premiums for motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States.

The agency's authority to exempt small insurers is subject to several limitations. First. the agency can exempt small insurers only if it "finds that such exemption will not significantly affect the validity or usefulness of the information collected and compiled under this section, nationally or State-by-State." Second, some insurers who meet the definition in section 612(a)(5)(C)(i) are nevertheless ineligible for any exemption under section 612(a)(5) and others are eligible for only a partial exemption. Section 612(a)(5)(B) provides that NHTSA *cannot* exempt as a "small insurer" under section 612(a)(5) any person considered an insurer solely because it has a fleet of 20 or more vehicles used primarily for rental or lease and not covered by theft insurance policies issued by an insurer. In other words, rental and leasing companies cannot qualify for an exemption by satisfying the requirements for small insurers. Further. section 612(a)(5)(C)(ii) provides that if any insurer satisfies the section 612(a)(5)(C)(i) definition. but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, that insurer must report on its activities within that State. See H.R. Rep. No. 1087. 98th Cong., 2d Sess., at 20 (1984).

To implement these statutory criteria for exempting small insurers. NHTSA examined data on insurance companies published by A.M. Best. That organization estimates that there are approximately 2,200 insurance groups that issue motor vehicle insurance in the United States. Of this number, all but 20 of the companies would qualify as small insurers under the definition set forth in section 612(a)(5)(C)(i). Another 11 companies would be required to report on their activities only within a particular State, pursuant to the provisions of section 612(a)(5)(C)(ii). These figures are based on the A.M. Best data for 1984, the most recent year for which these data are available. These 31 companies received more than 57 percent of the total premiums paid for all forms of motor vehicle insurance issued by insurers within the United States in 1984. Additionally, these 31 companies received at least 30 percent of the total premiums paid for motor vehicle insurance in each one of the 50 States in 1984, ranging from a low of 30 percent in North Dakota to a high of 73 percent in Hawaii.

Because the reports would represent such a significant percentage of national and individual State premiums paid for motor vehicle insurance, NHTSA has tentatively concluded that the filing of reports by these 31 insurance companies will provide the agency with representative data, both nationally and on a State-by-State basis, and that these data will be sufficient for the agency to carry out its activities and responsibilities under Title VI. Conversely, NHTSA has tentatively concluded that exemptions for all small insurers will not affect the validity or usefulness of the information collected in these reports either nationally or on a State-by-State basis. Therefore, this notice proposes to exempt all insurance companies that qualify as small insurers within the meaning of section 612(a)(5)(C) of the Cost Savings Act from these insurer reporting requirements.

To implement this tentative determination, this notice proposes to include Appendices A and B in Part 544. Appendix A would consist of an annually updated listing of insurance companies whose premiums for motor vehicle insurance accounted for one percent or more for all forms of motor vehicle insurance issued by insurers within theUnited States. Those insurance companies listed in Appendix A are subject to the reporting requirements in Part 544 for each State in which they do business. Appendix B would consist of an annually updated listing of insurance companies whose premiums accounted for 10 percent or more of premiums for all forms of motor vehicle insurance issued by insurers in any one of the 50 States. Those insurance companies listed in Appendix B are subject to the reporting requirements in Part 544 only for the State or States listed in parentheses after the company's name. All insurance companies not on this list would *not* be required to file reports under this part. Following this procedure would comply with the requirement in section 612(a)(5)(A) that NHTSA "shall, *by rule,* exempt from the requirements of this section small insurers if the [agency] finds that such exemption will not significantly affect the validity or usefulness of the information collected and compiled under this section, nationally or State-by-State."

The agency also proposes to update Appendices A and B annually, shortly after A.M. Best publishes its revised listings, to reflect changes in premium shares for the insurance companies. An insurer who was not formerly subject to these reporting requirements and whose name is added to either Appendix A or B would have to file a report in the year following the year in which its name was added to the Appendix. For example, if an insurer's name is added to Appendix A in November 1987, the insurer would be required to file a report under this part in October 1988. This procedure would comply with the requirement in section 612(a)(5)(C)(i) that: "The regulations under this paragraph shall provide that eligibility as a small insurer shall be based on the most recent year for which adequate data is available, and that, once attained, such eligibility shall continue without further demonstration of qualification for one or more years, as the [NHTSA] considers appropriate."

NHTSA has based its listing of insurers that do *not* qualify as small insurers on information published by A.M. Best. NHTSA believes that the A.M. Best information is "adequate data" for the purposes of section 612(a)(5)(C)(i), quoted above. The agency believes that the A.M. Best information is both accurate and timely. Further, by implementing section 612(a)(5)(A) using information which is already voluntarily supplied to A.M. Best by insurance companies, NHTSA would not be imposing any additional information collection burdens on the insurance companies.

However, NHTSA is aware that not all insurance companies are members of this organization. Thus, it is possible that some non-member insurance companies would *not* qualify as small insurers, but would be exempted from these reporting requirements, simply because A.M. Best would not show the market shares for such companies.

NHTSA tentatively concludes that such a situation is not likely to arise.

A.M. Best members represent 98 percent of all insurance groups in the United States. Further, A.M. Best gathers information on non-affiliated insurance companies and publishes that information annually, together, with the information on members. Hence. the only way in which a nonqualifying company would inadvertently be given the benefit of the small insurer exemption would be if it were a new company which gained a large market share nationally or in a State in its first year of operations. Even if this unlikely situation were to arise, the erroneous exemption would last for only one year, because A.M. Best updates its market share information each year. Notwithstanding this tentative conclusion, the agency invites public comment on the appropriateness of using A.M. Best information for the purpose of determining which insurance companies are subject to these reporting requirements.

The second provision for exempting insurers is section 612(a)(4) of the Cost Savings Act. That section provides that NHTSA shall exempt from these reporting requirements any insurer, if the agency determines that

(1) the cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, *and*

(2) the insurer's report will not significantly contribute to carrying out the purposes of this title.

Exemptions under this provision are statutorily available to all insurers, including rental and leasing companies as well as insurance companies that do not qualify as small insurers. However, it appears unlikely to NHTSA at this point that it could conclude that a report by an insurance company listed in Appendix A or B will not significantly contribute to carrying out the purposes of Title VI. This belief is based on the fact that *all* insurance companies that qualify as small insurers have been proposed to be exempted from these reporting requirements. As explained above, the agency proposed these exemptions because of its belief that the reports from those insurance companies that do not qualify as small insurers will provide the agency with data that are representative both nationally and State-by-State. This tentative determination would obviously be affected unless the agency does, in fact. get reports from all insurance companies except those that qualify as small insurers. Accordingly, NHTSA believes that this exemption provision will be used primarily by rental and leasing companies.

Before issuing this proposal, the agency tried to obtain information from trade associations representing rental and leasing groups that would provide a basis for proposing a blanket exemption from these reporting requirements for small rental and leasing companies. Specifically, NHTSA requested information on the size of the business of the rental and leasing companies. These associations were the Automotive Fleet and Leasing Association, the American Automotive Leasing Association, and the American Car Rental Association. Each association indicated that market share data of the type sought by the agency either was unavailable or was confidential and therefore not revealable.

The agency could not take the additional step of requiring the submission of the information it requested because Title VI of the Cost Savings Act does not provide the agency with authority to issue compulsory process to obtain such information. In fact, section 602(e) states: "Nothing in this title shall be construed to grant authority to require any person to keep records or make reports, except as expressly provided in sections 603(c), 605(b), 606(a), and 612." This is in contrast to the information gathering authority granted the agency in Titles I and V of the Cost Savings Act (15 U.S.C. 1914 and 2005, respectively). Since none of the sections of Title VI give NHTSA authority to issue compulsory process in this situation, NHTSA must accept the refusal to provide it with the requested information. However, without this information, the agency is unable to even try to structure a blanket exemption for small rental and leasing companies.

By this notice, NHTSA seeks once again to obtain information that will aid it in establishing an appropriate exemption for small rental and leasing companies. If sufficient information is obtained in response to the requests set forth below, the agency will try to include a blanket exemption for small rental and leasing companies in the final rule on this subject.

First, the agency requests information on how many rental and leasing companies have fleets of 20 or more vehicles that are not covered by theft insurance policies issued by insurers of motor vehicles. The Coalition to Halt Auto Theft (CHAT) has stated to agency representatives its belief that most leasing companies have a requirement in their leases that the lessee obtain comprehensive insurance coverage for the leased vehicle for the duration of the lease. Requiring both the leasing company and the insurance company to report the theft and any recovery of the vehicle would result in double counting, according to CHAT, and make the reported information less accurate. NHTSA believes there is merit to this position. It would be plainly inconsistent with section 612(a)(3) to count such vehicles as self-insured. Therefore, NHTSA would not count rental or leased vehicles subject to a contractual requirement for the renter or lessee to obtain comprehensive insurance for the subject vehicle in determining whether a rental or leasing company has a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles.

Second, the agency needs information about the size of the business of the rental and leasing companies. Such information is necessary for the required determination that the cost of preparing and submitting these reports is excessive in relation to the size of the rental or leasing company's business. For the purposes of these insurer reports, NHTSA believes that the most important and easily provided information for judging the size of a company's business is the number of vehicles in its rental or leasing fleet. This is because larger fleets would be expected to have more incidents of thefts and recoveries of vehicles.

Third, the agency seeks public comment on the criteria it should use in deciding whether the costs of preparing and furnishing these reports is "excessive in relation to the size of the business of the insurer." Should the agency rely exclusively on some objective criteria, such as a percentage of the insurer's annual revenues or an absolute dollar figure, or consider subjective criteria as well in making such determinations? The agency is also interested in comments on whether it might be more burdensome and intrusive for a business requesting an exemption from these reporting requirements to provide the information needed by the agency under section 612(a)(4) than it would be for the business to prepare and file the reports.

Fourth, the agency seeks public comment on the probable costs of preparing and filing the reports proposed to be required by this part for the small rental and leasing companies, and the methodology used for estimating those costs. For instance, if a commenter states a projected probable cost figure for preparing and filing these reports, the comment should explain whether:

1. the estimate assumes that the commenter will have to generate new data or use existing data;

2. if the estimate assumes the generation of new data, identify what the new data are;

3. the data (new or pre-existing) will be gathered by computer search or by hand;

4. the assumed annual number of thefts and recoveries;

5. the amount of time the commenter estimates it will take to gather the necessary data; and

6. whether the estimated costs are one-time costs necessary to set up procedures for preparing the reports, or are expected to be recurring annual costs.

Absent adequate information on these topics, this notice is statutorily required to propose that all rental and leasing companies with fleets of 20 vehicles or more that are not covered by theft insurance policies issued by insurers of motor vehicle insurance be required to file these proposed reports. As noted above, should the agency obtain sufficient information in these areas, it will try to draft a final rule that includes a blanket exemption for small rental and leasing companies. If this turns out to be infeasible, the agency will include in the final rule preamble an invitation for any rental or leasing company that believes it satisfies the criteria set forth in section 612(a)(4) to send a letter to the Administrator at the address shown in the proposed rule for filing reports. Such letter should include whatever information and data form the basis for the company's belief that it satisfies those criteria. The sending of such letters by rental or leasing companies will not exempt those companies from the reporting requirements. However, they will aid the agency in determining whether it should initiate rulemaking to exempt those rental and leasing companies from these reporting requirements. The agency notes that this approach (i.e., the sending of letters by individual rental or leasing companies) to the question of exemptions for rental and leasing companies is likely to be much more burdensome and time-consuming for the companies and the agency than one under which the individual companies and/or their trade associations provide sufficient comments on the four topics set forth above to enable the agency to adopt a blanket exemption in the final rule.

Time Period to be Covered in Annual Reports

Section 612(a)(1) specifies that insurers must file the required reports *annually,* and that the first reports must be filed two years after enactment, i.e., in October 1986. However, this section leaves to the discretion of the agency the time period from which data must be included in these reports. Section 603 of the Cost Savings Act requires theft data to be computed on a calendar year basis, and calculations of median theft rates to be based on the calendar year data. If the insurer reports were required to be provided on other than a calendar year basis, the agency could not make comparative evaluations of the information in the insurer reports with the calendar year theft data provided to the agency by the National Crime Information Center (NCIC). Such comparative evaluations are desirable since they would allow the agency to judge what percentage of total thefts are reported to these insurance companies, and estimate the total number of stolen vehicles that are recovered, and the condition of the recovered vehicles. To allow the agency to perform these evaluations using insurer reports submitted on other than a calendar year basis, the agency would have to require insurers either to break down the theft and recovery information in their reports into separate months, or to perform an overall calculation showing the calendar year in which each theft and recovery had occurred. A requirement for either of these additional steps would, in this agency's opinion, be an unnecessary burden on the insurers.

NHTSA has tentatively decided that the calendar year preceding the year in which the reports are to be filed should be proposed as the annual time period to be covered in these reports. Thus, the reports due in October 1986 must include the relevant information for the 1985 calendar year. The agency believes that the advantages resulting from the consistency of this format with the theft data reported by NCIC and the consistency with the legislative intent that these reports impose the least burden on the reporting insurers outweigh the potential disadvantage that the information in these insurer reports will not include the most current data that could be provided. Public comment is sought on this tentative conclusion, along with suggestions and rationales for any other annual time period that would be more consistent with the purposes of the Theft Act.

The agency is aware that it might not be possible for insurers to provide some of the required data for 1985 in their October 1986 reports. As noted above, several insurance companies and the NATB have stated to the agency that they do not currently collect data on the condition of recovered vehicles. Absent such data, it would not be possible to classify a recovered vehicle within the three subcategories of "recovery" set forth in section 612. The agency also notes that the insurers had no means of knowing what time period would be covered in the initial reports, or the exact definitions that would be proposed for the different kinds of recovery set forth in section 612 before the publication of this proposal. Accordingly, this notice seeks comments on the ability of insurers to provide all of the proposed data for 1985 in the October 1986 report. If an insurer believes that it could not provide all of the data for 1985 in the October 1986 report, it should identify precisely which data cannot be provided and explain the reasons for its inability. These comments will be particularly important if the commenter asserts that data other than the type of "recovery" cannot be provided in the October 1986 report. The agency will carefully analyze these comments, and may draft the final rule so that certain informational requirements will not apply to the October 1986 report, but will apply to all subsequent ones.

General Requirements for Reports

The agency proposes that each report:

(1) be written in the English language;

(2) be identified as a Part 544 report;

(3) identify the insurer submitting the report;

(4) identify the calendar year covered by the report;

(5) state the full name, title, and address of the company official responsible for preparing the report;

(6) include a glossary defining all acronyms and terms of art used in the report, unless those acronyms and terms of art are defined immediately after they first appear in the report; and

(7) be submitted in three copies to this agency.

NHTSA would like to call insurers' attention to the procedures to be followed if a report includes information the insurer believes should be accorded confidential treatment. This agency has a regulation setting forth its procedures for evaluating claims for confidentiality at 49 CFR Part 512. The insurers should follow those procedures if they wish to request confidential treatment for any of the information provided in their reports.

Contents of Reports

A. Types of Vehicles on Which Information Must Be Reported

Section 614 of the Cost Savings Act requires NHTSA's 1987 report to Congress to include NHTSA's recommendations on whether the requirements of the theft prevention standard should be extended to trucks, multipurpose passenger vehicles, and motorcycles. To ensure that the insurer reports provide information that aids the agency in making that assessment,

section 612(f) specifies that, for the purposes of the insurer reports, the term "motor vehicle" includes trucks, multipurpose passenger vehicles, and motorcycles. Further, the agency is required to include information on thefts and recoveries of trucks, multipurpose passenger vehicles, and motorcycles, "by model, make, and line" in both its 1987 report to Congress, as specified in section 614(a)(2), and its 1990 report to Congress, as specified in section 614(b)(2)(B). Thus, insurers must include information in their reports on each of these types of motor vehicles, in addition to reporting information on passenger cars. This notice proposes that insurers provide the required information separately for each type, in the following order: passenger cars; multipurpose passenger vehicles; light trucks; heavy trucks; and motorcycles.

The agency wishes to emphasize that this proposal would split the statutory term "trucks" into light trucks (those with a gross vehicle weight rating of 10,000 pounds or less) and heavy trucks (those with a gross vehicle weight rating of more than 10,000 pounds). NHTSA believes that there are significant differences in the characteristics of light and heavy trucks and that those differences result in light trucks being stolen more frequently. This belief is based on informal statements to the agency by law enforcement groups. The agency also understands that insurers already keep separate records for light and heavy trucks, with the dividing point at 10,000 pounds gross vehicle weight rating. If this understanding is correct, this proposed requirement would not require reporting insurers to provide any information they don't already keep, nor would it increase the burden of reporting above the level that would occur if the agency simply required information to be reported on trucks as a single category. NHTSA is particularly interested in comments on whether the proposed requirements for separate reporting of data on light and heavy trucks would impose a greater burden on persons preparing the report, together with an explanation of the extent and reason for the greater burden.

B. Format for Reports.

1. Subdivisions of Vehicle Types

The agency needs the theft and recovery data to be broken down according to the model year of the stolen or recovered vehicles. This indication of model year is needed for the agency to evaluate the effectiveness of the theft prevention standard, as required by section 614 of the Cost Savings Act. For example, if the data show that thefts of vehicles remain constant in 1988, but that the thefts of vehicles marked in accordance with the theft prevention standard decrease, such data would be very significant. However, NHTSA would not learn this fact unless the theft and recovery data show the model year of the stolen and recovered vehicles. This should not impose a significant burden on the reporting insurers, because the theft and recovery data currently gathered by the National Automobile Theft Bureau (NATB), a group funded by the insurance companies, already show the model year for stolen or recovered vehicles.

Additionally, as noted above, NHTSA is required to provide Congress with information on both thefts and recoveries of each separate type of motor vehicle "by model, make, and line". To enable the agency to satisfy this statutory requirement, this notice proposes that insurers provide information on each of the vehicle types broken down into these categories. In the case of passenger cars, NHTSA understands that insurers generally set rates based on the make/model of the car, and requests comments on the accuracy of this belief. If this understanding is correct, this proposal would not require the insurers to make any further breakdown of the information than they would make for their own purposes. Based on this understanding, this proposal requires insurers to provide information based on vehicle risk groupings. If risk groupings are not make/model groupings for passenger cars, the final rule will specifically provide that information on passenger cars must be provided by make/model.

On the other hand, in the case of motorcycles, the agency believes that insurers set rates based solely on the engine size of the motorcycle. If this belief is correct, insurers would have to make further calculations for the theft and recovery data required in these reports. NHTSA acknowledges that this proposed requirement would require insurers to generate data that they would not generate for their own purposes. However, NHTSA believes that the statutory language of section 614 requires the insurers to assume this burden. The agency seeks public comment on this point. Any commenters that believe the information on other vehicle types need not be broken into make/model for these insurer reports should explain the extent of the burden that would be imposed by this requirement and the alternative means they believe the agency could use to satisfy the statutory requirement to provide this information by make/model in the reports to Congress.

NHTSA wishes to emphasize that this notice is proposing only to require this regrouping for the theft and recovery data for the various types of motor vehicles. None of the other information proposed to be required in these reports is required to be presented to Congress by "model, make, and line," nor is it necessary to have the information broken out by model year to permit a fair evaluation of the effectiveness of the theft prevention standard. Accordingly, NHTSA has structured these proposed requirements to impose the smallest burden on the reporting insurers. To achieve this purpose, this notice proposes that all of the information *other than theft and recovery data* to be included in these reports be broken down into whatever risk categories the insurer uses for its own purposes. NHTSA's understanding is that this information is grouped into model years by insurers for these risk categories, and that the information reported to the agency would be divided into separate model years. However, this would not impose any added burden on reporting insurers since this is how they collect data for their own purposes.

2. Geographic Subdivisions

Section 612 implicitly anticipates that the information in these reports will be separated for each State in which the reporting insurer does business. For instance, one of the criteria for receiving a small insurer exemption is a finding by the agency that an exemption "will not significantly affect the validity or the usefulness of the information collected and compiled under this section, *nationally or State-by-State.*" 15 U.S.C. 2032(a)(5)(A) (Emphasis added). In accordance with this legislative intent, the agency is proposing that insurers listed in Appendix A provide the required information separately for each State in which it does business. The agency will generate any needed cumulative information simply by adding together the data for each State in which the insurer does business. Those insurers listed in Appendix B would only be required to provide the information for each State listed after their name in that Appendix.

NHTSA believes this proposed requirement will simplify the insurers' task in preparing these reports. This belief is based on the agency's understanding that insurers are presently required by State insurance regulatory officials to keep separate

records in each State in which they do business. If this is correct, an insurer could simply gather the data in each State and furnish that data to the agency, without undertaking the additional step of aggregating them. However, it is possible that it would be simpler for reporting insurers to aggregate some of their data from the various States. The agency requests comments on the accuracy of its belief that requiring insurers to report data separately for each State in which the insurer does business would not impose a significant burden on those insurers.

3. Identical Responses for Different Vehicle Types or Different States in Which the Insurer Does Business, and Incorporation bv Reference of Previous Responses.

NHTSA believes that some of the items required to be included in an insurer's report will be the same for each risk grouping within a vehicle type, some may be the same for each vehicle type, and some may be the same for each State in which the insurer does business. If this is true for an insurer preparing a report, it would not be necessary to provide the same response over and over. In this situation, the insurer may simply indicate once in its report that its response to a specific item required in the report applies to all the risk groupings within a vehicle type, that the response applies for all vehicle types, or that the response applies for some or all of the other States in which the insurer does business. On the other hand, it may be simpler for the insurer to prepare separate reports for each State in which it does business, and provide repetitive responses. An insurer is permitted to provide repetitive responses to these proposed requirements, if it wishes to do so.

Further, it seems likely that the responses to some of the information requirements for the insurer reports will not change each year. To address this situation, this notice proposes that insurers be allowed to incorporate by reference any responses given in documents previously filed with this agency or any State agency within the last four calendar years. If an insurer chooses to incorporate by reference a document, it would be required to clearly identify the document being incorporated. If the document the insurer wished to incorporate by reference had been previously submitted to NHTSA, the insurer would be required only to indicate the date on which the document was submitted to the agency and the person whose signature appeared on the document. If, on the other hand, the document incorporated by reference had not been previously submitted to NHTSA, the insurer would be required to append the entire document or the pertinent sections of the document to the report. The appended document would be required to show the specific requirement of Part 544 in response to which it is being submitted. For example, if a section of an insurer's filing with the Maine State Insurance Commission is submitted as a partial response to § 544.6(d)(4) in an insurer's report, the appended section should indicate both that it was filed with the Maine State Insurance Commission and in compliance with § 544.6(d)(4) on its cover or first page.

This procedure is proposed so that reporting insurers can avoid a requirement to provide repetitive answers year after year. It is also proposed to carry out the legislative intent evidenced in the House committee report. That report states: "It is anticipated that the DOT will work with the insurers to provide such general information about accuracy, etc., initially and, *where appropriate, to merely update that information every two years thereafter, rather than repeat it.*" H. Rept. at 20 (Emphasis added). Under this proposal, reporting insurers would be required to examine the responses in their previous reports to ensure that they were still accurate. To the extent that the response is still accurate, the insurer may incorporate it by reference and avoid the need to repeat any responses.

C. Theft and Recovery Data (Section 612(a)(2)(A) and (B))

This notice proposes that insurers report the number of vehicle thefts, as required by section 612(a)(2)(A) of the Cost Savings Act, broken down into model year, vehicle model, make, and line, as discussed above. A "vehicle theft" would be defined as an actual physical removal of a motor vehicle without the permission of its owner. However, it would not include the removal of component parts, accessories, or personal belongings from a vehicle which is not moved. Thus, stripping of parts from stationary vehicles and breaking into a vehicle to steal the radio or personal belongings left in the vehicle would not be considered a vehicle theft under this proposed definition.

NHTSA believes this proposed definition is consistent with the definition of vehicle theft currently used by law enforcement groups and insurance companies. Hence, adopting this proposed definition would accomplish two important objectives of these reporting requirements. First, it would ensure that the data received in the insurer reports are based on the same definition of theft as the NCIC data, which will allow for ready comparison of the two data sources by the agency. Second, this proposed definition would not require any change to the data collection methods currently used by insurers, thereby minimizing the burden associated with this proposed reporting requirement.

After providing these theft data, reporting insurers would be required to report the total vehicle "recoveries" for each make, model and line. These recoveries would first be listed in total and then be broken down into three subdivisions in accordance with section 612. These subdivisions are:

1. recoveries intact (required by section 612(a)(2)(B));
2. recoveries-in-whole (required by section 612(a)(2)(A)); and
3. recoveries-in-part (required by section 612(a)(2)(A)).

These terms would be defined as follows. A "recovery" would be regaining physical possession of a motor vehicle or a major portion of the superstructure of a motor vehicle with one or more major parts still attached to the vehicle or superstructure, after that vehicle has been reported to the insurer as stolen. To enable the reporting insurers to determine whether a vehicle is recovered with one or more "major parts" still attached to the superstructure, NHTSA must define the parts considered major parts for each vehicle type. This has already been done for passenger cars in the theft prevention standard; 49 CFR § 541.5(a). The agency proposes that the insurer reporting requirements use the same listing of major parts for passenger cars.

For light trucks, this notice proposes that the major parts include the 14 parts listed as major parts for passenger cars, plus the cargo bed. For heavy trucks, NHTSA proposes that the major parts include the 14 parts listed as major parts for passenger cars, plus the following parts, if present on the vehicle:

a. transfer case;
b. fifth wheel;
c. drive axle assembly; and
d. sleeper.

In the case of multipurpose passenger vehicles, the major parts would consist of the 14 parts listed for passenger cars, plus the transfer case.

The major parts of motorcycles would be:

a. front fork;
b. frame;
c. engine; and
d. transmission.

The parts proposed to be selected as major parts for vehicle types other than passenger cars are those parts that law enforcement groups have informally indicated to the agency should be considered the major parts of such vehicles. The agency also believes that it would be a simple task for the insurance investigator to check to see if one of these parts is present on the recovered vehicle, and to record that vehicle as "recovered". Accordingly, NHTSA believes this proposed listing of major parts would ensure that the agency gets the information it needs to carry out its functions under the Theft Act without imposing a significant burden on the reporting insurers. Public comment is sought on this proposed listing of major parts for vehicle types other than passenger cars. If a commenter believes that one of these parts should not be listed as a major part, or that some other part should be added to the list of major parts for these vehicle types, the commenter should explain the reasons underlying that belief.

The definitions proposed for the three subdivisions of "recovery" all depend on whether or not any of the major parts of the vehicle are missing at the time of recovery. A "recovery intact" would be defined as a recovery with none of the recovered vehicle's major parts missing at the time of recovery and with no apparent damage to the vehicle, except additional mileage, ordinary wear and tear, and damage necessary to enter, steer, and operate the vehicle. Such recoveries would presumably result in smaller payouts to the insured under the comprehensive coverage on the vehicle.

A vehicle recovered with no major parts missing, but with damage to the vehicle in addition to that sustained during unauthorized entry and operation would be a "recovery-in whole". This category would include stolen vehicles recovered with broken front or rear windows, a stolen radio, vandalism to the interior of the car, a burned vehicle with no major parts missing, and so forth. Such recoveries would result in more significant payouts to the insured under the comprehensive coverage on the vehicle.

Finally, a vehicle recovered with one or more major parts missing at the time of recovery would be a "recovery-in-part". Recovered vehicles would be reported in this grouping whether they had only one major part missing upon recovery or all but one major part missing at that time. Such recoveries would indicate at least a possibility that the vehicle was stolen for use by a chop shop.

NHTSA is unsure of what changes in data collection would be required for insurers to provide the proposed information on the several subdivisions of recovered vehicles. The agency has attempted to draft the proposed definitions set forth above so that it would obtain useful information on each of these types of vehicle recoveries, as required by the Theft Act. The proposal would also allow insurance investigators to easily determine the category in which a recovered vehicle should be classified and would not require insurers to keep any additional records beyond the ones specifically required by section 612. NHTSA specifically solicits public comment on how effectively these proposed definitions of recovery, recovery intact, recovery-in-whole, and recovery-in-part would help in achieving these aims.

This notice also proposes that insurers be required to explain how the theft and recovery data were obtained by the insurer, and the steps taken by the insurer to ensure that these data are accurate and timely. Further, the reporting insurer would be required to report the use it made of the theft and recovery information, including the extent to which such information is reported to national, public, and private entities. Such information is expressly required to be included in the insurer reports by section 612(a)(2). The agency believes that these proposed requirements would impose a minimal burden on reporting insurers, since they would only be required to state their company policies and procedures. The agency would also like to repeat that insurers would be allowed to incorporate by reference responses given in previous reports, when these company policies and procedures have not changed from one year to the next.

D. Rating Rules and Plans Used by Insurers To Establish Comprehensive Insurance Premiums and Premium Penalties for Motor Vehicles Considered by the Insurer as More Likely To Be Stolen. (Section 612(a)(2)(C))

Section 612(a)(2)(C) expressly requires that insurer reports include "the rating rules and plans, such as loss data and rating characteristics, used by such insurers to establish premiums for comprehensive insurance coverage for motor vehicles, including the basis for such premiums, and premium penalties for motor vehicles considered by such insurers as more likely to be stolen." This statutory requirement means that these reports must include the following information:

1. The loss data used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers as more likely to be stolen;
2. The rating characteristics used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers as more likely to be stolen;
3. Any other rating rules and plans used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers as more likely to be stolen; and
4. The basis for the insurer's comprehensive insurance premiums and premium penalties for motor vehicles it considers as more likely to be stolen.

The agency has structured this proposed requirement to specify that the above-listed items of information shall be included in these reports. There are several ways by which these requirements could be satisfied. For instance, the reporting insurers could generate new data or reorganize existing data into a new format. This proposal would permit insurers to submit new or reorganized data to satisfy any of the four above-listed statutory requirements. However, NHTSA believes the least burdensome way for the insurers to satisfy these requirements would be for them to submit existing documents as explained below.

For the rating characteristics used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers as more likely to be stolen, the insurer may submit pertinent sections of its rate manual(s). This information will inform the agency of the different groupings into which vehicles are divided for the purposes of calculating the comprehensive insurance premiums, and the comprehensive insurance premiums actually charged for each risk grouping.

For the loss data used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers as more likely to be stolen, the insurer may submit the following information:

1. *Total number of comprehensive insurance claims paid by the insurer during the relevant time period;*
2. *Total number of those comprehensive insurance claims paid by the insurer during the relevant time period because of vehicle theft;*
3. *Total amount (in dollars) paid out by the insurer in response to all comprehensive claims filed by its*

policyholders during the relevant time period;

4. *Total amount (in dollars) paid out by the insurer in response to all comprehensive insurance claims filed by its policyholders during the relevant time period because of vehicle theft and*

5. *Total amount (in dollars) of salvage value realized from the sale of recovered vehicles and recovered major parts not attached to a vehicle superstructure, after payment has been made to the insured for a vehicle theft claim.*

The agency tentatively concludes that these pieces of information jointly would provide the loss data used by insurers to establish their comprehensive insurance premiums. Items 1 and 3 would establish the total payout the insurer made during the relevant time period. Items 2 and 4 would allow the agency to calculate what percentage of the total comprehensive insurance payout resulted from vehicle thefts. Item 5 would allow the agency to subtract from item 4 the moneys the insurer received from salvage sales of recovered vehicles, to arrive at an overall total of the amount paid by insurers as a result of vehicle thefts. This proposed requirement is intended to give the agency information about the possible savings for consumers if the theft prevention standard is effective in reducing automobile thefts nationally and State-by-State. Such information would be included in the report to Congress required by section 614 of the Cost Savings Act.

However, this loss data by itself would not satisfy the statutory requirement that insurers provide the loss data used to establish the premium penalties for motor vehicles considered by the insurer as more likely to be stolen. To satisfy this requirement, the insurer may submit:

6. *An identification of the motor vehicles for which the insurer charges comprehensive insurance premium penalties, because it considers those vehicles more likely to be stolen;*

7. *The relevant loss data for each vehicle risk grouping so identified;* and

8. *The maximum premium adjustments (as a percentage of the basic premium) made for comprehensive insurance premiums for a vehicle risk grouping as a result of the insurer's belief that vehicles in this risk grouping are more likely to be stolen.*

The agency believes that all of these loss data are already collected by the insurers for their own purposes.

In the case of any other rating rules and plans used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers as more likely to be stolen, the insurer may simply identify those rules and plans in its reports and explain how they are used to establish comprehensive insurance premiums and any premium penalties.

Finally, to satisfy the statutory requirement that these reports include the basis for the insurer's comprehensive insurance premiums and premium penalties for motor vehicles it considers as more likely to be stolen, the insurer may submit pertinent sections of materials filed with State insurance regulatory officials if the insurer clearly indicates which information in those sections is being submitted in compliance with this requirement. The agency believes that these sections would substantially explain the basis for the comprehensive insurance premiums charged for each vehicle risk grouping.

As noted above, the agency believes that insurers would have this information readily available and could provide it without having to make any supplemental calculations solely for the purposes of this report. Public comment is requested on the accuracy of this belief. If any commenters suggest other requirements that they believe would satisfy the statutory requirement that insurers provide data about their rating rules and plans and the basis for their comprehensive insurance premiums and any premium penalties in their reports, the agency asks that the commenters explain why they believe the suggested requirement would impose a smaller burden on the reporting insurers and yet still satisfy the statutory requirements.

E. Actions Taken by Insurers To Reduce Comprehensive Insurance Premiums Because of a Reduction in Motor Vehicle Thefts. (Section 612(a)(2)(D))

This section of the Cost Savings Act requires insurers to list the actions they have taken to reduce the premiums charged for comprehensive insurance coverage for motor vehicles, *because of a reduction in thefts of such motor vehicles.* To implement this statutory provision, NHTSA is proposing a requirement that it believes would allow insurers to provide the agency with the necessary information with the least possible burden. Insurers preparing these reports would be required to list each reduction they have made in comprehensive insurance premiums because of a reduction in thefts of motor vehicles. For each reduction listed, the insurer would:

1. State the conditions that must be met to receive the reduction;

2. State the number of policyholders that received the reduction; and

3. State the difference in average comprehensive insurance premiums for those policyholders that received the reduction vs. policyholders that did not receive this reduction.

If there have been no reductions in the thefts of motor vehicles, or if the insurer has not made any reductions in its comprehensive insurance premiums in response to such a reduction, the insurer could simply state that fact.

F. Discounts for Anti-theft Devices (Section 612(a)(2)(F))

This is the only information proposed to be required in these reports that is not explicitly mandated by section 612. NHTSA is proposing that an insurer provide this additional information *only* if it offers a reduction to its comprehensive insurance premiums for vehicles equipped with anti-theft devices. Such information would assist the agency in evaluating and comparing the effectiveness of anti-theft devices and parts marking in compliance with the theft prevention standard in deterring and reducing vehicle thefts. The agency is required by section 605 of the Cost Savings Act to make such determinations whenever a manufacturer files a petition under Part 543. At present, however, the only information available to the agency on the effectiveness of anti-theft devices are 1980 and 1981 studies by the Highway Loss Data Institute and General Motors, theft data for certain General Motors cars equipped with optional automatic anti-theft devices in the 1983 and 1984 model years, and the estimates of effectiveness submitted by manufacturers in their petitions filed pursuant to Part 543. None of the available data are as current or reliable as the insurers' actual theft experience with vehicles equipped with such devices would be. NHTSA believes that these insurer reports could significantly enhance the data available to the agency for making such determinations, simply by having insurers include data already collected for their own purposes in these reports.

Accordingly, this notice proposes the following requirements. In the immediately preceding section of its report, the insurer would have indicated a reduction of its comprehensive insurance premiums for cars equipped with anti-theft devices, the States in which a reduction is offered for such anti-theft devices, the number of policyholders that received the reduction, and the difference in average comprehensive premiums as a result of

this reduction. Under this proposed section, insurers would be required to provide the following additional items of information concerning any such discounts:

1. The specific criteria used to determine whether a vehicle is eligible for this reduction;

2. The total number of vehicle thefts for vehicles that received this reduction; and

3. The total number of recoveries of vehicles that received this reduction, broken down into recoveries intact, recoveries-in-whole, and recoveries-in-part.

NHTSA believes that the need for these first two items is fully explained in the preceding discussion of why the agency is proposing that information about theft experience of vehicles with anti-theft devices be included in these reports. With respect to the proposal for insurers to provide information about the recoveries of vehicles equipped with anti-theft devices, the agency believes such information is necessary to have an overall understanding of the effectiveness of anti-theft devices. That is, if these devices reduce the theft rate of vehicles, but those vehicles which are stolen are recovered in significantly lower proportion than vehicles not equipped with these devices, that fact must be considered in assessing the effectiveness of the devices. There is currently no reliable information available on this subject, and the agency knows of no other potential sources for this information.

G. Insurers' Actions to Assist in Deterring and Reducing Vehicle Thefts. (Section 612(a)(2)(E))

In response to this statutory criterion, the insurer would be required to identify each action it took to assist in deterring or reducing vehicle thefts. For each action identified, the insurer would describe it and explain why the insurer believed it would be effective in deterring and reducing vehicle thefts.

In addition, insurers would be required to describe their company's policy regarding the use of used parts to repair vehicles insured by the insurer. One of the reasons that chop shops have been so profitable for criminals is that there is a large demand for used parts, as opposed to new parts. This demand appears to result largely from the price differential between new and used parts. However, the agency is aware of at least one insurance company that forbids the use of used parts in repairs for which it has authorized payment. If this policy were generally adopted by insurers, it could significantly decrease the demand for used parts, thereby reducing the potential profits to be made from illegal chop shop activities.

The agency believes that most insurers currently either require or promote the use of used parts to make repairs for which they are paying. Even if used parts are used in such repairs, chop shops could still be denied the opportunity to profit from their criminal actions if the insurer were to take precautions to minimize the chance that a used part furnished by a chop shop will be used in repairs paid for by the insurer. Such precautions might consist of requiring the repair shop to state how it obtained the used part and identify the source for the part, or of requiring that used parts be obtained through specified distribution channels, for example. This notice proposes that insurers state whether they took such precautions, and, if they did, what those precautions were. Again, since the agency is proposing only that insurers state their existing policies, NHTSA does not believe that these requirements will impose any significant burden on the reporting insurers. However, comment is sought on these provisions. If a commenter suggests alternative requirements to satisfy this statutory mandate, the commenter should explain how those alternative requirements would provide the agency with the information it needs while imposing a smaller burden on the reporting insurers.

H. Voluntarily Submitted Information

This proposed regulation specifies information that insurers must provide on an annual basis, as required by section 612. Any insurer may voluntarily provide additional information which it believes would help the agency in evaluating the effectiveness of the theft prevention standard. For example, some insurers may be able to provide recovery statistics for each of the 14 major parts covered by the parts-marking requirement.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted as a final rule, the agency estimates these reporting requirements will impose costs of less than $9 million in the first year and lesser amounts in succeeding years. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order. The agency believes that it will be better able to assess the effectiveness of the theft prevention standard as a result of these insurer reports. However, NHTSA cannot provide a quantified estimate of those benefits. A preliminary regulatory evaluation analyzing these impacts has been placed in Docket No. T86-01, Notice 1. A copy of this evaluation may be obtained by any interested person by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590, or by calling the Docket Section at (202) 426-2768.

However, public comment is invited on the likely costs and benefits that would be associated with these reporting requirements. The agency is also interested in receiving suggestions about some means by which the agency could better estimate these costs and benefits.

2. Small Business Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. All of the insurance companies that qualify as small insurers within the meaning of section 612 would be exempted from these reporting requirements. With respect to rental and leasing companies, the agency will try to draft the final rule to exempt the smaller ones from this reporting requirement. If that is not possible, the agency will initiate rulemaking to exempt from these reporting requirements any small entity that can show the costs of preparing and furnishing these reports is excessive in relation to the size of its business, and that its report will not significantly contribute to carrying out the purposes of the Theft Act. Thus, the agency believes that any small entity that would experience a significant economic impact as a result of these reporting requirements will be exempted therefrom.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

4. Paperwork Reduction Act

The proposed requirements that insurers report certain information annually to this agency are 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 this proposed information collection requirement 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 shown above for this proposed action.

Public Comments

The agency has provided a comment period of 30 days for this proposal in an effort to maximize the time in which insurers will have to prepare and submit their reports by the October 24, 1986 statutory deadline.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed that Title 49 of the Code of Federal Regulations be amended by adding a new Part 544, to read as follows:

PART 544—INSURER REPORTING REQUIREMENTS

Sec.

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

§ 544.1 Scope.

This part sets forth requirements for insurers to report to the National Highway Traffic Safety Administration information about motor vehicle thefts and recoveries, the effects of the Federal motor vehicle theft prevention standard on those thefts and recoveries, and related insurance practices.

§ 544.2 Purpose.

The purpose of these reporting requirements is to aid in implementing the provisions of the Motor Vehicle Theft Law Enforcement Act to prevent or discourage the theft of motor vehicles, to prevent or discourage the sale or distribution in interstate commerce of used parts removed from stolen motor vehicles, and to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

§ 544.3 Application.

This part applies to the issuers of motor vehicle insurance policies listed in Appendices A or B, and to any person which has a fleet of 20 or more motor vehicles (other than a governmental entity) which are used primarily for rental or lease and are not covered by theft insurance policies issued by insurers of motor vehicles.

§ 544.4 Definitions.

(a) *Statutory terms.* All terms defined in sections 2 and 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021) are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

(b) *Other definitions.* (1) "Comprehensive insurance coverage" means the indemnification of motor vehicle owners by an insurer against losses due to fire, theft, robbery, pilferage, malicious mischief and vandalism, and damage resulting from floods, water, tornadoes, cyclones, or windstorms.

(2) "Gross vehicle weight rating" is used as defined at § 571.3 of this chapter.

(3) "Heavy truck" means a truck with a gross vehicle weight rating of more than 10,000 pounds.

(4) "Light truck" means a truck with a gross vehicle weight rating of 10,000 pounds or less.

(5) "Major part" means–

(i) In the case of passenger motor vehicles, any part listed in §§ 541.5(a)(1) through (14) of this chapter;

(ii) In the case of light trucks, any part listed in §§ 541.5(a)(1) through (14) of this chapter, or the cargo bed;

(iii) In the case of heavy trucks, any part listed in §§ 541.5(a) (1) through (14) of this chapter, or the transfer case, fifth wheel, drive axle assembly, or the sleeper;

(iv) In the case of multipurpose passenger vehicles, any part listed in § § 541.5(a) (1) through (14) of this chapter, or the transfer case;

(v) In the case of motorcycles, the front fork, frame, engine, or transmission.

(6) "Motorcycle" is used as defined at § 571.3 of this chapter.

(7) "Motor vehicle" means a passenger motor vehicle, multipurpose passenger vehicle, truck, or motorcycle.

(8) "Multipurpose passenger vehicle" is used as defined at § 571.3 of this chapter.

(9) "Recovery" means regaining physical possession of a motor vehicle or a major portion of the superstructure of a motor vehicle with one or more major parts still attached to the superstructure, after that vehicle has been reported to the insurer as stolen.

(10) "Recovery-in-part" means a recovery in which one or more of the recovered vehicle's major parts is missing at the time of recovery.

(11) "Recovery intact" means a recovery with none of the recovered vehicle's major parts missing at the time of recovery and with no apparent damage to any part of the vehicle other than those parts damaged in order to enter, start, and operate the vehicle, but with additional mileage and ordinary wear and tear.

(12) "Recovery-in-whole" means a recovery with none of the recovered vehicle's major parts missing at the time of recovery, but with apparent damage to some part or parts of the vehicle in addition to those parts damaged in order to enter, start, and operate the vehicle.

(13) "Reporting period" means the calendar year covered by a report submitted under this part.

(14) "Truck" is used as defined at § 571.3 of this chapter.

(15) "Vehicle theft" means an actual physical removal of a motor vehicle without the permission of its owner, but does not include the removal of component parts, accessories, or personal belongings from a motor vehicle which is not moved.

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually during the month of October, beginning in October 1986. The report shall contain the information required by § 544.6 of this part for the calendar year preceding the year in which the report is filed (e.g., the report due in October 1988 shall contain the information for the 1987 calendar year).

(b) Each report required by this part must:

(1) Preceding its text, have a heading that includes the words "Insurer Report";

(2) Identify the insurer, including all subsidiary companies, on whose behalf the report is submitted, and the agent, if any, submitting the report;

(3) Identify the State or States in which the insurer did business;

(4) State the full name and title of the official responsible for preparing the report, and the address of the insurer;

(5) Identify the reporting period covered by the report;

(6) Be written in the English language;

(7) Include a glossary defining all acronyms and terms of art used in the report, unless those acronyms and terms of art are defined immediately after they first appear in the report.

(8) Be submitted in three copies to: Administrator, National HighwayTraffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590; and

(9) If the insurer wishes to submit certain information under a claim of confidentiality, be submitted in accordance with Part 512 of this chapter.

§ 544.6 Contents of insurer reports.

(a) Provide the information specified in paragraphs (b) through (g) of this section separately for each State in which the insurer, including any subsidiary, did business during the reporting period, if the insurer is listed in Appendix A or is otherwise subject to the requirements of this part, or for each State listed after the insurer's name, if the insurer is listed in Appendix B.

(b) For each of the following vehicle types, provide the information specified in paragraphs (c) through (g) of this section for all the vehicles of that type insured by the insurer during the reporting period—

(1) Passenger cars.

(2) Multipurpose passenger vehicles.

(3) Light trucks.

(4) Heavy trucks.

(5) Motorcycles.

(c)(1) List the total number of vehicle thefts, subdivided into model, make, and line, and model year for this type of motor vehicle.

(2) List the total number of recoveries, subdivided into model, make, and line, and model year for this type of motor vehicle. For each of these subdivided numbers of recoveries, indicate how many were:

(i) Recoveries intact;

(ii) Recoveries-in whole; and

(iii) Recoveries-in-part.

(3) Explain how the theft and recovery data set forth in response to paragraphs (c)(1) and (2) of this section were obtained by the insurer, and the steps taken by the insurer to ensure that these data are accurate and timely.

(4) Explain the use made by the insurer of the information set forth in response to paragraphs (c)(1) and (2) of this section, including the extent to which such information is reported to national, public, and private entities (e.g., the Federal Bureau of Investigation and State and local police). If such reports are made, state the frequency and timing of the reporting.

(d)(1) Provide the rating characteristics used by the insurer to establish the premiums it charges for comprehensive insurance coverage for this type of motor vehicle and the premium penalties for vehicles of this type considered by the insurer as more likely to be stolen. This requirement may be satisfied by furnishing the pertinent sections of the insurer's rate manual(s).

(2) Provide the loss data used by the insurer to establish the premiums it charges for comprehensive insurance coverage for this type of motor vehicle and the premium penalties it charges for vehicles of this type it considers as more likely to be stolen. This requirement may be satisfied by providing the following:

(i) The total number of comprehensive insurance claims paid by the insurer during the reporting period;

(ii) The total number of claims listed in (d)(2)(i) of this section that arose from a vehicle theft;

(iii) The total amount (in dollars) paid out by the insurer in response to all the comprehensive claims filed by its policyholders during the reporting period;

(iv) The total amount (in dollars) listed under paragraph (d)(2)(iii) of this section paid out by the insurer as a result of vehicle theft;

(v) The total amount (in dollars) recovered by the insurer from the sale of recovered vehicles or major parts recovered not attached to the vehicle superstructure, after the insurer had made a payment listed under paragraph (d)(2)(iv) of this section;

(vi) An identification of the vehicles for which the insurer charges comprehensive insurance premium penalties, because the insurer considers such vehicles as more likely to be stolen;

(vii) The total number of comprehensive insurance claims paid by the insurer for each vehicle risk grouping identified in paragraph (d)(2)(vi) of this section during the reporting period, and the total amount (in dollars) paid out by the insurer in response to each of the listed claims totals; and

(viii) The maximum premium adjustments (as a percentage of the basic comprehensive insurance premium) made for this type of vehicle as a result of the insurer's belief that a vehicle is more likely to be stolen.

(3) Identify any other rating rules and plans used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers as more likely to be stolen, and explain how such rating rules and plans are used to establish the premiums and premium penalties.

(4) Explain the basis for the insurer's comprehensive insurance premiums and the premium penalties charged for motor vehicles it considers as more likely to be stolen. The insurer may satisfy this requirement by providing the pertinent sections of materials it has filed with

State insurance regulatory officials and clearly indicating which information in those sections is being submitted in compliance with this paragraph.

(e) List each action taken by the insurer to reduce the premiums it charged for comprehensive insurance coverage because of a reduction in thefts of such motor vehicles. For each action:

(1) State the conditions that must be met to receive such a reduction (e.g., installation of anti-theft device, marking of vehicle in accordance with theft prevention standard, etc.);

(2) State the number of the insurer's policyholders and vehicles that received this reduction;

(3) State the difference in average comprehensive insurance premiums for those policyholders that received this reduction versus those policyholders that did not receive the reduction.

(f) In the case of an insurer who offered a reduction in its comprehensive insurance premiums for vehicles equipped with anti-theft devices, provide:

(1) The specific criteria used to determine whether a vehicle is eligible for the reduction (original equipment anti-theft device, passive anti-theft device, etc.).

(2) The total number of vehicle thefts for vehicles that received this reduction; and

(3) The total number of recoveries of vehicles that received this reduction and how many of the total were—

(i) Recoveries intact,

(ii) Recoveries-in-whole, and

(iii) Recoveries-in-part.

(g)(1) List each action taken by the insurer to assist in deterring or reducing thefts of motor vehicles. For each action, describe the activity and explain why the insurer believed it would be effective in deterring or reducing motor vehicle thefts.

(2)(i) State the insurer's policy regarding the use of used parts to effect repairs paid for by the insurer on vehicles it insures. Indicate whether the insurer required, promoted, allowed, or forbade the use of used parts in those repairs.

(ii) In the case of insurers requiring, promoting, or allowing the use of used parts to make repairs paid for by the insurer on vehicles it insures, indicate the precautions taken by or on behalf of the insurer to identify the origin of those used parts.

§ 544.7 Incorporation by reference in reports.

(a) In any report required by this part, an insurer may incorporate by reference any document or portion thereof previously filed with any Federal or State department or agency within the past four years.

(b) An insurer that incorporates by reference a document not previously submitted to the National Highway Traffic Safety Administration shall append that document or the pertinent sections of the document to its report, and clearly indicate on the cover or first page of the document or pertinent sections the regulatory requirement in response to which the document or pertinent sections are being submitted.

(c) An insurer that incorporates by reference a document shall clearly identify the document and the specific portions thereof sought to be incorporated and, in the case of a document previously submitted to the National Highway Traffic Safety Administration, indicate the date on which the document was submitted to the agency and the person whose signature appeared on the document.

Appendix A—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

State Farm Group
Allstate Insurance Group
Farmers Insurance Group
Nationwide Group
Aetna Life & Casualty Group
Travelers Insurance Group
Liberty Mutual Group
USAA Group
CIGNA Group
United States F & G Group
GEICO Corporation Group
Continental Corporation
Hartford Insurance Group
Fireman's Fund Group
Sentry Insurance Group
Interinsurance Exchange Auto Club of Southern California
California State Auto Association
Commercial Union Assurance Companies
American Financial Group
American Family Group

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alabama Farm Bureau Group (Alabama)
Southern F & B Group (Arkansas)
Shelter Insurance Companies (Arkansas)
Island Insurance Group (Hawaii)
United Farm Bureau Mutual (Indiana)
Kentucky Farm Bureau Group (Kentucky)
American General Group (Maine)
Auto Club of Michigan Group (Michigan)
Amica Mutual Insurance Company (Rhode Island)
Tennessee Farmers (Tennessee)
American International Group (Vermont)

Issued on June 20, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-14275 Filed 6-20-86; 12:01 pm]

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Notices

Federal Register
Vol. 51, No. 122
Wednesday, June 25, 1986

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.

ACTION

Foster Grandparent and Senior Companion Programs: Income Eligibility Levels

AGENCY: Action.

ACTION: Notice of revision of income eligibility levels for Foster Grandparent and Senior Companion Programs.

SUMMARY: This notice revises the schedules of income eligibility levels for individuals and families for the Foster Grandparent and Senior Companion Programs published in the **Federal Register** April 29, 1985 (50 *FR* 16725). The revised schedule is based on Poverty Income Guidelines from the Department of Health and Human Services (DHHS) published in the **Federal Register**, February 11, 1986 (51 *FR* 5105). This revision adopts as the income eligibility level for each State the higher amount of either (a) 125% of the DHHS Poverty Income Guideline, or (b) 100% of the DHHS Poverty Income Guideline plus the amount each state supplements Federal Supplemental Security Income, rounded to the next highest multiple of $5.00.

Any person whose income is not more than 100% of the DHHS poverty income guideline for her/his specific family unit status shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs.

EFFECTIVE DATE: June 25, 1986.

FOR FURTHER INFORMATION CONTACT: C. Wade Freeman, Assistant Director, Older American Volunteer Programs, ACTION, 806 Connecticut Avenue NW., Room M-1006, Washington, DC 20525, or telephone (202) 634-9355.

SUPPLEMENTARY INFORMATION: These ACTION programs are authorized pursuant to Sections 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93-113, 87 Stat. 394. The income eligibility levels are determined by the currently applicable guideline published by DHHS pursuant to Sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires pverty income guidelines to be adjusted for Consumer Price Index changes.

The income eligibility levels will be reviewed at least once a year, and similar schedules will be prepared to reflect any changes required as a result of that review.

Schedule of Income Eligibility Levels: Foster Grandparent adn Senior Companion Programs

For all States, (except Alaska, Hawaii, California, Connecticut, Massachusetts and New Jersey) the District of Columbia, Puerto Rico and the Virgin Islands

For Family Units of:

One	Two	Three	Four	Five	Six	Seven	Eight
$6,700	$9,050	$11,400	$13,750	$16,100	$18,450	$20,800	$23,150

For the following states:

For Family Units of:

State	One	Two	Three	Four	Five	Six	Seven	Eight
AK	$9,930	$13,650	$16,000	$18,350	$20,700	$23,050	$25,400	$27,750
CA	7,725	13,060	14,940	16,820	18,700	20,580	22,460	24,340
CT	7,110	8,275	10,155	12,035	13,915	15,795	17,675	19,555
HI	7,715	10,415	13,115	15,815	18,515	21,215	23,915	26,615
MA	6,910	9,660	11,540	13,420	15,300	17,180	19,060	20,940
NJ	7,165	12,640	14,515	16,395	18,275	20,155	22,035	23,915

For family units with more than eight members add the appropriate supplement for each additional member (over eight) as follows:

Alaska	$2,350
Hawaii	2,700
MA, NJ, CA, & CT	1,880
All Others	2,350

All of the above levels are calculated from the base DHHS Poverty Income Gidelines now in effect.

Those guidelines are:

Size of family unit	For all States (except Alaska and Hawaii) and the District of Columbia	For Alaska	For Hawaii
1	$5,360	$6,700	$6,170
2	7,240	9,050	8,330
3	9,120	11,400	10,490
4	11,000	13,750	12,650
5	12,880	16,100	14,810

—Continued

Size of family unit	For all States (except Alaska and Hawaii) and the District of Columbia	For Alaska	For Hawaii
6	14,760	18,450	16,970
7	16,640	20,800	19,130
8	18,520	23,150	21,290

Signed in Washington, DC.

Donna M. Alvarado,

Director of ACTION.

[FR Doc. 86-14299 Filed 6-24-86; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 23, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Question about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Federal Crop Insurance Corporation, Claim for Citrus Indemnity, FCI-63 Citrus, Recordkeeping; On occasion, Individuals or households; Farms; 7,304 responses; 3,652 hours: not applicable under 3504(h), Peter F. Cole (202) 447-3325.

• Forest Service, Requesting National Forest concessioners to have their accountants reconcile fee-base financial reports, FS-2700-7; 2700-8; and 2700-19. Annually. Businesses or other for-profit; Small businesses or organizations; 300 responses; 900 hours; not applicable under 3504(h), Richard E. Kuhn (703) 235-8466.

Revision

• Farmers Home Administration, 7 CFR 1940-G, Environment Program, FmHA 1940-20. On occasion. Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 9,745 responses; 75,235 hours; not applicable under 3504(h), John Hansel (202) 382-9647.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 86-14350 Filed 6-24-86; 8:45 am]

BILLING CODE 3410-01-M

Commodity Credit Corporation

Loan and Purchase Programs; 1986-Crop Peanut Program

Correction

In FR Doc. 86-13660 beginning on page 21941 in the issue of Tuesday, June 17, 1986, make the following corrections: On page 21942, in the second column, in the first complete paragraph, in the fourth line, "607.14" should read "607.47"; and in the third complete paragraph, in the twelfth line, "for the" should read "for which the".

BILLING CODE 1505-01-M

Food Safety and Inspection Service

[Docket No. 86-026N]

Use of Pesticide-Treated Seed in Animal Feed; Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) announces a meeting to be held on the use of pesticide-treated seed in animal feed. The meeting will be conducted by officials from FSIS and the Agricultural Marketing Service, Department of Agriculture; the Environmental Protection Agency; and the Food and Drug Administration, Department of Health and Human Services. The purpose of this meeting is to gather information and suggestions from the public relating to the prevention of treated seed contamination of the human food supply.

DATE: Thursday, July 10, 1986, from 9:30 a.m. to 12:00 noon.

ADDRESS: The meeting will be held at Room 104-A, Administration Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC. Interested persons may submit comments before or after the meeting to the Policy Office, ATTN: Annie Johnson, FSIS Hearing Clerk, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Karen Stuck, Chief, Information Office, Information and Legislative Affairs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-9113.

SUPPLEMENTARY INFORMATION: Seed intended for planting is often treated with a pesticide or a fungicide. With the exception of captan-treated seed corn that is properly detreated, it is illegal to use treated seed for animal feed because of its potential for contaminating the human food supply. To prevent accidental use of treated seed in feed, such seed is dyed pink or other suitable color for easy identification. Despite this precaution, however, milk and meat in Arkansas and surrounding States were contaminated this spring because some animals were fed feed containing seed treated with heptachlor, a pesticide that is now banned for most agricultural uses. The Food Safety and Inspection Service and the Agricultural Marketing Service of the Department of Agriculture (USDA), the Environmental Protection Agency (EPA), and the Food and Drug Administration (FDA) are now evaluating the heptachlor incident and the potential for other deversions of treated seed into human food channels.

USDA, EPA, and FDA carry out regulatory responsibilities to assure the Nation's consumers of a safe and wholesome food supply. Consequently, the regulatory agencies are interested in receiving information concerning all aspects of the heptachlor contamination issue, including the reason for and the extent of the problem, as well as suggestions on how the industry and regulatory agencies can cooperate in preventing recurrences of similar incidents.

In order to coordinate activities in this area, the agencies will conduct a joint public meeting on July 10, 1986, to present current knowledge on the treated seed issue and to gather input from the public. The meeting is open to the public on a space available basis. Anyone wishing to provide information or comments on the issue may do so by submitting them, before or after the meeting, to Annie Johnson, FSIS Hearing Clerk, Policy Office, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, on June 20, 1986.

Lester M. Crawford,

Associate Administrator, Food Safety and Inspection Service.

[FR Doc. 86-14349 Filed 6-24-86; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Public Meetings on Proposed Land and Resource Management Plan and Draft Environmental Impact Statement for Lassen National Forest, CA

AGENCY: USDA Forest Service.

ACTION: Notice.

Lassen National Forest (including portions of Butte, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Tehama Counties) will hold three additional public hearings on its Proposed Land and Resource Management Plan and Draft Environmental Impact Statement. The new hearings will be in Redding, Red Bluff, and Burney, California. The five public hearings are for the purpose of receiving formal public comments on the two documents. They will be held:

July 24, Thursday, 7:00 p.m.
Redding: Civic Auditorium, 747 Auditorium Drive.
July 28, Monday, 7:00 pm.
Red Bluff: Elks Lodge.
July 29, Tuesday, 7:00 pm.
Chico: CARD Room, 545 Vallombrosa Avenue.
July 30, Wednesday, 7:00 pm.
Burney: Burney Lion's Hall.
July 31, Thursday, 7:00 pm.
Susanville: Lassen College, Humanities Building Lecture Hall.

Each hearing will be conducted by a hearing officer. After an introduction by the Forest Service, the public may present oral and/or writen comments. A court reporter will keep a verbatim record of all oral comments, and it will become part of the comments record on the Proposed Plan and Draft Environmental Impact Statement. Each speaker may be limited to five minutes. Speakers can pre-register by contacting the Receptionist at Lassen National Forest in Susanville, phone 916–257–2151, in writing, or in person. Please specify your name, address, affiliation (if any), and which hearing. Speakers can also pre-register at the hearing from 6:30 until 7:00 pm. Forest Service officials will not comment or respond to statements made by the speakers. The Forest Service will respond to all public comments made by the speakers. The Forest Service will respond to all public comments in the Final Environmental Impact Statement.

Written comments should be sent to Forest Supervisor Richard A. Henry, Lassen National Forest, 55 South Sacramento Street, Susanville, California 96130 by August 7, 1986.

For more information, contact Forest Supervisor Richard A. Henry at the above address.

Dated: June 17, 1986.

Richard A. Henry,

Forest Supervisor.

[FR Doc. 86–14312 Filed 6–24–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1987 Census of Wholesale Trade

Form Number: Agency—CB–5012, CB–5013, etc.; OMB—NA.

Type of Request: New collection.

Burden: 412,100 respondents; 269,000 reporting hours.

Needs and Uses: This census, to be conducted in FY 88, is part of the Economic Census and is the one of the primary sources of facts about the structure and functioning of a large segment of the economy, and provides essential information for government, business, and the general public. It provides an important part of the framework for the national accounts and serves as benchmarks for economic indicators.

Affected Public: State or local governments, businesses or other for-profit institutions, small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Timothy Sprehe, 395–4814.

Agency: Bureau of the Census.

Title: 1987 Census of Retail Trade.

Form Number: Agency—CB–5201, CB–5202, etc.; OMB—NA.

Type of Request: New collection.

Burden: 995,000 respondents; 414,500 reporting hours.

Needs and Uses: This census, to be conducted in FY 88, is part of the Economic Census and is the one of the primary sources of facts about the structure and functioning of a large segment of the economy, and provides essential information for government, business, and the general public. It provides an important part of the framework for the national accounts and serves as benchmarks for economic indicators.

Affected Public: State or local governments, businesses or other for-profit institutions, small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW. Washington, DC 20230.

Written comments and recommendations for this proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: June 20, 1986.

Edward Michals,

Departmental Clearance Officer Information Management Division Management.

[FR Doc. 86–14340 Filed 6–24–86; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[C–355–001]

Leather Wearing Apparel From Uruguay; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: In response to requests from the Government of Uruguay and a domestic interested party, the Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Uruguay. The review covers the period April 17, 1982 through December 31, 1983.

As a result of the review, the Department has preliminarily determined the bounty or grant to be 1.35 percent *ad valorem* for shipments of this merchandise exported directly to the United States, and 27.57 percent *ad valorem* for merchandise exported through intermediate countries, during the period April 17, 1982 through December 31, 1982. For the period January 1, 1983 through December 31, 1983, we have preliminarily determined the bounty or grant for all shipments to be 0.11 percent *ad valorem*, a rate which we consider to be *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 25, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Bernard T. Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 31032) a countervailing duty order on leather wearing apparel from Uruguay. We began this review under our old regulations. After the promulgation of our new regulations, a domestic interested party (the Amalgamated Clothing and Textile Workers Union, AFL-CIO) and the Government of Uruguay, on September 17 and October 9, 1985, respectively, requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of this order. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Uruguayan leather wearing apparel and parts and pieces thereof. Such merchandise is currently classifiable under items 791.7620, 791.7640, and 791.7660 of the Tariff Schedules of the United States Annotated. The review covers the period April 17, 1982 through December 31, 1983 and nine programs: (1) Reintegros; (2) supplementary reintegros; (3) transitional export payments; (4) Tax Refund Certificates; (5) bonification payments; (6) uncollected social security taxes; (7) income tax forgiveness; (8) tanner's subsidy; and (9) preferential export financing.

Analysis of Programs

(1) Reintegros

Reintegros are tax certificates issued to exporters in amounts which represent a percentage of the f.o.b. value of the exported merchandise. The reintegro was ostensibly designed to rebate the indirect and direct taxes paid by exporters of leather wearing apparel. In our final determination (46 FR 19288, March 30, 1981), we found the full amount of the reintegro, less a one percent processing fee, to be countervailable because the Uruguayan government did not demonstrate any link between eligibility for payments on export and indirect taxes paid by manufacturers of leather wearing apparel.

During the period April 17, 1982 through November 26, 1982 (the date the Uruguayan government terminated the program), the amount of reintegros available for various types of leather wearing apparel ranged from four percent to 21 percent, depending on the type of leather used and on whether the leather was domestically produced or imported. However, Uruguayan Decree 245/82 (July 16, 1982) prohibited payment of reintegros on shipments of the merchandise exported to the United States after that date. In 1981, the government had instituted an offsetting export tax on exports of the merchandise to the United States. Rather than pay the export tax, which was higher than the rate of the reintegro, exporters simply did not apply for the reintegros or turn in the export certificates required to receive them. Thus, shipments of the merchandise which were exported directly to the United States did not receive benefits under this program during any part of the period April 17 through December 31, 1982.

Several large shipments were imported into the United States from intermediate countries during that period. We have no reason to believe that these shipments, exported through intermediate countries, did not receive the reintegros. As the best information available, we have assumed that exporters received a 21 percent rebate, the highest rate available under this program in 1982. In our final determination, we found that a one percent deduction from the reintegro payment was a legitimate offset to the gross bounty or grant because that deduction was necessary in order to qualify for, or receive, the benefit. We have therefore reduced the amount of the reintegro benefit by one percent of the payment.

Accordingly, we preliminarily determine that shipments of the merchandise exported directly to the United States during the period of review received no benefits under this program. We further find, preliminarily, the weighted-average bounty or grant on merchandise exported to the United States through intermediate countries to be 17.97 percent *ad valorem* during the period April 17, 1982 through December 31, 1982.

(2) Supplementary Reintegros

The Uruguayan government instituted a supplementary 10 percent reintegro on June 2, 1982 (Uruguayan Decree 189/982) for exports of leather wearing apparel during the period June 2, 1982 through November 26, 1982, the date the government terminated all reintegros. Once again, while the government prohibited payment of these supplementary reintegros on shipments of the merchandise exported directly to the United States, there was no such restriction on shipments exported through intermediate countries.

We preliminarily determine the weighted-average benefit from this program on shipments of leather wearing apparel exported through intermediate countries to the United States during the period April 17, 1982 through December 31, 1982 to be 8.25 percent *ad valorem*. Further, we preliminarily find that there was no benefit conferred by this program on any shipments of the merchandise exported directly to the United States during the period of review.

(3) Transitional Export Payments

After terminating the reintegro program, the Government of Uruguay instituted a five percent transitional payment on all shipments of leather wearing apparel exported between November 29, 1982 and December 31, 1982 (Decree 442/82). The purpose of these payments, which, like the reintegros, took the form of tax certificates, was to prevent disruption of Uruguayan trade after elimination of the reintegros and prior to implementation of the Tax Refund Certificate program (see below).

Because the transitional export payments are not linked to the payment of indirect taxes, we preliminarily determine that this program constitutes a bounty or grant. We preliminarily find the net benefit conferred by this program during the period April 17, 1982 through December 31, 1982 to be 0.38 percent *ad valorem*. We further find preliminarily that there was no bounty or grant conferred on leather wearing apparel exports by this program during 1983.

(4) Tax Refund Certificates

On July 25, 1983, the Government of Uruguay instituted a system of tax refunds on exports of leather wearing apparel (Resolution 289/983) for all shipments of the merchandise exported on or after January 1, 1983. The Uruguayan government stated that these refunds, which again take the form of tax certificates, were rebates of the indirect taxes borne by the leather garments: The amounts of these certificates, which ranged from 1.7 to 2.9 percent of the f.o.b. value of the

merchandise, depended on the type of leather used in the garment.

The non-excessive rebate or refund of indirect taxes levied on exported products and their components is not a subsidy if the foreign government demonstrates to the Department's satisfaction (a) that the program operates for the purpose of rebating indirect taxes, (b) that there is a clear link between eligibility for payments on exports and indirect taxes paid, and (c) that the government has reasonably calculated and documented the actual indirect tax incidence relative to the products concerned and has demonstrated a clear link between such tax incidence and the amount rebated or refunded on export.

In this case, the Uruguayan government instituted the program by first conducting a study of the indirect taxes borne by the leather wearing apparel. After soliciting affidavits regarding costs of production of leather garments produced by all major exporters of the merchandise, the government calculated the indirect tax incidence for each type of garment and, rather than taking a weighted average of the individual exporters' tax incidence, elected a more conservative approach and used the lowest company's indirect tax incidence for each category of leather garments as the rate for the refund certificates.

During our verification, we reviewed official and company records supporting the production costs, the tax incidence and the methodology used to calculate the rates of refunds established by the government. Based on that evidence, we preliminarily find that the requisite linkage exists and that in each instance the amount of the refund was the same as or less than the actual tax incidence. Accordingly, we preliminarily find that the Tax Rebate Certificate program with regard to leather wearing apparel is a remission of indirect taxes and is not a bounty or grant within the meaning of the countervailing duty law. We also determine preliminarily that no overrebate under this program existed during the period of review.

(5) Bonification Payments

Bonification payments are export refunds of 22 percent of the value of the processed wool portion of the leather wearing apparel. The Uruguayan government made such payments on three shipments to the United States in 1982, and on 15 shipments in 1983. Because these payments are not linked to the payment of indirect taxes, we preliminarily determine that this program is countervailable. We preliminarily find the weighted-average benefit to leather wearing apparel exports to the United States to be 0.01 percent *ad valorem* for the period April 17, 1982 through December 31, 1982, and 0.07 percent *ad valorem* for the period January 1, 1983 through December 31, 1983.

(6) Uncollected Social Security Taxes

On May 11, 1982, the Government of Uruguay notified the Department that it had ceased in its efforts to collect social security taxes that the leather wearing apparel industry had not paid in 1980.

Because the Government of Uruguay was not able to collect these taxes, we consider the uncollected taxes to be a grant given on the date the government officially declared the taxes uncollectable. We consider the amount of the grant to be the total amount of the uncollected taxes plus the interest which would have accrued from June 16, 1981 (the date on which the Uruguayan government agreed to eliminate all benefits on leather wearing apparel exports to the United States), to May 11, 1982. We used as our benchmark interest rate the prime rate of interest available in Uruguay in 1981.

To calculate the benefits, we applied the grant methodology outlined in the Subsidies Appendix to the notice of "Final Affirmative Countervailing Duty Order" on certain cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006, April 26, 1984) ("the Subsidies Appendix"). We allocated the grant over 11 years, the average useful life of assets in the leather wearing apparel industry, according to the Asset Guideline Classes of the Internal Revenue Service. We used as the discount rate the short-term 1982 interest rate, as published by the Central Bank of Uruguay, because we have no information on long-term interest rates or on the weighted cost of capital in the leather wearing apparel industry for that year. On this basis, we preliminarily determines the benefit from this program to be 0.09 percent *ad valorem* for the period April 17, 1982 through December 31, 1982, and 0.04 percent *ad valorem* for the 1983 period.

(7) Income Tax Forgiveness

The Government of Uruguay forgave a percentage of the tax liability on income derived from the domestic value-added content of leather wearing apparel exporting during calendar years 1979, 1980 and 1981. Even though the program ended in 1981, benefits continued into the review period for firms that filed their income taxes in 1982 for the period ending December 31, 1981. Accordingly, we preliminarily determine the benefit on exports of leather wearing under this program during the period April 17, 1982 through December 31, 1982 to be 0.87 percent *ad valorem*. Further, we preliminarily find no benefit under this program during the period January 1, 1983 through December 31, 1983.

(8) Tanner's Subsidy

The petitioner alleged that a tanner's subsidy had been reinstituted and that benefits from this program were passed through to leather wearing apparel manufacturers. The tanner's subsidy was an export subsidy granted to domestic manufacturers of leather wearing apparel to allow for the added cost of using domestic tanned leather in their production.

The Government of Uruguay rescinded the tanner's subsidy on April 16, 1980, incorporating it into the system of reintegros. Further, there were no separate reintegros available for raw or tanned hides during the period April 17, 1982 through November 26, 1982, the date the reintegro program ended. We reviewed official and company documents and applications for other types of export rebates and found no applications for, or documents indicating issuance of, reintegros or any other type of export refund or rebate on leather. Accordingly, we preliminarily determine that there was no tanner's subsidy on leather during the period of review.

(9) Preferential Export Financing

The Central Bank of Uruguay suspended, but did not terminate, the preferential pre-export financing program on March 28, 1979. During our verification we determined that exporters who used financing for their exports obtained these loans from private banks at commercial rates and did not use the Central Bank program. Accordingly, we preliminarily find no bounty or grant under this program during the period of review.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 1.35 percent *ad valorem* for Uruguayan shipments of leather wearing apparel exported directly to the United States for the period April 17, 1982 through December 31, 1982, and 27.57 percent *ad valorem* for Uruguayan leather wearing apparel exported to the United States through intermediate countries for that period. For all Uruguayan leather wearing apparel exported to the United States during the calendar year 1983, we preliminarily determine the bounty or grant to be 0.11 percent *ad valorem*. The Department

considers any rate less than 0.5 percent to be *de minimis*.

The Department therefore intends to instruct the Customs Service to assess countervailing duties in the following amounts:

1. For all shipments exported directly to the United States and entered, or withdrawn from warehouse, for consumption on or after April 17, 1982 and exported on or before December 31, 1982, 1.35 percent of the f.o.b. invoice price of the merchandise.

2. For all shipments exported from Uruguay on or after April 17, 1982 and on or before December 31, 1982, to intermediate countries and entered, or withdrawn from warehouse, for consumption in the United States on or after April 17, 1982, 27.57 percent of the f.o.b. invoice price of the merchandise.

3. For all shipments exported from Uruguay to the United States on or after January 1, 1983 and on or before December 31, 1983, zero percent of the f.o.b. invoice price.

Further, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results on this review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 55 days after the date of publication or the last workday preceding. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This notice is published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32566, August 13, 1985).

Dated: June 17, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-14341 Filed 6-24-86; 8:45am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Conference on Weights and Measures; Meeting

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of Annual Meeting of National Conference on Weights and Measures.

SUMMARY: Notice is hereby given that the 71st Annual Meeting of the National Conference on Weights and Measures will be held Sunday, July 20 through Friday, July 25, 1985, at the Albuquerque Marriott Hotel, 2101 Louisiana Boulevard, N.E., Albuquerque, NM 87110.

SUPPLEMENTARY INFORMATION: The National Conference on Weights and Measures is an organization of weights and measures officials of the States, counties, and cities of the United States as well as associated Federal, industry, and consumer representatives. The annual meeting of the Conference brings together the enforcement officials, other government officials, and representatives of business, industry, trade associations and consumer organizations for the purpose of discussing and seeking consensus on subjects that relate to the fields of weights and measures technology, administration, and regulations.

Pursuant to authority in section 2 of the Act of March 3, 1901, as amended, (15 U.S.C. 272(5)), the National Bureau of Standards, as the sponsor of the National Conference on Weights and Measures, seeks to provide the technical basis for attaining nationwide uniformity among the States in the complex of laws, regulations, codes, methods, and the inspection and testing procedures that comprise regulatory control of commercial weighing and measuring activities by the States and local jurisdictions.

The public is invited to attend. A registration fee of $135.00 per person will be charged to pay for expenses of the meeting. The registration fee also includes membership in the National Conference on Weights and Measures for the fiscal year July 1, 1986 to June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Albert D. Tholen, Executive Secretary, National Conference on Weights and Measures, National Bureau of Standards, Gaithersburg, MD 20899, telephone—(301) 921-2401.

Dated: June 12, 1986.

Ernest Ambler,

Director.

[FR Doc. 86-14293 Filed 6-24-86; 8:45 am]

BILLING CODE 3510-13-M

National Technical Information Service Intent to Grant

Exclusive Patent License

The National Technical Information service (NTIS), U.S. Department of Commerce, intends to grant to Absorbent Industries, Inc., having a place of business at Spokane, Washington, an exclusive right to the United States to manufacture, use, and sell products embodied in the invention entitled "Highly Absorbent Graft Copolymers of Polyhydroxy Polymers, Acrylonitrile, and Acrylic Comonomers," U.S. Patent 4,134,863. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 14281 Filed 6-23-86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Consultations With the Government of Thailand To Review Trade in Category 611

June 20, 1986.

On May 30, 1986, The Government of the United States requested consultations with the Government of Thailand with respect to Category 611 (woven cellulosic fabric of man-made

fibers). This request was made on the basis of the bilateral agreement of July 27 and August 8, 1983 between the Governments of the United States and Thailand relating to trade in cotton, wool and man-made fiber textiles and textile products. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by market disruption, or the threat thereof, due to imports.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments within ninety-days of the request of consultations, the Committee for the Implementation of Textile Agreements, pursuant to the terms of the bilateral agreement, may establish a prorated specific limit for Category 611 for the period which began on May 30, 1986 and extends through December 31, 1986 at a level of 1,696,663 square yards.

The Government of the United States, pending agreement in consultations on a mutually satisfactory solution, has decided to control imports in this category exported during the ninety-day consultation period which began on May 30, 1986 and extends through August 27, 1986 at the prescribed level of 494,860 square yards.

In the event the level established for the ninety-day period is exceeded, such excess amounts, if they are allowed to enter, shall be charged to the period described above.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A summary market statement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 611 under the agreement with Thailand, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, Internal Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. 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, DC, 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."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Thailand—Market Statement

Category 611—Cellulosic Spun Yarn Fabric

May 1986.

Summary and Conclusions

U.S. imports of Category 611—cellulosic spun yarn fabric—from Thailand during the year ending March 1986 were 2.2 million square yards compared with 1,994 square yards a year earlier. Imports in 1984 were 1,994 square yards increasing to 802,753 square yards in 1985. Thailand is the third largest supplier of Category 611 fabric, accounting for 7 percent of the first quarter 1986 imports.

The U.S. market for cellulosic spun fabric has been disrupted by imports. Thailand's position as a major supplier of these fabrics makes it a major contributor to the U.S. market disruption.

Production and Market Share

U.S. production of Category 611 dropped sharply in 1982 due to a substantial decline in the market for these type fabrics. Production declined from 592 million square yards in 1981 to 94 million in 1982 and continued to drop in 1983 to a level of 87 million square yards. Although production regained some of the loss in 1984, increasing to 113 million square yards, 1985 production fell to 102 million square yards, a decline of 10 percent.

The market for Category 611 has improved since 1982. However, there has been a distinct downward trend in the U.S. producers' share of the market. In 1981, the domestic producers provided 98 percent of the market; in 1985, they provided 74 percent.

Imports and Import Penetration

U.S. imports of Category 611 from all sources increased 51 percent in 1985 to a record level 36.8 million square yards. Imports for the first three months of 1986 were up 100 percent over the comparable period of 1985.

The ratio of imports to domestic production doubled from 11.4 percent in 1982 to 21.6 percent in 1984. The ratio continued to rise in 1985, reaching 36.1 percent.

Duty-Paid Values and U.S. Producers' Prices

The duty-paid landed values of Category 611 imports from Thailand are below the U.S. producers prices for comparable fabrics. Approximately 60 percent of Thailand's Category 611 trade during January–March 1986 were lightweight apparel fabrics imported under TSUSA Number 338.5046.

Committee for the Implementation of Textile Agreements

June 20, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner:

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 26, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 611, produced or manufactured in Thailand and exported during the ninety-day period which began on May 30, 1986 and extends through August 27, 1986, in excess of 494,860 square yards.[1]

Textile products in Category 611 which have been exported to the United States prior to May 30, 1986 shall not be subject to this directive.

Textile products in Category 611 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under 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 (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action fails within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after May 29, 1986.

Sincerely,
William H. Houston III,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 86-14339 Filed 6-24-86; 8:45 am]
BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Board of Trade and the Chicago Mercantile Exchange for Designation as Contract Markets in Option Contracts on Specified Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contracts.

SUMMARY: The Chicago Board of Trade ("CBT") has applied to the Commodity Futures Trading Commission ("Commission") for designation as a contract market in options on its wheat, soybean oil and soybean meal futures contracts. In addition, the Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in options on its feeder cattle and pork bellies futures contracts. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 25, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the specific option contract(s) being addressed.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7303.

Copies of the terms and conditions of the proposed futures option contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT or the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures option contracts, or with respect to other materials submitted by the CBT or the CME in support of their applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by July 25, 1986.

Issued in Washington, DC, on June 19, 1986.
Paula A. Tosini,
Director, Division of Economic Analysis.
[FR Doc. 86-14284 Filed 6-24-86; 8:45 am]
BILLING CODE 6351-01-M

COPYRIGHT ROYALTY TRIBUNAL

[Dockets No. 84-1-83CD and 85-4-84CD]

Notice of Partial Distribution of 1983 Cable Copyright Royalty Fees

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of partial distribution; notice of postponement of procedural dates.

SUMMARY: The Copyright Royalty Tribunal announces it will make a partial distribution of the 1983 cable copyright royalty fund. The Tribunal also announces it will postpone the commencement of the 1984 Phase II cable distribution proceeding.

EFFECTIVE DATES: The partial distribution of the 1983 cable copyright royalty fund shall take place on June 26, 1986. The filing of written direct cases in the 1984 Phase II cable distribution proceeding shall be made on September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Edward W. Ray Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Washington, DC 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION: A Joint Motion For Distribution of 1983 Royalties was filed June 13, 1986 with the Copyright Royalty Tribunal by all the parties who participated in the 1983 cable royalty distribution proceeding. The parties requested that the Tribunal treat all the 1983 royalties which were previously distributed by the Tribunal on June 27, 1985 as basic fund royalties, to distribute as soon as possible the rest of the fund which constitute basic fund and 3.75% fund royalties, and to withhold, pending resolution by the Court of Appeals of certain appeals taken by the parties, the entire part of the fund which constitutes syndicated exclusivity surcharge (syndex) royalties.

The parties further agree that should it occur, either because of settlement or court decisions, that any party has received an amount in excess of its entitlement, the party will refund the overpayment as provided in the Tribunal's May 29, 1986 distribution order.

The Tribunal grants the joint motion and will make partial distribution of the 1983 cable copyright royalty fund according to the terms of the joint motion on June 26, 1986.

In addition, the Tribunal has received indications from several of the parties to the 1984 Phase II cable distribution proceeding that the proper production of evidence cannot take place in time to meet the procedural schedule announced earlier by the Tribunal, 51 FR 21587 (June 13, 1986). Accordingly, the Tribunal had modified its schedule. Written direct cases in Phase II shall be filed on September 15, 1986. The procedural dates to follow will be announced at a later time.

Dated: June 20, 1986.
Mario F. Aguero,
Acting Chairman.
[FR Doc. 86-14376 Filed 6-24-86; 8:45 am]
BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0930, Tuesday, 29 July 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research

Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended (5 U.S.C. App. II 10(d) 1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: June 20, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–14318 Filed 6–24–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB Review

SUMMARY: The Department of Defense has submitted to 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). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Financial Statement

Financial disclosure reporting is required to determine the collection procedures for individual debt collection when former and current Air Force Reserve and Air National Guard members, their dependents and civilians use military hospital facilities.

Individuals; Responses 5,000; Burden Hours 5,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Leonard L. Christensen, AFAFC/AJ, Denver, CO 80279–5000, telephone number (303) 370–7651.

Dated: June 20, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–14319 Filed 6–24–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for review

SUMMARY: The Department of Defense has submitted to 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). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement

Personal Information Questionnaire NAVMC 10064

The information obtained is used as a standardized method in rating officer program applicants in the areas of character, leadership, ability and suitability for service as a commissioned officer.

Individuals; Responses 3,000; Burden hours 1,500.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway; Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Captain A. C. Sproul, Headquarters, U.S. Marine Corps, Personnel Procurement Division, Officer Procurement Section, telephone (202) 694–1756.

Dated: June 20, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–14320 Filed 6–24–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed Week of April 25 Through May 2, 1986

During the Week of April 25 through May 2, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 16, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 25 Through May 2, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 25, 1986	Economic Regulatory Administration, Washington, DC.	KRD-0121	Motion for Discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the statement of objections submitted by Tri-Service Drilling Co., in response to a proposed remedial order issued to the firm (Case No. KRO-0120).
Apr. 29, 1986	Grigsby Oil & Gas, Washington, DC	KEF-0035	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the November 29, 1976 remedial order issued to Grigsby Oil & Gas.

NOTICE OF OBJECTION RECEIVED

[Week of April 25 to May 2, 1986]

Date	Name and location of applicant	Case No.
May 1, 1986	Warrior Asphalt of Alabama, Washington, DC.	BYX-0197

REFUND APPLICATIONS RECEIVED

[Week of April 25 to May 2, 1986]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
Apr. 29, 1986	Eastern NJ/Hudson Tower.	RF232-385
May 1, 1986	Quaker State/The Guttman Group.	RF213-207
Do	Quaker State/National Wax Co.	RF213-206
Apr. 28, 1986	Arkansas Louisiana/ King's Pilgrim.	RF154-24
May 1, 1986	Union Texas/Base Wyandotte Corp.	RF140-41
Apr. 17, 1986	Amoco/Heiser Oil & Gas Co.	RF21-12603
Apr. 28, 1986	Amoco/Basin Electric Power Cooperative.	RF21-12602
Do	Amoco/Basin Electric Power Cooperative.	RF21-12604
Apr. 25, 1986	Gulf/North Temple Gulf	RF40-3138
Do	Earth/Yarbrough Self Service.	RF239-8
Do	Hicks/Boente Brothers Propane.	RF237-7
Do	Crystal/Guy R. Smith Drilling Co.	RF233-28
Do	Crystal/Kerr-McGee Corp.	RF233-27

REFUND APPLICATIONS RECEIVED—Continued

[Week of April 25 to May 2, 1986]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
Do	Eastern NJ/Japato Realty Co.	RF232-381
Do	Eastern NJ/Hi-Way Concrete Products.	RF232-380
Apr. 29, 1986	Conoco/Delta Airlines	RF220-367
Do	Martin/Amoco Corporation.	RF240-13
Apr. 28, 1986	Beacon/Orange Belt Supply Co.	RF238-18
Do	Beacon/Sooue Drive Beacon.	RF238-16
Do	Beacon/Martin H. Archer.	RF238-17
Apr. 29, 1986	Beacon/E. B. Johnstone, Inc.	RF238-15
Apr. 30, 1986	Beacon/Fred's Truck Fuels, Inc.	RF238-14
Apr. 29, 1986	Pride/Gulf Oil Corp.	RF235-9
Apr. 28, 1986	Crystal/Adrian C. Fletcher Farm.	RF233-29
Do	Crystal/Fletchers Service Station, Inc.	RF233-30
Apr. 29, 1986	Crystal/Magnum Corp.	RF233-31
Apr. 30, 1986	Crystal/Crystal Petroleum Co.	RF233-32
May 1, 1986	Eastern NJ/Friedman Management Co.	RF232-382
Apr. 28, 1986	Eastern NJ/Cliffside Office Supply.	RF232-383
Apr. 29, 1986	Eastern NJ/Ashley Goodman.	RF232-384
Apr. 27, 1986 thru May 2, 1986.	Mobil Oil Refund Applications.	RF225-3568 thru RF225-6325

Notice of Cases Filed Week of May 2 through May 9, 1986

During the Week of May 2 through May 9, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 16, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 2 through May 9, 1986]

Date	Name and location of applicant	Case No.	Type of submission
May 6, 1986	BHP Petroleum Co., Inc., Houston, TX	KRD-0250	Motion for Discovery. If granted: Discovery would be granted to BHP Petroleum Co., Inc. in connection with the Statement of Objections submitted in response to a February 14, 1986 Proposed Remedial Order (Case No. KRO-0250) issued to BHP under its former name, Monsanto Oil Co.
Do	Government Accountability Project, Washington, DC.	KFA-0032	Appeal of An Information Request Denial. If granted: The April 28, 1986 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Government Accountability Project would receive acess to certain DOE information.
Do	National Treasury Employees Union, Washington, DC.	KFA-0039	Appeal of an Information Request Denial. If granted: The April 4, 1986 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded and National Treasury Employees Union would receive access to records and reports concerning the Uniform Guidelines of the Employee Selection and the FEORP Program.
May 6, 1986	Texas, Arkansas, Colorado & Oklahoma Oil Purchasing Corp., Washington, DC.	KEF-0036	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V in connection with the September 23, 1983 Consent Order entered into with Texas, Arkansas, Colorado & Oklahoma Oil Purchasing Corporation.
May 9, 1986	F. Ray Moore Oil Co., Washington, DC	KEE-0040	Exception to the Reporting Requirements. If granted: F. Ray Moore Oil Co. would no longer be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report"

REFUND APPLICATIONS RECEIVED

[Week of May 2 to May 9, 1986]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
May 7, 1986	Beacon/King Currie Co., Inc.	RF238-27
Do	Eastern NJ/Star-Glo Rubber Company.	RF232-388
May 6, 1986	Eastern NJ/Berruroh Arms.	RF232-389
May 5, 1986	Eastern NJ/Clarco	RF232-390
Do	Eastern NJ/Flexicote, Inc.	RF232-391
Do	Eastern NJ/Paled Realty Company.	RF232-392
May 6, 1986	Earth/Kerr-McGee Corp.	RF239-12
May 5, 1986	Earth/Tennessee Valley Authority.	RF239-13
May 6, 1986	Earth/Tennessee Valley Authority.	RF239-13
May 5, 1986	Sigmor/Mission Petroleum Carrier, Inc.	RF242-8
May 5, 1986	Sigmor/Dalvest Energy, Inc.	RF242-9
Do	Power Pak/Cando Oil & Gas Co.	RF241-4
Do	Conoco/E-Z Serve, Inc.	RF220-368
May 7, 1986	Pride/McCormick and Sons Oil Co., Inc.	RF235-10
May 5, 1986	Boswell/King & Kenney, Inc.	RF179-17
Do	Champlain/Cota's Citgo Service Station.	RF187-17
May 2, 1986	Earth/Vaughn Oil Co., Inc.	RF239-10
Do	Earth/Westate Oil Co	RF239-11
April 17, 1986	Amoco/Heiser Oil & Gas Co.	RF21-12607
May 5, 1986	Gulf/Bill & Jim's Gulf Service.	RF40-3140
Do	Arkla/Pickens-Bond Construction Co.	RF153-29
Do	Arkansas Louisiana/ Pickens-Bond Construction Co.	RF154-25
Do	Arkansas Louisiana/ Chandler Trailer Convey.	RF154-26
Do	Crystal/Dynamic Industries, Inc.	RF233-34
Do	Crystal/Nu-Way Oil Co	RF233-35
May 7, 1986	Beacon/Jesse A. Zimmerman Trucking.	RF238-21
May 6, 1986	Beacon/Darling Oil & Tire.	RF238-22
Do	Beacon/Jeffries Brothers, Inc.	RF238-23
May 5, 1986	Beacon/Enterprise Beacon Service.	RF238-24
Do	Beacon/Hill's Gas N Go.	RF238-25
Do	Beacon/Apollo Oil Co.	RF238-26
May 2, 1986	Earth/Henderson Oil Co.	RF239-9
Do	Amoco/Southard Oil Co., Inc.	RF21-12606
Do	Amoco/Sanders Amoco Service.	RF21-2605
Do	Sid Richardson/MFA Oil Co.	RF26-34
Do	Gulf/Scruggs Gulf Service Station.	RF40-3139
Do	F. O. Flectcher/Peter Willden.	RF172-32
Do	Glaser Gas/Kiowa Store.	RF174-4
Do	Eastern NJ/Montclair Kimberley.	RF232-386
Do	Eastern NJ/Hyman Zeik.	RF232-387
Do	Crystal/Defense Logistics Agency.	RF233-33
Do	Hicks/Bryant & Son L.P. Gas, Inc.	RF237-8
Do	Beacon/harness & Son.	RF238-20
Do	Beacon/Tom R. Ward.	RF238-19
Do	Beacon/Tom R. Ward.	RF238-19
May 1, 1986	Martin/Conoco, Inc.	RF240-14
May 2, 1986	Sigmor/Conoco, Inc.	RF242-7

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 2 to May 9, 1986]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
May 8, 1986	National HJelium/ Nevada.	RQ3-294
May 5, 1986	Mobil Oil Refund Applications thru	RF225-6326 thru
May 19, 1986		RF225-7992

[FR Doc. 86-14324 Filed 6-24-86; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

[BPA File No. CCS-1]

Policy to Implement the Council-Recommended Conservation Surcharge

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Revised Proposed Policy and Request for Comment.

SUMMARY: In accordance with the Pacific Northwest Electric Power Planning and Conservation Act, the Northwest Power Planning Council (Council) has developed model conservation standards (MCS) and recommended to the BPA Administrator that a surcharge be imposed on BPA's customers for those portions of their loads within the region that are within States or political subdivisions which have not adopted, or on customers who have not adopted, the MCS or other conservation measures which achieve savings of electricity comparable to the standards. BPA is requesting comment on a revised proposed policy to implement the Council-recommended conservation surcharge (Surcharge Policy). This revised proposed policy focuses on the submission and content of utility plans to implement the residential and commercial MCS, the development of a procedure to measure compliance with the MCS, and the identification of near-term surchargeable events. The Policy applies to all BPA customers that purchase firm power pursuant to a Power Sales Contract under the Priority Firm Power, Firm Capacity, and New Resource Firm Power rate schedules or participate in the Residential Purchase and Sales Agreement/Exchange Transmission Credit Agreement. The policy will be updated on an annual basis to revise MCS performance standards, and the dates and requirements for utility submissions

Responsible Official: John Carr, Director, Division of Planning and Evaluation, Office of Conservation, is the official responsible for developing the policy.

DATES: Public comment forums will be held in the following locations. Additional meetings for public comment will be held upon request. Written comments must be received at the Public Involvement Office by 5 p.m., July 31, 1986.

Pasco, WA—July 15, 1986, Franklin County PUD, 1411 W. Clarke Street, 9–11 a.m.

Spokane, WA—July 15, 1986, Ridpath Motel, West 515 Sprague Avenue, 2–4 p.m.

Burley, ID—July 18, 1986, Burley Inn, Patio II Room, 800 North Overland, 9:30 a.m.–12 p.m.

Missoula, MT—July 21, 1986, Quality Inn, Highway 10 West, East Mullan Road, 6:30 p.m.–9 p.m.

Seattle, WA—July 24, 1986, Center House, Seattle Center, Third Avenue North & Harrison, 9 a.m.–12 p.m.

Salem , OR—July 25, 1986, Chumaree Mortor Inn 3301 Market Street, Northeast 9 a.m.–12 p.m.

ADDRESSES: Comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manger, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa M. Cunningham, Public Involvement Office, at the above address or 503–230–3478. Oregon callers outside of Portland may use the toll-free number 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. Bart Evans, Division of Planning and Evaluation, Office of Conservation, 1002 NE. Holladay Street, Portland, Oregon 97208, 503–230–4304.

Mr. George E. 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, 503–687–6959.

Mr. Wayne R. Lee, Upper Columbia Area Manager, U.S. Courthouse, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Terrence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagonhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6225.

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, 550 West Fort Street, Room 376, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background of Policy

A. Introduction

The Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839 *et seq.* (Pacific Northwest Power Act), provides for the development of cost-effective conservation as the first priority resource to be used in meeting the electric power needs of the region. Several mechanisms are provided to ensure that such conservation is developed. In addition to the BPA authority to acquire conservation or to grant billing credits for conservation that reduces its obligation to acquire other resources, the Council was directed to develop and include model conservation standards (MCS) in its Northwest Conservation and Electric Power Plan (Plan). As currently devised by the Council, these standards are minimum efficiency requirements for new electrically heated residential structures, new commercial buildings, existing residential structures which convert to electric heat, and existing commercial buildings which convert to electric space conditioning.

Neither BPA nor the Council has authority to impose the model conservation standards as building codes or as conditions of retail power service. Implementation is dependent on the actions of State and local governments or retail utilities. The Pacific Northwest Power Act, however, does provide for a Council recommendation of surcharge on BPA's power sales rates. If Council recommends, BPA may subsequently impose a 10 to 50 percent rate surcharge on BPA's customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on customers which have not, implemented the model standards or otherwise achieved comparable savings.

B. Statutory direction

The Pacific Northwest Power Act provides for the development of model conservation standards as part of the Council's Regional Power Plan in Section 4(e)(3). These standards, as described in Section 4(f)(1), are to include standards applicable to new and existing structures. Such standards should reflect geographic and climatic differences and produce all power savings that are cost-effective for the region and economically feasible for consumers.

Once the standards are included in the Plan, Section 4(f)(2) provides that the Council may recommend to the BPA Administrator the imposition of a surcharge on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the customers which have not, implemented the standards or alternative conservation measures that achieve energy savings comparable to the standards.

Section 4(e)(3)(G) provides for the Council to develop as part of its Plan a methodology for calculating such surcharges. As detailed in Section 4(f)(2):

> Surcharges shall be established to recover such additional costs as the Administrator determines will be incurred because such projected energy savings attributable to such conservation measures have not been achieved, but in no case may such surcharges be less than 10 percent or more than 50 percent of the Administrator's applicable rates for such load or portion thereof.

C. Actions by the Council

1. 1983 Regional Power Plan

On April 27, 1983, the Council adopted the 1983 Northwest Conservation and Electric Power Plan. As required by the Pacific Northwest Power Act, the Council's Plan contained model conservation standards for newly constructed residential and commercial buildings, and for conversion or existing residential and commercial buildings to electric space heating and conditioning.

In the 1983 Two-Year Action Plan (Chapter 10 of the 1983 Regional Power Plan), the Council identified tasks to be undertaken by BPA, the Council, and other regional entities. Tasks for BPA to perform included developing a consistent procedure for certifying compliance with each model conservation standard, developing a procedure for reviewing and evaluating alternative plans to ensure that savings comparable to those of the model standards will be achieved, and other actions designed to facilitate the implementation of the model conservation standards.

By January 1, 1986, State government, local governments, or utilities were to adopt and enforce the model conservation standards. Where such standards were not adopted, an alternative plan to achieve comparable savings should have been in place by January 1, 1986. Where neither action had occurred, the Council recommended in Section 25 of the 1983 Two-Year Action Plan that the Administrator impose a surcharge.

2. Council's Final MCS Amendments to the 1983 Regional Power Plan

On July 26, 1985, the Council published proposed amendments to the model conservation standards. Following extensive public comment, on December 4, 1985, the Council voted to amend that portion of the 1983 Northwest Power Plan dealing with the model standards. The MCS, as amended, includes: (1) MCS for new residential buildings, effective January 1,

1989; (2) MCS for utility residential conservation programs; effective January 1, 1987; (3) MCS for new commercial buildings, effective January 1, 1989; (4) MCS for utility commercial conservation programs, effective January 1, 1987; and (5) MCS for new residential and commercial buildings converting to electric space heating/conditioning, effective January 1, 1989.

The amended MCS savings levels for both new residential and commercial buildings is equivalent to the MCS set forth and amended by the Council in its 1983 Power Plan. The Council's 1983 approach to the MCS emphasized the use of building codes as the least expensive way for the regional power system to acquire regionally cost-effective conservation. The final amendment of the MCS delays the code or code-equivalent requirement for 3 years, and focuses on utility residential and commercial conservation programs in the meantime. The new MCS for utility programs are designed to encourage, through marketing and financial assistance, improved building practice and eventual adoption of building codes at MCS levels. The complete text of the model conservation standards, is contained in the Council's Final Model Conservation Standard Amendments.

In the 1986 Action Plan (Chapter 9 of the 1986 Northwest Power Plan) and the 1983 Plan Amendment to the MCS, the Council identifies specific actions BPA should take towards regionwide implementation of the MCS. Among the recommended actions are the following which pertain directly to the development of the Surcharge Policy: (1) Request utilities to submit to BPA by September 1, 1987, a plan declaring how they intend to comply with the MCS for utility residential conservation programs beginning on January 1, 1987; (2) request utilities or local jurisdiction s to submit to BPA by September 1, 1986, their plans for complying with the MCS for utility conservation programs for commercial buildings; (3) as soon as possible in 1986, design a process to collect utility specific data on the achievement of electricity savings as a percentage of the total savings that would be expected if all buildings were constructed to MCS levels. The data should be the basis for a report published every year to notify utilities of their progress towards achieving the MCS in the previous year and the annual minimum performance standard and equivalence standard, where applicable, which will have to be met in the following year to avoid a surcharge; (4) continue development of and implement a procedure to measure compliance with the MCS and to review alternative plans for achieving compliance with the MCS for utility conservation programs. This procedure should be incorporated into Bonneville's surcharge policy scheduled for completion early in 1986. The surcharge policy should be modified to incorporate changes to the MCS made by the Council in the Plan; and (5) develop the surcharge policy and impose a 10 percent surcharge on any utility that has not met all of the requirements of the MCS for utility conservation programs for new residential and new commercial buildings. The surcharge policy should be developed and a Council-recommended surcharge should be imposed pursuant to the Council's Final Model Conservation Standard Amendments.

3. Residential Surcharge Recommendation

The Council has recommended that the processes for evaluation of utility performance and the establishment of an annual residential minimum performance standard and equivalence standard should be incorporated in BPA's Surcharge Policy. The Council has also recommended that BPA should monitor MCS program performance and equivalence during each year beginning in 1987.

The Council recommends that a 10 percent surcharge be imposed as of January 1, 1987, on utilities which have not complied with the September 1, 1986, deadline to submit: (1) An initial plan for implementation of the BPA/Utility Residential MCS Program; (2) a plan for implementation of an alternative program which is approved by BPA as being equivalent; or (3) a declaration, approved by BPA, that the MCS for residential buildings will be met by building codes. This surcharge continues in effect until a utility has filed an initial plan and has obtained the necessary BPA approvals.

The Council recommends that on each January 1, beginning in 1989, a 10 percent surcharge be imposed for 1 year on all utilities which did not comply with the annual minimum performance standard for the performance year beginning two years earlier. However, utilities with a total load of less than 25 average megawatts, should not be surcharged regardless of their performance if they participate in the BPA/Utility MCS Program and offer throughout each year to which a minimum performance standard is applicable, a financial assistance equal to or greater than the maximum value of financial assistance identified in the Final Model Conservation Standard Amendments.

The Council recommends that on each July 1, beginning in 1990, a 10 percent surcharge be imposed for 1 year on utilities with alternative residential programs that have: (1) Not met the equivalence standard for the previous performance year beginning in 1989; and (2) have not secured BPA's approval of another alternative plan for meeting the equivalence standard, or have not adopted the BPA/Utility Residential MCS Program.

The Council recommends that a utility operating the BPA/Utility Residential MCS Program or a program approved by BPA as equivalent should not be surcharged if BPA does not offer it financial assistance, to be provided to homebuilders for each residence meeting the standards, at least equal to the minimum value of financial assistance shown in Table 3 of the Final Model Conservation Standard Amendments.

The Council recommends that in no event should a utility be surcharged if it achieves and maintains a level of electrical energy savings equivalent to 85 percent of those which would be achieved if all new electrically heated residences and all new electrically space-conditioned commercial buildings in its service territories were constructed to the level of the MCS.

4. Commercial Surcharge Recommendation

The Council recommends that the evaluation of utility performance and establishment of a commercial minimum performance standard and equivalence standard be incorporated as part of the BPA surcharge policy. The Council also recommends that BPA monitor performance and equivalence during each performance year beginning with the first performance year (1987).

The Council recommends that a 10 percent surcharge be imposed as of January 1, 1987, on utilities which have not complied with the September 1, 1986 deadline to submit: (1) An initial plan for implementation of the BPA/Utility Commercial MCS Program; (2) a plan for implementation of an alternative program which is approved by BPA as equivalent; or (3) a declaration, approved by BPA, that the MCS for commercial buildings will be met by building codes at the MCS levels. The Council recommends that the surcharge continues in effect until a utility has filed an intial plan and has obtained the necessary BPA approvals.

The Council recommends that on each January 1, beginning in 1989, a 10

percent surcharge be imposed for 1 year on utilities which have not complied with the annual minimum performance standard for the performance year beginning two years earlier.

The Council recommends that on each July 1, beginning in 1990, a 10 percent surcharge be imposed for 1 year on utilities with alternative commercial programs that have: (1) No met the equivalence standard for that performance year beginning in 1989; and (2) have not secured BPA's approval of another alternative plan for meeting the equivalence standard, or have not adopted the BPA/Utility Commercial MCS Program.

5. Conversion Surcharge Recommendation

The Council's MCS for residential and commercial buildings converting to electric space heating/conditioning states that State or local governments or utilities should take actions through codes and/or alternative programs to achieve electric power savings from buildings which convert to electric space heating/conditioning. The savings should be comparable to those savings that would be achieved if each building converting to electric space heat/conditioning were upgraded to include all cost-effective electricity conservation measures. The Council highly recommends this conversion standard, but is not recommending that a surcharge be imposed for failure to act accordingly.

6. Surcharge Methodology

As required by the Pacific Northwest Power Act, the Council included a methodology to calculate sucharges in Appendix A to the initial Model Conservation Standards Rule. In October 1984, the Council amended its original methodology in which called for a 10 percent surcharge to be levied on the monthly charges for power purchased and/or exchanged to serve a customer's non-complying load. The Council has recommended that the total surcharge on a utility for failing to meet the MCS for residential and commercial utility programs should not exceed 10 percent of its rate at any time. The complete text of the surcharge methodology is contained in the Council's Final Model Conservation Standard Amendments.

7. Exemptions

At the present time, the Council has determined that there is no need for exemptions. The Council recommends that if BPA finds that hardship exists for a particular utility or jurisdiction, BPA should, if necessary, fully finance the achievement of the MCS in that utility service area or jurisdiction.

D. Actions by BPA

BPA, through this notice, is revising its proposed policy for certifying compliance with the MCS for new residential and commercial buildings, certifying compliance with the MCS for utility residential and commercial conservation programs, and reviewing and evaluating alternative plans designed to achieve comparable savings.

BPA is presently proposing a Surcharge Policy which incorporates four, near-term, surchargeable events:

1. A 10 percent surcharge will be imposed as of April 1, 1987 on utilities which have not implemented either a Residential MCS plan or an alternative plan. BPA is requesting that by January 1, 1987 all customers submit to BPA (a) an initial plan for implementation of the Residential BPA/Utility MCS Program; or (b) a plan for implementation of an alternative program which is approved by BPA as being equivalent; or (c) a declaration that the MCS for residential buildings will be met by building codes. The surcharge will continue in effect on a monthly basis until a utility has implemented an initial MCS plan and has obtained the necessary BPA approvals.

2. A 10 percent surcharge will be imposed for a period of 1 year effective January 1, 1989 on customers which did not comply with the 1987 residential minimum performance standard. The residential minimum performance standard for 1987 has been set by the Council at 30 percent of the savings available from full MCS attainment.

3. A 10 percent surcharge will be imposed effective January 1, 1988 on customers which have not implemented a commercial MCS plan or an alternative plan. BPA is requesting that by October 1, 1987, all customers submit: (a) an initial plan for implementation of the BPA/Utility Commercial MCS Program; or (b) a plan for implementation of an alternative program which is approved by BPA as being equivalent; or (c) a declaration that the MCS for commercial buildings will be met by building codes. The surcharge will continue in effect on a monthly basis until a utility has implemented an initial MCS plan and has obtained the necessary BPA approvals.

4. A 10 percent surcharge will be imposed for a period of 1 year effective January 1, 1990, on customers which did not comply with the 1988 commercial minimum performance standard. The commercial minimum BPA performance standard for 1988 will be determined by BPA and announced prior to July 1987.

At the request of the Council, BPA did not include in the proposed policy provisions for exemptions from the Council recommendation to impose a surcharge. The Council believed that most exemptions would be unnecessary if acceptable alternative plans were developed. As a result of comments BPA received on the alternative plans in the proposed policy and the comments the Council received on their MCS amendment, the Council voted not to recommend specific exemptions to this policy.

Previously, BPA stated that following the Council's consideration of exemptions, BPA would consider exemptions, and would then solicit public comment on its position. In this notice BPA is soliciting comments on the Council's recommendation for BPA to fully finance the achievement of the MCS in areas where hardship exists.

The resulting final policy will fulfill BPA's obligations under the terms of BPA's power sales contracts, the Final Model Conservation Standard Amendments, the 1986 Action Plan developed as part of the Council's 1986 Northwest Power Plan, and the Pacific Northwest Electric Power Planning and Conservation Act.

II. Activities to Date

BPA began the development of the policy in early 1984 through a series of informal meetings with State government, local government, utility, and Council representatives. BPA staff informally discussed the various issues that might surround the development of a policy to implement the Council recommendation to impose a surcharge. These informal discussions formed the basis of a **Federal Register** Notice of Intent to develop a policy to implement the Council-recommended conservation surcharge. The notice (49 FR 34891, September 4, 1984) was mailed to the public on August 28, 1984. The notice outlined what BPA believed would be the major sections of the policy, the issues that had surfaced during the preliminary discussions, and requested recommendations on the identification of other issues and how these issues might best be addressed in the policy.

The notice requested that written recommendations be provided to BPA by October 1, 1984. A general information meeting was also scheduled for September 13, 1984. This meeting provided an opportunity for BPA staff to clarify the issues identified as well as to describe the public process to be used in developing the policy. Additionally, the

meeting offered an opportunity for recommendations to be made orally. Thirty-nine letters and numerous oral comments were received in response to the notice.

BPA elected to delay publication of a proposed policy until after final Council action on amendment of the surcharge methodology. The Council voted October 31, 1984, to adopt an amendment which greatly simplified the surcharge calculation.

BPA received a number of recommendations concerning possible exemptions from a surcharge during the comment on the Notice of Intent. The Council, also, received numerous comments on exemptions during its amendment process for the surcharge methodology. As a result, the Council developed an issue paper examining possible exemptions from the MCS and from its recommendation to impose a surcharge. The issue paper analyzed three specific exemptions from the MCS. These were exemptions for: areas which have both low population density and little new building construction; utilities which have significant resource surpluses that are projected to continue over the next 20 years and have very low retail rates (less than the cost of energy saved by the MCS) which can be assured through the Council's planning horizon; and areas of the region outside of the four Northwest states. BPA provided the Council with copies of all comments received in response to the Notice of Intent, including those comments suggesting exemptions from BPA's imposition of a Council-recommended surcharge. At their meeting on November 28, 1984, the Council elected to defer action on exemptions on the basis that many of the exemptions might be unnecessary if adequate alternative plans could be developed. BPA was requested to proceed with the development of its policy and to address alternative plans. However, BPA was requested to delay a proposal on exemptions until after Council action on the issue.

During the period of March 13, 1985 to May 17, 1985, BPA released the proposed Surcharge Policy for public review and comment. In the proposed policy, BPA sought comment on specific issues including applicable rate schedules, regional suspension criteria, policy implementation date, pre-approved alternative plans, responsibilities of utilities and local governments, and the methods for calculation and collection of the surcharge. Public meetings were held throughout the BPA service territory in six locations. BPA received written comments from twelve utilities, five State/local governments, five private organizations/individuals and one Indian Tribe. Oral comments were received from sixteen utilities, thirteen local/State governments, and three private organizations/individuals.

Within 2 months from the close of the comment period on the proposed Surcharge Policy, the Council proposed that the MCS be amended and the recommendation for surcharge be delayed. The Council amended the MCS on December 4, 1985.

BPA has developed and is currently implementing a variety of MCS marketing and research programs throughout the region. Paramount among the marketing programs are the Super Good Cents Program and the MCS Early Adopter Program.

The Early Adopter Program is designed to support and encourage voluntary regionwide adoption and implementation of the MCS. Through this program, BPA pays for the additional costs of adopting and implementing the MCS, either as traditional building codes or through utility service standards for new, electrically heated homes.

The Super Good Cents Program is an energy efficient new home marketing program jointly sponsored by BPA and participating BPA customers. The program emphasizes utility and shelter industry training, regional advertising, and the provision of financial incentives to home builders or home buyers. The goal of this program is to influence regional building practices resulting in the eventual adoption of improved building codes throughout the region. A home constructed to Super Good Cents specifications is equivalent to the model conservation standards. For purposes of this Policy, the Super Good Cents Program, as offered by BPA, comprises the BPA/Utility Residential MCS Program.

BPA has also recently begun two projects to encourage construction of energy-efficient new commercial structures. BPA is currently operating: (1) a design competition, "Energy Edge", which will select 35 energy-efficient buildings determined to be at least 30 percent more efficient than the Commercial MCS; and (2) a series of "Energy Smart" workshops for commercial designers and contractors on how to integrate energy efficiency into the design of a new commercial building without increasing costs.

BPA is currently developing a BPA/Utility Commercial MCS Program which will be offered to customers in the Spring of 1987. This Program will address Council-recommended actions under the 1986 Regional Power Plan.

Through this notice, BPA is soliciting comments on a revised proposed Surcharge Policy. Incorporated into the policy are the Council's final amendments to the MCS and the comments BPA received on proposed policy. Once the Surcharge Policy is finalized, BPA will provide annual policy updates to revise annual minimum performance standards and equivalence standards, as well as revise the dates and requirements for utility submissions of MCS related information.

Written and oral comments are requested on this proposal, the issues identified in the proposal, and other relevant issues.

III. Summary of Revised Proposed Policy

The following summary is intended to provide the reader with an overview of the revised proposed policy. A discussion of policy issues and how BPA is proposing to address each follows in Section IV.

Purposes—Section 1. This section lists the four purposes of the surcharge policy. The purposes are to:

A. provide a procedure by which customers may demonstrate that they, or the jurisdiction they serve, are in compliance with the model conservation standards;

B. provide a procedure by which customers may demonstrate that they, or the jurisdictions they serve, have adopted acceptable alternative plans for achieving savings comparable to the model conservation standards;

C. identify under what conditions BPA might exempt a customer from a conservation surcharge; and

D. provide a procedure by which the Administrator will determine the level of the surcharge to be imposed.

Definitions—Section 2. Terms that are unique to this policy as well as more general abbreviations are noted.

Application of Policy—Section 3. This policy will be in effect upon publication of the final policy in the **Federal Register.**

The policy applies to all BPA customers that purchase firm power pursuant to a Power Sales Contract under any of the rate schedules that are subject to the surcharge or customers that participate in the Residential Purchase and Sales Agreement/ Exchange Transmission Credit Agreement (Residential Exchange). In the 1985 Rate Case a surcharge provision was included for the Priority Firm Power (PF), Firm Capacity (CF),

and New Resource Firm Power (NR) rate schedules.

If the Administrator determines that (1) a given model conservation standard does not meet the Pacific Northwest Power Act requirement of regional cost-effectiveness, or (2) there is no increased system cost created by nonadoption or delay of the standard, then the policy relative to that standard shall be suspended for all customers.

Concurrent with the development of this policy, BPA is conducting a cost-effectiveness review of the MCS, using actual energy use data from over 400 MCS homes built under BPA's Residential Standards Demonstration Program and from other data gathering efforts.

Exemptions—Section 4. The Administrator has discretion as to whether a Surcharge will be imposed on customers. The Council has not recommended specific exemption to this policy, although it has recommended that if BPA finds a hardship in particular cases BPA should fully finance the MCS in those utility areas and/or jurisdictions.

BPA is seeking comment on the Council's recommendation through this notice.

Procedures to Impose Conservation Surcharge—Section 5. The determination of the conservation surcharge for failure to implement an MCS plan or alternative plan requires each customers to submit a plan to adopt the MCS as a code or utility service requirement, implement the BPA/Utility MCS Program, or implement an alternative plan or alternative code. This surcharge continues in effect until a customer has implemented an initial MCS plan or alternative plan and has obtained the necessary approvals from BPA.

The determination of the conservation surcharge to be levied on customers not achieving performance standards requires four findings: (1) What portion of the load is in a jurisdiction that has adopted, or in an area where the customer has adopted, the MCS; and (2) what portion of the load is in a jurisdiction that has adopted, or in an area where the customer has adopted the BPA/Utility MCS Program; (3) what portion of the load is in a jurisdiction that has implemented, or in an area where the customer has implemented, an acceptable alternative plan or alternative code; and (4) what portion of the load is exempted. The remaining portion of the customer's total load may be determined to be in noncompliance and is therefore subject to surcharge. This surcharge will be imposed for a period of 1 year on customers not complying with the annual minimum performance standard and/or equivalence standard.

The surcharge, as determined by the Council's method, is 10 percent of the monthly charge for power purchased under the applicable rate schedules, and/or the monthly price for the residential power exchanged, to serve loads not covered by the MCS as a code, utility program, an alternative plan, or which are otherwise exempted. To achieve this, BPA will develop a percentage which when applied to the utility's total firm power purchases or residential exchange power, yields the same results as if a 10 percent surcharge is applied to only that portion of a utility's load that is in noncompliance. As an example, if 25 percent of a utility's total load is located in a jurisdiction which has adopted the MCS as a code, 20 percent in a jurisdiction with an approved alternative plan, and 5 percent exempted, then 50 percent of the utility's total load is not covered and is, therefore, subject to the surcharge. Using the Council's methodology, the 10 percent surcharge is multiplied by the 50 percent, resulting in a 5 percent surcharge applied to the total applicable utility purchases (10%×50%=5%).

If the customer participates in the BPA/Utility MCS Program, and offers the Program to all jurisdictions it serves, the utility is free from the surcharge provided it achieves the annual minimum performance standard for each year during which the BPA/Utility MCS Program is operated.

Collection of Surcharge—Section 6. The surcharge for a specific utility will be included in the monthly bill for the power purchases or reflected in the priority firm rates on residential exchange invoices beginning the first billing period after a final decision is made to impose a surcharge. If a utility is not actively participating in the Residential Purchase and Sales Agreement/Exchange Transmission Credit Agreement (Residential Exchange), but is currently a deemer pursuant to the respective agreement, then the surcharge amount shall be included in the determination of the amount accumulated in the special account established for this purpose (deemer account).

If a utility only purchases firm power from BPA under a rate schedule that is subject to the surcharge and does not participate in the Residential Exchange, the surcharge is applied to the total monthly charge for power purchases. For a utility that does not purchase power from BPA under a rate schedule to which the surcharge applies but participates in the Residential Exchange, the surcharge is included in the determination of the net benefits/payments under the Residential Exchange. If a utility both purchases firm power with a rate schedule subject to the surcharge and participates in the Residential Exchange, the Council's surcharge methodology provides for an adjustment to avoid surcharging the load twice: Once when the power is purchased and again when that same power is exchanged. In this situation, the surcharge is applied to the firm power purchases subject to the surcharge in the same manner as if the utility were only purchasing power from BPA and not participating in the Residential Exchange. The surcharge adjustment recommended by the Council applies to the level of the surcharge included in the determination of net benefits/payments under the Residential Exchange. The surcharge for the Residential Exchange is adjusted by multiplying the surcharge by the fraction of the utility's total load not originally purchased from BPA. For example if a utility purchases 50 aMW from BPA to meet a portion of its total system load of 150 aMW and exchanges 75 aMW under the Residential Exchange, then the level of the surcharge applied to the determination of net benefits/payments under the Resdiential Exchange would be 6.7 percent or [1—(50aMW/150aMW)]*.10.

In the event a determination that a utility is subject to a surcharge is made after the applicable date for the surcharge, billings will be made retroactive to the applicable surcharge date. If a utility is participating in the Residential Exchange, a retroactive adjustment shall be made to the net exchange benefits or payments, or deemer account, whichever is appropriate.

IV. Issues

A. Application of Policy

1. Cost-Effectiveness/Economic Feasibility

Any model conservation standard developed must be regionally cost-effective and economically feasible for consumers as mandated in the Pacific Northwest Power Act. BPA has received a number of comments suggesting that a surcharge not be imposed because the MCS have not been proven to be cost-effective to the region. BPA is presently conducting a thorough evaluation of the cost-effectiveness of the MCS. To determine cost-effectiveness, BPA is collecting reliable data on MCS construction through the Residential Standards Demonstration Program, the

End-Use Load and Conservation Assessment Project, and the Super Good Cents Program. Cost-effective, as defined in the Pacific Northwest Power Act, "means that such measure or resource must be forecast to be reliable and available within the time it is needed, and to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof."

Economic feasibility of the MCS depends upon the energy use and retail electric rates which consumers face. Economic feasibility of the MCS can be determined for various types of consumers using information on retail electric rates, and electric use characteristics.

BPA is also initiating a public process to assist in evaluating MCS efforts. A MCS Data Analysis Working Group comprised of interested parties in the region will assist BPA in reviewing MCS cost and performance data and assist in developing an MCS economic analysis procedure. BPA may also implement other projects to collect additional cost and thermal performance data.

Policy Provision. The policy includes a provision, Section 3, to suspend the regionwide application of the policy relative to any standard which the Administrator determines is not regionally cost-effective and economically feasible for consumers.

2. System Cost

The surcharge is included in the Pacific Northwest Power Act in recognition of the fact that construction of energy-efficient buildings will allow the region to avoid the development of other, more costly, resources in the future. The Council analyzed the incremental systems costs and concluded that a delay in adoption of the MCS from January 1, 1986, to January 1, 1988, imposes a cost on the BPA system.

The Act defines system cost as: ". . . an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as the Administrator determines, on the basis of a methodology developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource."

BPA received suggestions that a determination of MCS system costs be conducted on a regular basis and the process for that analysis be incorporated into the Surcharge Policy. It has also been suggested that the Administrator should not impose a surcharge unless the costs to the system are in excess of an established threshold.

Policy Provision: The policy includes a provision, section 3, for suspending the application of this policy if the Administrator determines that there are no costs imposed on the system due to nonadoption of the MCS regionwide.

3. Implementation Date

The Council has recommended that BPA impose a surcharge effective January 1, 1987, on utilities failing to meet the September 1, 1986 deadline to submit residential and commercial MCS plans or alternative plans. The Council has also recommended that a surcharge be imposed effective January 1, 1989, on those utilities failing to achieve the residential and commercial minimum performance standards established for 1987.

BPA intends to finalize the Surcharge Policy in October 1986. The Council's deadline of September 1, 1986, to submit MCS or alternative plans will not provide utilities and jurisdictions with adequate time to develop appropriate strategies to achieve the MCS. Furthermore, BPA will not have the BPA/Utility Commercial MCS Program available to customers prior to Spring 1987. For these reasons BPA is proposing that utilities submit residential MCS plans by January 1, 1987, and commercial MCS plans by October 1, 1987.

In the proposed Surcharge Policy, BPA stated that a determination of compliance with the MCS would not be made earlier than 1 year from the date of publication of a final surcharge policy. This provision is not incorporated into this notice. Instead, BPA is proposing that a surcharge will be imposed April 1, 1987 if a utility fails to implement a Residential MCS or alternative plan. BPA is also proposing a surcharge effective January 1, 1988 for failure to implement a commercial MCS or alternative plan. BPA is soliciting comments on how appropriate this strategy might be, taking into consideration the Council's recommendation to amend the timetable for MCS activities.

Policy Provision: BPA is requesting that on or before January 1, 1987, each customer shall provide a plan to implement the residential MCS or an alternative plan. Failure to implement a residential MCS plan or alternative will result in the imposition of a surcharge effective April 1, 1987. A surcharge will also be imposed effective January 1, 1989 on customers failing to achieve the 30 percent residential minimum performance standard for the 1987 program.

BPA is also requesting that on or before October 1, 1987, each customer shall provide a plan to implement the commercial MCS or an alternative plan. Failure to implement a commercial MCS plan or alternative will result in the imposition of a surcharge effective January 1, 1988. A surcharge will also be imposed effective January 1, 1990 on customers failing to achieve the commercial minimum performance standard for the 1988 program year.

B. Exemptions

The Council has indicated that there is no need for exemptions to the Surcharge Policy at this time. BPA agrees. The Council further recommends that if BPA finds "hardship" to exist, BPA should, if necessary, fully finance the MCS in those jurisdiction.

The Council does not define "hardship" or suggest workable criteria for determining what would constitute such a situation. BPA questions whether a fair and objectively neutral definition could be developed and objectively applied, and further whether BPA has authority to surcharge some customers and exempt others.

The revised proposed Policy contains Section 4 which identifies the information customers are to provide if requesting an exemption. At the present time, BPA does not expect that there will be exemptions to the Policy. Should the need for exemptions be identified prior to the Policy being finalized, BPA will make appropriate changes to Section 4.

Policy Provision: For the above reasons, BPA does not anticipate allowance of "exemptions" to the Policy. BPA will, however, consider public comment on these issues in developing its final Policy.

C. Pre-Approved Residential Alternative Plans and Sample Residential Alternative Plans

1. Pre-Approved Residential Alternative Plans

BPA received numerous comments on both the general criteria for alternative plans and on the three pre-approved alternative plans contained in the proposed policy. Many comments were

directed at keeping the options for alternative plans both simple and flexible.

In the proposed Surcharge Policy BPA described 3 pre-approved alternative plans based on the combined concepts of existing or improved building codes, financial incentives, and formal marketing programs. When the Council amended the MCS and surcharge recommendation, the new requirement for a performance standard and equivalence standard changed the concept of pre-approved alternative plans. Through the introduction of performance standards, the Council further qualified both alternative and pre-approved alternative plans. BPA had previously defined a "pre-approved" alternative plan as one which provides equivalent savings to the MCS, and if implemented, regardless of performance, would assure that a utility is free from surcharge. With the Council requirement for annual performance standards and equivalence standards, the previously pre-approved alternative plans are no longer, for the purposes of this policy, pre-approved.

The Council's MCS amendment contained an option for those utilities with less than a 25 average megawatt total annual power load. The Council recommended that utilities with total annual power loads under 25 average megawatts be provided the opportunity to avoid compliance with the minimum performance standard. To be eligible for this provision, the Council recommended that the utility must participate in the BPA/Utility Residential MCS program and offer to pay in the performance year an incentive equal to the incremental costs of building homes in their service territories to the level of the MCS. The payment, as recommended by the Council, is based on the median costs of builders in the Residential Standards Demonstration Program. The level of incentive provided by BPA through the Super Good Cents Program is included in calculating the full incremental costs of building to the MCS. BPA considers this option for utilities with less than a 25 average megawatt total load a pre-approved alternative plan because no performance standard is required to avoid the surcharge.

BPA is proposing that customers who pursue this type of alternative participate in the BPA/Utility MCS Program (Super Good Cents) and offer a utility-based financial incentive. The total incentive offered by the customer would be equal to the level of incentive BPA offers to participants in the Early Adopter Program, and would include the Super Good Cents incentive offer by BPA. The amount of incentive which the customer would be required to offer, in addition to BPA's Super Good Cents incentive, would be the difference between the Early Adopter Program incentive and Super Good Cents incentive for the performance year the pre-approved alternative plan is implemented. Beginning with the 1989 performance year, the level of incentive offered by the customer would be equal to the incentive offered by BPA in 1988 to participants in the Early Adopter Program. The total incentive would be provided by the customer because BPA will not be providing Super Good Cents or Early Adopter incentives following the 1988 performance year.

2. Sample Residential Alternative Plans

There are other alternatives available to utilities who do not participate in the BPA/Utility Residential MCS Program. All alternative plans not pre-approved must comply with the annual minimum performance standard and equivalence standard for the year the alternative program is implemented. Alternative programs not meeting the annual minimum performance standard or equivalence standard are subject to a 1 year surcharge which is imposed two years following implementation of the alternative plan. The Administrator may, at any time, request documentation to verify that alternative plans are achieving savings levels comparable to that assumed by the MCS. BPA has identified three sample approaches utilities may employ in developing alternative plans. BPA is soliciting comments on these alternative plans, the issues identified and other issues implied therein.

a. *Sample Alternative Plan No. 1.* One alternative could involve implementation of a formal marketing program other than Super Good Cents coupled with an optional financial incentive, the amount of which would be determined by the utility. As BPA provides incentives only for the Super Good Cents Program, a utility would not receive incentives from BPA for this alternative. The alternative plan must achieve a penetration rate yielding comparable savings to the performance target established for that performance year and must also meet the equivalence standard as defined by the Council. The alternative plan must also assure that measures are taken to maintain adequate indoor air quality. When pursuing alternative approaches to the MCS, the burden is upon the utility to prove that savings comparable to the MCS will be achieved by the alternative plan.

b. *Sample Alternative Plan No. 2.* This alternative involves the implementation of a financial incentive coupled with a reduced marketing effort. The utility would be required to offer an incentive it determines will achieve the annual minimum performance standard and the equivalence standard as established for that program year. A formal marketing program would not be required in implementing this alternative; however, the utility must provide a limited marketing effort emphasizing both the value of energy efficient homes and the availability of the financial incentive. The utility must include in the alternative plan specific details regarding the marketing efforts to be undertaken. Possible marketing activities might include conducting Super Good Cents training sessions for builders, advertising the availability of utility financial incentives, and/or consumer bill enclosures. As is true with other alternatives, the burden of proof is upon the utility or jurisdiction implementing the plan. Savings to be realized by the alternative plan must be documented to meet or exceed that of projected MCS savings levels.

c. *Sample Alternative Plan No. 3.* BPA realizes that the implementation and administration costs of a formal marketing program such as Super Good Cents may be prohibitive for some utilities experiencing small levels of new residential load growth. Furthermore, in these service areas, BPA may experience difficulties in obtaining a valid statistical data base for purposes of assessing utility performance and equivalent savings. Small utilities with limited load growth or few annual housing starts may find it advantageous to cluster as a group and coordinate their resources towards achieving the performance standards. A group of small utilities might employ a third party to implement and administer the BPA/Utility MCS Program. This approach might serve to eliminate much of the administrative burden on utilities and would also provide BPA with valid statistical data on which to measure MCS progress.

There are however, some issues requiring resolution before such an alternative can be implemented. How might BPA define the characteristics of utilities which would qualify for this alternative? With whom should the utilities contract to operate the program? Should BPA, if requested, implement the BPA/Utility MCS Program in these areas? If a group of utilities implemented this alternative and failed to achieve the minimum performance standard or

equivalence standard, how should the surcharge be imposed?

D. Compliance with the Model Conservation Standards.

The Council has recommended that BPA develop and implement a procedure to measure compliance with the MCS, and to review alternative plans for achieving compliance with the MCS for utility conservation programs. Through this notice, BPA is proposing a procedure to assess utility performance and levels of savings resulting from the implementation of the BPA/Utility MCS Program and alternative programs. This procedure, when completed, will enable BPA to calculate the percentage of electricity savings achieved by the MCS or alternative program, and compare that amount to the savings that would have been achieved had the MCS been adopted as a building code. BPA has developed the following proposed procedure to illustrate how compliance with the residential MCS will be determined:

1. A calculation of electrical energy consumption using the 1983 performance baseline is conducted. The result will yield the amount of energy which would have been consumed had residential buildings been constructed to 1983 code or practice. The process to accomplish this is as follows:

a. Identify, by prototype(s), the actual amount (or projection) of building activity to be calculated;

b. Model the prototype(s) using 1983 code or current practice to yield the average consumption (kwh/ft ^{2}) per building;

c. Multiply the average consumption per building by the total number of homes (actual or projected). The result is the total consumption for 1983 code or current practice.

2. A calculation of a utility's MCS program or alternative program performance is determined in a similar manner as follows.

a. Identify building activity by prototype;

b. Model the prototype incorporating MCS program or alternative program conservation measures to yield average consumption per building.

c. Multiply the average consumption per building times the number of homes. The result is total consumption for the utility's MCS program or alternative program.

3. A calculation of MCS level consumption is calculated as follows:

a. Identify building activity by prototype;

b. Model the prototype incorporating MCS conservation measures to yield the average consumption per building;

c. Multiply the average MCS consumption per building times the number of homes. The result is total MCS level consumption.

4. Determine the differnce in consumption between the 1983 baseline consumption and the total consumption for the utilities MCS program or alternative program by subtracting Step 1c from Step 2c.

5. Determine the differnce in consumption between the 1983 baseline total consumption and the total MCS level consumption by subtracting Step 1c from Step 3c.

6. A utility's MCS performance is determined by dividing the amount resulting from Step 4 by the amount resulting from Step 5.

In determining compliance, BPA realizes that some customers may experience very limited new residential and commercial load growth on an annual basis. BPA intends to develop a process which would evaluate the performance of these customers. Specifically, BPA is seeking comments for establishing a base on which to calculate the performance of customers experiencing limited new building activity. Should BPA establish a minimum number of new housing starts or minimum amount of new commercial square footage in evaluating performance, or should a specific period of time for reviewing performance be established? If so, where should the level of new construction activity be set, or over what duration of time?

The revised proposed policy also identifies specific criteria customers are to include in both the MCS plans and alternative plans submitted to BPA. The policy also identifies specific dates for submittals to BPA. BPA is seeking comment on the content of MCS and alternative plan submittals including the availability of criteria and the logic of the timetable for submissions.

Policy Provision: Appendices 1 and 2 of this proposal identify information customers are to submit for compliance with the policy. BPA has identified specific criteria for those customers who will (1) adopt the MCS as code or service requirement, (2) implement the BPA/Utility MCS Program, and (3) adopt pre-approved alternative plans, or (4) adopt alternative plans or alternative codes.

E. Collection of the Conservation Surcharge.

The Regional Council recommended that the conservation surcharge be levied on noncomplying customers that purchase firm power from BPA under a Power Sales Contract and/or participate in the Residential Exchange.

If a customer purchases firm power but does not participate in the Residential Exchange, the conservation surcharge will be levied on the total monthly payment for power purchases.

If a customer is both purchasing firm power and participating in the Residential Exchange, the surcharge is applied to both the monthly payments for actual firmpower purchases and the charges for computing payments under the Residential Exchange agreements. In this case, to avoid double counting a load that is both a firm power purchase and an exchange load the Council's methodology adjusts a utility's firm power purchase from the exchange load before computing the surcharge.

If a utility does not purchase firm power from BPA but participates in the Residential Exchange, the surcharge is levied on the charges used to determine the payments for power under this agreement.

Both public and private utilities in the region are currently involved in the Residential Exchange. To participate the Residential Exchange a utility's average system cost (ASC) is computed following a methodology developed by BPA. This ASC is then compared to the rate BPA charges its preference customers, the Priority Firm Power (PF) rate. Payments under the Residential Exchange are paid directly to the customer when the utility's ASC exceeds the PF rate. In this situation, a utility is defiend as an"active participant." Currently, the ASC of some of the exchanging utilities is less than the PF rate. When this occurs the utility can deem its ASC equal to the PF rate and make no cash payment to BPA. In this situation, a utility is defined as a deemer. Even though no payment is made, BPA continues to accumulate the differnce between the utility's ASC and the PF rate, as if the utility was not deeming, in the deemer account. When a utility's ASC exceeds the PF rate, the amount that has accumulated in its account must be cleared before a utility rescinds its deemer election and receives any direct payment from BPA.

For exchanging utilities, the application of the conservation surcharge will either reduce the direct payments or increase the amount accumulated in the deemer account. This approach is administratively less burdensome and retains the method BPA currently employs to apply other PF rate adjustments to exchange purchasers.

Policy Provision: If a utility is purchasing firm power from BPA, the conservation surcharge will be included in the total monthly bill for power

purchasers. If a utility is an active participant in the Residential Exchange, the conservation surcharge will be deducted from the determination of direct net payment to the utility. If a utility is deemer, the surcharge will be accumulated in the deemer account.

F. Surcharge for Utilities Without a Current Firm Load on BPA

In the Final Model Conservation Standard Amendments, the Council recommended that MCS financial assistance should be offered regionwide to utilities purchasing or exchanging power, and to utilities not currently purchasing or exchanging power. The Council identified levels of financial assistance to be provided to full requirements utilities operating the BPA/Utility Residential MCS Program or a program approved by BPA as equivalent. The level of financial assistance recommended is equal to the difference between what is considered "economically feasible" to consumers and "cost-effective" to the region. The level of minimum financial assistance, as defined by the Council, is between $1,000 to $1,400 depending upon climate zone. The Council further recommends that if BPA does not offer a participating full requirements utility at least this minimum level of financial assistance, the utility should not be surcharged.

The Council also recommends that financial assistance to partial requirements customers and potential customers not currently purchasing from BPA should reflect the benefits BPA is expected to receive in reduced load requirements, reduced exchange requirements, and improved building practice. These payments should also reflect BPA's Cost-Sharing Principles.

The Office of Conservation conducted an analysis of the benefit to BPA of the first 3 years (1986 to 1989) of MCS savings on exchange loads and found BPA's share of the benefit to be approximately 25 percent. Thus, the Super Good Cents incentive to exchanging utilities was set at 25 percent of the $2,000 Super Good Cents incentive to full requirements customers, or $500.

BPA's investor-owned utility (IOU) customers, and the Council, have taken a position regarding the difference in incentive levels which were recommended by the Council and the level being offered by BPA. It is being argued that because BPA did not offer the minimum incentive levels identified by the Council, BPA cannot surcharge IOU's using the authority of the Council-recommended conservation surcharge.

Through this notice, BPA is requesting comments to clarify the Council's recommendation. Should BPA's offering of financial assistance and authority to surcharge be based upon the minimum incentive levels identified by Council or on the MCS benefits BPA is expected to receive excharge loads?

Policy Provision: BPA is proposing that all customers participating in the Residential Exchange be surcharged if they do not meet the requirments delineated in the revised proposed Surcharge Policy.

V. Environmental Procedures

An Environmental Assessment (EA), titled "BPA's Proposal to Apply the Council-Recommended Conservation Surcharge" (DOE/EA–0269) was issued in March 1985. The analysis in the EA indicated that the effects of the proposed surcharge policy would be primarily economic. Other effects that might occur would not significantly affect the quality of the human environment. The recommendation was made not to prepare an Environmental Impact Statement (EIS) on the proposal to implement the conservation surcharge. At the close of the comment period for the EA, six letters of comment had been received. BPA will respond to these comments when it prepares a Finding of No Significant Impact (FONSI) on the proposal to implement the surcharge.

Because of the amendment for indoor air quality (IAQ) that the Council made to the MCS some of the comments received on IAQ have been rendered moot. In its amended MCS the Council states that ventilation rates in MCS homes shall be maintained at the same level as homes built to current practice. This means that adoption of amended MCS by local governments or utilities will not have adverse effects on IAQ. Utilities proposing to implement the MCS are required to address IAQ when submitting implementation plans.

IV. Policy to Implement a Council-Recommended Conservation Surcharge

Section 1. Purposes.

The purposes of this policy are to:

A. Provide a procedure by which customers may demonstrate that they, or the jurisdictions they serve, are in compliance with the model conservation standards (MCS);

B. Provide a procedure by which customers may demonstrate that they, or the jurisdictions they serve, have adopted acceptable alternative plans for achieving savings comparable to the model conservation standards;

C. Identify under what conditions BPA might exempt a customer from a conservation surcharge; and

D. Provide a procedure by which the Administrator will determine the level of the surcharge to be imposed.

Section 2. Defintions

A. *Alternative Plan.* An action or set of actions designed to achieve conservation savings comparable to those that would have been achieved by adoption and enforcement of the MCS.

B. *BPA/Utility Residential MCS Program.* An aggressive residential MCS marketing and financial assistance program made available by BPA and its customers to home builders and/or homebuyers. For purposes of this policy, the BPA/Utility Residential MCS Program is comprised of the Super Good Cents marketing program coupled with optional financial incentives provided by BPA and/or its customers.

C. *BPA/Utility Commercial MCS Program.* An aggressive commercial MCS marketing program made available by BPA and its customers. The provision of financial incentives by BPA and/or its customers is optional.

D. *Climate Zone.* As part of its model conservation standards, the Council has established climate zones for the region based on the number of heating degree days, as follows: Zone 1: 4,000–6,000 heating degree days (the mild maritme climate west of the Cascades and other temperate areas); Zone 2: 6,000–8,000 heating degree days (the somewhat harsher eastern parts of the region); and Zone 3: over 8,000 heating degree days (western Montana and the severe higher elevations throughout the region).

E. *Cost Effective.* According to the Pacific Northwest Electric Power Planning and Conservation Act, a cost effective measure or resource must be forecast to be reliable and available within the time it is needed and to meet or reduce electrical power demand of consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative or combinations of alternative.

F. *Customer.* For purposes of this policy, an entity which contracts for the purchase of firm power under a rate schedule identified as being subject to a surcharge or participates in the Residential Purchase and Sales Agreement/Exchange Transmission Credit Agreement (Residential Exchange) pursuant to the Pacific Northwest Power Act.

G. *Equivalence Standard.* The average savings achieved by utilities participating in the BPA/Utility MCS Program during the previous performance year. Compliance with the equivalence standard applies only to

alternative plans that are not pre-approved.

H. *Investor-Owned Utility.* A utility which is organized under State law as a corporation to provide electric power service and earn a profit for its stockholders.

I. *Jurisdiction.* For purposes of this policy, any unit of government including Indian Tribes, State governments, and local governments and municipal corproations.

J. *Model Conservation Standards.* The standards developed by the Northwest Power Planning Council as provided for in 4(e)(3)(A) of the Pacific Northwest Electric Power and Conservation Planning Act and included in the Final Model Conservation Standard Amendments to the 1983 Northwest Power Plan. For purposes of this Policy, the MCS also includes any codified versions published by BPA.

K. *Performance Standard.* A percentage of the electricity that could have been saved if new electrically heated residential buildings or electrically space conditioned commercial buildings in a utility service territory were built to MCS levels.

L. *Resource.* Under the Pacific Northwest Electric Power Planning and Conservation Act, electric power, including the actual or planned electric capability of generating facilities, or actual or planned load reduction resulting from direct application of a renewable resource by a consumer, or from a conservation measure.

M. *Surcharge Mathodology.* The methodology developed by the Northwest Power Planning Council as provided for in 4(e)(3)(G) of the Pacific Northwest Electric Power Planning and Conservation Act and included as the Final Model Conservation Standard Amendments to the 1983 Northwest Power Plan.

N. *System Cost.* According to the Pacific Northwest Electric Power Planning and Conservation Act, all direct costs of a measure or resource over its effective life. It includes, if applicable, distribution and transmission costs, waste disposal costs, end-of-cycle costs, fuel costs (including projected increases), and quantifiable environmental costs and benefits.

O. *Total Load.* The number of firm kilowatthours sold by a customer during a 12-month period prior to the application of this policy.

Section 3. Application of Policy

A. This policy shall be in effect upon publication as a final policy in the **Federal Register.**

B. All customer loads served by firm power purchased pursuant to a Power Sales Contract under the Priority Firm Power, Firm Capacity, and New Resource Firm Power rate schedules or participate in the Residential Purchase and Sales Agreement-Exchange Transmission Credit Agreement are subject to this policy.

C. The Administrator shall suspend implementation of this policy with respect to a MCS if the Administrator determines:

1. That a model conservation standard proposed by the Council fails to satisfy the requirements of section 4(f)(1) of the Pacific Northwest Electric Power Planning and Conservation Act, or

2. That failure to adopt a model conservation standard regionwide imposes no cost on the system.

D. The implementation date of the conservation surcharge shall be as specified in Appendix 1 and 2 of this notice.

Section 4. Loads Exempted From Conservation Surcharge

A. Customers requesting an exemption under section 5 shall provide the Administrator the following information:

1. The justification for exemption.

2. The percentage of load which is to be considered for exemption.

B. The customer must provide the Administrator with supporting documentation sufficient to verify that the exemption is applicable and that the percentage of load claimed for exemption is accurate.

Section 5. Procedures to Impose Conservation Surcharge.

A. Surcharge for Failure to Implement an MCS Plan or Alternative Plan

1. Each customer shall provide the Administrator with information according to the requirements identifed to Appendix 1 of this notice. Failure to implement an MCS plan or an alternative plan will result in the imposition of a surcharge on applicable loads determined to be in noncompliance.

2. At least 30 days prior to a final surcharge decision, the Administrator shall provide a written notice of intent to surcharge the customer determined to be in noncompliance.

3. The customer and other interested parties shall be afforded an opportunity to comment regarding the determination to surcharge based on the conditions set forth in Appendix 1.

4. Such comments may be made in writing or orally at a public meeting convened for this purpose by the appropriate BPA Area or District Office. The public meeting will be held between the time of the written notice to intent to surcharge and the final surcharge decision.

5. Following receipt and evaluation of such comments, the Administrator shall provide written notice to the customer of the final surcharge decision.

6. Customers may request a review by providing evidence in accordance what Appendix 1 that the customer or a jurisdiction served by that customer has taken actions subsequent to the effective date of the surcharge.

7. Once a surcharge has been levied pursuant to conditions set forth in Appendix 1, no surcharge shall be imposed for failure to meet actions identified in Appendix 2 for the same period of time.

8. The surcharge continues in effect until a customer has taken the necessary actions identified in Appendix 1 and/or section 4 of this policy.

9. The surcharge will be removed if the Administrator determines that conditions are not met which satisfy the requirements of Section 3 of this policy.

B. Surcharge for Failure to Achieve the Performance Standard

1. Each customer shall provide the Administrator with information according to the requirements in Appendix 2 of this notice. Failure to achieve the performance standard as specified in Appendix 2 will result in the imposition of a surcharge on applicable loads determined to be in noncompliance.

2. MCS performance information, as requested in Appendix 2, shall be presented as follows:

a. Information documenting what portion of its load is in jurisdictions that have adopted the Residential and/or Commercial MCS;

b. Information documenting what portion of its load is in an area for which the customer has adopted the Residential and/or Commercial MCS;

c. Information documenting what portion of its load is in an area for which the customer is implementing the Residential and/or Commercial BPA/Utility MCS Program;

d. Information documenting what portion of its load is in an area for which a jurisdiction is implementing the Residential and/or Commercial BPA/Utility MCS Program;

e. Information documenting what portion of its load is in an area implementing a residential and/or commercial alternative plan or alternative code adopted by a jurisdiction;

f. Information documenting what portion of its load is in an area implenting a residential and/or commercial alternative plan or alternative code adopted by the customer;

g. Information documenting what portion of its load is eligible for exemption pursuant to section 4;

3. Such information shall be provided according to the requirements of the Appendices and section 4 of this document.

4. During the 6 month period following the performance year for which performance data are requested, BPA will assess each customer's performance. Customers will be advised of their performance by July 1 of the year following the performance year assessed. If a customer fails to achieve the annual minimum performance standard or equivalence standard, a surcharge shall be imposed for a period of 1 year pursuant to Appendix 2.

5. Not less than 30 days prior to a final decision on the imposition of a surcharge the Administrator shall provide written notice to the customer including a determination of:

a. That percentage of the customer load during the performance year found to be covered by the MCS (A_1%),

b. That percentage of the customer load during the performance year found to be covered by the BPA/Utility MCS Program meeting the annual minimum performance standard (A_2%),

c. That percentage of the customer load during the performance year found to be covered by an approved alternative plan and/or alternative code meeting the equivalence standard (A_3%),

d. That percentage of the customer load found during the performance year to be exempt (A_4%),

e. That percentage of the customer load proposed to be surcharged (100%—(A1 + A2 + A3 + A4)%)=B%

f. That customer level of the surcharge (B% x the surcharge percentage as determined by the Council's methodology).

6. The customer and other interested parties shall be afforded an opportunity to provide comments regarding determinations made in section 5.B.5.

7. Such comments may be made in writing or orally at a public meeting convened for this purpose by the appropriate BPA Area or District Office. This public meeting will be held between the time of the written notice of intent to surcharge and the final surcharge decision.

8. Following receipt and evaluation of such comments, the Administrator shall provide written notice to the customer of the final surcharge decision.

Section 6. Collection of Conservation Surcharge

A. The surcharge shall be levied based on the Administrator's findings and determination that a customer is subject to a surcharge due to a failure to meet conditions set forth in section 5 and Appendix 1.

B. The level of surcharge is applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules and/or exchanges pursuant to Residential Purchase and Sales Agreement/ Exchange Transmission Credit Agreement, using the Council's surcharge methodology, and is applied subsequent to any other rate adjustments.

1. For customes purchasing power under the rate schedules subject to the conservation surcharge, the surcharge is applied to the customer's monthly power bill.

2. For customers participating in the Residential Purchase and Sale Agreement, the surcharge shall be included in the charges for determining the BPA price of residential exchange power.

3. For customers both purchasing firm power under the rate schedules subject to the conservation surcharge and participating in the Residential Purchase and Sale Agreement/Exchange Transmission Credit Agreement, the surcharge is applied to the total firm power purchase from BPA and the portion of a utility's exchange load not served by firm power purchases from BPA. In this situation, the surcharge shall be multiplied by the percent of utility's exchange load not served with firm power purchases from BPA. This percentage shall be calculated based on a utility's total load and total firm power purchases from BPA and rounded to the nearest 0.1 percent.

C. If a customer participating in the Residential Exchange is currently in a deemer status, the surcharge shall be accumulated in the account established for this purpose as specified in the respective agreement, and shall be included in the obligation a utility must repay prior to receiving a direct payment from BPA. If a customer is not in a deemer status, the surcharge shall be included in the determination of the net payment made by BPA.

D. Those customers receiving a final written notice of a load subject to the surcharge shall be billed for the surcharge beginning the first full billing period following issuance of such notice.

E. Any power purchases made on or after the effective date of the surcharge, but before receipt of final notice finding the load to be subject to a surcharge, shall be retroactively billed to the effective date of the surcharge.

F. Such retroactive billing shall collect the retroactive surcharge over a like number of billing periods as elapsed from the effective date of the surcharge to the receipt of final written notice of a surcharge.

G. The surcharge shall continue until the Administrator determines by way of new information presented that the surcharge is no longer required under the terms of this policy.

H. Surcharges collected on purchases for periods in which loads are subsequently found to be in compliance with this policy shall be credited to the customer in the first full billing period following final written notice of such finding. Surcharges on loads which are subsequently found not to have been in compliance with the terms of this policy for specified periods shall be billed to the customer in the first full billing period following final written notice of such finding.

Issued in Portland, Oregon, on June 9, 1986.

Peter T. Johnson,

Administrator, Bonneville Power Administration.

Appendix 1

I. Surcharge for Failure To Implement the Model Conservation Standards

A. A 10 percent surcharge will be imposed effective April 1, 1987 on customers which have not implemented a residential MCS plan or an alternative plan. On or before January 1, 1987, each customer shall provide the Administrator with a utility plan to implement the residential MCS. The utility plan must contain one of the following activities:

1. An initial plan for adoption and implementation of the BPA/Utility Residential MCS Program; or

2. A plan for implementation of an alternative program which is approved by BPA as capable of producing equivalent savings; or

3. A declaration that the residential MCS have been, or will be, met by building codes or utility service requirements.

B. A 10 percent surcharge will be imposed effective January 1, 1988, on customers which have not implemented a commercial MCS plan or an alternative plan. On or before October 1, 1987, each customer shall provide the Administrator with a utility plan to implement the commercial MCS. The utility plan must contain one of the following activities:

1. An initial plan for adoption and implementation of the BPA/Utility Commercial MCS Program; or

2. A plan for implementation of an alternative program which is approved by BPA as capable of producing equivalent savings; or

3. A declaration that the commercial MCS have been, or will be, met by building codes or utility service requirements.

C. The surcharge will continue in effect until a customer has implemented an initial MCS plan or alternative plan and has obtained the necessary BPA approvals.

D. In no event will a utility be surcharged if it achieves and maintains, in any of the ways identified above, a level of electrical energy savings equivalent to 85 percent of those which would be achieved if all new electrically heated residences and all new electrically space conditioned commercial buildings in its service territories were constructed to the level of the MCS.

E. The dates for customer submissions specified above represent a proposed schedule. BPA may revise this schedule should these dates be found to be inappropriate. BPA will provide advance notice to customers should this proposed schedule be revised.

F. For purposes of determining compliance with this Policy, the content of customer submissions indentified below may be revised should BPA determine that its data needs have changed. BPA will provide advance notice to customers should the content of utility submissions require revision.

II. Customer Action Necessary To Avoid the Surcharge for Failure To Implement the Model Conservation Standards

A. Each customer shall provide the Administrator with the appropriate information identified below pursuant to the schedule identified above. Failure to implement one of the following actions will result in the imposition of a 10 percent surcharge on the applicable loads of non-complying customers:

1. Any customer serving a jurisdiction that has adopted or intends to adopt, or any customer that has adopted or intends to adopt, the model conservation standards as a building code or utility service requirement for new residential and commercial buildings shall provide the Administrator with the following information:

a. A description of the institutional mechanism and schedule by which the residential and commercial standards are to be implemented and enforced;

b. A copy of the standards or utility service requirement as adopted or proposed to be adopted, including a statement of expected residential energy performance and commercial efficiency specifications;

c. A projection of annual housing starts for the reporting period including both the total number of residential starts and the total number of electrically heated housing starts. This projection should reflect both single family and multi-family housing structures.

d. A statement identifying measures which will be taken to protect residential indoor air quality; and

e. A statement of the legal authority which permits the customer or jurisdiction to adopt and enforce the actions to be taken. The statement should address the potential for any conflicts with existing State statutes or local ordinances which may either prohibit or limit actions taken. The statement should identify the geographic area to which the code or service requirement applies in relationship to the customer's service area.

f. A statement signed by an appropriate official certifying that such action has been taken and that the jurisdiction intends to enforce such action.

2. Any customer that has or intends to adopt and implement the MCS as the Residential and/or Commercial BPA/Utility MCS Program shall provide the Administrator the following information:

a. Proof of participation in, or a statement of intent to participate in, the BPA/Utility MCS Program;

b. Projections of building activity shall be provided to assess savings, to calculate performance towards achievement of full MCS, and to be used in developing the equivalence standard. The projection shall include the following elements for single-family, multi-family and manufactured homes:

(1) A projection of the total number of electric service hookups for the reporting period;

(2) A projection of the number of electric service hookups which are electrically heated for the reporting period; and

(3) A projection of the number of electrically heated, Super Good Cents homes to be certified for the reporting period.

c. A statement signed by an appropriate official certifying that the customer is participating in or intends to participate in and will abide by the contractual conditions set forth in the BPA/Utility MCS Program.

3. Any customer serving a jurisdiction adopting an alternative residential and/or commercial building code or utility service requirement as the equivalent of the MCS that in wording or requirements varies from code language approved by the Council shall provide the Administrator with the following:

a. A copy of the alternative code or utility service requirement.

b. An analysis of expected code performance.

(1) For residential alternative codes, an analysis of expected energy performance shall be provided which identifies savings to be achieved by the alternative code or service requirement compared to a projection of savings that would have been achieved by the MCS as a building code. Included in the analysis shall be a description of the residential prototypes used in determining projected savings. This description should identify all conservation measures incorporated including measures taken to protect indoor air quality. BPA is currently developing a residential code-equivalency determination procedure which will be included in the final Surcharge Policy.

(2) For commercial alternative codes an analysis of commercial efficiency specifications shall be provided. An analysis of the energy used by building type of the alternative code or service requirement shall be compared to the energy used by building type if constructed to MCS code levels. This analysis should employ the same building types as those to be used in BPA's commercial code equivalency determination procedure which is currently in development.

c. A comparison of the level of residential and/or commercial savings from the alternative plan to savings that would have been achieved if the residential and commercial MCS had been adopted. Supporting information shall include:

(1) A projection of the total number of new single-family and multi-family residential structures for the reporting period,

(2) A projection of the total number of new, electrically heated single-family and multi-family residential structures for the reporting period,

(3) The projected number of square feet of new commercial floor space for the reporting period,

(4) The climate zone, as defined by the Council, and

(5) The customer's projection of the savings that would have been achieved by the MCS.

d. A description of the institutional mechanisms and timetable by which the

alternative code or service requirement are to be implemented and enforced.

e. A description of the differences between the alternative code and the MCS code including changes in language, format, and any omissions made.

f. A statement of the legal authority which permits the customer or jurisdiction to adopt and enforce the actions taken. The statement should address the potential for any conflicts with existing State statutes or local ordinances which may either prohibit or limit actions taken. The statement should also identify the geographic area to which the alternative code or service requirement applies in relationship to the customer's service area.

g. A statement signed by an appropriate official certifying that such action has been taken and the jurisdiction intends to enforce such action.

h. The above information shall be provided for the 20-year period during which the alternative code is to provide savings comparable to the MCS. BPA recognizes that forecasting models and methods reflect inherent imprecisions; therefore, the following levels of tolerance are considered acceptable when comparing savings of alternative codes to the MCS:

(1) During the first 5 years following implementation of the alternative code, projected savings may not vary by more than 10 percent annually from projected MCS savings levels. In subsequent years, alternative code savings may not vary by more than 10 percent of projected MCS savings in 5-year increments over the planning period.

(2) Alternative code savings shall be projected for a 20-year period. In the final year, savings from alternative codes may not vary by more than 5 percent of the total cumulative, projected MCS savings.

i. The information above must conform to the requirements set forth in section II.A.5.g.h.i.j. of this Appendix.

j. The detail of the above information must be sufficient to allow for independent review of the code or service requirement and the resulting energy savings.

k. Energy performance shall be verified through the use of BPA's residential heat loss methodology and code equivalency determination procedures, and/or the Council's residential and commercial heat loss models.

1. The level of savings and performance analyses are a function of the changes to the MCS code. Minor, non-substantive changes would require less formal analysis than entirely new code language.

4. Any customer that has adopted or intends to adopt a pre-approved alternative plan shall provide the Administrator with the following information:

a. A statement that the customer's total load for the previous year is less than 25 average megawatts.

b. Proof of participation in or intent to participate in the BPA/Utility MCS Program. If the customer participates in the BPA/Utility MCS Program the information specified in seciton II.A.2.b of this Appendix shall be provided.

c. A statement identifying both the method of offering and the amount of the financial incentive to be offered. The total incentive offered must equate to the level of incentive BPA offers to participants in the Early Adopter Program for the performance year the pre-approved alternative plan is implemented.

d. A statement signed by an appropriate official certifying that the customer is participating in or intends to participate in and will abide by the constractual conditions set forth in the BPA/Utility MCS Program.

5. Any customer serving a jurisdiction that has adopted, or intends to adopt, or any customer that has adopted, or intends to adopt, an alternative plan not pre-approved shall provide the Administrator with the following information:

a. A detailed technical analysis of the electric energy that will be saved through the adoption and implementation of the residential and/or commercial alternative plan. Included in the analysis should be the following:

(1) A detailed description of the conservation measures that will be installed; and

(2) Thermal efficiency specifications per residential building, and/or electric efficiency specifications per commercial building;

(3) Measures taken to protect residential indoor air qualilty.

b. A comparison of the level of the residential and/or commercial savings from the alternative plan to savings that would have been achieved if the residential and/or commercial MCS had been adopted. Supporting information shall include:

(1) A projection of the total number of single-family and multi-family residential structures for the reporting period;

(2) A projection of the total number of new, electrically heated single-family and multi-family residential structures for the reporting period;

(3) The projected number of square feet of new commercial floor space for the reporting period;

(4) The climates zone, as defined by the Council; and

(5) The customer's projection of the savings that would have been achieved by the MCS.

c. Residential and/or commercial program marketing plans which describe the mechanisms to implement the alternative plan. The marketing plans should identify projected penetration rates and the level of utility payments or other activities to promote residential and commercial MCS level construction.

d. Residential and commercial contingency plans to be implemented should savings equivalent to projected MCS level savings not be achieved.

e. A residential and commercial compliance certification strategy such as a utility inspection to assure quality control on the installation of conservation measures.

f. A signed statement from an appropriate official that such a plan has been, or will be, adopted and implemented.

g. The customer must provide evidence that the savings achieved through the alternative plan:

(1) Do not displace resources in the Council's Energy Plan; and

(2) Can be expected to be reliable and available for the same or longer period of time as those of the MCS.

h. Where the above information is not available, or is in doubt, BPA shall determine the level of savings that would have occurred had the MCS been adopted through use of the values included in the Council's surcharge methodology.

i. BPA shall determine, in consultation with the Council, whether the alternative conservation plan of a utility or jurisdiction will or has achieved savings of electricity comparable to those that would have been achieved under the utility programs identified in the MCS.

j. At any time, the Administrator may request documentation to verify that the information submitted is in compliance with this policy.

Appendix 2

I. Surcharge for Failure To Achieve the MCS Performance Standards

A. A 10 percent surcharge will be imposed as of January 1, 1989 for a period of 1 year, on customers which did not comply with the residential minimum performance standard for the performance year beginning 2 years earlier. The residential minimum

performance standard for 1987 has been established by the Council at 30 percent of the savings available from full MCS attainment. Failure to achieve this performance standard will result in the imposition of a 10 percent surcharge on applicable loads effective January 1, 1989. BPA is requesting that the residential MCS performance information specified in section II of this appendix be submitted by Janaury 1, 1988.

B. A 10 percent surcharge will be imposed as of January 1, 1990 for a period of 1 year, on customers which did not comply with the commercial minimum performance standard for the performance year beginning 2 years earlier. The commercial minimum performance standard for 1988 will be determined by BPA and announced prior to July 1, 1987. Failure to achieve this performance standard will result in the imposition of a 10 percent surcharge on applicable loads effective January 1, 1990. BPA is requesting that the commercial MCS performance information specified in section II of this appendix be submitted by January 1, 1989.

C. In no event will a utility be surcharged if it achieves and maintains, in any of the ways identified above, a level of electrical energy savings equivalent to 85 percent of those which would be achieved if all new electrically heated residences and all new electrically space conditioned commercial buildings in its service territories were constructed to the level of the MCS.

D. The dates for the above submissions and determinations represent a proposed schedule. BPA may revise this schedule should these dates be found to be inappropriate. BPA will provide advance notice to customers should the proposed schedule be revised.

E. For purposes of determining compliance with this Policy, the content of customer submissions identified below may be revised. Should BPA determine that its data needs have changed, BPA will provide advance notice to customers regarding the content of utility submissions.

II. Customer Submissions Necessary To Determine MCS Performance and Compliance With the Surcharge Policy

A. For the purpose of determining customer compliance with this policy, each customer shall provide the Administrator with the following appropriate information pursuant to the schedule identified above. Failure to take such action will result in the imposition of a 10 percent surcharge on the applicable loads of non-complying customers.

1. Any customer serving a jurisdiction that has adopted, or any customer that has adopted, the model conservation standards as a building code or utility service requirement for new residential and commercial buildings shall provide the Administrator the following information:

a. A statement of the previous year's compliance with the residential and/or commercial MCS code or utility service requirement adopted.

2. Any customer that adopts and implements the MCS as the Residential and/or Commercial BPA/Utility MCS Program shall provide the Administrator the following information:

a. To assess residential MCS savings, calculate performance toward achievement of residential MCS, and develop a residential equivalence standard, each customer shall submit the following. This information shall be provided for single-family, multi-family and manufactured homes: (1) Number of electric service hookups; (2) number of electric service hookups with electric space heat; (3) number of electric service hookups with electric space heat that are certified Super Good Cents homes.

b. To assess commercial savings, calculate performance toward achievement of commercial MCS, and develop a commercial equivalence standard, each customer shall submit the following:

[This information shall be determined when the BPA/Utility Commercial MCS Program is finalized.]

3. Any customer serving a jurisdiction adopting an alternative residential and/or commercial building code or adopting a utility service requirement as the equivalent of the MCS that in wording or requirement varies from code language approved by the Council shall provide the Administrator with the following:

a. A statement of the previous year's compliance with the alternative residential and/or commercial MCS code or utility service requirement adopted. This statement should include the actual amount of building activity which was projected in the previous year's plan to implement an alternative code (Appendix 1, section II.3.c.).

4. Any customer serving a jurisdiction that has adopted or any customer that has adopted a pre-approved alternative plan shall provide the Administrator with the following information:

a. A statement that the total load for the customer was not in excess of 25 average megawatts for the applicable performance year.

b. Information verifying that a total financial incentive equal to the incentive BPA offers to participants in the Early Adopter Program was offered by the customer during the applicable performance year.

c. If the customer is participating in the BPA/Utility MCS Program, the information specified in section II.A.2.a. of this Appendix shall be provided.

5. Any customer serving a jurisdiction that has adopted or any customer that has adopted an alternative plan shall provide the Administrator with the following information:

a. Evidence that the savings achieved from the alternative plan for the applicable performance year met or exceeded the annual minimum performance standard and equivalence standard.

b. A statement that the alternative plan information previously provided pursuant to Appendix 1, section II.A.5. has not been revised. Any revisions to the alternative plan will require that the information requested in Appendix 1, section II.A.5. be provided for the revised alternative plan.

[FR Doc. 86-14305 Filed 6-24-86; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-535-000 et al.]

Electric Rate and Corporate Regulation Filings; Boston Edison Co. et al.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER86-535-000]

June 19, 1986.

Take notice that on June 13, 1986, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effect as of the commencement date of the transaction to which it relates, June 1, 1986.

Edison states that it has served the filing on Cambridge Electric Light Company and the Massachusetts Department of Public Utilities.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Centel Corporation

[Docket No. ER86-539-000]

June 19, 1986

Take notice that on June 6, 1986, Centel Corporation (Centel) tendered for filing Appendix No. 1 to Service Schedule P (Participation Power Service), as a part of the Electric Interconnecton and Interchange Agreement dated June 27, 1983 between Centel Corporation, formerly Western Light & Telephone Company, Inc., and Midwest Energy, Inc., formerly Central Kansas Electric Cooperative, Inc. Centel states that this Appendix contains the rate determination calculations for the contract year beginning June 1, 1986 and ending May 31, 1987.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Connecticut Light and Power Company

[Docket No. ER86-537-000]

June 19, 1986.

Take notice that on June 13, 1986, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated December 15, 1985 between (1) CL&P and Western Massachusetts Electric Company (WMECO, and together with CL&P, the NU Companies) and (2) Montaup Electric Company (Montaup).

CL&P states that the Transmission Agreement provides for transmission services to Montaup for the wheeling of their entitlements in generating units from the Connecticut Municipal Electric Energy Cooperative during the period from December 15, 1985 until 30 days notice of termination. The transmission charge rate is a weekly rate equal to one-fifty-second of the estimated annual average cost of transmission service on the electric transmission system of the NU Companies determined in accordance with Appendix A and Exhibits I, II and III thereto, of the Transmission Agreement. The weekly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-Week), and (ii) the number of kilowatts of capacity Montaup is entitled to receive pursuant to the Tramsmission Agreement.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective as of December 15, 1985. WMECO has filed a certificate of concurrence in this docket. CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and Montaup (Lincoln, RI). CL&P further states that the filing is in accordance with Secton 35 of the Commission's Regulations.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

The Connecticut Light and Power Company et al.

[Docket No. ER86-538-000]

June 19, 1986.

Take notice that on June 13, 1986, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Northfield Mountain Purchase Agreement between the Connecticut Light and Power Company, Western Massachusetts Electric Company ((WMECO) and together with CL&P, the Licensees) and North Attleborough Electric Department (the Department) dated as of May 1, 1986.

CL&P states that the Purchase Agreement provides for a sale to the Department of a specified percentage of capacity and related pondage from the Licensees' Northfield Mountain Pumped Storage Hydro Electric Project (Project) together with related transmission service during the period May 1, 1986 to October 31, 1990. CL&P requests that the Commission waive its standards notice period and permit the rate schedule to become effective on May 1, 1986. CL&P states that this Agreement supercedes a prior Northfield Mountain Purchase Agreement, CL&P Rate Schedule FERC No. 308, WMECO Rate Schedule FERC No. 246. The Prior Northfield Mountain Purchase Agreement terminates by its own terms of April 30, 1986.

CL&P states that the capacity charge rate for the Project is a rate determined on a cost-of-service basis for the entire Project. CL&P states that the services to be provided under the Purchase Agreement rate are the same as services provided by the Licensees relating to a sale of capacity from the Project to North Attleborough Electric Department pursuant to a rate schedule dated as of November 30, 1983. (Rate Schedule FERC Nos. CL&P 308 and WMECO 246). CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations. WMECO has filed a Certificate of Concurrence in this docket.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Dayton Power and Light Company

[Docket No. ER86-534-000]

June 19, 1986.

Take notice that on June 12, 1986, The Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of New Bremen (New Bremen), Ohio.

The proposed Agreement allows New Bremen 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 New Bremen.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Illinois Power Company

[Docket No. ER86-540-000]

June 19, 1986.

Take notice that on June 13, 1986, Illinois Power Company ("the Company") tendered for filing the Power Coordination Agreement between Illinois Power Company and Illinois Municipal Electric Agency, dated June 2, 1986 ("Power Coordination Agreement").

The Company states that the Power Coordination Agreement provides for a hybrid of services, consisting of partial requirements services, interchange services, and wheeling services. The Power Coordination Agreement will supersede and replace agreements for purchase of power currently in effect between the Company and nine partial requirements customers and two full requirements customers.

The Company with the concurrence of the Illinois Municipal Electric Agency requests that the Commission grant a waiver of its notice requirement pursuant to § 35.11 of the Commission's regulations and allow the filing to become effective on July 1, 1986, without suspension to achieve the effective date provided in the Power Coordination Agreement.

Copies of this filing were served upon the Illinois Municipal Electric Agency and the Illinois Commerce Commission.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ER86-527-000]

June 19, 1986.

Take notice that on June 13, 1986, The Montana Power Company ("Montana") tendered for filing a revised Appendix I as required by Exhibit C for retail sales

in accordance with the provisions of the Residential Purchase and Sale Agreement ("Agreement") between Montana and the Bonneville Power Administration ("BPA").

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests an effective date of August 29, 1985 and, therefore, requests waiver of the Commission's notice requirements.

A copy of the filing was served upon BPA.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. The Montana Power Company

[Docket No. ER86-536-000]

June 19, 1986.

Take notice that on June 13, 1986, The Montana Power Company (MPC) tendered for filing Transfer Agreements between MPC and the Bonneville Power Administration (BPA), pursuant to which MPC transfers energy generated by BPA to Vigilante Electric Cooperative, Inc.; Missoula Electric Cooperative, Inc.; Northern Lights, Inc.; and Ravalli County Electric Cooperative, Inc.

MPC states that the parties previously agreed to initiate transfer service pursuant to cost-based rates approved by the FERC as of July 1, 1985, but that they were unable to complete negotiation of the necessary agreements by that time. MPC has therefore requested waiver of the Commission's regulations in order to permit each of the filed agreements to become effective as of that date.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Curtis/Palmer Hydroelectric Company

[Docket No. ER86-543-000]

June 20, 1986.

Take notice that on June 16, 1986, Curtis/Palmer Hydroelectric Company ("Curtis/Palmer") tendered for filing a power sale contract between Curtis/Palmer and Niagara Mohawk Power Corporation ("Niagara Mohawk") pursuant to which Curtis/Palmer will, on or about October 1, 1986, commence selling power and energy to Niagara Mohawk from a qualifying small power production facility with a rated capacity greater than 30 MW and less than 80 MW. Curtis/Palmer requests an effective date of October 1, 1986 for its filing and also requests waiver of certain Commission requirements for rate filings. Curtis/Palmer also requests waiver of certain Commission requirements with regard to accounting, property dispositions and consolidations, issuance of securities and assumptions of liabilities, and interlocking director positions.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Power Company

[Docket No. ER86-544-000]

June 20, 1986.

Take notice that on June 16, 1986, Duke Power Company (Duke) tendered for filing a revision to its Interchange Agreement with the South Carolina Public Service Authority (Santee Cooper). The revision is in the form of a new Service Schedule F—1986, dated February 21, 1986, which provides for the wheeling of power and energy from the Southeastern Power Administration's Richard B. Russell Project to the Duke system.

Duke requests an effective date of February 21, 1986. Copies of this filing were served on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Holyoke Power and Electric Company

[Docket No. ER86-541-000]

June 20, 1986.

Take notice that on June 16, 1986, Holyoke Power and Electric Company ("HP&E") tendered for filing Rider B, to the Full Requirements Rate F-1 (HP&E's FERC Rate Schedule 1) ("Rate F-1") for firm wholesale electric provided by HP&E to the Town of South Hadley, Massachusetts (the "Buyer").

HP&E states that Rider B provides a mechanism to be incorporated in Rate F-1 which facilititates billing for the delivery to the Buyer of the Buyer's entitlement(s) in the output of the New York Power Authority's power projects. Rider B establishes a mechanism by which the the Buyer obtains an entitlement(s) in power projects of the New York Power Authority, assigns the power to the Company for delivery across the transmission and distribution system of the Northeast Utilities operating companies and credits the value of such power against bills rendered under the Company's Rate F-1.

HP&E and the Buyer propose to make Rider B to Rate F-1 effective as of July 1, 1985 in conjunction with the commencement of the power flow from entitlements in the New York Power Authority power projects. In order to accomplish this effective date, HP&E has requested a waiver of the prior notice requirement of the Commission's Regulations.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of Colorado

[Docket No. ER86-406-000]

June 20, 1986.

Take notice that on June 6, 1986, Public Service Company of Colorado (Public Service) tendered for filing an Amendment to its Non-Firm Energy Agreement (Agreement) between Public Service and the City of Colorado Springs, Colorado (Colorado Springs).

Public Service states that the Amendment provides for the rates to be assessed for the non-firm sale and purchase of electric energy between Public Service and Colorado Springs.

Public Service states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

13. United States Department of Energy—Bonneyville Power Administration

[Docket No. EF86-2051-000]

June 20, 1986.

Take notice that on June 16, 1986, the United States Department of Energy, Bonneville Power Administration (BPA) tendered for filing in the above-captioned docket a proposed rate for Firm Displacement (FD) power sales. The proposal follows the conclusion of BPA proceedings under section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i). The proposed FD-85 rate has been designed to assist BPA in marketing its surplus firm power. The rate applies to long-term sales of BPA's surplus firm power to Pacific Northwest (PNW) utilities. PNW utilities would use the power purchased from BPA to serve their regional (PNW) load and would make a sale of their displaced resources to the Pacific Southwest.

Under the proposal, the FD-85 demand charge is $4.74 per kW-month

for load factors greater than or equal to 55 percent. For load factors below 55 percent, the demand charge increases $.017 per kW-month for each one percent reduction in load factor. The energy charge is 22.2 mills per kWh. The demand charge for naked capacity is $5.69 per kW-month. The rate also contains extended peaking surcharges, energy return surcharges, and provisions for partial year service and resource sales. All rate components and surcharges are escalated at the rate of increase in BPA's Priority Firm rate multiplied by a factor of 1.02 compounded annually.

BPA has requested final confirmation and approval of the proposed FD–85 rate effective December 16, 1986. The proposed rate is to be effective until September 1, 2006.

Comment date: July 2, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–14351 Filed 6–24–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-765-000, et al.]

The Dexter Corp., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission:

1. Dexter Corp.

[Docket No. QF86–765–000]

June 17, 1986.

On May 27, 1986, The Dexter Corporation (Applicant), of One Elm Street, Windsor Locks, Connecticut, 06096, 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 in Windsor Locks, Connecticut. The facility will consist of a combustion turbine generating unit, a waste heat recovery steam boiler, and an extraction/condensing steam turbine generating unit. Steam and hot water produced by the facility will be used by the C.H. Dexter Division of the The Dexter Corporation for process requirements. The net electric power production capacity of the facility will be 52 MW. The primary energy source will be natural gas. The installation of the facility will begin in early 1987.

2. North Jersey Energy Associates, a New Jersey Limited Partnership

[Docket No. QF86–789–000]

June 17, 1986.

On June 6, 1986, North Jersey Energy Associates, a New Jersey Limited Partnership (Applicant), of 87 Elm Street, Cohasset, Massachusetts 02025, submitted for filing an application for certification of a facility as a qualifiying 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 cogenaration facility will be located in Sayerville, New Jersey. The facility will consist of two combustion turbine generating units, two waste heat recovery steam generators, and one steam turbine generating unit. Steam produced by the facility will be utilized in the cooling process of the cold storage facility, heating and cooling applications of new industry that will be located nearby the facility. The electric power production capacity of the facility will be 125 MW. The primary energy sources will be coal and natural gas. The installation of the facility will begin on April 1, 1988.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants a 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. 86–14353 Filed 6–24–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-6043-001 et al.]

BHP Petroleum Co. Inc. (formerly Monsanto Oil Co.); Corporate Name Change

June 23, 1986.

Take notice that on June 10, 1986, BHP Petroleum Company Inc. (BHP PC), formerly Monsanto Oil Company (Monsanto), of 1300 Post Oak Tower, 5051 Westheimer, Houston, Texas 77056, filed a petition for an order amending, changing and revising prior orders and records of the Commission to reflect the change of corporate name of Monsanto Oil Company to "BHP Petroleum Company Inc." and for the redesignation of rate schedules, all as more fully shown on the attached Exhibit "A", which is on file with the Commission and open to public inspection.

Effective April 1, 1986, the corporate name of Monsanto was authorized to be changed to "BHP Petroleum Company Inc." by Certificate of Amendment of Certificate of Incorporation of Monsanto, which was filed on March 31, 1986, with the Office of Secretary of State, State of Delaware.

Notice is hereby given that all the certificates and rate schedules as listed in the attached Exhibit "A" are hereby redesignated to reflect the corporate name change from Monsanto Oil Company to BHP Petroleum Company Inc.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–14353 Filed 6–24–86; 8:45 am]

BILLING CODE 6717-01-M

EXHIBIT A.—CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND GAS RATE SCHEDULES TO BE REDESIGNATED

Certificate Docket No.	Designation	FPC GRS No.	Gas purchaser	Location of sales County (Parish) State
G-6043	Monsanto Oil Company	1	Texas Eastern Transmission Corp	Bienville, LA
G-6040	Monsanto Oil Company	2	Texas Eastern Transmission Corp	Richland, LA
G-6041	Monsanto Oil Company	3	Mississippi River Transmission Corp	Lincoln, LA
G-6036	Monsanto Oil Company	5	El Paso Natural Gas Co	Andrews, TX
G-10287	Monsanto Oil Company	9	Arkla Energy Resources	Lincoln, LA
G-10509	Monsanto Oil Company	11	Arkla Energy Resources	Lincoln, LA
G-10679	Monsanto Oil Company	12	El Paso Natural Gas Co	Crockett, TX
G-10774	Monsanto Oil Company	14	Southern Natural Gas Co	Bienville, LA
G-11230	Monsanto Oil Company (Operator) et al	16	United Gas Pipelilne Co	Victoria, TX
G-11600	Monsanto Oil Company (Operator) et al	18	Colorado Interstate Gas Co	Beaver, OK
G-12639	Monsanto Oil Company	23	Northern Natural Gas Co	Meade, KS
G-13801	Monsanto Oil Company	25	Mountain Fuel Supply Co	Moffat, CO
G-14717	Monsanto Oil Company	26	El Paso Natural Gas Co	San Juan, NM
G-14799	Monsanto Oil Company (Operator) et al	27	Northern Natural Gas Co	Beaver, OK
G-15290	Monsanto Oil Company	29	Northern Natural Gas Co	Beaver, OK
G-17260	Monsanto Oil Company	30	ANR Pipeline, Co	Beaver, OK
G-17519	Monsanto Oil Company	31	United Gas Pipeline Co	Bienville, LA
G-17969	Monsanto Oil Company	32	El Paso Natural Gas Co	San Juan, NM
G-18374	Monsanto Oil Company	34	El Paso Natural Gas Co	San Juan, NM
G-18666	Monsanto Oil Company	35	Southern Union Gathering Co	San Juan, NM
G-19965	Monsanto Oil Company	37	Northern Natural Gas Co	Roberts, TX
G-15318	Monsanto Oil Company	39	Transwestern Pipeline, Co	Reeves, TX
CI61-27	Monsanto Oil Company	40	Texas Gas Transmission Co	Ouachita, LA
CI61-94	Monsanto Oil Company	41	Transwestern Pipeline Co	Hansford, TX
CI61-604	Monsanto Oil Company	42	Texas Gas Transmission Co	Union & Quachita, LA
CI61-713	Monsanto Oil Company	43	Transwestern Pipeline Co	Ochiltree, TX
CI61-1778	Monsanto Oil Company (Operator) et al	48	Northern Natural Gas Co	Hansford & Ochiltree TX
CI61-1777	Monsanto Oil Company	49	Northern Natural Gas Co	Beaver, OK
CI62-131	Monsanto Oil Company	50	El Paso Natural Gas Co	San Juan, NM
CI62-347	Monsanto Oil Company	51	El Paso Natural Gas Co	Montezuma, CO
CI63-25	Monsanto Oil Company	55	Northern Natural Gas Co	Beaver, OK
G-9357	Monsanto Oil Company et al	64	Natural Gas Pipeline Co. of America	Brooks & Jim Wells, TX
G-9358	Monsanto Oil Company et al	65	Natural Gas Pipeline Co. of America	Brazoria & Matagorda TX
G-9356	Monsanto Oil Company et al	66	Transcontinental Gas Pipeline Co	Brooks & Jim Wells, TX
G-9353	Monsanto Oil Company et al	68	Tennessee Gas Transmission Co	Victoria, TX
G-9354	Monsanto Oil Company et al	70	Tennessee Gas Transmission Co	Colorado, TX
G-9361	Monsanto Oil Company et al	71	United Gas Pipeline Co	Lamar & Marion, MS
CI60-258	Monsanto Oil Company et al (Operator)	75	Southern Natural Gas Co	St. Mary, LA
CI64-767	Monsanto Oil Company	76	Northern Natural Gas Co	Beaver, OK
CI64-1392	Monsanto Oil Company (Operator) et al	78	Lone Star Gas Co	McClain, OK
CI65-531	Monsanto Oil Company (Operator) et al	81	Natural Gas Pipeline Co. of America	Eddy, NM
CI65-525	Monsanto Oil Company	82	Natural Gas Pipeline Co. of America	Eddy, NM
CI66-491	Monsanto Oil Company	83	Texas Gas Transmission Co	Ouachita, LA
CI67-123	Monsanto Oil Company (Operator) et al	84	El Paso Natural Gas Co	San Juan, UT
CI67-286	Monsanto Oil Company (Operator) et al	85	Arkla Energy Resources	LeFlore, Haskell, Pittsburg, OK
CI67-367	Monsanto Oil Company	86	Panhandle Eastern Pipeline Co	Woods, OK
CI67-1079	Monsanto Oil Company	88	Transwestern Pipeline Co	Hemphill, TX
CI67-1160	Monsanto Oil Company	89	Transwestern Pipeline Co	Reeves, TX
CI68-516	Monsanto Oil Company (Operator) et al	91	Arkla Energy Resources	Sebastian, AR
CI68-893	Monsanto Oil Company	92	Transwestern Pipeline Co	Reeves, TX
CI69-187	Monsanto Oil Company	93	Transwestern Pipeline Co	Eddy, NM
CI69-606	Monsanto Oil Company	94	Transwestern Pipeline Co	Ochiltree, TX
CI69-851	Monsanto Oil Company et al	95	Natural Gas Pipeline Co. ofAmerica	Brazoria & Matagorda TX
CI69-889	Monsanto Oil Company	96	Arkla Energy Resources	LeFlore, OK
CI69-1001	Monsanto Oil Company (Operator & Agent) et al	97	Arkansas Oklahoma Gas Corp	LeFlore, OK
CI70-932	Monsanto Oil Company	98	ANR Pipeline Co	Major, OK
CI72-159	Monsanto Oil Company	100	Northern Natural Gas Co	Pecos, TX
CI72-341	Monsanto Oil Company	101	Northwest Central Pipeline Corp	Hemphill, TX
CI72-351	Monsanto Oil Company	102	Transwestern Pipeline Co	Woodward, Ok
CI72-844	Monsanto Oil Company	103	Trunkline Gas Co	DeWitt, TX
CI73-305	Monsanto Oil Company	104	Transwestern Pipeline Co	Dewey, OK
CI73-919	Monsanto Oil Company	107	Northwest Central Pipeline	Hemphill, TX
CI75-96	Monsanto Oil Company	110	Transwestern Pipeline Co	Winkler, TX
CI75-167	Monsanto Oil Company	111	United Gas Pipeline Co	Bienville, LA
CI75-358	Monsanto Oil Company (Operator) et al	112	United Gas Pipline Co	Bienville, LA
CI75-495	Monsanto Oil Company (Operator) et al	113	Colorado Interstate Gas Co	Fremont & Natrona, WY
CI75-552	Monsanto Oil Company (Operator) et al	114	Transwestern Pipeline Co	Dewey, OK
CI75-543	Monsanto Oil Company (Operator) et al	115	K-N Energy, Inc	Fremont & Natrona, WY
CI75-632	Monsanto Oil Company (Operator) et al	116	Transwestern Pipeline Co	Dewey, OK
CI75-613	Monsanto Oil Company	117	Transwestern Pipeline Co	Winkler, TX
CI75-639	Monsanto Oil Company	118	Transwestern Pipeline Co	Eddy, NM
CI75-597	Monsanto Oil Company	119	Colorado Interstate Gas Co	Fremont & Natrona, WY
CI76-4	Monsanto Oil Company	120	Transwestern Pipeline Co	Eddy, NM
CI76-7	Monsanto Oil Company	121	El Paso Natural Gas Co	Eddy, NM
CI76-251	Monsanto Oil Company	122	Texas Eastern Transmission Co	DeWitt, TX
CI76-339	Monsanto Oil Company (Operator) et al	123	Transwestern Pipeline Co	Hemphill, TX
CI76-580	Monsanto Oil Company	124	Transwestern Pipeline Co	Eddy, NM
CI77-93	Monsanto Oil Company (Operator) et al	125	Northern Natural Gas Co	Ward, TX
CI77-218	Monsanto Oil Company	126	Transwestern Pipeline Co	Eddy, NM
CI77-146	Monsanto Oil Company (Operator) et al	127	K-N Energy, Inc	Fremont & Natrona, WY
CI77-309	Monsanto Oil Company	128	Transwestern Pipeline Co	Winkler, TX
CI77-524	Monsanto Oil Company	129	El Paso Natural Gas Co	Eddy, NM
CI77-574	Monsanto Oil Company	130	Transwestern Pipeline Co	Eddy, NM
CI77-596	Monsanto Oil Company	131	Transwestern Pipeline Co	Eddy, NM
CI77-623	Monsanto Oil Company (Operator) et al	132	El Paso Natural Gas Co	Eddy, NM
CI77-801	Monsanto Oil Company	133	Transwestern Pipeline Co	Winkler, TX
CI78-154	Monsanto Oil Company	135	Texas Eastern Transmission Co	Lincoln, LA
CI78-338	Monsanto Oil Company	136	Northern Natural Gas Co	Lea, NM

EXHIBIT A.—CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND GAS RATE SCHEDULES TO BE REDESIGNATED—Continued

Certificate Docket No.	Designation	FPC GRS No.	Gas purchaser	Location of sales County (Parish) State
CI78-589	Monsanto Oil Company	137	Northern Natural Gas Co.	High Island Area, Offshore TX
CI79-547	Monsanto Oil Company	140	Columnbia Gas Transmission Co.	Galveston Area, Offshore, TX
CI79-658	Monsanto Oil Company	141	Columbia Gas Transmission Co.	Galveston, Area, Offshore TX
CI78-757	Monsanto Oil Company	142	El Paso Natural Gas Co.	Eddy, NM
CI81-387	Monsanto Oil Company	143	Northwest Central Pipeline Co.	Logan, OK
CI81-487	Monsanto Oil Company	144	Colorado Interstate Gas Co.	Lea, NM
CI82-414	Monsanto Oil Company	145	Natural Gas Pipeline Co. of America	Ward, TX
CI85-611	Monsanto Oil Company	146	K-N Energy, Inc.	Fremont & Natrona, WY

[FR Doc. 86-14354 Filed 6-24-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EF86-2041-001]

Bonneville Power Administration; Request for Confirmation and Approval of Proposed Variable Industrial Power Rate

June 17, 1986.

Take notice that on June 16, 1986, the Bonneville Power Administration (BPA) of the United States Department of Energy tendered for filing a proposed Variable Industrial Power rate schedule, identified as the VI-86 rate schedule. BPA requests confirmation and approval of this rate pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(a)(2), and the Commission's rules for the confirmation and approval of rates for Federal power marketing agencies 18 CFR 300. BPA proposes that its VI-86 rate schedule be effective on August 1, 1986, and be given Commission approval for a period of ten years.

VI-86 is a formula rate that varies the price of electricity paid by aluminum smelters within BPA's direct service industrial customer class according to the U.S. market price of aluminum. It is designed to maintain aluminum smelter load and protect BPA revenues during the near-term period of BPA's capacity and energy surplus.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 30, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceedings. 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. 86-14355 Filed 6-24-86; 8:45 am]
BILLING CODE 6717-01

[Docket No. CP86-556-000]

Natural Gas Pipeline Co.; Application

June 19, 1986.

Take notice that on June 13, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-556-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport up to a maximum of 8,000 billion Btu per day of natural gas on an interruptible basis for Green Valley Chemical Corporation (Green Valley), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

According to a gas transportation agreement between Natural and Green Valley dated June 10, 1986, Natural proposes to provide interruptible transportation for a period of two years from the date of first delivery. Green Valley will make volumes available to Natural for transportation at existing points of interconnection between Natural and (1) ONG Transmission Company in Woodward County, Oklahoma; (2) Reliance Pipeline Company at two points in Caddo County, Oklahoma (West Caddo and East Caddo); (3) Northwest Central Pipeline Corporation in Ford County, Kansas; and (4) ANR Pipeline Company in Beaver County, Oklahoma. Natural will then redeliver these volumes to Iowa Electric Light and Power Company at an exiting point of interconnection located at Creston, Union, County, Iowa. Ultimate delivery will be to Green Valley's feedstock and ammonia plant in Union County, Iowa. In addition to the above mentioned points for the receipt of transportation volumes, Natural requests authorization to add or delete receipt points in the future to support the proposed transportation service.

Natural proposed to charge Green Valley a negotiated transportation rate consistent with its Rate Schedule T-1. This proposed rate will be the greater of the non-gas component of Natural's Rate Schedule DMQ-1 commodity rate less production and gathering costs or a mileage-based rate. Natural will also charge the currently effective GRI surcharge.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 3, 1986, 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 385.214 or 385.211) 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 application 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 Natural to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-14356 Filed 6-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4129-009]

Olcese Water District; Application Filed With the Commission

June 20, 1986.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Amendment of License.

b. Project No: 4129-009.

c. Date Filed: June 9, 1986.

d. Applicant: Olcese Water District.

e. Name of Project: Rio Bravo.

f. Location: On the Kern River in Kern County, California.

g. Filed Pursuant to: Federal Power Act. 16 U.S.C. 791(a)-825(r).

h. Contact Person: Dean Gay, President, Olcese Water District, P.O. Bix 651, Bakersfield, CA 93302, (805) 323-2991.

i. Comment Date: July 21, 1986.

j. Description of Proposed Action: The applicant proposes to replace the previously authorized unconstructed project on the north side of the Kern River with the following facilities on the south side of the river. A 15-foot-high, 270-foot-long concrete gravity overflow diversion dam across the Kern River will be constructed approximately 1000 feet downstream of the previous site and 1200 feet downstream from the existing Pacific Gas and Electric Company's (PG&E) Kern Canyon Powerhouse. The dam will impound a 6-acre pool with a storage capacity of 46 acre-feet at a normal water surface elevation of 682.0 feet. A concrete intake structure on the south abutment of the dam will divert river flows to the power canal. The power canal will range in depth from 12 to 15 feet and will be 27 feet wide and 7500 feet long with a discharge capacity of 1600 cfs. A forebay will be created at the end of the power canal by widening the canal to 40 feet and lowering the invert 7½ feet to provide for submergence of the penstocks. The reinforced concrete penstock intake structure will contain two hydraulically operated 10-foot-wide by 12-foot-high slide gates to serve as shut-off valves for the powerhouse which will contain two identical vertical kaplan turbine/generators with a total installed capacity of 14 MW. The powerhouse will be a reinforced concrete structure approximately 52 feet long by 65-feet-wide by 57 feet high. A 120-foot-long reinforced concrete tailrace channel will be constructed at the draft tube outlets to return flow via an earthen channel to the river. An underground transmission line 1600 feet long will connect the powerhouse substation to an existing PG&E transmission line.

k. This notice also consists of the following standard paragraph: B and C.

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 received 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 APPLICATION", "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, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-14352 Filed 6-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-277-000 et al.]

Certificates of Transportation; Southern Natural Gas Co., Order Convening Technical Conference

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Issued: June 17, 1986.

In the matter of Docket Nos. CP86-277-000, CP86-306-000, CP86-308-000, CP86-318-000, CP86-336-000, CP86-358-000, CP86-359-000, CP86-365-000, CP86-366-000, CP86-382-000, CP86-392-000, CP86-400-000, CP86-401-000, CP86-408-000, CP86-409-000, CP86-432-000, CP86-433-000, CP86-439-000, CP86-458-000, CP86-459-000, CP86-460-000, CP86-461-000, CP86-466-000, CP86-467-000, CP86-500-000.

Southern Natural Gas Company (Southern) has filed 25 applications in the above-referenced dockets, pursuant to section 7(c) of the Natural Gas Act (NGA), 15 U.S.C. 717-717w (Supp. 1986), for certificates of public convenience and necessity authorizing the transportation of natural gas for local distribution companies (LDCs) and industrial end users. These shippers, and the volumes to be transported for each, are listed in Appendix A to this order.

Due notice of each of Southern's applications was published in the **Federal Register.** Parties that filed motions to intervene in one or more of the proceedings are listed in Appendix B to this order.

By order issued June 13, 1986, the Commission granted the authorizations requested for an initial period of 90 days, and reserved the right to extend that term *sua sponte* for the full period requested in the applications[1] based on the applications and the record compiled at a technical conference. In that order we noted that Southern's proposals, taken together, constitute a significant transportation program and may thus raise the question whether Southern's transportation policy may be unduly discriminating in providing access to its pipeline. Further, we determined that, prior to taking final action on any of the individual applications, they should be reviewed

[1] 35 FERC ¶ 61,334 mimeo at 3.

and considered together as a whole. To that end we stated our intention to convene a technical conference for that purpose, to explore several aspects of the applications, particularly with respect to their potential for discrimination.[2]

In this regard, we note that on March 31, 1986, Southern filed a response to data requests from the Commission's staff in which Southern states, among other things, that it is Southern's transportation policy "to seek authorization pursuant to section 7(c) of the Natural Gas Act to perform specific transportation services for anyone requesting transportation service. The terms and conditions of each request for such service may vary depending on the circumstances of each request for transportation."

The presiding officer at the technical conference is instructed to explore the following aspects of the applications:

1. Does Southern's transportation policy, as quoted above, encompass transportation for producers, brokers, and marketers of gas? If not, would the exclusion of producers and/or brokers and marketers constitute undue discrimination?

2. Has Southern declined to provide transportation for any person (whether or not such person is or has been a customer of Southern) who has requested such transportation? If so, what were Southern's reasons for declining to transport, and what were the facts and circumstances pertinent to the request and refusal?

3. Does the limitation of transportation to just section 7(c) interruptible transportation constitute undue discrimination against "firm transportation" since the quality and duration of the offered service precludes certain customer classes from using transportation and precludes producers from entering into alternative long-term supply contracts?

4. Would Southern be willing to reduce the contract demand of sales customers who request transportation service? If not, would such unwillingness constitute undue discrimination?

5. Does the system-wide transportation program proposed by Southern confer an undue preference on Southern's interests in its merchant function at the expense of transportation as an equal service?

6. Are the rates for section 7(c) transportation unduly discriminatory when new customers pay only one rate and existing pipeline customers pay the same rate for transportation but also demand charges for prior sales that are now not required?

7. Must this Commission employ different standards of undue discrimination that are applicable to section 7(c) certificates when a pipeline requests to serve a narrow and possibly unique situation, as opposed to when the pipeline plans to use section 7(c) certificates for a system-wide transportation program? What standards should the Commission apply in evaluating whether Southern's transportation program is unduly discriminatory or preferential?

8. Any other issues of potential discrimination related to Southern's applications raised by the participants or the presiding officer at the technical conference.

The conference will be limited to review of the factual context of Southern's applications but, within that context, may address pertinent transportation policy issues that may have broader applicability.

The conference will commence at 9:00 a.m. on July 18, 1986, at the Commission's offices at 825 North Capitol St., NE., Washington, DC in a hearing room to be designated.

All interested persons are invited to participate in the technical conference, whether or not they are parties to the above-captioned proceedings.

Participants in the conference may submit written comments in advance of the conference. An original and 14 copies of such comments should be filed with the Commission no later than July 10, 1986, at the following address:

Federal Energy Regulatory Commission,
Office of the Secretary, Room 3110,
825 North Capitol St., NE.,
Washington, DC 20246

Copies of the comments must be served on all parties listed in Appendix B.

At the conclusion of the technical conference, the presiding officer will submit a report to the Commission summarizing the matters discussed and the conclusions reached.

In the interest of ascertaining in advance of the conference what size room would be appropriate, persons who plan to attend are requested to notify the Office of the Secretary no later than July 10, 1986.

The Secretary is instructed to cause a copy of this order to be published in the **Federal Register.**

By the Commission. Acting Chairman Sousa dissented with a separate statement to be issued later.

Kenneth F. Plumb,

Secretary.

APPENDIX A.—PENDING APPLICATIONS BY SOUTHERN NATURAL GAS COMPANY FOR TRANSPORTATION CERTIFICATES

Docket No.	MMBtu/day	Agent	Customer	Seller	Term (years)
CP86-277 [1]	189,000	None	Alabama Gas Co.	SNG Trading	2
CP86-306 [1]	310,000	None	Atlanta Gas	SNG Trading	2
CP86-308	50,000	Alabama Gas (Alagasco)	32 industrial customers	SNG Trading	1
CP86-318 [1]	80,000	None	South Carolina	SNG Trading	2
CP86-336	16,000	None	McMillen Bloedel	SNG Trading	1
CP86-358	20,000	None	Union Carbide	SNG Trading	1
CP86-359	65,630	None	U.S. Steel	TXO Corp.	1
CP86-365	1,530	Alagasco	Harbison-Walker	TXO Corp.	1
CP86-366	5,000	South Georgia	Floridin	SNG Trading	1
CP86-382	3,000	City of Andersonville	Mullite	SONAT	1
CP86-392 [1]	7,000	None	S.E. Alabama	SNG Trading	1
CP86-400	20,000	Atlanta Gas	Engelhard	SNG Trading	1
CP86-401	6,000	South Georgia	Engelhard	SNG Trading	1
CP86-408	4,700	Atlanta Gas	Anglo-American	Diamond-Shamrock	1
CP86-409	3,200	S.E. Alabama	Harbison-Walker	TXO Prod. Corp.	1
CP86-432	17,000	Alagasco	Gulf States	Con. Fuel Supply	1
CP86-433	9,000	Atlanta Gas	Georgia Kaolin	SONAT	1
CP86-439	76,000	None	Co. Nitrogen	Mid Continent Arkla Energy	1
CP86-458	2,200	None	Bickerstaff	SNG Trading	1
CP86-459	1,500	Atlanta Gas	Bickerstaff	SNG Trading	1
CP86-460	1,500	Phenix City	Bickerstaff	SNG Trading	1
CP86-461	2,000	Atlanta Gas	Packaging Corp.	Con. Fuel Supply	1
CP86-466 [1]	3,000	None	Ut. Bd., Sylacauya	SNG Trading	1
CP86-467 [1]	6,500	None	Austell, Ga.	SNG Trading	1
CP86-500	1,700	Atlanta Gas	Chemical Products	Con. Fuel Supply	1
Total	972,560				

[1] Application to transport for shipper's system supply.

[2] Id. at 2.

Appendix B—Interventions

Alabama Gas Corporation
Anglo-American Clays Corporation
Arco Oil & Gas Company (Division of Atlantic Richfield Company)
Atlanta Gas Light Company
Chattanooga Gas Company
Cheney Energy Corporation
Columbia Nitrogen Corporation & Nipro, Inc.
Diamond Shamrock Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership
Dickey Clay Company
Engelhard Corporation
FMP Operating Company
Georgia Industrial Group
Howell Petroleum Corporation
Louisiana Resources Company
Pennzoil Producing Company & Pennzoil Gas Marketing Company
Warren L. Seal
Sonat Exploration Company
South Carolina Pipeline Corporation
Transcontinental Gas Pipe Line Corporation
United States Steel Corporation

[FR Doc. 86-14357 Filed 6-24-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP86-38-000]

Texas Gas Transmission Corp. Complainant, v. Amoco Production Co.; Complaint

June 20, 1986.

Take notice that on May 30, 1986, Texas Gas Transmission Corporation (Texas Gas) filed a complaint with Federal Energy Regulatory Commission (Commission) against Amoco Production Company (Amoco), pursuant to section 5(a) of the Natural Gas Act (NGA) and Rule 206 of the Commission's Rules of Practice and Procedure. Texas Gas requests the Commission to find that the minimum take and take-or-pay provisions of certain Amoco rate schedules are unjust and unreasonable within the meaning of NGA section 5(a).

Texas Gas argues that the take-or-pay provisions found in Amoco's Rate Schedule Nos. 540, 779, 780, 815, 816 and 826 are unjust and unreasonable and, accordingly, unenforceable. In addition, Texas Gas argues that certain Amoco rate schedules impose an unjust and unreasonable obligation on Texas Gas to take monthly minimums, to take 100 percent of available casing-head gas and to take "all available remedies" to prevent drainage. Texas Gas argues that these provisions: (1) Insulate Amoco's high-cost supplies from market risk by forcing the purchase of and/or payment for supplies which would not otherwise be marketable, (2) serve to "prop up" the prices Amoco receives for its gas, and (3) prevent the pursuit by Texas Gas of a least-cost purchasing policy. Texas Gas argues that Amoco's take and take-or-pay provisions are the functional equivalent of the pipeline minimum commodity bill provisions found unlawful by the Commission in Order No. 380, FERC Stats. & Regs. ¶ 30,571 (1984). Finally, Texas Gas argues the Commission has plenary authority over matters affecting the interstate sale of natural gas for resale, *FPC v. Hope Natural Gas Company*, 320 U.S. 591 (1944), and that the Commission's jurisdiction extends to the rate schedules in question.

Texas Gas states that while the majority of its producer-suppliers are willing to negotiate workable solutions to the take-or-pay problem, Amoco is apparently unwilling to accept narket-responsive changes to its gas purchase agreements. Under the circumstances, Texas Gas urges the Commission to consider the issue raised in an expeditious manner so as to minimize the adverse impact of Amoco's take and take-or-pay provisions on the markets which Texas Gas serves.

Any person desiring to be heard or to protest Texas Gas' filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 (1985)). All such motions or protests should be filed on or before July 21, 1986.

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 Texas Gas' complaint are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-14358 Filed 6-24-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP86-550-000]

Trunkline Gas Co.; Application

June 17, 1986.

Take notice that on June 11, 1986, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86-550-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas and continued operation of facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 5,000 Mcf of natural gas per day on an interruptible basis on behalf of Intrastate Gathering Corporation (Intrastate). Trunkline States that it would receive natural gas for Intrastate's account from Danex Energy Company (Danex) at an existing interconnection between Danex and Trunkline in Richard Boatwright Survey Abstract A-8, Wharton County, Texas. It is explained that Trunkline would transport and redeliver natural gas on behalf of Intrastate to one or more of the following locations: (1) Tenneco Ward Plant in Hidalgo County, Texas (2) Houston Pipeline Company in Waller County, Texas and (3) Intrastate in Dewitt County, Texas. Trunkline requests authority to add and delete delivery points from the transportation agreement as may be required from time to time. It is stated that Intrastate would pay Trunkline a unit transportation charge of 5.28¢/Mcf

Trunkline states that the primary term of the proposed service is until the earlier of: (1) May 20, 1988 or (2) thirty days following the date Trunkline accepts a blanket certificate of public convenience and necessity authorizing such service under Subpart G of 18 CFR Part 284 of the Commission's Regulations. Trunkline also requests pregranted authority to abandon the proposed service upon expiration of the transportation agreement.

Trunkline states that the existing point of receipt in Wharton County, Texas and the exising point of delivery to Intrastate in Dewitt County, Texas were constructed for nonjurisdictional transportation service as reported in Docket Nos. ST84-1144 and ST84-542. Trunkline requests authority to operate these facilities for the proposed jurisdictional transportation service.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 3, 1986, file with the Federal Energy Regulatory Commission, Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 application if no motion to intervene is filed within the 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-14359 Filed 6-24-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order, Period of April 28 through May 23, 1986

During the period of April 28 through May 23, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 205865 Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 17, 1986.

Standard Oil of Connecticut, 5/22/86; KEE-0034

On April 12, 1986, Standard Oil of Connecticut filed an Application for Exception seeking relief from the requirement to file Form EIA-782B with the DOE Energy Information Administration. The OHA issued a Proposed Decision and Order tentatively granting the firm exception relief.

[FR Doc. 86-14384 Filed 6-24-86; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Period of April 7 through June 6, 1986

During the period of April 7 through June 6, 1986, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

June 17, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Port Petroleum, Shreveport, LA, KRO-0290 Crude Oil

On June 3, 1986, Port Petroleum, T. Michael Howell and C. Gregory Crafts of Shreveport, Louisiana, and Morris M. James of Kingwood, Texas filed a Notice of Objection to a Proposed Remedial Order (PRO) which the Dallas, Texas Office of the Economic Regulatory Administration of the DOE issued to the firm on April 7, 1986. On June 4, 1986, the State of California filed a Notice of Objection to the PRO. In the PRO the ERA found that during the period August 1979 through December 1980, Port Petroleum improperly reported crude oil receipts and received unwarranted financial benefits through the Entitlements Program. According to the PRO the violations amount to $9,020,867 excluding interest.

Scruggs Energy Co., Kingwood, TX, KRO-0280 Crude Oil

On June 2, 1986, Scruggs Energy Company (SECO) and W.W. Scruggs, 2902 Laurel Drive, Kingwood, Texas 77339 filed a Notice of Objection to a Proposed Remedial Order (PRO) which the DOE Houston District Office of Enforcement issued to the firm on March 31, 1986. In the PRO the Houston District found that from August 1979 through January 1981, SECO violated 10 CFR 205.202, 210.62(c) and 212.186 by charging prices $13,302,314.00 in excess of its crude oil purchase price without performing any traditional or historical reseller services. Alternatively, the PRO found that from August 1979 through January 1980, and from July through August 1980, SECO charged prices $860,379.00 in excess of its permissible average markup, in violation of 10 CFR 212.183. The PRO finds that Mr. Scruggs is jointly and severally liable for all the overcharges.

[FR Doc. 86-14385 Filed 6-24-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $75,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Kent Oil & Trading Company, a reseller of petroleum products.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0578.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision related to a consent order entered into by Kent Oil & Trading which settled possible violations of DOE price controls in the firm's sales of covered petroleum products to its customers during the January 1973 through January 1981 period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Kent pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of covered products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of pubication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: june 18, 1986

George B. Breznay,

Director Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

June 18, 1986.

Name of Firm: Stephen R. Kent, d/b/a Kent Oil & Trading Co.

Date of Filing: April 3, 1985

Case Number: HEF–0578

On April 3, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Stephen R. Kent, doing business as Kent Oil & Trading Company. See 10 CFR Part 205, Subpart V. This proposed decision contains OHA's tentative plan for distributing funds the DOE received from Kent to qualified refund applicants. Information necessary to prepare refined product refund applications appears at section II of this decision. The decision first sets forth specific requirements applicable to each of the various types of claimants that are likely to file applications in section II–A. A claimant should take particular note of those requirements applicable to its particular circumstances. The specific application requirements are followed at section II–B by a discussion of general requirements which apply to all refined product refund applications.

Kent was a reseller of crude oil and motor gasoline with offices in Houston, Texas and Los Angeles, California. As part of its enforcement activities, DOE reviewed Kent's records and subsequently alleged that Kent had violated various regulations governing resales of crude oil and refined petroleum products. On December 12, 1983, Mr. Kent and the DOE entered into a settlement agreement in order to settle all claims relating to those allegations. That consent agreement settled all disputes between Mr. Kent individually, Kent Oil & Trading Co. and the Department of Energy for the period between August 19, 1973 and the date of the consent order, with the specific exception of potential violations by Kent of the crude oil producer regulations, 10 CFR Part 212, Subpart D. Kent agreed to pay $75,000 in settlement of the claims covered by the agreement. The settlement agreement was approved by the United States Bankruptcy Court for the Southern District of Texas (Houston Division), since Kent had filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code on August 26, 1980. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. As of April 30, 1986, the escrow account contained approximately $88,300.

Because the Consent Order resolves alleged violations involving both sales of crude oil and refined products, we propose to divide the fund into two pools. *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). From our review of the only available records, it appears that approximately 18.5 percent of the firm's sales volume in gallons was crude oil and the remainder was motor gasoline and other refined products. We therefore propose that 18.5 percent of the funds contained in the Kent escrow account he set aside in a crude oil pool. We further propose that the remaining 81.5 percent of the Kent funds be made available for distribution to claimants who demonstrate that they were injured by Kent's alleged violations in sales of motor gasoline and other refined products.

I. Proposed Refund Procedures for Crude Oil Claims

As a reseller of crude oil, Kent was subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212. Because the nature of the crude oil resale violations alleged in the enforcement proceedings is not specified, it is impossible to determine with absolute certainty whether miscertifications of crude oil did or did not occur. To the extent that Kent miscertified old crude oil as new or stripper well crude oil, however, the impact of the violations was spread throughout the domestic refining industry by the operation of the Entitlements Program, 10 CFR 211.67. *See, e.g., Union Oil Co. v. DOE*, 688 F.2d 797 (Temp. Emer. Ct. App. 1092), *cert. denied*, 459 U.S. 1202 (1983). Based upon the OHA's report to the District Court in the Stripper Well Exemption Litigation, *see Report of the Office of Hearings and Appeals, In re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan., filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 at 90,620 (1985) (the OHA Stripper Well Report), the DOE announced that no claims for direct restitution would be accepted, and the Department would maintain overcharges associated with such violations in escrow to afford Congress the opportunity to select the means of making indirect restitution. *See* Statement of Restitutionary Policy, 50 FR 27400 (1985), Fed. Energy Guidelines ¶ 90,508 (1985). In light of the DOE policy determination, the OHA issued an order in June 1985 announcing that it intended to apply the policy in special refund proceedings involving overcharge funds attributable to Entitlements-period crude oil certification violations. 50 FR 27402 (1985).

After soliciting comments from potentially aggrieved parties regarding the OHA's application of the policy to pending refund proceedings, the OHA stated in *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985), that it would apply the Statement of Restitutionary Policy in crude oil refund cases. Thus, the OHA will pool the Kent funds attributable to alleged crude oil violations with other crude oil funds for distribution in accordance with departmental policies. *See* 50 FR 27402 (1985); 50 FR 27400 (1985); 50 FR 1919 (1985).

II. Proposed Refund Procedures for Motor Gasoline Refund Claims

With regard to the remainder of the Kent settlement fund, we propose to implement a two-stage refund proceeding in which purchasers of Kent motor gasoline or other refined products will be afforded an opportunity to submit refund applications during the initial stage. ERA's enforcement records do not reveal names of all potentially injured parties. From our experience with Subpart V proceedings, we believe that potential claimants will fall into the following categories: (1) End users, i.e., consumers who used Kent refined products; (2) reguated non-petroleum entities which used Kent products in their businesses or cooperatives which sold Kent's products in their businesses; (3) and refiners, resellers or retailers who resold Kent refined products.

In establishing the procedures which will govern the Kent Special Refund Proceeding, we are adopting certain presumptions which will permit claimants to participate in the refund process without incurring inordinate expense and enable OHA to consider the refund applications in the most efficient manner possible.[1] First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of refined product made by Kent during the consent order period and that refunds should therefore be made on a pro-rata or volumetric basis. In the absence of better information, such a volumetric refund assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser might have been greater, and any purchaser may file a refund application based on a claim that the impact of the alleged overcharge on it was disproportionally greater than the pro rata share calculated by the use of the volumetric presumption. *See. e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

Under the volumetric refund approach we are adopting, a claimant will be eligible to receive a refund equal to the product of the number of gallons purchased times the per gallon refund factor.[2]

(A) Specific Application Requirements for Each Category of Refined Product Refund Applicants

(1) Refund Applications by End Users

We will adopt a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM Oil Associates*). *See also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of Kent's refined products need only document that they were ultimate consumers of a specific amount of product to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications by Regulated Firms or Cooperatives

In addition, we will adopt the presumption that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed the alleged motor gasoline overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Kent's alleged violations would routinely be passed through to the firms' customers. Consequently, we will add such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). Instead, those firms and cooperative groups should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body of membership group will be advised of the applicant's receipt of refund money. We note, however, that a cooperative's sales of Kent's products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications by Resellers, Retailers and Refiners

a. *Spot Purchasers.* If a claimant made only spot purchases, we believe that in most circumstances it should not receive a refund since it is unlikely to have experienced injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Kent's product at increased prices unless they were able to pass through the full amount of the quoted selling price at the time of purchase to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Therefore, a firm which made only spot purchases from kent will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishes the extent to which it was injured as a result of its purchases of Kent refined petroleum products during the consent order period.

b. *Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less.* Another presumption we will adopt is that purchasers of Kent's refined petroleum products seeking small refunds were injured by the firm's pricing practices. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). With small claims, the cost of the firm of gathering evidence of injury to support a refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be effectively denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Kent refined product it purchased during the consent order period. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). In addition to the general information required from all applicants it need only establish that it is a small-claims.

c. *Refiners, Resellers and Retailers Seeking Large Refunds.* Unlike small-claims applicants, a firm which claims a refund in excess of $5,000 will be required to provide a detailed demonstration of its injury in addition to providing purchase volume information. It will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, a claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Panhandle Eastern Pipeline Co./ I. V. Cole Petroleum Co.*, 10 DOE ¶ 85,051 (1983); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). For periods in which the DOE regulations did not require retailers to compute cost banks, a retailer will only be required to show that market conditions prevented it from recovering increased costs. Such a showing might be made though a demonstration of lowered profit margins, decreased market shares, or depressed sales volume during the period of purchaser from the consent order firm.

(B) *General Refund Application Requirements*

In addition to the specific requirements outlined above, all applications for refund must be in writing and signed by the applicant. An application must make reference to the Stephen R. Kent/Kent Oil & Trading Co. Special Refund Proceeding (Case No. HEF–0578). Each applicant must submit a monthly purchase schedule for refined product purchases from Kent during the consent order period, August 19, 1973 through January 27, 1981. If an applicant purchased Kent's products from another reseller, it must establish its basis for belief that the product originated with Kent and identify the reseller from whom the product was purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of Kent products passed through the alleged Kent overcharges to its own customers.

An applicant for refund should furnish us with the name, position or title, and telephone number of a person who may be contacted by us for additional information concerning the applicant. If the applicant is affiliated or associated with Kent in any manner, it must so indicate and provide information explaining the nature of its relationship with the consent order firm. If the applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved. If the applicant is a firm which did not actually purchase refined product from Kent, but is a successor to a Kent customer, the applicant must provide evidence establishing that it, rather than Kent's former customer, is entitled to a refund. Finally, each application

[1] The Subpart V regulations specifically authorize the use of presumptions in special refund proceedings. *See* 10 CFR Part 205, Subpart V.

[2] A volumetric refund amount will be calculated by dividing the refined product portion of the settlement amount by our estimate of the total gallonage of refined product sold by Kent during the period encompassed by the consent order. We know that the firm sold at least 684,041,606 gallons of refined product during the settlement period and a maximum per-gallon refund for refined product can therefore be calculated by dividing the fund available for refined product refunds (81.5 percent of $88,300 as of April 30, 1986) by the number of gallons solds. This calculation yields a per-gallon refund amount of $.0001520.

must include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential. Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

C. Distribution of the Remainder of the Consent Order Funds Attributable to Kent's Refined Product Sales

In the event that money remains after all first stage claims have been disposed of, undistributed funds attributable to Kent's alleged refined product sales violations could be distributed in a number of different ways. For example, the funds may be distributed through plans formulated by state governments to benefit consumers who were likely injured by Kent's alleged overcharges. *See, e.g., Northeast Petroleum Industries,* 11 DOE ¶ 85,199 (1983). However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Stephen R. Kent, doing business as Kent Oil & Trading Company, pursuant to the Consent Order executed on December 12, 1983 will be distributed in accordance with the foregoing Decision.

Appendix—partial customer list

Kent Oil & Trading Co.

Tesoro
Hiri (Hawaiian Independent Refinery, Inc.)
Lajet
Tosco
Valcap
Oasis
Giant Refining
Erickson Refining
OKC Trading
Mitchell
Union Oil Company
Reidy & Jones
Apex
Hill Petro
Vanguard Petroleum
Aweco, Inc.
Sierra Anchor
Mellou Energy
McAuley Oil Company (Long Beach, CA)
Betsy Oil & Trading Co.
Edington
Sentry Refining, Inc.
Husky
American Continental Inc.
Chevron U.S.A., Inc.
Petrocal, Inc.
Circle Oil
Mutual Petroleum Marketing

[FR Doc. 86-14382 Filed 6-24-86; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $33,690.23 and $2,500 obtained as a result of consent orders which the DOE entered into with Quarles Petroleum, Inc. (Quarles) and Reynolds Oil Company (Reynolds), both reseller-retailers of refined petroleum products. Quarles is located in Fredericksburg, Virginia; Reynolds is located in Kremmling, Colorado. The monies are being held in separate escrow accounts following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Quarles or Reynolds consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer either to Case Number HEF-0158 (for Quarles) or HEF-0164 (for Reynolds) and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION:

In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to consent orders that the DOE entered into with Quarles Petroleum, Inc. (Quarles) and Reynolds Oil Company (Reynolds) which settled all claims and disputes between the firms and the DOE regarding the manner in which they applied the federal price regulations with respect to their sales of motor gasoline. The Quarles consent order covered the period January 2, 1979, through September 30, 1979, while the Reynolds consent order covered the period between September 1, 1979, and November 30, 1979 (consent order periods). Proposed Decisions and Orders tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Quarles and Reynolds consent order funds were issued on April 15, 1986, and April 18, 1986, respectively. 51 FR 15058 (April 22, 1986); 51 FR 16192 (May 1, 1986).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of two escrow accounts funded by Quarles and Reynolds pursuant to their respective consent orders. The DOE has decided to accept Applications for Refund from firms and individuals that purchased motor gasoline sold by Quarles or Reynolds during the appropriate consent order periods. Eligible applicants include indirect customers as well as first purchasers. In order to receive a refund, a claimant will be required to submit a schedule of its monthly purchases of Quarles or Reynolds motor gasoline and to demonstrate that it was injured by firm's pricing practices. An indirect purchaser must also submit the name of its immediate supplier and indicate why it believes the motor gasoline was originally sold by Quarles or Reynolds.

As the accompanying Decision and Order indicates, Applications for Refund may now be filed by customers that purchased Quarles motor gasoline during the period January 2, 1979, through September 30, 1979, or Reynolds motor gasoline between September 1, 1979, and November 30, 1979. Applications will be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: June 18, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

June 18, 1986.

Name of firms: Quarles Petroleum, Inc. Reynolds Oil Company.

Date of filing: October 13, 1983.

Case No's.: HEF-0158, HEF-0164.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with Quarles Petroleum, Inc. (Quarles) and Reynolds Oil Company (Reynolds). This Decision and order contains the procedures which the OHA has formulated to distribute the funds received pursuant to those consent orders.

I. Background

Each of these firms is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31. Quarles is located in Fredericksburg, Virginia; Reynolds is located in Kremmling, Colorado. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a consent order with DOE. The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. In addition, each consent order states that the subject firm does not admit that it committed any such violations. A brief discussion of other pertinent matters covered by each consent order follows.

In the Quarles proceeding, the DOE audit alleged that between January 2, 1979, and September 30, 1979, the firm committed possible pricing violations in its sales of motor gasoline. The Quarles consent order, executed on October 21, 1981, settled all claims and disputes between Quarles and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit. Under the terms of the consent order, Quarles was required to deposit $33,690.23 into an interest-bearing escrow account for ultimate distribution by the DOE. Quarles remitted this sum on April 5, 1982.[1]

In the Reynolds case, the DOE audit alleged that between September 1, 1979, and November 30, 1979, Reynolds committed possible pricing violations amounting to $7,961.38 in its sales of motor gasoline. The Reynolds consent order, executed on October 28, 1980, settled all claims and disputes between Reynolds and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit. Under the terms of the consent order, Reynolds was required to directly refund $798.58, plus interest, to its retail customers. In addition, as settlement of the alleged overcharges to its wholesale customers, the firm agreed to deposit $2,500 into an interest-bearing escrow account for ultimate distribution by the DOE. Reynolds remitted this sum to the DOE on January 16, 1981.[2]

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which OHA may use to formulate and implement a plan to distribute funds received as the result of an enforcement proceeding are set foreth in 10 CFR Part 205, Subpart V. The Subpart V procedures may be used in situations where the DOE is unable either to readily identify those persons who might have been injured by any alleged overcharges or to ascertain the amount of such injuries. For a more detailed discussion of Subpart V and the authority to fashion refund procedures, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981); and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

OHA issued Proposed Decisions and Orders (PD&Os) in the Reynolds and Quarles proceedings on April 15, 1986, and April 18, 1986, respectively. 51 FR 15058 (April 22, 1986); 51 FR 16192 (Mayn 1, 1986). The PD&Os set forth tentative plans for the distribution of refunds to parties that make reasonable showings of injury as a result of the alleged overcharges in the firms' sales of motor gasoline during the respective consent order periods. The PD&Os stated that the basic purpose of a special refund proceeding is to make restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

In order to give notice to all potentially affected parties, copies of the Proposed Decisions were published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, copies of the PD&Os were sent to various petroleum dealers associations. Comments were submitted in the Quarles proceeding on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia concerning the distribution of any funds remaining after refunds have been made to injured parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the Quarles and Reynolds refund proceedings. Any procedures pertaining to the disposition of any monies remaining after this first stage will necessarily depend on the size of the fund. *See Office of Enforcement,* 9 DOE at 85,055. Therefore, it would be premature for us to address the issues raised by the states' comments at this time. Since no comments were received concerning the first-stage procedures in either case, they will be adopted as proposed.

III. Refunds to Identifiable Purchasers

In the first stage of the Quarles and Reynolds refund proceedings, we will distribute the funds in the escrow accounts to claimants that demonstrate that they were injured by the alleged overcharges. In order to be eligible to receive a refund, a claimant will have to file an application and, with the three exceptions discussed below, show the extent to which injury resulted from the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the monies in the appropriate consent order fund.

In these cases we will adopt two rebuttable presumptions as well as two findings regarding injury. These presumptions and findings have been used in many previous special refund cases. First, we will presume that purchasers of Quarles or Reynolds motor gasoline that are claiming small refunds ($5,000 or less) were injured by the alleged overcharges.[3] In the absence of compelling material, we will also presume that spot purchasers were not injured. In addition, we find that end-users or ultimate consumers of Quarles or Reynolds motor gasoline whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Finally, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Quarles or Reynolds motor gasoline and passed the alleged overcharges associated with that product through to their end-user members. Prior OHA decisions provide detailed explanations of the bases of these presumptions and findings. *E.g., Peterson Petroleum, Inc.,* 13 DOE ¶ 85,191 at 88,508-10 (1985). The rationale for their use was also fully explained in the PD&Os. 51 FR 15058 at 15059-50 (April 22, 1986); 51 FR 16192 at 16193-94 (May 1, 1986). These presumptions and findings will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a claimant might make such a showing, it is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, and (ii) that market conditions did not permit it to pass on the increased costs to its customers in the form of higher prices.[4]

[1] As of May 31, 1986, the total value of the Quarles escrow account was $49,600.08.

[2] As of May 31, 1986, the total value of the Reynolds escrow account was $4,424.62

[3] Since the Reynolds consent order amount is itself less than $5,000 all applicants in that proceeding will be filing small claims.

[4] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

A modification of the standard injury requirement is necessary in the Quarles proceeding because for 2½ months of the 9-month Quarles consent order period, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under the new rule by adding a specified gross profit margin to its cost of product. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Consequently, retailers were not required to maintain or compute cost banks during the 2½ month period. As a result, any requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, *i.e.*, based on unrecovered cost banks, would effectively eliminate all non-threshold retailer claimants for a portion of the Quarles consent order period. Therefore, for the period after July 16, 1979, retailers will be allowed to file claims for refunds which exceed $5,000 without demonstrating the existence of cost banks.[5] However, like resellers, for the entire Quarles consent order period retailers will be required to show that market conditions prevented them from recovering increased product costs, *e.g.*, through a demonstration of reduced profit margins, decreased market shares, depressed sales volumes or competitive disadvantage.[6]

A. Calculation of Refund Amounts

In both the Quarles and Reynolds proceedings we will use a volumetric method to determine the refunds of eligible applicants. This method presumes that the alleged overcharges in each case were spread equally over all the gallons of motor gasoline covered by the respective consent orders. Under the volumetric method, a claimant will be eligible to receive a refund equal to the number of gallons of Quarles or Reynolds motor gasoline that it purchased during the consent order period times the appropriate volumetric factor. The volumetric factor, which is the average per gallon refund, equals $0.003662 in the Quarles case and $0.015222 in the Reynolds proceeding.[7] In addition, successful claimants will receive a proportionate share of the interest which has accrued on the appropriate escrow account.

We recognize that a particular purchaser could have absorbed a disproportionate share of the alleged overcharges. Any purchaser which can make such a showing may file a refund application based on such a claim.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims in either of the two proceedings exceed the funds available in the particular escrow account, all refunds in that proceeding will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

IV. Applications for Refund

Through the procedures described above, we will be able to distribute the Quarles and Reynolds consent order funds as equitably and efficiently as possible. According, we will now accept Applications for Refund from individuals and firms that purchased Quarles motor gasoline during the period January 2, 1979, through September 30, 1979 or Reynolds motor gasoline between September 1, 1979, and November 30, 1979. Eligible applicants include subsequent repurchasers as well as first purchasers.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of Quarles or Reynolds motor gasoline during the appropriate consent order period along with any relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the motor gasoline was originally sold by Quarles or Reynolds;

(2) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying the proceeding in which it is claiming a refund;

(3) Whether there has been a change in ownership of the firm since the consent order period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) Whether the applicant is or has been involved as a party in any DOE enforcement proceedings or private actions filed under § 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The application must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to the appropriate case number (HEF-0158 for Quarles and HEF-0164 for Reynolds) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to Department of Energy by Quarles Petroleum, Inc. pursuant to the Consent Order executed on October 21, 1981, may now be filed.

(2) Applications for Refund from the funds remitted to Department of Energy by Reynolds Oil Company pursuant to the Consent Order executed on October 28, 1980, may now be filed.

(3) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: June 18, 1986.

[FR Doc. 86-14383 Filed 6-24-86;8:45 am]

BILLING CODE 6450-01-M

[5] The cost bank requirement has been relaxed in other instances involving the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982).

[6] Resellers or retailers that claim a refund in excess of $5,000 but which do not attempt to establish that they did not pass through the price increases will be eligible for a refund of up to $5,000 without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982).

[7] The Quarles volumetric factor is computed by dividing the $33,890.23 received from Quarles by the 9,200,389 gallons of motor gasoline sold by the firm between January 2, 1979, and September 30, 1979. The Reynolds volumetric factor is computed by dividing the $2,500 received from Reynolds by the 164,232 gallons of motor gasoline sold by the firm to its wholesale customers between September 1, 1979, and November 30, 1979. The computation of this volumetric factor does not include the volumes of motor gasoline that Reynolds sold to end users since those customers have already received direct refunds from the firm and are therefore not eligible to submit applications in this proceeding.

Cases Filed; Week of April 4 Through April 11, 1986

During the Week of April 4 through April 11, 1986, the appeal and the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in

these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 17, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 4, Through April 11, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 21, 1986	Petro-Thermo Corp., Hobbs, NM	KCX-0011	Supplemental order. If granted: The October 30, 1985 decision and order (Case No. HEE-0074) issued to Petro-Thermo Corp., by the Office of Hearings and Appeals would be modified in connection with the order affirming remedial order and reversing denial of exception issued by the Federal Energy Regulatory Commission on Oct. 20, 1986.
Apr. 7, 1986	Exxon Junction Service, Bowbells, ND	KEE-0033	Exception to the reporting requirements. If granted: Exxon Junction Service would no longer be required to file form EIA-782B "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Apr. 10, 1986	Whirlpool Corp., Benton Harbor, MI	KEL-0002	Request for temporary exception from the Energy Conservation Program for consumer products. If granted: Whirpool Corp. would receive an exception from the provisions of 10 CFR part 430 which would permit the firm to modify the energy efficiency test procedures applicable to a refirgerator freezer model with a new electronic adaptive defrost control.
Apr. 11, 1986	Berry Holding Co., Inc., Washington, DC	KEF-0027	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR part 205, subpart V, in connection with the December 15, 1983 agreed final judgment entered into with Berry Holding Co., Inc.
Do	Cranston Oil Co., Washington, DC	KEF-0029	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR part 205, subpart V, in connection with the February 8, 1977 consent order entered into with Cranston Oil Co.
Do	Government accountability project, Washington, DC.	KFA-0027	Appeal of an information request denial. If granted: The April 2, 1986 Freedom of Information Request Denial issued by the Albuquerque Operatios Office would be rescinded and the Government accountability project would receive access to records concerning the discharge of Monsanto Corp., mound facility employees.
Do	Saxon Oil Co., Washington, DC	KEF-0028	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR part 205, subpart V, in connection with the December 31, 1984 consent order entered into with Saxon Oil Co.
Do	Standard Oil of Connecticut, Bridgeport, CT	KEE-0034	Exception to the reporting requirements. If granted: Standard Oil of Connecticut would not be required to file Form EIA-782B "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/Name of refund applicant	Case No.
Apr. 4, 1986	Conoco/King Oil Co	RF220-296
Do	Earth/F. L. N. Corondolet, Inc.	RF239-5
Do	Eastern NJ/Elwein, Inc.	RF232-317
Do	Gulf/Kung's Gulf Service.	RF40-3135
Apr. 7, 1986	Belcher/Turner's Falls Coal Co., Inc.	RF227-29
Do	Belcher/Bay State Refining Co., Inc.	RF227-30
Do	Belcher/Dick Howard Fuel Service.	RF227-31
Do	Belcher/Gentile Oil Co	RF227-32
Do	City Service/Richard Lawrence.	RF219-9
Do	Crystal/Leon Smith	RF233-19
Do	Eastern NJ/Continental Apts. Association.	RF232-318
Do	Eastern NJ/Park Lake Village.	RF232-319
Do	Eastern NJ/Sutton Apts. Association.	RF232-320
Do	Eastern NJ/Madison Area YMCA.	RF232-321
Do	Eastern NJ/Pavillion Gardens.	RF232-322
Do	Eastern NJ/William Givone.	RF232-323
Do	Perry Gas/New York	RQ183-299
Do	Richard/Dayton's	RF70-29
Do	Sigmor/Arguindegui Oil Co.	RF242-2
Do	Sigmor/Susser Petroleum Co.	RF242-3
Apr. 8, 1986	Belcher/Tryba Oil Co	RF227-33
Do	Belcher/Alpha Oil Co	RF227-34
Do	Conoco/Don's Car Washes.	RF220-297
Apr. 9, 1986	Eastern NJ/Mayer Winograd.	RF232-324
Do	Eastern NJ/Harvey Schwartzbery.	RF232-325
Do	Eastern NJ/Doria, Inc.	RF232-326
Do	Sigmor/Colonial Cake Co. Inc.	RF242-4

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/Name of refund applicant	Case No.
Do	Sigmor/Tyro Oil Corp	RF242-5
Apr. 10, 1986	Eastern NJ/Benjamin Jacobs.	RF232-327
Do	Eastern NJ/Town Fuel Co.	RF232-328
Do	Eastern NJ/Abex Corp	RF232-329
Do	Eastern NJ/Accurate Bushing Co.	RF232-330
Do	Ocean/Wasserman Realty Service.	RF243-1
Do	Power Pak/Bellville Quick Shop.	RF241-2
Apr. 11, 1986	Amoco/Mississippi Power Co.	RF21-12586
Do	ARKLA/Dan Glover Construction Co.	RF153-28
Do	Belcher/Oil Burner Engineering Co.	RF227-35
Do	Crystal/Crowell Service Station.	RF233-20
Do	Eastern NJ/Duncan Terrace.	RF232-331
Do	Eastern NJ/Charles Shilowitz.	RF232-332
Do	Eastern NJ/Westfield Pines Apts.	RF232-333
Do	Eastern NJ/Bellemead Development Corp.	RF232-334
Do	Eddy/Jack Ritter, Inc.	RF145-4
Do	General Equities/Car Care Service.	RF224-5
Do	General Equities/Scott Oil Co.	RF224-6
Do	Martin/Ashland Petroleum Co.	RF240-9
Do	Martin/Osceola Refining Co.	RF240-10
Do	Post/Burnett & Sons	RF229-6
Do	Union Texas/Jack Ritter Oil Co.	RF140-39
Apr. 7, 1986 through Apr. 11, 1986.	Mobil refund applications.	RF225-455 through RF 225-589

[FR Doc. 86-14302 Filed 6-24-86; 8:45 am]

BILLING CODE 6450-01

Cases Filed; Week of April 11 Through April 18, 1986

During the Week of April 11 through April 18, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 16, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 11 through April 18, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 14, 1986	Marion Corp., Washington, DC	KEF-0030	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR part 205, subpart V, in connection with the December 10, 1985 Compromise Agreement entered into with Marion Corp.
Apr. 15, 1986	Co-Op Supply of Lake County, Inc., Ronan, MT.	KEE-0035	Exception to the reporting requirements. If granted: Co-Op Supply of Lake County, Inc. would not be required to file form EIA-782B, the "Reseller/Retailers' Monthly Petroleum Products Sales Report."
Do	Government accountability project, Washington, DC.	KFA-0028	Appeal of an information request denial. If granted: The Government accountability project would receive access to certain records relating to the Department of Energy's alleged efforts on behalf of the Diablo Canyon Nuclear Power Plant.
Apr. 16, 1986	J.N. Abel, Washington, DC	KEF-0034	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR part 205, subpart V, in connection with a February 2, 1984 agreed final judgement between J.N. Abel and the DOE.
Do	Richard Oil Co., Savage, MN	KQF-0031	Implementation of second stage refund procedures. If granted: The Office of Hearings and Appeals would implement a second stage refund proceeding to distribute the balance of the funds remitted to the DOE pursuant to the consent order entered into with Richards Oil Co. (Case No. HEF-0165).
Do	Reinhard Distributing, Inc., Kent, WA	KQF-0032	Implementation of second stage refund procedures. If granted: The Office of Hearings and Appeals would implement a second stage refund proceeding to distribute the balance of the funds remitted to the DOE pursuant to the consent order entered with the Reinhard Distributing, Inc. (Case No. HEF-0163).
Do	JAL Oil Co., Great Neck, NY	KQF-0033	Implementation of second stage refund procedures. If granted: The Office of Hearings and Appeals would implement a second stage refund proceeding to distribute the balance of the funds remitted to the DOE pursuant to the consent order entered with the JAL Oil Co. (Case No. HEF-0098).
Apr. 17, 1986	Magnes Oil Co., Cotter, AR	KEE-0038	Exception to the reporting requirements. If granted: Magnes Oil Co. would no longer be required to file form EIA-782B, the "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Apr. 18, 1986	Whirlpool Corp., Benton Harbor, MI	KEE-0037, KEL-0037	Exception from the Energy Conservation Program for consumer products and temporary exception from the Energy Conservation Program for consumer products. If granted: Whirlpool Corp. would receive an exception from the provisions of 10 CFR Part 430 which would permit the firm to modify the energy efficiency test procedures applicable to a refrigerator-freezer model with a new electronic adaptive defrost control. The firm would also receive a temporary exception pending a final determinaiton on its applications for exception.
Do	Whirlpool Corp., Benton Harbor, MI	KEE-0036	Exception from the Energy Conservation Program for consumer products. If granted: Whirlpool Corp. would receive an exception from the provisions of 10 CFR Part 430 which would permit the firm to modify the energy efficiency test procedures applicable to a refrigerator-freezer model with a new electronic adaptive defrost control.

REFUND APPLICATIONS RECEIVED

[Week of April 11 to April 18, 1986]

Date	Name of refund proceeding/Name of refund applicant	Case No.
Apr. 7, 1986	General Equities/Freddie's Mobil.	RF224-7
Apr. 14, 1986	Quaker State/F.C.M., Inc.	RF213-205
Do	Saber/Mississippi Power Co.	RF192-17
Do	Red Triangle/Ted & Lil	RF178-23
Do	Tenneco/Mississippi Power Co.	RF7-133
Do	Crystal/Golden Bros. Co., Inc.	RF233-21
Apr. 15, 1986	General Equities/Bob's Auto Service.	RF224-8
Do	Martin/Total Petroleum, Inc.	RF240-11
Do	Conoco/Total Petroleum, Inc.	RF220-298
Apr. 16, 1986	F.O. Fletcher/Joe B. Young.	RF172-31
Do	Amoco/Southard Standard Service.	RF21-12587
Apr. 17, 1986	Crystal/Trace Creek Timber Co.	RF233-22
Do	Pride/E-Z Serve, Inc	RF235-6
Do	Pride/Tenneco Oil Co	RF235-7
Do	Beacon/Red Triangle Oil Co.	RF238-9

REFUND APPLICATIONS RECEIVED—Continued

[Week of April 11 to April 18, 1986]

Date	Name of refund proceeding/Name of refund applicant	Case No.
Apr. 11, 1986 through Apr. 18, 1986.	Eastern of New Jersey refund applications.	RF232-335 through RF232-347
Do	Belcher Oil refund applications.	RF227-46 through RF227-47
Do	Mobil Oil refund applicaitons.	RF225-590 through RF225-1709

[FR Doc. 86-14303 Filed 6-24-86; 8:45 am]

BILLING CODE 6450-01

Cases Filed; Week of April 18 Through April 25, 1986

During the Week of April 18 through April 25, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 16, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 18 Through April 25, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 22, 1986	Amoco/Pennsylvania, Harrisburg, PA	RM21-14	Request for modification/rescission. If granted: The November 19, 1984 decision and order (Case No. RQ21-0118) issued to the State of Pennsylvania would be modified regarding the State's application for refund submitted in the Amoco second stage refund proceeding.
Do	Southwestern Gulf Petroleum Co., Washington, DC.	KRD-0200	Motion for discovery. If granted: Discovery would be granted to Southwestern Gulf Petroleum Co. in connection with the firm's statement of objections submitted in response to a proposed remedial order issued to the firm (Case No. KRO-0200).

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 18 Through April 25, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 24, 1986	The Bakersfield Californian, Bakersfield, CA	KFA-0029	Appeal of an information request denial. If granted: The April 4, 1986 freedom of information request denial issued by the Director of Naval Petroleum and Oil Shale Reserves would be rescinded and the Bakersfield, Californian would receive a report entitled, "Investigation Report on the explosion and fire at the 35R Sump August 25, 1985, Naval Petroleum Reserve No. 1, Elk Hills," October 1985.
Do	Discount Oil Corp., Washington, DC	KEE-0039	Exception to the reporting requirements. If granted: Discount Oil Corp. would no longer be required to file form EIA-782B, the "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Apr. 25, 1986	Neal R. Cross & Co., Washington, DC	KFA-0030	Appeal of an information request denial. If granted: The March 26, 1986 freedom of information request denial issued by the Office of Procurement Operations would be rescinded and Neal R. Gross & Co. would receive access to a copy of the bid abstract for Request for Proposals (RFP) Number ED-RP02-85IE10432 and related documents.

NOTICE OF OBJECTION RECEIVED

[Week of April 18, 1986 to April 25, 1986]

Date	Name and location of applicant	Case No.
April 24, 1986	Burlile Oil Co., Gallipolis, OH.	KEE-0022

REFUND APPLICATIONS RECEIVED

[Week of April 18 to April 25, 1986]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
Apr. 17, 1986	Amoco/Strohl Oil Co. et al.	RF21-12589 through RF21-12600
Apr. 18, 1986	Oceana/Trump Village	RF243-2
Apr. 21, 1986	Pride/West Utilities Co	RF235-8
Do	General Equities/ Budwitz Brothers Station.	RF224-9
Do	Gulf/Cook's Gulf Service.	RF40-3137
Do	Gulf/Lighthouse Gulf Service.	RF40-3136
Do	Amoco-Ed's Standard	RF21-12588
Do	Beacon/Abbotts Auto Co.	RF238-11
Do	Beacon/Nicoletti Oil, Inc.	RF238-10
Apr. 21, 1986 through Apr. 25, 1986.	Eastern of New Jersey Refund Applications.	RF232-348 through RF232-379
Do	Mobil Oil Refund Applications.	RF225-1710 through RF225-3567
Apr. 22, 1986	Martin/Excel Sales, Inc	RF240-12
Do	Allied Materials/ McCormick & Sons Oil Co.	RF194-8
Do	Union Texas/ Consumers Supply Co.	RF140-40
Do	APCO/Sentry Oil Co	RF83-146
Do	OKC/McCormick & Sons Oil Co.	RF13-42
Do	Coline/Indian	RQ183-291
Do	Crystal/Stone's Independent Oil Co.	RF233-24
Do	Crystal-Caceres Oil Co	RF233-23
Do	Amoco-Keystone Amoco.	RF21-12601
Do	Pennzoil/South Carolina.	RQ10-292
Apr. 23, 1986	Crystal/Mike Chapa & Joe Chapa.	RF233-25
Apr. 24, 1986	Sigmor/Foremost Petroleum Co.	RF242-6
Do	Power Pak/H&M Food Mart.	RF241-3
Do	Earth/Ward's Self Service.	RF239-6
Do	Earth/E.L. Morgan Co	RF239-7
Do	Beacon/Ben W. Hachtigall Distributor.	RF238-13
Do	Beacon/Wesco Oil Co	RF238-12
Apr. 25, 1986	Vickers/Minnesota	RQ1-293

[FR Doc. 86-14304 Filed 6-24-86; 8:45 am]

BILLING CODE 6450-01

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30256A; FRL-3033-9]

American Cyanamid Co.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by American Cyanamid Co., to register the pesticide products Scepter Herbicide and Scepter Herbicide Technical containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** of December 26, 1985 (50 FR 52852), which announced that American Cyanamid Co., Agricultural Research Div., PO Box 400, Princeton, NH 08540, had submitted applications to register the pesticide products Scepter Herbicide and Scepter Herbicide Technical containing the active ingredient imazaquin (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinolinecarboxylic acid).

The applications were conditionally approved on March 20, 1986, for Scepter Herbicide Technical and Scepter Herbicide for use on soybeans. The products were assigned EPA Registeration Number 241-287 and 241-289 respectively.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of imazaquin (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinolinecarboxylic acid) and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of imazaquin (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinolinecarboxylic acid) during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

The company must submit field dissipation studies (soil) to the Agency. These conditions must be fulfilled by March 1, 1988.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not

result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations are contained in a Pesticide Fact Sheet on imazaquin (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinolinecarboxylic acid).

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS-767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St. SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703-557-3262). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: June 11, 1986.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 86-13857 Filed 6-24-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50658; FRL-3033-8]

Issuance of Experimental Use Permits; Dow Chemical Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

464-EUP-76. Extension. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 4,370 pounds of the insecticide chlorpyrifos on alfalfa, corn, cotton, and grain sorghum to evaluate the control of various insect pests. A total of 1,060 acres are involved; the program is authorized only in the States of Arizona, California, Georgia, Nebraska, New Mexico, and Texas. The experimental use permit is effective from May 29, 1986 to May 29, 1987. (Larry Schnaubelt, PM 12, Rm, 202, CM#2, (703-557-2386))

359-EUP-69. Issuance. Rhone-Poulenc Inc., P.O. Box 125, Monmouth Junction, NJ 08852. This experimental use permit allows the use of 3,360 pounds of the nematicide ethoprop on broccoli and califlower to evaluate the control of verious nematodes. A total of 330 acres are involved; the program is authorized only in the States of California, Oregon, Michigan, New Jersey, and Texas. The experimental use permit is effective from April 28, 1986 to April 28, 1938. A temporary tolerance for residues of the active ingredient in or on broccoli and cauliflower has been established. (William Miller, PM 16, Rm. 211, CF#2, (703-557-2600)).

612-EUP-1. Issuance. Unocal Corporation, 461 S. Boylston C5, Los Angeles, CA 90017. This experimental use permit allows the use of 84,269 pounds of the nematicide sodium tetrathiocarbonate on grapefruits, grapes, oranges, and potatoes to evaluate the control of various nematodes. A total of 500 acres are involved; the program is authorized only in the States of Arizona, California, Florida, Oregon, and Washington. The experimental use permit is effective from May 2, 1986 to March 15, 1987. Temporary tolerances for residues of the active ingredient in or on grapefruits, grapes, oranges, and potatoes have been established. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703-557-1900)).

Persons wishing to review these experimental use permit are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated June 10, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-13858 Filed 6-24-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-459; FRL-3037-5]

Amendment to Pesticide Tolerance Petition; Methalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Ciba Geigy Corp. has amended a food additive petition that proposed tolerances for the combined residues of the fungicide [*N*-(2,6-dimethylphenyl)-*N*(methoxyacetyl] alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methyl-phenyl)-*N*-(methoxyacetyl) alanine methyl ester, each expressed as metalaxyl by withdrawing the proposed tolerances for grape juice and grape wine and adding a tolerance for raisins.

ADDRESS: By mail, submit comments identified by the document control number [PF-459] and the petition number, attention Product Manager (PM-21), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8:00 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Henry M. Jacoby, (PM-21), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Room 229, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of March 7, 1984 (49 FR 8483) which announced that Ciba Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, has submitted food additive petition (FAP) 4H5425 to the Agency proposing to amend 21 CFR 193.277 by establishing a regulation permitting residues of the fungicide metalaxyl in or on the processed agricultural commodities grape juice and grape wine at 2.0 parts per million (ppm).

Ciba Geigy Corp. has amended the petition by deleting grape juice and grape wine, and by adding raisins at 6.0 ppm which was inadvertently omitted at the initial filing.

Authority: 21 U.S.C. 348.

Dated: June 13, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-14182 Filed 6-24-86; 8:45 am]

BILLING CODE 6560-50-M

[PP 6G3350/T521 FRL-3037-6]

Carbon Disulfide; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of carbon disulfide in or on certain raw agricultural commodities. These temporary tolerances were requested by Unocal Corporation.

DATE: These temporary tolerances expire March 15, 1987.

FOR FURTHER INFORMATION CONTACT: By mail:

Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1900).

SUPPLEMENTARY INFORMATION: Unocal Corporation, 1205 West 5th St., Los Angeles, CA 90060, has requested in pesticide petition PP 6G3350 the establishment of temporary tolerances for residues of carbon disulfide in or on the raw agricultural commodities grapefruit, grapes, oranges, and potatoes at 0.1 part per million (ppm) resulting from soil applications of the nematicide sodium tetrathiocarbonate.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 612-EUP-1, which was issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant information were evaluated, and the Agency determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the nematicide will be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Unocal Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 15, 1987. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: June 10, 1986.

James W. Akerman,

Acting 'Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-14183 Filed 6-24-86; 8:45 am]

BILLING CODE 6560-50-M

[Docket Nos. ECAO-HA-84-1 and ECAO-HA-84-2; ORD-FRL-3036-7]

Draft Health Assessment Document for Acetaldehyde and Draft Health Assessment Document for Acrolein; Public Meetings

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: This notice announces two workshops to be held by EPA's Environmental Criteria and Assessment Office at the Crystal City Marriott in Washington, DC, to facilitate preparation of external review drafts of a Health Assessment Document for Acetaldehyde and a Health Assessment Document for Acrolein.

DATES: The acetaldehyde workshop will be held on June 30, 1986, and the acrolein workshop will be held on July 1, 1986, from 8:00 a.m. to 5:00 p.m. Members of the public are invited to attend as observers.

FOR FURTHER INFORMATION CONTACT: Mr. William Ewald, Project Manager for Acetaldehyde and Acrolein, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711 (919) 541-4164 [FTS: 629-4164].

SUPPLEMENTARY INFORMATION: In May 1985, EPA's Office of Air Quality Planning and Standards requested that the Environmental Criteria and Asessment Office (ECAO), Office of Health and Environmental Assessment (OHEA), prepare separate health assessment documents for acetaldehyde and acrolein. The documents will be used by EPA in the decisionmaking process to possibly regulate acetaldehyde and acrolein under the

Clean Air Act as Amended. 42 U.S.C., 7401 *et seq.*

ECAO is now assembling a panel of scientifically and technically qualified persons to review drafts of the health assessment documents at the workshop. Copies of the workshop drafts will be made available to the public at the meeting, and observers will have an opportunity to make brief oral statements. The draft documents subsequently will be revised and released as external review drafts. Ample opportunity will be provided for public review an submission or written comments upon released of the first external review drafts. The public comment periods will be announced in subsequent **Federal Register** notices.

Dated: June 16, 1986.

Norbert A. Jaworski,

Acting Assistant Administrator for Research and Development.

[FR Doc. 86-14326 Filed 6-24-86; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. ECAO-R-063: ORD-FRL-3037-9]

Draft Health Assessment Document for Hydrogen Sulfide; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a workshop to be held by EPA's Environmental Criteria and Assessment Office at the Environmental Research Center, Research Triangle Park, North Carolina, to facilitate preparation of an external review draft of a Health Assessment Document for Hydrogen Sulfide.

DATES: The workshop will be held on July 7 and 8, 1986, from 8:30 a.m. to 5:00 p.m. Members of the public are invited to attend as observers.

FOR FURTHER INFORMATION CONTACT: Dr. Harriet Ammann, Project Manager for Hydrogen Sulfide, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711, (919) 541-4930 [FTS/629-4930].

SUPPLEMENTARY INFORMATION: In January 1986, EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the Environmental Criteria and Assessment Office (ECAO), Office of Health and Environmental Assessment (OHEA), prepare a health assessment document for hydrogen sulfide. The document will be used by EPA in the decision-making process to possibly regulate hydrogen sulfide under the Clear Air Act as amended, 42 U.S.C., 7401 *et seq.*

ECAO is now assembling a panel of scientifically and technically qualified persons to review a draft of the Health Assessment Document for Hydrogen Sulfide at the workshop. Copies of the workshop draft will be made available to the public at the meeting, and observers will have an opportunity to make brief oral statements. The draft document subsequently will be revised and released as an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of the first external review draft. The public comment period will be announced in a subsequent **Federal Register** notice.

Dated: June 16, 1986.

Norbert A. Jaworski,

Acting Assistant Administrator for Research and Development.

[FR Doc. 86-14327 Filed 6-24-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66126A; FRL-3038-1]

Certain Pesticide Products; Intent to Cancel Registrations; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: This document corrects a few entries in a notice of voluntary cancellations of registrations of pesticide products. After publication, the Agency discovered that (a) Notices of intent to cancel mailed to three companies were undeliverable; (b) A company withdrew its voluntary cancellation request within the 30 day comment period; and (c) Two registration numbers were listed incorrectly.

FOR FURTHER INFORMATION CONTACT: John Richards, Chief, Federal Register Staff (TS-788B), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, (202-382-2253).

SUPPLEMENTARY INFORMATION: In FR Doc. 86-849, appearing in the **Federal Register** of January 22, 1986 (51 FR 2956), the following products were listed for voluntary cancellation. Subsequently, the Agency found that the notices of intent to cancel mailed to the addresses listed below were undeliverable. Therefore, the products affected have not been canceled.

Registration No.	Product name	Registrant	Date registered
142-19	Meyer's Insect-orfume-10 Powerful.	H.B. Meyer and Son, Inc., P.O. Box 710, Huntington, IN 46750.	Apr. 9, 1951
142-20	Meyer's Insect-orfume-7	do	Do.
10474-1	Formula 19 Roach Killer	Quality Manufacturing Co., 5957 South St., Andrews Place, Los Angeles, CA 90047.	Apr. 9, 1969
10497-1	Flea and Tick Spray for Dogs	Star Chemical Co., Inc., 9830 Derby Lane at Bristol, Westchester, IL 60153.	Jun. 2, 1969

The following Company withdrew its voluntary cancellation request so that the products could be transferred to another party. Therefore, these products have not been cancelled.

Registration	Product name	Registrant	Date registered
38097-3	Di-Chem 656 Microbiocide	Dresser Industries, Inc., P.O. Box 6504 Houston, TX 77005.	Oct. 28, 1981
38097-7	G-100	do	Sept. 23, 1981
38097-11	G-100W	do	Sept. 23, 1981
38097-15	Di-Chem G113 Bactericide	do	Apr. 8, 1983

The following product registration numbers were incorrectly listed. Both the correct and incorrect numbers are listed below. These products have been cancelled.

Registration	Product name	Registrant	Date registered
140-1 should read 140-41	Copper Sulfate Pentahydrate	Purepac Corp., 200 Elmora Ave., Elizabeth, NJ 07207.	Sept. 28, 1967
37699-3 should read 37699-1	Challenger 3 Premix Contains Rabon 7.76 Oral Larvacide.	Lavergne Supplement Co., 1038 Space Park South Nashville, TN 37211.	July 26, 1976

Dated: June 18, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-14329 Filed 6-24-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36119, FRL-3038-2]

Standard Evaluation Procedures; Availability of Draft Guidance Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comments.

SUMMARY: The Environmental Protection Agency announces the availability of the following draft Standard Evaluation Procedures: Avian Reproduction; Fish Early Life State; Aquatic Invertebrate Life Cycle; Fish Life Cycle; and Field Testing for Pollinators. The Standard Evaluation Procedures (SEPs) are guidance documents which explain how the Hazard Evaluation Division (HED) of the Office of Pesticide Programs evaluates studies and scientific data to ensure consistency in scientific review of studies submitted by registrants in support of pesticide registration. The SEPs increase the efficiency of pesticide registration and other regultory activities, and help to maintain a high standard of scientific quality in regulatory decisions. Copies of the draft documents are available at the address given below.

DATE: Comments must be received on or before July 25, 1986.

ADDRESSES: Submit three copies of written comments, identified with the document control number "OPP-36119," to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Copies of these draft Standard Evaluation Procedures are also available at this address.

FOR FURTHER INFORMATION CONTACT:

By mail:

Stephen L. Johnson, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Room 1121, Crystal Mall, Building #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202 (703-557-7695).

SUPPLEMENTARY INFORMATION: The Standard Evaluation Procedures are guidance documents which explain how HED evaluates studies and scientific data to ensure consistency and high quality in scientific review. In addition, the SEPs serve as valuable internal reference documents and training aids for new staff, and inform the public and regulated community of important considerations in the evaluation of test data for determining chemical hazards.

The SEPs help to ensure a comprehensive and consistent treatment of major scientific topics in EPA's science reviews and provide interpretive policy guidance where appropriate, but are not so detailed that they inhibit creativity and independent throught. Throughout the remainder of this and next fiscal year, HED will be writing additional SEPs on the scientific disciplines of toxicology, chemistry, exposure assessment, and ecological effects. Twenty SEPs have been published this far and are available from the National Technical Information Service, which is responsible for distribution of all SEPs after they have been finalized. Prior to publication, each of the SEPs must undergo extensive peer review including Division, Program Office, Intra-Agency, FIFRA Scientific Advisory Panel, and public comment. This announcement solicits public comment on the draft documents.

Dated: June 18, 1986.

John W. Melone,

Director, Hazard Evaluation Division.

[FR Doc. 86-14328 Filed 6-24-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51624; FRL-3020-7]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 86-11663 beginning on page 18958 in the issue of Friday, May 23, 1986, make the following correction:

On page 18960, in the third column, under **P 86-1042**, the twelfth line should read: "8,750-39, 375 kg/yr.".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Doris Benz, FCC, (202) 632-7513. Comments should be sent to David Reed, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395-7231.

OMB No.: 3060-0031

Form No.: FCC 314

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License

Action: Extension

Estimated Annual Burden: 771 Responses; 61,680 Hours.

OMB No.: 3060-0032

Form No.: FCC 315

Title: Application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License

Action: Extension

Estimated Annual Burden: 771 Responses; 61,680 Hours.

Federal Communications Commission.
William J. Tricarico,
Secretary.
June 17, 1986.
[FR Doc. 86-14273 Filed 6-24-86; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-484]

Southland Federal Savings and Loan Association, Opelousas, LA; Approval of Conversion Application

Date: June 18, 1986.

Notice is hereby given that on December 11, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Southland Federal Savings and Loan Association, Opelousas, Louisiana for permission to convert to the stock of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Dallas, 500 E John Carpenter Freeway, Post Office Box 619026, Dallas, Fort Worth, Texas 75261-9026.

By the Federal Home Loan Bank Board
Jeff Sconyers,
Secretary.
[FR Doc. 86-14344 Filed 6-24-86; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

AGREEMENT NO.: 224-002401-A-002
TITLE: City of Long Beach and Sea-Land Service, Inc. Rail and Truck Terminal Agreement
PARTIES: City of Long Beach Sea-Land Service, Inc.
SYNOPSIS: The proposed amendment would amend the term of the lease to coincide with the preferential assignment agreement between the parties of certain marine terminal premises adjacent to the subject premises, and to revise the provisions regarding renegotiation or rental. The term of this lease shall be for a period of twenty-seven (27) years, commencing April 1, 1971 and ending March 30, 1998. The parties have requested a shortened review period.

AGREEMENT NO.: 224-002401-006
TITLE: City of Long Beach and Sea-Land Service, Inc. Preferential Assignment Agreement
PARTIES: City of Long Beach Sea-Land Service, Inc. (Assignee)
SYNOPSIS: The proposed amendment would increase the area assigned, provide for certain new construction, amend the compensation provisions, provide future options to Assignee and provide for a new guarantee. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.
Dated: June 19, 1986.
John Robert Ewers,
Secretary.
[FR Doc. 86-14289 Filed 6-24-86; 8:45 am]
BILLING CODE 6730-01-M

Marine Terminal Service Agreements

AGENCY: Federal Maritime Commission.
ACTION: Notice of Waiver of Penalties.

SUMMARY: This grants a waiver of assessment of penalties under the Shipping Act, 1916 and the Shipping Act of 1984 for pre-filing implementation of marine terminal service agreements, if such agreements are filed within 120 days of publication of this notice. The purpose is to encourage filing compliance in an area where there appears to be some uncertainty as to legal requirements and where a serious compliance gap exists.

DATE: Effective June 25, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5787.

SUPPLEMENTARY INFORMATION: On April 4, 1986, the Commission denied the petition of International Transportation Services, Inc., (ITS) a marine terminal operator (MTO), for a declaratory order on the issue of whether a lump-sum charge to an ocean carrier for wharfage, dockage, and stevedoring would have to be filed with the Commission. The Commission denied the petition on the grounds that a declaratory order was not necessary to resolve the legal issue presented because applicable regulatory requirement made it clear that an MTO's charges for terminal services must be reflected separately either in a tariff or an agreement on file with the Commission.

In its Order Denying Petition, the Commission advised that it was initiating an informal investigation into certain practices of MTO's on the West Coast to ensure compliance with the shipping statutes and the Commission's regulations.

As a result of this announcement and preliminary inquires by the Commission's West Coast District Offices, some MTO's have filed terminal service agreements covering activities which have been in effect for several years. Other MTO's have informed the Commission that they have large numbers of such agreements (previously unfiled) which they intend to file as soon as they can put them into the proper form for filing.

All indications suggest that a rather widespread practice has developed in the MTO industry whereby MTO's are providing terminal services to ocean carriers pursuant to agreements which are required by law to be filed with the Commission, but which have not been filed. A variety of reasons have been offered as to why MTO's were under the misimpression that such agreements were not required to be filed. The recent publicity regarding the Commission's disposition of the ITS petition has now served to inform the industry that the Commission considers such unfiled agreements to be in violation of the Shipping Act, 1916 (1916 Act), 46 U.S.C. App. 801-842 and the Shipping Act of 1984 (1984 Act), 46 U.S.C. App. 1701-1720.

The Commission has fully considered the circumstances surrounding this situation in an effort to balance its objectives of: (1) Obtaining full compliance by identifying all unfiled agreements and causing them to be filed, and (2) appropriately disposing of the question of possible penalties for any such past violations. The Commission has determined that its principal objective should be to obtain full compliance through the filing of subject agreements. We believe that the best way to do that is by granting a 120-day

period of waiver of assessment of penalties for failure to timely file.

Waiver is appropriate given: (1) The recent clarification of the applicable filing requirements; (2) the number of agreements involved; and (3) the significant amounts of resources of the Commission's Bureaus of Agreements, Investigations and Hearing Counsel which would otherwise be required to investigate, document and prosecute past violations. In sum, the regulatory process would be better served by not assessing penalties for past behavior under these circumstances.

The effect of this action is to waive penalities for unfiled yet implemented agreements that are filed within a 120-day period. The intent is to encourage the prompt filing of agreements. Expired or terminated agreements need not be filed. Parties are referred to 46 CFR 572 regarding agreement filing requirements. Specific attention is called to § 572.406 which requires filing of the complete agreement among the parties. In the case of terminal service agreements this would include schedules of rates or charges for terminal services which are not reflected in a filed tariff.

It should be understood that this waiver applies only to the extent the agreements are subject to filing and relate to rates and charges for terminal services performed for water carriers pursuant to negotiated contracts. The precautionary filing of non-subject to agreements, *e.g.*, those providing for furnishing of terminal services by an MTO to a shipper or to a surface carrier, should be avoided.

Accordingly, notice is hereby given that the penalty provisions of section 32(a) of the Shipping Act, 1916 (46 U.S.C. App. 831) and section 13 of the Shipping Act of 1984 (46 U.S.C. App. 1712) will not be invoked against parties to terminal service agreements for failure to file such agreements with the Commission as required by section 15 of 1916 Act (46 U.S.C. App. 814) and/or section 5 of the 1984 Act (46 U.S.C. App. 1704), where: (1) such agreements were entered into prior to the date of publication of this notice in the **Federal Register** but have since expired; and, (2) such agreements were entered into prior to the date of publication of this notice in the **Federal Register** and continued in effect beyond said date, provided that such agreements are filed with the Federal Maritime Commission pursuant to the aforementioned sections prior to or within 120 days of the publication of this notice. For purpose of this notice, terminal services shall include, but not be limited to, "services" as defined in 46 CFR 515.6(d).

During the waiver period, the primary intention of the Federal Maritime Commission is to insure regulatory compliance without fear of penalty action. However, failure to file appropriate agreements during this period will subject past violators to all applicable statutory penalties.

By the Commission June 13, 1966.

John Robert Ewers,

Secretary.

[FR Doc. 86-14333 Filed 6-24-86; 8:45am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86D-0214]

Radionuclides in Imported Foods; Levels of Concern; Availability of Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide 7119.14 and "Radionuclide Screening Values for Monitoring Imported Meat Products," which describe the protective action guidelines that FDA and the U.S. Department of Agriculture, Food and Safety and Inspection Service (FSIS), will use for monitoring radionuclides in imported foods sampled under field assignments.

ADDRESSES: Requests for single copies of Compliance Policy Guide 7119.14 and any written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests for single copies of "Radionuclides Screening Values for Monitoring Imported Meat Products" and any written comments to Patricia Stolfa, Deputy Administrator for International Programs, Food Safety Inspection Service, U.S. Department of Agriculture, 14th and Independence Ave., SW., Washington, DC 20250, 202-447-3473.

FOR FURTHER INFORMATION CONTACT: Raymond Gill, Center for Food Safety and Applied Nutrition (HFF-300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0160.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 22, 1982 (47 FR 47073), FDA issued radionuclide protective action recommendations to State and local officials. These recommendations were for use in the event of a domestic nuclear accident. Both FDA and FSIS have decided to utilize these protective action recommendations with certain dose calculation adjustments as a basis for monitoring radionuclide levels in imported foods sampled as a consequence of the fallout expected from the April 26, 1986, accident in the Soviet Union.

Compliance Policy Guide 7119.14 and "Radionuclide Screening Value for Monitoring Imported Meat Products" define levels of radionuclides that are to be used as indicators of the safety of imported foods and food ingredients and imported meat products. If imported products are found to contain unsafe levels of radionuclides, FDA and FSIS will take appropriate regulatory action to assure that the public health is protected.

Copies of Compliance Policy Guide 7119.14, FSIS's "Radionuclide Screening Values for Monitoring Imported Meat Products," and the **Federal Register** reference mentioned above have been placed on public display with the Dockets Management Branch (address above) and are available for public examination between 9 a.m. and 4 p.m., Monday through Friday. In accordance with 21 CFR 10.85(d)(3) and (i), any person may submit written comments on the guide. Requests for single copies of the filed documents and any comments on Compliance Policy Guide 7119.14 should reference the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Requests for single copies of FSIS's document and any written comments on the radionuclide screening values should be submitted to the Deputy Administrator for International Programs (address above).

Although the agencies will consider comments in deciding whether to revise these guidelines, they will not defer regulatory actions pending any such revision.

Dated: June 18, 1986.

James W. Swanson,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-14291 Filed 6-24-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 46, No. 223, pg. 56933, dated Thursday, November 19, 1981; **Federal Register**, Vol. 50, No. 70, pg. 14297, dated Thursday, April 11, 1985; **Federal Register**, Vol. 51, No. 55, pg. 9894, dated Friday, March 21, 1986; and **Federal Register**, Vol. 51, No. 63, pg. 11348, dated April 2, 1986) is amended to reflect several changes in the organizational structure of HCFA. The Office of Health Maintenance Organizations, recently transferred to HCFA from the Public Health Service, is being combined with the Office of Prepaid Operations, Bureau of Program Operations, Office of the Associate Administrator for Operations, to form a new Office of Prepaid Health Care reporting directly to the Office of the Administrator. In addition, the Office of Legislation and Policy is being transferred from Office of the Associate Administrator for Policy (OAAP) to report directly to the Office of the Administrator. The OAAP is also being renamed the Office of the Associate Administrator for Program Development.

The specific amendments to Part F. are described below:

- Section F.10., Health Care Financing Administration (Organization), is amended to reflect the changes in the HCFA organizational structure. Section F.10. should be deleted in its entirety and replaced by the following:

Section F.10. Health Care Financing Administration (Organization)

The Health Care Financing Administration (HCFA) is an Operating Division of the Department. It is headed by an Administrator, HCFA, who reports to the Secretary and it consists of the following organizational elements:

A. Office of the Administrator (FA).
B. Office of Prepaid Health Care (FC).
C. Office of Legislation and Policy (FB).
D. Office of Executive Operations (FE).
E. Office of the Associate Administrator for External Affairs (FG).
F. Office of the Associate Administrator for Management and Support Services (FH).
G. Office of the Associate Administrator for Operations (FP).
H. Office of the Associate Administrator for Program Development (FQ).

- Section F.20.C., Office of Health Maintenance Organizations (OHMO), is deleted in its entirey. The OHMO is being replaced by a new Office of Prepaid Health Care which is found in section FC.
- A new section FC., Office of Prepaid Health Care (FC), is added to read as follows:

Section FC.10. Office of Prepaid Health Care (FC) (Organization)

The Office of Prepaid Health Care (OPHC), under the leadership of the Director, OPHC, includes:

A. The Policy, Planning, and Liaison Staff (FC–1).
B. The Division of Qualifications (FCA).
C. The Division of Compliance (FCB).
D. The Division of Financial Management (FCC).

Section FC.20. Office of Prepaid Health Care (FC) (Functions)

The Office of Prepaid Health Care provides national direction and executive leadership for prepaid health activities, including health maintenance organizations (HMOs), competitive medical plans (CMPs), other capitated health organizations, and vouchers. Develops national policies and objectives for the development, qualification, and ongoing compliance of HMOs and CMPs. Develops long- and short-range program goals and objectives. Serves as the departmental focal point in the areas of prepaid health plan qualification, ongoing regulation, employer compliance efforts, Medicare HMO and CMP risk contracting, and Medicaid prepaid health care activities. Plans, coordinates, and directs the development and preparation of related legislative proposals, regulatory proposals, and policy documents. Acts as the focal point for all prepaid health plan research, demonstration, and evaluation study activity in the Department and external to the Department. Develops and implements programs to encourage greater access of Federal Medicare and Medicaid beneficiaries to HMOs and other prepaid health plans. Monitors and analyzes Federal activities and policies regarding Federal beneficiaries in Medicare, Medicaid, CHAMPUS, and the Federal Employees Health Benefits programs. Coordinates the development and implementation of health education and health promotion programs in prepaid health plans. Provides correspondence management for the control of written communications and action documents, including substantive policy review and follow-up to insure timely and appropriate action and clearances. Administers Medicare HMO and CMP contracts, the capitation formula, and reimbursement policies. Provides oversight of and assistance to State Medicaid Agencies on prepaid health care activities. Oversees the operation of the prepaid health care information system. Determines the amounts of payments to be made to prepaid health plans and the amounts, methods, and frequency of retroactive adjustments. Incorporates a prospective payment system for prepaid health care through the implementation of Tax Equity and Fiscal Responsibility Act risk contracts. Evaluates cost reporting methodologies and conducts a continuing audit program to determine the final program liability for cost contracts. Administers beneficiary enrollment and disenrollment including, coordination with beneficiary groups and other HCFA and HHS components.

A. Policy, Planning, and Liaison Staff (FC–1)

Coordinates the Department's efforts to move toward a pluralistic health care delivery system. Conducts special studies of prepaid health plans operations and operating data. Based on such studies identifies trends and develops performance measures which can be used by the Office of Prepaid Health Care staff and by the industry to assess the development and operation of prepaid health plans. Works with State Medicaid offices on the development of prepaid health operations to service Medicaid beneficiaries. Develops and issues technical guidance documents for use by the industry in the development of prepaid health plans and the improvement of operations in existing prepaid health plans. Develops and maintains close relationships with national organizations representing the prepaid health plans industry to enhance technical assistance capability and to establish appropriate performance measures. Plans, coordinates, and directs the development and preparation of related legislative proposals, regulatory proposals, and policy documents. Performs strategic policy and planning functions and other special tasks as requested by the Administrator. Monitors State legislation and regulations and arranges for direct technical assistance to State regulators. Serves as the focal point and repository for State laws and regulations dealing with HMOs, group medical practice, insurance, licensing, foundations,

service corporations, certificate of need, and reserve requirement statutes. Provides liaison staff for activities with other Federal programs and agencies, health care professional associations, and trade associations.

B. Division of Qualifications (FCA)

Establishes qualification standards, and determines the acceptability of entities seeking to become Federally "qualified." Refines the review procedures as necessary to facilitate the qualification process. Coordinates and insures the consistency of regional office activities related to the qualification process. Assists the Office of the General Counsel in the development of legal actions concerning qualification status. Performs congressional, Department of Health and Human Services, and other intergovernmental liaison related to qualification activities. Develops policy and regulatory proposals related to qualification. Evaluates the impact of policies, legislation, and regulations on the ability of organizations to become qualified and provides guidance as to interpretation of policy guidelines and regulations related to qualification. Administers and promotes prepaid health plan participation in the Medicare program. Oversees all aspects of contract administration, including working with the regional offices and national organizations wishing to deal with the HCFA central office. Reviews and analyzes national data on an ongoing basis for the purpose of monitoring prepaid health care in the areas of contract performance, plan enrollment, and payments. Uses forecasting techniques to determine the trends and future growth of the prepaid health care industry. Analyzes trends in prepaid health care and advises HCFA management of their impact on the Medicare program.

C. Division of Compliance (FCB)

Assures the continuing compliance of prepaid health plans with the statutory and regulatory requirements. Assures compliance by employers with a mandatory offering of the prepaid health plan alternative in employee health benefits plans. Assists the Office of the General Counsel in the development of legal actions against prepaid health plans and employers considered not to be in compliance with applicable standards and regulatory requirements. Reviews standards, procedures, and reporting requirements for monitoring of prepaid health plans that receive financial assistance under grants, loans, and loan guarantees. Establishes and updates standards and procedures for compliance monitoring of qualified organizations and prepares status reports for internal and external use. Assures compliance by loan recipients with the legislative requirement for fiscal viability. Establishes and maintains liaison with concerned State and local regulatory and monitoring agencies. Develops policy and regulatory proposals related to prepaid health plan compliance. Evaluates the impact of policy, legislation, and regulations on the ability of qualified organizations to remain in compliance. Provides guidance as to the interpretation of policy guidelines and regulations related to prepaid health plan compliance. Establishes standards and procedures for all loan applications, awards, and reviews. Directs and coordinates the prepaid health plan loan management activities. Analyzes needs and develops forecasts for the loan and loan guarantee programs. Develops policy and implements strategy related to rehabilitation or liquidation and utilizes computerized data systems to maintain and monitor national prepaid health plan activity and statistics.

D. Division of Financial Management (FCC)

Develops, plans, and conducts a comprehensive financial management program with respect to the operation of prepaid health plans (including Health Maintenance Organizations, Health Care Prepayment Plans, Competitive Medical Plans, and any capitation demonstration projects) for the provision of services under the Medicare program. Coordinates and monitors the financial management implementation with HCFA and HHS components in regard to capitation formula, reimbursement policies, and the prepaid health care information system. Determines the amounts of payments to be made to prepaid health plans and the amounts, methods, and frequency of retroactive adjustments. Incorporates a prospective payment system for prepaid health care through the implementation of Tax Equity and Fiscal Responsibility Act risk contracts. Evaluates cost reporting methodologies and conducts a continuing audit program to determine final program liability for cost contracts. Conducts or participates in studies aimed at long-range improvements and the overall evaluation of prepaid health care and its impact on the Medicare program. Reviews and analyzes national data on an ongoing basis for the purpose of monitoring prepaid health care in the areas of plan enrollment and payments.

- A new section FB., Office of Legislation and Policy (FB), is added to read as follows:

Section FD.10. Office of Legislation and Policy (FB) (Organization)

The Office of Legislation and Policy (OLP), under the leadership of the Director, OLP, includes:

A. The Division of Policy Analysis (FBA).

B. The Division of Legislation (FBB).

C. The Division of Legislative Services and Congressional Affairs (FBC).

Section FD.20. Office of Legislation and Policy (FB) (Functions)

The Office of Legislation and Policy provides leadership and executive direction within HCFA for the legislative planning and policy analysis programs. Develops and evaluates recommendations concerning legislative proposals for changes in health care financing. Develops the long-range HCFA legislative plans. Maintains continued observation of its activities with the Office of the Assistant Secretary for Legislation (ASL) and serves as the ASL's principal contact point on legislative and congressional relations activities. Develops HCFA strategy for long-range and yearly policy plans in such areas as cost containment, reimbursement limitations, and alternative methods of reimbursement and coverage. Plans, directs, and develops HCFA "strategy planning" documents. Provides technical and advisory services to HCFA components to the Department, to other elements of the Executive Branch, and other government agencies interested in health care financing legislation, congressional relations, and policy development. In conjunction with the affine of the ASL, provides information services to congressional committees, individual Congressmen, and private organizations on health care financing legislation.

A. Division of Policy Analysis (FBA)

Plans and conducts long-range and short-term policy analyses of health care financing issues and legislative proposals. Initiaties or performs major policy studies for the Administrator in such areas as reimbursement reform, alternative cost control systems, and the reimbursement of new delivery systems. Coordinates technical and operating policy issues with respect to the introduction of appropriate statutory modifications through the Office of Legislation and Policy. Reviews policy documents including regulations, issue papers, and memoranda before they are signed by the Administrator and/or the Deputy Administrator. Reviews, analyzes, and develops new legislative proposals for submission to the

Department. Serves as a focal point for interface with the Office of the Assistant Secretary for Planning and Evaluation, other department components, and other Federal agencies on health care financing policy issues and legislative initiatives. Provides technical services and support to the Office of Research and Demonstrations, the Bureau of Eligibility, Reimbursement, and Coverage, other HCFA components, and through ASL to the Congress on the policy implications and technical aspects of new legislative or policy initiatives.

B. Division of Legislation (FBB)

Plans and directs the legislative planning and development activities of HCFA. Develops and analyzes recommendations concerning legislative proposals for changes to the health care financing programs. Develops long-range legislative plans in substantive areas related to the reimbursement, coverage, and eligibility of services under the Medicare and Medicaid programs. Analyzes the impact of HCFA and congressional legislative proposals affecting HCFA programs and makes recommendations to the Administrator and the Department. Prepares testimony and technical briefing materials for congressional hearings on HCFA programs and serves as principal advisor to the HCFA senior staff on congressional legislative initiatives of interest or concern to the Agency. Develops the technical specifications for HCFA legislation. Through the ASL, provides information on HCFA programs and legislative plans to members of the Congress and the congressional committees as requested. Coordinates legislative activities and prepares for congressional hearings with the Office of the Assistant Secretary for Legislation.

C. Division of Legislative Services and Congressional Affairs (FBC)

Provides legislative research and analysis services to HCFA staff, and produces regular and special reports to HCFA and the Department on legislative issues and activities. Prepares background materials for congressional hearings and briefing sessions and coordinates with HCFA components and ASL on the preparation of bill reports and bill report clearances. Maintains and services HCFA with a legislative research and reference library. Responds directly or coordinates responses to written and verbal congressional and legislative requests for information related to HCFA programs. Organizes and prepares materials for briefings of individual Congressmen and their constituents. Monitors the interests or concerns of individual Congressmen and prepares recurring reports on significant congressional contacts. Analyzes alternative responses to congressional issues and makes recommendations to higher officials on specific issues.

- Section FP.20.A.5., Office of Prepaid Operations, is deleted in its entirety along with all subordinate components. This Ofice is being combined with the former Office of Health Maintenance Organizations to form the new Office of Prepaid Health Care found at the new section FC. of this statement.
- Section FQ.20.C., Office of Legislation and Policy (OLP), is deleted in its entirety along with all subordinate components. This Office is being transferred to report directly to the Office of the Administrator. As stated earlier in this document, OLP is now found at the new section FD.
- Section FQ.10. The Office of the Associate Administrator for Policy (FQ) (Organization), is deleted and replaced by the following:

Section FQ.10. The Office of the Associate Administrator for Program Development (FQ) Organization)

The Office of the Associate Administrator for Program Development (OAAPD), under the direction of the Associate Administrator for Program Development, includes:

A. The Bureau of Eligibility, Reimbursement, and Coverage (FQA).

B. The Office of Research and Demonstrations (FQB).

- Section FQ.20. The Office of the Associate Administrator for Policy (FQ) (Functions), is deleted and replaced by the following:

Section FQ.20. The Office of the Associate Administrator for Program Development (FQ) (Functions)

The Associate Administrator for Program Development is responsible for the effective direction and implementation of the development and review of Medicare and Medicaid policies and regulations pertaining to HCFA programs and HCFA's research and demonstrations activities.

- Section FQ.20.A., Bureau of Eligibility, Reimbursement, and Coverage, and FQ.20.B., Office of Research and Demonstrations, remain unchanged along with all of their subordinate components.

Dated: June 16, 1986.

Otis R. Bowen,

Secretary, Department of Health and Human Services.

[FR Doc. 86-14321 Filed 6-24-86; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Recombinant DNA Advisory Committee Working Group on Human Gene Therapy; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Working Group on Human Gene Therapy at the National Institutes of Health, Building 31C, Conference Room 4, 9000 Rockville Pike, Bethesda, Maryland 20892, on August 8, 1986, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss scientific issues and procedures for review of proposals involving human gene therapy. This meeting will be open to the public. Attendance by the public will be limited to space available.

The working Group will also consider a proposal to amend the NIH Guidelines for Research Involving Recombinant DNA Molecules which will subsequently be considered by the Recombinant DNA Advisory Committee at its meeting on September 29, 1986. This proposal is published for comment in the accompanying notice of Proposed Action Under Guidelines.

Further information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee Working Group on Human Gene Therapy, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland, telephone (301) 496-6051.

Dated: June 18, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a

list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites to readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 86-14377 Filed 6-24-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Agency Information Collection Activities Under OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Copies of the proposed information collections requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's (BLM) clearance officer at the phone number listed below.

Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Reviewing Official at 202-395-7340.

Title: Land Use Application and Permit, 43 CFR 2920

Bureau Form Number: 2920-1

Frequency: Once

Description of Respondents: Individuals, State and local government entities, and other qualified proponents applying for use of BLM administered land via lease, permit, or easement.

Annual Responses: 435

Annual Burden Hours: 3230

Bureau Clearance Officer (alternate): Rebecca Daughtery at 202-653-8853

Guy Baier,

Acting Assistant Director, Lands and Renewable Resources.

May 6, 1986.

[FR Doc. 86-14286 Filed 6-24-86; 8:45 am]

BILLING CODE 4310-84-M

[AA-41952]

Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(e), and Sec. 12 of the Act of January 2, 1976, Pub. L. 94-204, 43 U.S.C. 1611 nt, as amended, and Par. I.C.(2)(a) of the document entitled Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, will be issued to Cook Inlet Region, Inc., for approximately 624 acres. The lands involved are within T. 12 N., Rs. 5 and 6 W., and T. 13 N., R. 5 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the ANCHORAGE TIMES. 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 July 25, 1986 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 shall be deemed to have waived their rights.

Suzanne McWilliams,

Acting Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-14294 Filed 6-24-86; 8:45 am]

BILLING CODE 4310-JA-M

[F-14870-A]

Alaska Native Claims Selection; Kaktovik Inupiat 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 sec. 1431(g)(3) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), 94 Stat. 2371, 2539, will be issued to Kaktovik Inupiat Corporation for approximately 1,782 acres. The lands involved are in the vicinity of Kaktovik, Alaska.

Umiat Meridian, Alaska

T. 7 N., R. 35 E.
T. 8 N., R. 36 E.

A notice of the decision will be published once a week for four (4) consecutive weeks in the TUNDRA TIMES. 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 July 25, 1986 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, shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-14296 Filed 6-24-86; 8:45 am]

BILLING CODE 4310-JA-M

[E-14870-A]

Alaska Native Claims Selection; Kaktovik Inupiat 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 sec. 1431(g)(3) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), 94 Stat. 2371, 2539, will be issued to Kaktovik Inupiat Corporation for approximately 17,806 acres. The lands involved are in the vicinity of Kaktovik, Alaska.

Umiat Meridian, Alaska

T. 7 N., R. 35 E.
T. 8 N., R. 35 E.
T. 7 N., R. 36 E.

A notice of the decision will be published once a week for four (4) consecutive weeks in the TUNDRA TIMES. 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 July 25, 1986 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 indentified 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, shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–14297 Filed 6–24–86; 8:45 am]

BILLING CODE 4310–JA–M

[AA–6701–A]

Alaska Native Claims Selection; Seldovia Native Association, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Seldovia Native Association, Inc., for 3.16 acres. The lands involved are in the vicinity of Seldovia, Alaska.

U.S. Survey No. 1619, Alaska, Tracts B and C and Lot 2.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the ANCHORAGE TIMES. 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 July 25, 1986 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 shall be deemed to have waived their rights.

Suzanne McWilliams,

Acting Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–14295 Filed 6–24–86; 8:45 am]

BILLING CODE 4310–JA–M

[A 20347 (C)]

Realty Action; Exchange of Public Land in Graham, Greenlee, Cochise and Pinal Counties, AZ, and Amendment of MFP Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public land in Graham, Greenlee, Cochise and Pinal Counties, Arizona and amendment of MFP decision.

SUMMARY: Certain public lands within the following described sections have been determined to be suitable for disposal by exchange to the State of Arizona pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716).

Selected Public Lands

Gila and Salt River Meridian, Arizona

T. 8 S., R. 17 E.,
Sec. 29.
T. 11 S., R. 27 E.,
Secs. 24–29.
T. 11 S., R. 28 E.,
Secs. 30, 31.
T. 5 S., R. 30 E.,
Secs. 17, 21.
T. 6 S., R. 30 E.,
Sec. 1.
T. 4 S., R. 31 E.,
Secs. 27, 28, 32, 33, 35.
T. 5 S., R. 31 E.,
Secs. 4, 6, 7, 10, 11, 14, 15, 24, 27, 28, 31, 33, 34.
T. 6 S., R. 31 E.,
Secs. 3–6, 8, 20–26.
T. 7 S., R. 31 E.,
Secs. 10, 13, 14, 15, 22, 23, 24, 26, 27, 34, 35.
T. 8 S., R. 31 E.,
Secs. 2, 12–15, 22, 23, 25, 27, 33, 34.
T. 9 S., R. 31 E.,
Secs. 7, 8, 12, 13, 17–20.
T. 10 S., R. 31 E.,
Secs. 1, 2, 11–14, 23–26, 35, 36.
T. 6 S., R. 32 E.,
Secs. 18, 19, 20, 29, 30.
T. 7 S., R. 32 E.,
Secs. 7, 8, 9, 17–22, 27–31, 33, 34.
T. 8 S., R. 32 E.,
Secs. 3–9, 17.
T. 9 S., R. 32 E.,
Secs. 3–10, 15, 17, 18, 28, 33, 34.
T. 10 S., R. 32 E.,
Secs. 5–8, 17–21, 28–33.
T. 11 S., R. 32 E.,
Secs. 4, 5, 6.

The involved public lands within the townships described above comprise 3,413.60 acres, more or less, in Graham County, 52,232.38 acres, more or less, in Greenlee County and 160 acres, more or less, in Pinal County.

In exchange, the State of Arizona has offered lands in the following described sections to the United States.

Offered State Lands

Gila and Salt River Meridian, Arizona

T. 8 S., R. 26 E.,
Sec. 36.
T. 10 S., R. 26 E.,
Sec. 36.
T. 7 S., R. 27 E.,
Secs. 25, 26, 27, 36.
T. 8 S., R. 27 E.,
Sec. 16.
T. 10 S., R. 27 E.,
Sec. 30.
T. 6 S., R. 28 E.,
Sec. 36.
T. 7 S., R. 28 E.,
Sec. 16.
T. 5 S., R. 29 E.,
Secs. 32, 34, 35, 36.
T. 6 S., R. 29 E.,
Secs. 2, 16.
T. 7 S., R. 29 E.,
Sec. 2.
T. 5 S., R. 30 E.,
Sec. 31.
T. 6 S., R. 30 E.,
Secs. 4, 5, 6, 32, 36.
T. 7 S., R. 30 E.,
Secs. 2, 5–8, 22, 23, 25, 31, 32.
T. 8 S., R. 30 E.,
Secs. 2, 4, 5, 7, 8, 16, 17, 25, 26, 28, 34, 35, 36.
T. 11 S., R. 30 E.,
Secs. 10, 15, 16, 31, 32, 36.
T. 12 S., R. 30 E.,
Sec. 2.
T. 13 S., R. 30 E.,
Sec. 12.
T. 6 S., R. 31 E.,
Sec. 32.
T. 7 S., R. 31 E.,
Secs. 20, 21, 28, 29, 31, 32, 33.
T. 8 S., R. 31 E.,
Secs. 9, 10, 11, 14, 15, 32.
T. 9 S., R. 31 E.,
Secs. 5, 6.
T. 11 S., R. 31 E.,
Secs. 11–16, 21–25, 27, 28, 32, 34, 35, 36.
T. 12 S., R. 31 E.,
Secs. 2, 10, 11, 14, 16, 32, 35, 36.
T. 13 S., R. 31 E.,
Secs. 2, 8, 17.
T. 11 S., R. 32 E.,
Secs. 2, 16, 32.
T. 12 S., R. 32 E.,
Secs. 2, 5, 8, 14, 15, 16, 19, 29–32.

The involved State lands within the townships described above comprise 14,957.5 acres, more or less, in Graham County, 24,415.10 acres, more or less, in Greenlee County and 9,394.91 acres, more or less in Cochise County.

The above identified non-federal lands are being acquired to enhance

resource management programs and continue the land tenure adjustment program prescribed in the land use plan. The overall exchange program will block up Federal and State-owned lands and consolidate ownership and management with the predominant land holder for the areas involved. The public interests will be well served.

The values of the lands to be exchanged are approximately equal and the acreages will be adjusted to equalize values upon competion of the final appraisal of the lands.

Patents for the public lands, when issued, shall contain the following reservations:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Reservations to the United States of rights-of-way granted for certain petroleum and gas pipelines, Federal Aid Highways, railroads, roads and electrical powerlines.

The public lands shall also be patented subject to all valid existing rights and terms and conditions of the authorized uses.

The State lands, when conveyed to the United States, will be subject to such terms and conditions as are necessary to protect the permittees and lessees. The permittee/lessee will be able to either continue his/her use under the existing terms of the State's authorization or may be issued a new authorization by the Bureau of Land Management.

This will serve as notice that the Winkelman Management Framework Plan has been amended to allow for the inclusion in this exchange of 160 acres of public land near Mammoth, Arizona.

DATES: For a period of 45 days from date of publication in the **Federal Register,** interested parties may submit comments to the Safford District Manager, 425 E. 4th Street, Safford, Arizona 85546. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including detailed legal descriptions of the lands involved, the land use plan supporting this exchange and the environmental considerations reviewed in making this decision to exchange, are available for review at the Safford District Office.

Dated: June 16, 1986.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 88-14288 Filed 6-24-86; 8:45 am]

BILLING CODE 4310-32-M

[M-62060(ND)]

Realty Action—Exchange of Public and Private Land in Bowman County, ND

SUMMARY. This notice amends the legal description of the public land for an exchange of public and private land published in the **Federal Register,** Vol. 50, No. 251, pages 53404 and 53405, issue of Tuesday, December 31, 1985, (FR Doc. 85-30905). The following lands, located in Bowman, Billings, Grant, and McKenzie Counties, have been added to the list of lands identified as suitable for exchange.

Fifth Principal Meridian, North Dakota

T. 131 N., R. 86 W.,
Sec. 22, E1/2SW1/4, SE1/4.
T. 149 N., R. 95 W.,
Sec. 1, Lot 1;
Sec. 10, SE1/4SE1/4.
T. 150 N., R. 95 W.,
Sec. 24, Lot 4;
Sec. 25, Lot 1.
T. 147 N., R. 99 W.,
Sec. 22, NW1/4NW1/4.
T. 151 N., R. 99 W.,
Sec. 6, Lot 5.
T. 152 N., R. 99W.,
Sec. 7, Lot 3;
Sec. 24, NW1/4NE1/4.
T. 152 N., R. 100 W.,
Sec. 24, SE1/4NW1/4, SW1/4SW1/4.
T. 141 N., R. 101 W.,
Sec. 18, SE1/4SE1/4.
T. 152 N., R. 101 W.,
Sec. 12, NW1/4SEI/4;
Sec. 14, SW1/4SW1/4, SE1/4SE1/4;
Sec. 22, SE1/4NW1/4.
T. 152 N., R. 103 W.,
Sec. 24, SE1/4SW1/4.
T. 131 N., R. 105 W.,
Sec. 17, S1/2SE1/4;
Sec. 18, SW1/4NE1/4;
Sec. 21, W1/2NW1/4.
T. 129 N., R. 106 W.,
Sec. 19, Lot 4;
Sec. 30, Lot 1.
T. 129 N., R. 107 W.,
Sec. 34, Lot 4.

Comment period: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1229, Dickinson, North Dakota, 58602.

Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a decision for the Department of Interior. Parties adversely affected by the decision have a right to appeal to the Interior Board of Land Appeals. In absence of any action by the State Director, this realty action will become a final determination of the Department of Interior.

Dated: June 18, 1986

William F. Krech,

District Manager.

[FR Doc. 86-14313 Filed 6-24-86; 8:45 am]

BILLING CODE 4310-DN-M

National Part Service

Hunting and Trapping in Buffalo National River, AK, et al.; Court Decision

AGENCY: National Park Service, Interior.

ACTION: Notice of court decision.

SUMMARY: The decision of the U.S. District Court in the lawsuit styled *National Rifle Association, et al., v. G. Ray Arnett, et al.* United States District Court for the District of Columbia, Civil Action No. 84-1348, is now a final order. The National Park Service (NPS) general regulation that was the subject of this lawsuit provides that hunting and trapping are allowed only in park areas where such activity is specifically authorized by Federal statute, except for four park areas where trapping may continue until January 15, 1987, or until there is a final order of the court in this lawsuit, whichever occurs first. The four park areas are: Buffalo National River, Arkansas; Ozark National Science Riverways, Missouri; Saint Croix National Scenic Riverways, Wisconsin—Minnesota; and Delaware Water Gap National Recreation Area, Pennsylvania—New Jersey.

The District Court rendered a decision in this lawsuit on February 24, 1986; the decision was not appealed and is now final. Therefore, since there is no Federal statutory authorization for trapping activities to take place or to continue in the four park areas listed above, trapping is now prohibited there. The NPS will proceed in the near future with a rulemaking, making the technical changes necessary to remove the regulatory text codified at 36 CFR 2.2(b)(3) that has been rendered obsolete by receipt of the final order and completion of the judicial process.

FOR FURTHER INFORMATION CONTACT: Andy Ringgold, National Park Service, Branch of Ranger Activities, P.O. Box 37127, Washington, D.C. 20013-7127, 202-343-1360.

Dated: June 13, 1986.

William Penn Mott, Jr.

Director.

[FR Doc. 86-14292 Filed 6-24-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-249]

Import Investigation; Certain Aircraft Carbon Disc Brakes and Replacement Carbon Discs

AGENCY: International Trade Commission.

ACTION: Institution of Investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 19, 1986, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Goodyear Aerospace Corporation, 1210 Massillon Road, Akron, Ohio 44315. A supplement to the complaint was filed on June 4, 1986. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain aircraft carbon disc brakes and replacement carbon discs into the Untied States, and in their sale, by reason of alleged direct, contributory, or induced infringement of at least claims 4, 22, and 25 of U.S. Letters Patent 3,650,357 and as amended by U.S. Reexamination Certificate No. B1 3,650,357. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Gary Kaplan, Esq., or Deborah S. Strauss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-1088 and 202-523-1233, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on June 18, 1986, ordered that:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation or certain aircraft carbon disc brakes and replacement carbon discs into the United States, or in their sale, by reason of alleged contributory or induced infringement of claims 4, 22, and 25 of U.S. Letters Patent 3,650,357 and as amended by U.S. Reexamination Certificate No. B1 3,650,357, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Goodyear Aerospace Corporation, 1210 Massillon Road, Akron, Ohio 44315.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

The Dunlop Company, Ltd., Fort Dunlop, Birmingham B24 9QT, England

The British Tire & Rubber Company, plc., Erdington, Birmingham B24 9QH, England

(c) Gary Kaplan, Esq., and Deborah S. Strauss, Esq., Office of Unfair Import Investigations, United States International Trade Commission, 701 E Street NW., Room 126, Washington, DC 20436, shall be the Commission investigative attorneys, a party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: June 18, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-14364 Filed 6-24-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-224]

Import Investigation; Certain Cellulose Acetate Hollow Fiber Artificial Kidneys

AGENCY: International Trade Commission.

ACTION: Review and nonadoption of a portion of an Initial Determination finding no violation of section 337, 19 U.S.C. 1337.

SUMMARY: The International Trade Commission has determined to review and not adopt a portion of an Initial Determination (ID) finding no violation of section 337. The portion of the ID not adopted relates to the priority date of the patent in issue and the invalidity of the patent under 35 U.S.C. 102(b) because of a prior sale. The remainder of the ID will not be reviewed and is the final determination of the Commission. Commissioner Eckes and Commissioner Lodwick make no determination regarding the unenforceability of the patent by reason of inequitable conduct. Vice Chairman Liebeler and Commissioner Burnsdale find it unnecessary to address the propriety of considering lost sales of ancillary products in the injury determination.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

SUPPLEMENTARY INFORMATION: On April 30, 1986, the presiding officer issued an ID finding no violation of section 337 on the grounds that (1) the subject patent was invalid as anticipated under 35 U.S.C. 102(b) by reason of a prior sale

more than one year before the priority date of the patent: (2) claims 1 and 2 of the patent were invalid as anticipated under 35 U.S.C. 102(a) and (b) by certain prior art (reports of the National Institute of Health); (3) claims land 2 of the patent were invalid as obvious under 35 U.S.C. 103 in view of the NIH reports, and in view of the NIH reports in combination with Skiens. U.S. Letters Patent 3,532,527; and (4) the patent is unenforceable by reason of inequitable conduct before the Patent and Trademark Office in the prosecution of the applications which led to the patent.

The complainant filed a petition for review on May 14, 1986. Respondents opposed review on all grounds cited by complainants OUII filed an opposition as to part of the petition.

The Commission has determined to review and not adopt that portion of the ID regarding the priority date of the patent and the invalidity of the patent based upon a prior sale. The Commission adopts the remainder of the ID and the finding of no violation of section 337.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and the Commission's rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: June 17, 1936.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-14365 Filed 6-24-86; 8:45 am]

BILLING CODE 7020-02-M

[332-228]

The Generalized Probable Economic Effect of Possible Removal of the Eligibility and Hong Kong, Korea, and Taiwan for Duty-Free Treatment of Portable, Fan-Forced Air, Electric Space Heaters

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: In accordance with the provisions of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission has instituted investigation No. 332–228 for the purpose of obtaining information for use in connection with the preparation of advice requested by the U.S. Trade Representative (USTR), at the direction of the President, as to the probable economic effect on the U.S. industry producing a like or directly competitive article and on consumers of the removal of Generalized System of Preferences (GSP) duty-free status from portable, fan-forced air, electric space heaters, provided for in item 684.40 of the Tariff Schedules of the United States, which are imported from Hong Kong, Korea, and Taiwan.

EFFECTIVE DATE: June 12, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Georgia P. Jackson (202–523–4604) or William B. Fletcher (202–523–0378) in the Commission's Office of Industries, Machinery and Equipment Division. For information on legal aspects of the investigation, contact Mr. William Gearhart of the Commission's Office of General Counsel at 202–523–0487.

Background and Scope of Investigation

USTR requested the investigation following initiation of a review by the Trade Policy Staff Committee (TPSC). The review was initiated following receipt of a petition filed by Patton Electric Company, Inc., and concerns the possible removal of the eligibility for duty-free treatment of portable, fan-forced air, electric space heaters under the GSP. Notice of the TPSC investigation was published in the **Federal Register** of May 1, 1986 (51 FR 16249). The USTR requested that the Commission complete its investigation within 90 days of receipt of the request. The request was received on May 21, 1986, therefore, the Commission's report will be forwarded to the USTR not later than August 18, 1986.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on July 11, 1986. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: June 16, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-14366 Filed 6-24-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-243]

Import Investigation; Certain Luggage Products

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Pedro Companies (Inc.).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on June 19, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the

aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and just include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: June 19, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–14367 Filed 6–24–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–225]

Import Investigation; Certain Multi-Level Touch Control Lighting Switches

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) finding four respondents in default and imposing sanctions.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) ID finding respondents Good Laurel Enterprise Co., Chung Pak International Development, Ltd., Barney Hong Kong, Ltd., and COSM Electronics, Ltd., in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: John Kingery, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1638.

SUPPLEMENTARY INFORMATION: On May 7, 1986, complainant Southwest Laboratories, Inc., filed a motion (Motion No. 255–40) requesting that certain respondents be found in default and that sanctions be imposed. The sanctions were previously requested in Motion Nos. 225–28 and 225–31, which were attached as Exhibits 1 and 2 to Motion No. 225–40.

On May 14, 1986, the ALJ issued an ID (Order No. 34) finding respondents Good Laurel Enterprise Co., Chung Pak International Development, Ltd., Barney Hong Kong, Ltd., and COSM Electronics, Ltd. in default. They were deemed to have waived their right to appear. No petitions for review of this ID were filed nor were any comments from other government agencies.

In determining not to review the subject ID the Commission takes no position as to the appropriateness of any adverse inferences which the Commission may draw against defaulting respondents pursuant to Commission rule 210.25(c) (19 CFR 210.25(c)).

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: June 16, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–14368 Filed 6–24–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–233]

Import Investigation; Certain Pharmaceutical Closures

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Tompkins Seals, Inc (Pennsylvania), Tompkins Rubber Co. (Pennsylvania) and Schubert Seals A/S (Denmark).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on June 19, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: June 19, 1986

Kenneth R. Mason,

Secretary.

[FR Doc. 86–14369 Filed 6–24–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–265 (Final) and 731–TA–297–299 (Final)]

Import Investigations; Porcelain-on-Steel Cooking Ware From Mexico, the People's Republic of China, and Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations and with countervailing duty investigation No. 701–TA–265 (Final).

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–

TA-297-299 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico, the People's Republic of China, and Taiwan of porcelain-on-steel cooking ware,[1] provided for in item 654.08 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). The Commission also gives notice of the scheduling of a hearing in connection with these investigations and with countervailing duty investigation No. 701-TA-265 (Final), Porcelain-on-Steel Cooking Ware from Mexico, which the Commission instituted on March 4, 1986 (51 FR 12220, April 9, 1986). The schedules for investigation No. 701-TA-265 (Final) and for the subject antidumping investigations will be identical, pursuant to Commerce's extension of these investigations (51 FR 20862). Commerce will make its final LTFV determinations and its final countervailing duty determination in these cases on or before October 2, 1986. Accordingly, the Commission will make its final injury determinations by November 17, 1986 (see sections 705(a) and 705(b) and sections 735(a) and 735(b) of the act (19 U.S.C. 1671d(a) and 1671d(b) and 19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 20, 1986.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-523-0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

[1] Cooking ware, including teakettles, not having self-contained electric heating elements, all the foregoing of steel and enameled or glazed with vitreous glasses, but not including kitchen ware (currently reported under item 654.0828 of the Tariff Schedules of the United States Annotated).

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce (51 FR 18469, May 20, 1986) that imports of porcelain-on-steel cooking ware from Mexico, the People's Republic of China, and Taiwan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The Commission's schedule for these investigations and for investigation No. 701-TA-265 (Final) has been made in accordance with Commerce's notices of extension of its final determinations. The investigations were requested in petitions filed on December 4, 1985, by General Housewares Corp., Terra Haute, IN. In response to those petitions, the Commission conducted preliminary investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured, or threatened with material injury, by reason of imports of the subject merchandise (51 FR 3862, Jan. 30, 1986).

Participation in the Investigations

Persons wishing to participate in the antidumping investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry. (Persons wishing to participate in investigation No. 701-TA-265 (Final) Should have already filed an entry of appearance, pursuant to the Commission's notice of institution of this investigation in the **Federal Register** of April 9, 1986).

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the subject antidumping investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of services.

Staff Report

A public version of the prehearing staff report for the subject antidumping investigations and for investigation No. 701-TA-265 (Final) will be placed in the public record on September 26, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with the subject antidumping investigations and with investigation No. 701-TA-265 (Final) beginning at 10:00 a.m. on October 9, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on September 26, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on October 2, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 6, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing breifs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted no later than the close of business on October 16, 1986. In addition, any person who has not entered an appearance as a party to these investigations may submit a written statement of information pertinent to the subject of the

investigations on or before October 16, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: June 20, 1986

Kenneth R. Mason,

Secretary

[FR Doc. 86-14370 Filed 6-24-86; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; Child Victim as a Witness Research and Development Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to conduct a research and development program on the child victim as a witness.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 406(a)(6) of the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, announces a new OJJDP initiative entitled, "Child Victim as a Witness Research and Development Program." The primary research goal is to expand our knowledge of the effects of legal proceedings on child victim witnesses.

OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites public agencies or private nonprofit research agencies to submit competitive grant applications to design, implement, and test new strategies to be used to change court policies and practices for handling child victim witnesses. Targeted courts must be willing to test modified practices which would support child victims. The initiative will require a collaborative effort among researchers, prosecutors, judges and other court personnel, law enforcement personnel, and protective service workers, as appropriate.

OJJDP has allocated up to $400,000 for the first year of this initiative. One project will be funded to conduct the study in four to five jurisdictions. It is anticipated that this research and development initiative will entail three total years of program activity, at a cost of up to $1,200,000, to conduct the necessary planning, implementation and testing.

The deadline for submission of applications is August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Catherine P. Sanders, Research and Program Development Division, NIJJDP, 633 Indiana Avenue, NW., Room 782, Washington, DC 20531, Telephone (202) 724-5929.

SUPPLEMENTARY INFORMATION: Request for Proposals—Child Victim as a Witness

Table of Contents

1. Introduction and Background

This solicitation to conduct research on the Child Victim as a Witness is issued by the National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP), of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The solicitation addresses, the Missing Children's Assistance Act which authorizes the Office of Juvenile Justice and Delinquency Prevention to: "make grants to and enter into contracts with public agencies or nonprofit private organizations, or combinations thereof, for research, demonstration projects, or service programs designed to address the particular needs of missing children by: (1) Minimizing the negative impact of judicial and law enforcement procedures on children who are victims of abuse or sexual exploitation and; (2) by promoting the active participation of children and their families in cases involving abuse or sexual exploitation of children" (Title IV section 406(a)(6)).

The Office of Juvenile Justice and Delinquency Prevention (OJJDP), hereby invites applications for a program of research on the Child Victim as a Witness. To understand the program's goal, objectives, and strategy; it is necessary to examine the scope of the problem, related constitutional and justice system issues, and recent procedural and evidentiary trends.

While defendants are protected by many constitutional rights, victims and witnesses are not. When a child is a key witness to an event, he or she is often in a position similar to a rape victim: The child's credibility is questioned and attacked. Testifying in a formal courtroom at a criminal trial in front of the defendant, jury, judge, audience, and being subjected to direct and cross-examination are among the most intimidating and stressful aspects of the legal process for children. Although such an experience may be anxiety-producing for adults, adults generally have developed coping mechanisms to deal with such situations. The state's interest in punishing and incapacitating child molesters may come into conflict, paradoxically, with its desire to protect children from short term trauma and long term developmental problems. In 1981, the National Center on Child Abuse and Neglect (NCCAN), in an incidence study of reported cases, indicated that the average age of a child victim of sexual abuse was between eleven and fourteen years of age. It was also noted that more recent program information showed a higher percentage of children under age twelve, and one program showed that one third of the victims were under age six.(*1*).

Recent revelations about sexual abuse of pre-school age children in child care facilities force us to accept the fact that very young children are at risk. Further illustrating the extent of the problem, when NCCAN began collecting data in 1976, child protection agencies nationwide reported 1,975 substantiated cases of child sexual assault. By 1982, this figure had grown to 56,607.(*2*). Regardless of whether this is due to an increase in reporting or higher incidence, the justice system clearly must deal with growing numbers of difficult and sensitive cases.

Certain constitutional and due process issues arise when examining the issue of the child victim as a witness and determining what procedural and evidentiary reforms can be implemented by the courts to better accommodate child witnesses. When considering the defendant's right to confront witnesses

(Sixth Amendment) a number of questions are raised. For example, does the use of one way mirrors or closed circuit television with electronic communication between the defendant and counsel preserve the defendant's right to confrontation by providing the opportunity for this or her indirect participation in cross-examination? It might fail on constitutional grounds if the Sixth Amendment were to require face-to-face confrontation (*Kirby* v. *U.S.*, 1899; *Mattox* v. *U.S.*, 1895; *Snyder* v. *Mass.*, 1934; *U.S.* v. *Bufield*, 1979).

Preservation of the defendant's right to a public trial is somewhat less problematic. There is ample precedent for limiting the size of the audience when child victims of sex offenses testify (*Geise* v. *U.S.*, 1958; *Melanson* v. *O'Brien*, 1951). Similar authority exists for removing spectators who do not have a direct interest in the case. The interests of the defendant in a public trial may be met by having present, at minimum, the defendant, counsel, and the defendant's family and friends (*In re Oliver*, 1948).

The recent Supreme Court decision in *Globe Newspaper Co.* v. *Superior Court*(*3*) has serious implications for procedural reform of the First Amendments right of the public to have access to the trial process (through the press).(*4*) Justice Brennan, in writing the majority opinion, overturning a Massachusett's statute, stated that mandatory closure of the courtroom to the press during testimony by a child victim of a sex offense was in violation of the First Amendment. The Court acknowledged that protection of minor (child) victims is a compelling state interest, but found the statute to be insufficiently narrow in its scope. While some victims might want publicity of the trial so that the heinous behavior of the defendant would be exposed; others simply might not be bothered by media presence. Justice Brennan stated that a mandatory closure statute would be justified on the grounds of enhancing the frequency and quality of children's testimony only if it could be shown that "closure would improve the quality of testimony in all minor victims," an impossible task. Even assuming that the legal process is psychologically harmful for some child victims, there is essentially no research literature on which to base interventions to prevent such harm or, as *Globe* permits, to identify particularly vulnerable child victims so that trial procedures (e.g., access of the press) may be modified to protect them.

Recent developments by numerous states have taken a three pronged attack: (1) Modify legal procedures to be more sensitive to child victims; (2) improve prosecution and conviction rates; and (3) provide treatment in special programs for the offender, child, and family. The recent acceptance of special hearsay exceptions for a child's complaint of sexual abuse (*Ohio* v. *Roberts*) (*5*) is one indication of the increasing awareness of the need for procedural reform aimed at preventing emotional trauma. Other legislative reforms include abolishment of the corroboration requirements and competency tests for children. For example, by 1981, a dozen states had eliminated competency qualifications of child witnesses; by 1985, almost one half of the states had made this change.(*6*) In 1982, the American Bar Association's Child Sexual Abuse Project found that four states allowed videotaped testimony. By 1985, fourteen states had statutes permitting videotaped trial or preliminary hearing testimony. Six of the fourteen statutes permit the videotape to be admitted into evidence at trial only if the court finds that the child's testimony in open court would cause severe emotional trauma.(*7*) Other courts are considering at what stages different support strategies such as counseling are particularly helpful and legally acceptable.

A significant issue for research involves the need to study and compare the effects of legal intervention on a variety of crime victims. One risk with establishing special approaches for child witnesses without procedures available for other witnesses is that a social policy of special treatment for a particular group necessarily excludes other potentially eligible groups in society. Thus, for example, in the area of special hearsay exceptions, it may be questioned whether initial statements of child victims should receive special evidentiary status more than statements of other victims in cases which are difficult to prove.

The choice of alternatives for taking a child's testimony can depend upon the needs and problems of a particular child. Legislatures adopting innovative approaches must decide whether to mandate a particular approach for all child victims, or to allow individual needs to influence the choice of approach. Research needs to be done to determine how procedural and evidentiary reforms can be best suited to the needs of individual child witnesses in an attempt to mitigate stress while also permitting alleged offenders to be brought to justice.

There is a need for a substantial research initiative to examine the effects of special procedures designed to mitigate stress, both to ensure that child victims are not doubly victimized and, more generally, to provide the information needed on what strategies are effective in assisting children to make use of, and adjust to, legal procedures. The purpose of this program is to provide well documented, empirical evidence of the effects of different procedures which may be adopted to better accommodate child witnesses in the court process.

II. Program Goals and Objectives

A. Purposes and Goal Statement

The purposes of this Research and Development Program is to expand and improve our understanding of the effects of court policies and procedures on child witnesses. The research goal is to systematically test different techniques for improving the handling of child victims as witnesses.

B. Major Objectives

1. To identify what aspects of different types of court proceedings may be stress inducing or traumatizing for children and what changes might mitigate the stress.
2. To identify those that have been tried and determined what additional procedural and evidentiary reforms can be implemented by the courts to better accommodate child witnesses while also permitting alleged offenders to be brought to justice.
3. To examine the constitutional and due process implications of alternative strategies for child witnesses.
4. To determine the effects of implementing procedural or evidentiary reforms on child witnesses, the decisions of families and prosecutors to prosecute a case, case outcomes and cost.
5. To design and/or test improved techniques for the measurement of level of traumatization experienced by child witnesses.

III. Research and Development Strategy

This Research and Development (R&D) program is designed to develop and test effective strategies that can be used to change court policies to support child victim witnesses. It requires the implementation of techniques (procedural and evidentiary) intended to reduce the risk of children being traumatized by the legal process.

This initiative will require research applicants to establish a collaborative relationship with local courts, prosecutors, judges, law enforcement officers and protective services workers. This working group will be referred to as

the "Program team" throughout this solicitation. The applicant must identify at least four court jurisdictions characterized by: Willingness to plan and test improved strategies; and readiness to proceed with modified policies and practices (i.e., enabling legislation already would allow for such modifications). Specific program strategies to be tested are listed under Phase II activities. The primary intent of this study is to test evidentiary and procedural reforms rather than organizational changes such as the creation of special units to prosecute child abuse cases. (Organizational change is the major feature of a complementary demonstration program sponsored by the Bureau of Justice Assistance.)

This R&D program will consist of three years of funding and include three Phases of project activities. Phase I will include a six-month Assessment and Development period; Phase II an 18-month Operation and Evaluation period; and Phase III a 12-month Analysis and Report Preparation period. The research organization in conjunction with the targeted sites will be responsible for all aspects of the project design, implementation, and product development.

A. Phase I—Assessment and Development

Under Phase I, the program team will be required to conduct a comprehensive assessment of existing court policies and practices related to child witnesses in the study jurisdictions. The assessment should include an examination of all relevant Federal and state legislation and case law for accommodating child victim witnesses and the extent to which new legislation is translated into policy at the local level. The Program team must clearly document the frequency and types of cases in which child victims testify in the targeted court jurisdiction; and identify what specific procedures appear to have an adverse effect on the child victim witness. An assessment of the impact of the current policies and practices on the individual child, case prosecution decisions, case outcomes and justice system costs must also be included. Based on this assessment; a product of Phase I would be a revised description of the new strategies, policies, and practices to be tested.

OJJDP recognizes the difficulty in determining what portion of the traumatization can be directly attributed to the legal process, due to the fact that many children experience sustained stress from their actual victimization experience. Under this initiative, a challenge to the researcher would be to develop comparable core measures across sites of that traumatization which result from repeated testimony and court room appearances. With cross-site adoption of comparable measures, a substantial data base could be generated. This coordinated effort is expected to enhance the potential contribution of this research initiative to the state-of-the-art of developing court policies for handling child victim witnesses. It will also increase the potential for a long term follow-up of study sample youth, should resources be available.

The program team will be responsible for the following activities:

1. Conduct of planning and assessment activities.
2. Development of a refined and detailed research design which would include documentation of program development, process, and impact evaluation.
3. Development of a comprehensive workplan for the implementation of refined design.
4. Selection of or development and pretesting of data collection instruments.
5. Ensuring full access to all study data sources.
6. Development of a detailed plan for confidentiality of data.
7. Production of baseline data on the processing of cases involving child witnesses in study court.
8. Provision of technical assistance and training for project startup.

The program team must successfully complete Phase I activities prior to proceeding with Phase II activities, and prior to receiving consideration for continuation funding for years two and three.

B. Phase II—Operation and Evaluation

Phase II activities include the following:

1. Full implementation of the research design.
2. Preliminary analysis of data and provision of feedback to program team to inform program refinement.
3. Ongoing assessment of the validity and reliability of measurement techniques and instruments.
4. Refinement of data collection approaches and research design, as appropriate.
5. Communication of findings through the production of interim reports and issue papers.
6. Coordination and data sharing among sites involved in the program.

Presented below is a list of the strategies to be tested, including examples. Applicants may propose to study a strategy/procedure not included on the list provided they fully justify why the strategy/procedure appears promising for reducing child stress and ensuring the integrity of the justice process.

1. Avoiding direct confrontation between child victim witnesses and defendant.
—Using closed circuit television
—Permitting child to testify in front of one-way mirror
—Permitting child to testify in judge's chambers
—Permitting videotaped depositions and statements

2. Streamling the justice process.
—Expediting cases
—Reducing the number of interviews of the child

3. Permitting special exceptions to hearsay for sexually abused children.
—Allowing medical complaints
—Allowing complaint of rape theory
—Allowing excited utterances

4. Eliminating or modifying competency criteria for child victim witnesses.
—Modifying the wording of the oath for child witnesses
—Establishing a level of understanding of the difference between truth and falsehood

5. Using child victim advocates and guardian ad litems at different stages of the court process.

6. Using expert witnesses.
—Testifying on selected attributes of child sexual abuse
—Providing developmental information to compare normal behavior patterns with those of a child who was sexually abused
—Providing testimony which explains the behavior of child after the event occurs

7. Excluding spectators from the courtroom audience
—Limiting the access of the general public
—Developing legislation to better protect the identity of child witnesses.

C. Phase III—Analysis and Report Preparation

Phase III activities include the following:

1. Conduct of data analysis and interpretation of results (program team).
2. Followup data collection on individual child witnesses and case outcomes.
3. Continued coordination and data sharing among sites involved in this program.
4. Communication of findings through the production of issues papers (e.g., policies and practices necessary for

future research and program development), final reports, technical assistance and training manuals.

Throughout the grant period, the research should strive to produce documents which clearly convey significant findings and practical applications for policymakers, practitioners, and other researchers.

IV. Eligibility Criteria

Eligible applicants include public agencies or private nonprofit research agencies or organizations which are administratively and organizationally independent of the study court. Research agencies or organizations will apply directly for the grant award and may choose to provide limited support through contracts to courts to cover on-site costs critical for program implementation. The costs of implementing the intervention strategies must be supported by available community and court system resources. This requirement is in keeping with the intent of this program to test cost effective strategies or procedures which would be suitable for adaptation by other jurisdictions without external funding.

Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. The applicant and any co-applicants must have the management and financial capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

V. Dollar Amount and Duration

Up to $400,000 has been allowed for the initial 12 month award to one organization competitively selected under this initiative. It is anticipated that this R&D program will entail three years of program activities (i.e., a three year project period), and consist of three phases. The initial award will provide support for Phase I activities and six months of Phase II activities. Up to $400,000 will be allocated for each of the second and third 12-month budget periods.

Funding of each noncompeting continuation grant, i.e. each of the two additional 12 month budget periods, within the approved three year project period may be withheld for justifiable reasons. They include: (1) There is no continued need for further research; (2) the grantee is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the grantee has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a grantee's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason which would indicate that continued funding would not be in the best interests of the Government.

VI. Minimum Program Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. The program narrative shall not exceed 60 doubled-spaced pages in length.

In submitting jont applications, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. Those organizations which are primarily procuring services or products from another organization would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF-424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

A. A problem statement which clearly documents the characteristics of child victims serving as witnesses in the target courts, and the types of cases in which these children are involved including:

1. Examine the current process for handling Child Victim witnesses in the selected jurisdictions, and address the negative consequences for the child witness.

2. Identify the criteria utilized in the court site selections and provide data to justify those selections. Discuss the court's readiness to proceed with modified policies and practices.

3. Provide statistics regarding actual number of cases handled by the court and estimates of the annual case flow.

B. A review of the theoretical and empirical literature on the child victim as a witness. Discuss promising approaches for improvement of national policies and practices.

C. A succinct statement of your understanding of the goal and objectives of the Child Victim as a Witness R&D Program.

D. Description and justification of the new strategies, practices and/or procedures to be tested.

E. A complete discussion of the proposed research design and methodology including:

1. Delineation of theoretical framework which guides your study.

2. Presentation of your specific study's goals and objectives. Specify how each will be measured, what changes are expected, and when a substantial level of goal/objective accomplishment is anticipated.

3. Description of the research questions.

4. Description of the assessment and planning process (Phase I).

5. Description of preliminary design for evaluation (i.e., program development, process, and impact). Include a description of the proposed sample at each site and justification of adequacy of the sample size. Indicate how progress in meeting program goals and objectives can be attributed to program interventions.

6. Description of the plans for data collection, instrument development, and data analysis.

7. Specification of data sources and inclusion of letters from cognizant agencies verifying data access.

8. A Privacy Certificate describing procedures to be followed to assure confidentiality of data in accordance with funding agency regulations, copies of which are available upon request.

9. Written verification from authorized officials of all parties involved in the R&D Program team (e.g., court, protective service, law enforcement) of their commitment to collaborate in the program planning, implementation, data collection, and program refinement processes.

F. A detailed workplan for year one program activities which includes time frames for accomplishing major milestones, and which specifies responsibilities for tasks for the planning and development process. This workplan must provide: (1) A detailed

description of the six-month Phase I Assessment and Development activities and the initial six months of Phase II; and (2) a preliminary workplan for completion of Phase II and Phase III activities. It would also include a plan for delivering training and technical assistance to program team members, as appropriate, to assist them in incorporating a systematic program development process into their routine operations.

G. A description of the project management structure which includes proposed staffing plan, brief position descriptions which delineate roles and responsibilities, description of relevant staff experience and expertise, and resumes of key project staff (include as an appendix to the application). The project director must devote a minimum of fifty percent (50%) of his/her time to this effort.

H. An organizational capability statement which describes relevant organizational experience and demonstrates that the applicant has the substantive and financial capability to effectively administer the project.

I. A detailed budget for year one program activities. The budget should also include funds for a three person advisory board to meet once for two days during the first year.

J. An estimated budget of annual costs for conducting year two and three activities through the conclusion of the project period.

K. If it is determined to be necessary for the research organization to provide financial support from the grant award to another organization to cover costs critical for program implementation, the application must include: A statement of work for the proposed contract; and the procedures to be followed for completitive selection *or* a justification for noncompetitive award for these support services where a single contractor has the capability to provide specified services.

L. The applicant must indicate a willingness to host an on-site visit by OJJDP staff and/or Peer Review Panel member to verify information provided in the application.

VII. Selection Procedures and Criteria

All applications received in response to this solicitation will be reviewed in terms of their potential contribution to the state of the art, the rigor and feasibility of the R&D design, and their innovativeness in responding to key issues in the implementation of the study. Applications will be evaluated by an external peer review panel. Site visits may be conducted by peer review panelists and/or OJJDP staff to verify information provided by those applicants ranked as best qualified for further consideration.

Specifically, applications will be rated according to the following criteria and weights:

A. The problem to be addressed is clearly stated including evidence of knowledge of related literature and justification for site and strategy selection (refer to section VI A,B,D)—15

B. An understanding of the goal and objectives of this research and development program is clearly articulated, including an assessment of the degree to which the proposed R&D initiative would further these objectives (refer to section VI C, E.2)—10

C. The research and development design and methodology is sound and contains program elements directly linked to the achievement of project objectives, including written verification of commitment to collaborate and accessibility of data (refer to section VI E)—35

D. The project management structure is adequate to successfully conduct the project (refer to section VI G)—10

E. Organizational capability is demonstrated at a level sufficient to successfully support the project (refer to section VI H)—5

F. Budget costs are reasonable, complete and appropriate in comparison to the activities proposed to be undertaken (refer to section VII, J and K)—10

G. The workplan is adequate, clear and feasible and will support the development of useful products (refer to section VI F)—15

Applications receiving the highest total score on the above criteria will be recommended for funding consideration by the Administrator, OJJDP. In addition to the scores based upon the above weighted criteria, the final selection process will also include consideration of diversity of strategies to be tested. Peer review recommendations, in conjunction with the results of internal review any any necessary supplementary reviews, will assist the Administrator's consideration of competing applications and selection of applications for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Procedures and Deadlines for Submission of Applications

A. Applicants which plan to respond to this announcement are requested to submit written notification of their intent to apply to NIJJDP/OJJDP by July 30, 1986. Such notification should specify: The name of the applicant organization, mailing address, telephone number, and primary contact person. This notification should be forwarded to Catherine Sanders, NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Room 782, Washington. DC 20531.

B. Applicants must submit the original signed application and three copies to NIJJDP/OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

C. The deadline for submission of applications is August 27, 1986. All applications must be postmarked by the U.S. Postal Service or hand delivered on or before August 27, 1986. Hand delivered applications must be taken to the NIJJDP/OJJDP between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

D. The mailing address for all correspondence (e.g., applications, notification of intent of apply, requests for forms) related to this program announcement is as follows: Catherine Sanders, NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Room 782, Washington, DC 20531.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 32, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request, timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary

recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s), or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

X. References

Goodman, Gail S., *Journal of Social Issues*. 1984, Volume 40, Number 2.

Whitcomb, D., Shapiro, E.R., and Stellwagen, L.D. "When the Victim is a Child: Issues for Judges and Prosecutors", *ABT Associates, Inc.*, Final Report to the National Institute of Justice, 1985.

Melton, Gray B., "Sexually Abused Children and the Legal System: Some Policy Recommendations," *American Journal of Family Therapy*, Vol. 13 pp. 61–67, 1985.

Buckley, Josephine, "Intrafamily Child Sexual Abuse Cases," Washington, D.C.: American Bar Association.

Finkelhor, David, *Child Sexual Abuse*, Free Press, New York, N.Y., 1984.

Kelly, Jean L., "Legislative Responses to Child Sexual Abuse Cases: The Hearsay Exception and the Videotape Deposition," *Catholic University Law Review*, 1985, Volume 34, Number 4.

Appendix A: Footnotes

(1) Child Sexual Abuse: Incest, Assault and Sexual Exploitation, at 3, National Center on Child Abuse and Neglect (Rev. Apr. 1981)

(2) D. Finkelhor, "How Widespead is Child Sexual Abuse?" *Children Today*, 13, 18–20.

(3) Gray B. Melton, "Child Witnesses and the First Amendment: A Psycholegal Dilemma," Journal of Social Issues, Vol. 40 (1984): 109–123.

(4) *Globe Newspaper Co.*, v. *Superior Court*, 102 S.Ct. 2613,2621 (1982).

(5) Josephine Buckley. *Evidentiary and Procedural Trends in State Legislation and Other Emerging Issues in Child Sexual Abuse Cases*. American Bar Association (1985).

(6) *Ohio* v. *Roberts*, *448 U.S. 55, 65 (1979)*.

(7) Josephine Buckley. *Recommendations for Improving Legal Intervention in Child Sexual Abuse Cases*. Recommendations 4.1 and 4.2, and *Commentary*, American Bar Association, Washington, DC (1982).

Alfred. S. Regnery,

Administrator, Office of Juvenile Justice.

[FR Doc. 86-14310 Filed 6-24-86; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanitites (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before July 25, 1986.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) or Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extension. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who be required or asked to report: (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entires are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Applications and Instruction Forms for the Humanities, Science and Technology Category
Form Number: Not applicable
Frequency of Collection: Annual
Respondents: Humanities researchers and institutions
Use: Application for funding
Estimated Number of Respondents: 98
Estimated Hours for Respondents to Provide Information: 52 per respondent

Susan Metts,

Director of Administration.

[FR Doc. 86-14317 Filed 6-24-86; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-413]

Environmental Assessment and Finding of No Significant Impact; Duke Power Co. et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to the Duke Power Company, North Carolina Electric Membership Corporation and Saluda River Electric Cooperative, Inc. (the licensee) for the Catawba Nuclear Station, Unit 1, located at the licensee's site in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption would allow for a six week extension for the performance of Type B tests on all 91 containment electrical penetrations and 9 containment mechanical penetrations, and Type C tests on 14 containment isolation valves until September 28, 1986. Sections III.D.2 and III.D.3 of Appendix J require that Type B and C tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The current Type B and C test due dates range between August 19 and August 22, 1986, for the affected penetrations and valves. The extension would allow the licensee to take the station off line at a time consistent with system need for power rather than forcing a station shutdown in August when the distribution system's need for power is high due to the planned outage of other system power plants. The proposed exemption is in accordance with the licensee's request dated May 5, 1986, and its supplements dated May 9, 1986, and June 13, 1986.

The Need for the Proposed Action

The proposed exemption is needed to permit the licensee to perform the Type B and C tests on containment penetrations and isolation valves at a time consistent with the distribution system's need for power.

Environmntal Impact of the Proposed Actions

The proposed exemption grants a six-week extension for the performance of Type B and C local leak rate tests on containment penetrations and containment isolation valves. With respect to this exemption from Appendix J, the increment of

environmental impact is related solely to the potential increased probability of containment leakage following an accident involving a radiological release. This could lead to higher offsite and control room doses. However, this potential increase is not significant because: (1) The extension is for a short period, i.e. six weeks, (2) these penetrations and valves all yielded successful test results when they were tested in the August 19 and 22, 1984, time frame, (3) this facility was issued a low power license on December 6, 1984, and a full power license on January 17, 1985. Thus, these penetrations and valves will, with the proposed extension, have been exposed to their operating enviroment for no more than 22 months compared to the nominal two year surveillance interval permitted by Appendix J. Accordingly, the Commission finds that the increased probability of containment leakage associated with the proposed extension is insignificant and that no measureable impact would result from the proposed extension.

Alternative to the Proposed Action

Because the staff has concluded that there is no measureable impact asssociated with the proposed exemption, any alternatives to these exemptions would not result in substantial improvement in the quality of the environment and therefore need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operations and would result in economic and reserve power hardships to the licensee by requiring shutdown during a period of low grid reserve capacity.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the operation of Catawba Nuclear Station, Units 1 and 2," dated January 1983. (This document is available for public inspection and copying at the locations indicated below.)

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For details with respect to this action, see the request for the exemption dated May 5, 1986, and its supplements dated May 9, 1986, and June 13, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Bethesda, Maryland this 20th day of June 1986.

For the Nuclear Regulatory Commission.

Darl Hood,

Acting Director, PWR Project Directorate #4, Divison of PWR Licensing-A.

[FR Doc. 86-14371 Filed 6-24-86; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 7.10, "Establishing Quality Assurance Programs for Packaging Used in the Transport of Radioactive Material," is being issued to make it consistent with the revision of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material," that became effective on September 6, 1983. The guide provides information on the essential elements needed to develop, establish, and maintain a quality assurance program acceptable to the NRC staff for packages to transport radioactive materials.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of final guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 18th day of June 1986.

For the Nuclear Regulatory Commission.

Robert B. Minoque,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 86-14373 Filed 6-24-86; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, EE 405-4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 3 to Regulatory Guide 1.63 and is entitled "Electric Penetration Assemblies in Containment Structures for Nuclear Power Plants." The guide is being developed to describe a method acceptable to the NRC staff for complying with the design, construction, testing, qualification, installation, and external circuit protection of electric penetration assemblies in containment structures of nuclear power plants. The guide endorses, with one exception, IEEE Std 317-1983, "IEEE Standard for

Electric Penetration Assemblies in Containment Structures for Nuclear Power Generating Stations."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555. Comments will be most helpful if received by August 25, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 19th day of June 1986.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Technology Office of Nuclear Regulatory Research.

[FR Doc. 86-14375 Filed 6-24-86; 8:45 am]

BILLING CODE 7590-01-M

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50-373]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-11 for La Salle Unit 1, issued to Commonwealth Edison Company (the licensee), for operation of the La Salle County Station, Unit 1 located in La Salle County, Illinois.

The proposed amendment would correct the La Salle Unit 1 Technical Specifications. On October 22, 1985, as supplemented on March 21, 1986, the licensee transmitted the Unit 1, Cycle 2 Reload package which was approved by the staff on May 9, 1986. The licensee in this Cycle 2 Reload submittal reflected the wrong Rod Block Monitor (RBM) setpoints instead of the corrected values which decreased by 2% as a result of new analyses performed for the Cycle 2 Reload for both the dual and single loop operation. To conform to the new setpoints, the licensee submitted an amendment request on June 10, 1986, to incorporate the corrected setpoints in Table 3.3.6-2 of the Technical Specifications. In addition, an administrative change is requested to correct a typographical error. The Thermal Hydraulic Stability Specification on Index page VI does not exist and is being deleted. In the Cycle 2 Reload, the stability requirements are incorporated into the Technical Specification 3.4.1.1-1. The licensee inadvertently made a typographical error in not deleting the change in the Index on page VI. This amendment request addresses this deletion from page VI of the Index.

Before the issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided below.

The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. Therefore, operation in accordance with the proposed amendment involved no significant hazards consideration because the changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because it corrects and decreases the RBM setpoints for Unit 1 Cycle 2 reload; (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the amendment reflects the rod withdrawal already analyzed for Unit 1 Cycle 2 reload in the determination of the minimum critical power ratio operating limits; (3) involve a significant reduction in the margin of safety because the rod withdrawal is already analyzed for Unit 1 Cycle 2 reload in the determination of the minimum critical power ratio operating limit. Finally, an administrative change to correct the Index page to be consistent with the Technical Specifications is one of the examples (example (i)) of amendments not likely to involve significant hazards considerations described by the Commission in the **Federal Register** notice of issuance of the final rule 10 CFR 50.91 (44 FR 7751, March 6, 1986).

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By July 25, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for

leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final consideration will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commision's Public Document Room, 1717 H Street NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commision 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 G. 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 Regulatory Commission, Washington, DC 20555, and to Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for 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 this action, see the application for amendment which is available for public inspection at the Commmission's Public Document Room 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Dated at Bethesda, Maryland, this 19 day of June 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3 Division of BWR Licensing.

[FR Doc. 86-14374 Filed 6-24-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-89 and 50-163]

GA Technologies, Inc.; Receipt of Application for Approval of Transfer of Control of Licenses

The U.S. Nuclear Regulatory Commission (the Commission) hereby gives notice, pursuant to 10 CFR 50.80(c), of receipt of an application, dated May 7, 1986, from General Atomic Technologies Corporation (GATC), for Commission approval of the transfer of control of GA Technologies, Inc. (GA) to GATC. GA is presently the holder of licenses issued by the Commission, including Facility License No. T-38 and Facility License No. R-67, for a TRIGA MARK I non-power reactor and TRIGA MARK F non-power reactor, respectively. GATC is incorporated under the laws of the State of Wyoming. GA is currently a wholly-owned subsidiary of Chevron U.S.A., which is a wholly-owned subsidiary of Chevron Corporation.

Prior to approving an application for transfer of control of the above facility licenses, the Commission will determine whether (1) the proposed transferee is qualified to be the holder of the licenses, and (2) whether such transfer of control is otherwise consistent with applicable

provisions of law, regulations, and orders issued by the Commission.

For further details with respect to the subject application, see the application of GATC under the above-cited docket numbers, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Dated at Bethesda, Maryland this 16th day of June 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B, NRR.

[FR Doc. 86-14372 Filed 6-24-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted serivce, as required by civil service rule VI, Exceptions form the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on May 23, 1986, (51 FR 18986). Individual authorities established or revoked under Schedule A, B, or C between May 1, 1986, and May 30, 1986, appear in a listing below. Future notices will be pubished on the fourth Tuesday of each month, or as soon as possible therefter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established during May. However, coverage of the following exception was expanded:

Department of Agricutlure

Schedule A excepted appointing authority for part-time, intermittent, and seasonal commodity graders and related personnel is amended to permit meat acceptance specialists to be employed on a full-time basis for work required by the Food Security Act of 1985. The authority for excepted appointments of full-time meat acceptance specialists applies only to positions engaged in work required by the Food Secrutiy Act and will be in effect thorugh December 31, 1987.

Department of Justice

Schedule A excepted appointing authority for temporary field representatives employed by the Community Relations Service was revoked because it is no longer neeeded. Effective May 26, 1986.

Schedule A excepted appointing authority for intermittent employment of guards by the U.S. Marshals Service was revoked because it is no longer needed. Effective May 27, 1986.

Department of the Treasury

Schedule A excepted appointing authority for intermittent laborers in the U.S. Customs Service was revoked because it is no longer used. Effective May 27, 1986.

Schedule B

The following exception is established:

Federal Home Loan Bank Board

Up to 287 positions at GS-15 and below engaged in exploring methods to promote stability in the thrift industry, restore the industry to profitability, and protect individual savers. (This exception incorporates 73 positions previously placed in Schedule B.) No new appointments may be made under this authority after September 30, 1988, Effective May 21, 1986.

Schedule C

Department of Agriculture

One Confidential Assistant to the Secretary. Effective May 12, 1986.

One Staff Assistant to the Secretary. Effective May 16, 1986.

One Private Secretary to the Adminstrator, Rural Electrification Administration. Effective May 23, 1986.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective May 30, 1986.

On Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective May 30, 1986.

Department of Commerce

One Confidential Assistant to the Under Secretary for International Trade. Effective May 6, 1986.

One Congressional Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 7, 1986.

One Private Secretary to the Deputy General Counsel. Effective May 16, 1986.

One Confidential Assistant to the Special Assistant to the Secretary. Effective May 27, 1986.

One Deputy Assistant Secretary for Domestic Operations, International Trade Administration. Effective May 30, 1986.

Department of Education

One Special Assistant to the Director, Intergovernmental Affairs Staff. Effective May 2, 1986.

One Special Assistant to the Director, Legislative Liaison Staff. Effective May 2, 1986.

One Special Assistant to the Assistant Secretary for Postsecondary Education. Effective May 8, 1986.

One Confidential Assistant to the Assistant Secretary for Civil Rights. Effective May 13, 1986.

One Personal Assistant to the Special Assistant to the Secretary. Effective May 22, 1986.

One Confidential Assistant to the Assistant Secretary for Civil Rights. Effective May 30, 1986.

Department of Energy

One Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies. Effective May 12, 1986.

One Secretary (Confidential Assistant) to the Deputy Secretary. Effective May 23, 1986.

Department of Health and Human Services

One Director, Office of Intergovernmental Affairs to the Associate Administrator for External Affairs, Health Care Financing Administration. Effective May 16, 1986.

One Special Assistant to the Associate Commissioner, Administration for Children, Youth and Families, Human Development Services. Effective May 20, 1986.

One Special Assistant to the Executive Assistant to the Secretary. Effective May 23, 1986.

Department of Housing and Urban Development

One Executive Assistant to the Assistant Secretary for Community Planning and Development. Effective May 30, 1986.

Department of Interior

One Special Assistant to the Commissioner, Bureau of Reclamation. Effective May 2, 1986.

One Special Assistant to the Director, Bureau of Land Management. Effective May 12, 1986.

One Director, Management Analysis Staff, to the Assistant Secretary for Policy, Budget and Administration. Effective May 15, 1986.

One Special Assistant to the Assistant Secretary for Indian Affairs. Effective May 30, 1986.

Department of Justice

One Assistant Director, Office of Liaison Services, to the Director. Effective May 12, 1986.

One Staff Assistant to the Assistant Attorney General, Antitrust Division. Effective May 28, 1986.

Department of Labor

One Associate Under Secretary to the Under Secretary. Effective May 1, 1986.

Department of Navy

One Private Secretary to the Assistant Secretary of the Navy (Financial Management). Effective May 9, 1986.

Department of Transportation

One Staff Assistant to the Deputy Secretary. Effective May 9, 1986.

One Receptionist to the Deputy Secretary. Effective May 9, 1986.

One Confidential Assistant to the Assistant Secretary for Governmental Affairs. Effective May 9, 1986.

Department of Treasury

One Special Assistant to the Assistant Secretary for Legislative Affairs. Effective May 9, 1986.

One Legislative Specialist to the Assistant Secretary for Legislative Affairs. Effective May 12, 1986.

One Staff Assistant to the Assistant Secretary, Enforcement and Operations. Effective May 21, 1986.

Action

One Staff Assistant to the Associate Director, Office of Legislative, Public and Intergovernmental Affairs. Effective May 28, 1986.

Agency for International Development

One Special Assistant to the Director, Office of Private and Voluntary Cooperation. Effective May 5, 1986.

One Special Assistant to the Deputy Assistant Administrator for External Affairs. Effective May 9, 1986.

One Special Assistant to the Assistant Administrator for Private Enterprise. Effective May 9, 1986.

One Special Assistant to the Director of Policy Development and Program Review. Effective May 20, 1986.

One Special Assistant to the Assistant Administrator, Bureau for Africa. Effective May 23, 1986.

Commission on Civil Rights

One Special Assistant to a Commissioner. Effective May 6, 1986.

Consumer Product Safety Commission

One Staff Assistant to a Commissioner. Effective May 6, 1986.

General Services Administration

One Confidential Assistant to the Regional Administrator. Effective May 12, 1986.

National Endowment for the Humanities

One Secretary to the Chairman. Effective May 29, 1986.

National Labor Relations Board

One Confidential Assistant to a Board Member. Effective May 22, 1986.

Office of Management and Budget

One Secretary to the Director. Effective May 13, 1986.

One Secretary to the Director. Effective May 22, 1986.

Office of Personnel Management

One Special Assistant to the Counselor to the Director. Effective May 6, 1986.

One Confidential Assistant to the Director. Effective May 6, 1986.

One Special Assistant to the Director, Office of Congressional Relations. Effective May 22, 1986.

Securities and Exchange Commission

One Secretary (Steno) to the Director, Investment Management. Effective May 2, 1986.

One Secretary (Typing) to the Director, Corporation Finance. Effective May 2, 1986.

One Executive Aide (Typing) to the Executive Assistant to the Chairman. Effective May 20, 1986.

Small Business Administration

One Director of Women's Business Ownership, to the Associate Administrator for Business Development. Effective May 28, 1986.

One Special Assistant to the Director, Intergovernmental and Regional Affairs. Effective May 23, 1986.

One Special Assistant to the Assistant Administrator for Public Communications. Effective May 30, 1986.

United States Tax Court

Two Trial Clerks to a Judge. Effective May 13, 1986.

U.S. Information Agency

One Special Assistant (Congressional Relations) to the Director, Television and Film Service. Effective May 20, 1986.

Veterans Administration

One Confidential Assistant to the Administrator. Effective May 9, 1986.

One Confidential Assistant to the Administrator. Effective May 13, 1986.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-14309 Filed 6-24-86; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Production Planning Advisory Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Production Planning Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Research issue paper discussion
- Discussion of salmon and steelhead planning issue paper and genetics considerations
- Columbia River Basin fishery planning model
- Other
- Public comment

DATE: July 1, 1986. 9:30 a.m..

ADDRESS: The meeting will be held in room 171 of the International Trade Center at SeaTac Airport.

FOR FURTHER INFORMATION CONTACT: Ron Eggers, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-14343 Filed 6-24-86; 8:45 am]

BILLING CODE 0000-00-M

SMALL BUSINESS ADMINISTRATION

[Application No. 05/05-0205]

Ozanam Capital Co.—I; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, *et seq.*) has been filed by Ozanam Capital

Company—I, (Applicant), 4711 Golf Road, Suite 706, Skokie, Illinois 60076, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1986).

The general partner of the Applicant is Ozanam Venture Partners, 4711 Golf Road, Suite 706, Skokie, Illinios 60076, whose individual general partners are as follows:

Name:

Janis L. Mullin, 2725 Alison Lane, Wilmette, Illinois 60091

Adam E. Robins, 3631 North Pine Grove Avenue, Chicago, Illinois 60613

It is the intent to offer limited partnership interests in the Applicant through a private offering.

The Applicant, an Illinois limited partnership, will begin operations with $2,400,000 in partnership capital. The Applicant will conduct its activities primarily in the State of Illinois but will consider investments in business in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1985, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Skokie, Illinois.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 18, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-14278 Filed 6-24-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-5214]

Progressive Funding, Inc.; License Revocation

Notice is hereby given that Progressive Funding, Inc. (PFI) 920 South Ocean Boulevard, Palm Beach, Florida 33480 has had its license revoked and no longer operates as a small business investment company under the Small Business Investment Act of 1958, as amended, (the Act). PFI was licensed by the Small Business Administration on April 1, 1983.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the revocation was effective June 13, 1986, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: June 18, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-14280 Filed 6-24-86; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-0372]

Wilbur Venture Capital Corp.; Application for License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Rules and Regulations (13 CFR 107.102 (1986)) by Wilbur Venture Capital Corp., 9271 East Sixth Street, Tucson, Arizona 85710 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. *et seq.*).

The proposed officers, directors and shareholders are:

Name and address	Title or relationship	Percentage of shares owned
Jerry F. Wilbur, Jr., The Four Ranch, P.O. Box 340, Dragoon, AZ 85609.	President	
Thomas W. Schwab, #2 River Bluff Road, Louisville, KY 40207.	Financial Vice President.	3
Oliver Van Hoesen, 9271 E. 6th Street, Tucson, AZ 85710.	Sec. Treasurer	1
J.F. Wilbur III, P.O. Box 388, Sononita, AZ 85636.	Director	0
Wilbur Investment Fund, P.O. Box 340, Dragoon, AZ 85609.	Shareholder	96

The Beneficial holders of the voting securities of the Wilbur Investment Fund are as follows:

Name	Percentage of ownership
Jerry F. Wilbur, Jr., P.O. Box 340, Tucson, AZ 85710	20
Virginia S. Wilbur, P.O. Box 340, Tucson, AZ 85710	20
Nell Ann Wilbur Arnold, 9271 E. 6th St., Tucson, AZ 85710	15
Carrol Boone Wilbur Barnes, 3108 Overton Park West, Fort Worth, TX 76109	15
J. F. Wilbur III, P.O. Box 388, Sononita, AZ 85636	15
Marian Jean Wilbur Woodruff, 2358 Yorkwood, Fayetteville, AK 72701	15

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Tucson, Arizona.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 18, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-14279 Filed 6-24-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application for an All-Cargo Air Service Certificate

In accordance with Part 291 (14 CFR 291) of the Department's Economic Regulations, notice is hereby given that the Department of Transportation has received an application, Docket 43829, from Sundance Airlines, Inc., 18190 Edison Avenue, Spirit of St. Louis Airport, St. Louis, Missouri 63017, for an all-cargo air service certificate to provide domestic cargo transportation. Under the provisions of § 291.12(c) of

Part 291, interested persons may file an answer in opposition to this application within twenty-one (21) days after publication of this notice in the **Federal Register.** An executed original and six copies of such answer shall be addressed to the Documentary Services Division, Department of Transportation, Washington, DC 20590. It shall set forth in detail the reason for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Department's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Paul L. Gretch,

Director, Office of Aviation Operations.

[FR Doc. 86-14311 Filed 6-24-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting

Pursuant to section 10(a) (2) of the Federal Avisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on July 18, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks and Introductions; (2) Approval of Minutes of the Meeting Held on May 16, 1986; (3) Executive Director's Report; (4) Special Committee Activities Report for May and June 1986; (5) Mid-Year Review of the RTCA 1986 Budget; (6) Consideration of Proposals to Establish New Special Committees; (7) Consideration for Approval of Special Committee 153 Report on the Minimum Operational Performance Standard for Airborne ILS Glide Slope Receiving Equipment; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 18, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86-14260 Filed 6-24-86; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 150—Minimum System Performance Standards for Vertical Separation above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation above Flight Level 290 to be held on July 23-25, 1986, in the RTCA Conference Room, One McPherson Seuare, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Twelfth Meeting Held on March 18-20, 1986; (3) Report of Working Group Activities; (4) Data Collection Updates; (5) Review Input Criteria for the Modelling; (6) Resolution of Correspondence Error and Definition of Assigned Altitude Deviation; (7) Monitoring and Performance Assurance; (8) Further Development of the Minimum System Performance Standard; (9) Schedule Review; (10) Other Business; and (11) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 18, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86-14259 Filed 6-24-86; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 155—User Requirements for Future Communications, Navigation and Surveillance Systems, Including Space Technology Applications; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 155 of User Requirements for Future Communications, Navigation and Surveillance Systems, Including Space Technology Applications to be held on July 22, 1986, in Conference Rooms 7A/B/C, Federal Aviation Administration headquarters, 800 Independence Avenue, SW., Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Opening Remarks; (2) Approval of Third Meeting Minutes (held January 17, 1985); (3) Report on Operations Working Group Activities; (4) Report on Technology Working Group Activities; (5) Report on Transition/Economics Working Group Activitities; (6) Consideration of Third Draft of Committee Report; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 17, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86-14261 Filed 6-24-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Cooper Landing, AK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a new Draft Environmental Impact statement

and Draft 4(f) evaluation (EIS/4f) will be prepared for the proposed highway project in the Kenai Peninsula Borough, Alaska.

FOR FURTHER INFORMATION CONTACT: Tom Neunaber, Field Operations Engineer, Federal Highway Administration. P.O. Box 1648, Juneau, Alaska 99801, Telephone (907) 586–7428; Merlyn L. Paine, Central Region Environmental Coordinator, Alaska Department of Transportation and Public Facilities, P.O. Box 196900, Anchorage, Alaska 99519–6900, Telephone (907) 266–1508.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF), will prepare a new Draft Environmental Impact Statement/Draft 4(f) Evaulation on a proposal to improve the Sterling Highway from M.P. 37 to M.P. 60 (Project RF–021–2(15)), near Cooper Landing, Alaska, in the Kenai Peninsula Borough. The proposed improvement would involve the reconstruction of the existing Sterling Highway between Skilak Lake Road and the junction with the Seward Highway, a distance of about 23 miles. An eight mile realignment of the existing facility is currently proposed to avoid unstable slopes, to minimize impacts to cultural resource areas and to eliminate several new bridges over the Kenai River. The proposed realignment would be located between M.P. 55 just south of Sportsman's Lodge and M.P. 46 near the Broadview Guard station. Two routes are being evaluated for this realignment that follow a natural "bench" along the mountain north of and parallel to the Kenai River. Both routes would cross Resurrection Trail and the Kenai National Wildlife Refuge.

The existing highway is the only overland transportation route through the Kenai Mountains to the western and southern Kenai Peninsula. Originally constructed in the early 1950's, this narrow, winding road does not meet current standings for width and alignment. Present and future traffic demands as well as public safety needs deem this project necessary.

Alternatives under consideration include (1) taking no action (no-build), (2) reconstruction on the existing alignment, and (3) the project as currently proposed. Because of the mountainous terrain, low population density, and the length of the project, other modes of transportation are not considered viable alternatives.

To assure that issues and concerns presented in the 1982 draft EIS have not significantly changed, a public and agency scoping meeting will be held in July 1986. Comments and suggestions are invited from all interested parties and should be directed to ADOT&PF at the address provided above. The U.S. Army Corps of Engineers; U.S. Forest Service; U.S. Fish and Wildlife Service; the Alaska Department of Fish and Game; and the Alaska Department of Natural Resources, Division of Parks have been requested to participate as Cooperating Agencies in accordance with 40 CFR 1501.6.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction.)

Barry F. Morehead,

Division Administrator, Federal Highway Administration.

[FR Doc. 86–14290 Filed 6–24–86; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. IP86–07; Notice 1]

Wayne Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Wayne Corporation, of Richmond, Indiana, has petitioned to be exempt from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.205, Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials,* on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

FMVSS No. 205 requires prime glazing manufacturers to certify each piece of glazing to which FMVSS No. 205 applies is designed as a component of any specific motor vehicle by the following markings:

a. The symbol "DOT" and the manufacturer's code mark which is assigned by the National Highway Traffic Safety Administration,

b. the words "American National Standard" or the characters "AS" followed by a number which designates the item of glazing in accordance with FMVSS No. 205 and ANSI Z–26, and,

c. the manufacturer's glazing model number.

Size and legibility requirements are also specified in FMVSS No. 205 and ANSI Z–26. Location of the certification marking is not specified, and the manufacturer may provide additional information on the glazing, if desired.

The Petitioner stated that between April 1, 1985, and March 14, 1986, approximately 2,324 Lifeguard model buses were equipped with driver side windows which were not marked in accordance with section 6 of 49 CFR 571.205.

The petitioner also stated that between July 1, 1985, and March 1, 1986, the driver-side windows of approximately 223 Lifeguard model buses were not marked in accordance with section 6 of 49 CFR 571.205. The driver side windows were marked in accordance to ANSI Z97–1 (Safety Performance Specifications and Methods of Tests for Safety Glazing Material Used in Buildings). Markings in accordance with an architectural glazing code are not consistent with markings for automotive glazing, as specified by FMVSS No. 205.

A summary of the glazing affected is presented in the following table:

Number of lifeguard model buses involved	Location	Marking actually used by Wayne Corporation	Federal standard required marking
2,324	Driver side windows.	Fas temp Solid tempered AS–3 M3 DOT 296	AS–2 M3 DOT 296.
223	Driver side windows.	Guardian Charleton Mich ANSI Z971 1984 SGCC 933/18 V 16CRF 1201 II CGSB 12–GP–1 BS 6202 1981A	AS–2 M3 DOT 22.

The Wayne Corporation reported that both the Fas Temp Glass and the Guardian Glass meet all other requirements of 49 CFR 571.205, Glazing Materials and ANSI Z26.1, Item 2.

Thus, although the windows are marked AS–3, petitioner claims that the glazing in all other respects complies with the requirement of Item AS–2 glazing which is permitted for these locations.

The main differences between these two items of glazing is that Item AS–3 tempered glass is not required to be abrasion resistant, nor is a minimum level of light transmission required because the glazing is permitted only in locations which are not requisite for driver visibility. Item AS–2 glazing is permitted for use in locations immediately adjacent to the driver, whereas Item AS–3 glazing is not.

Interested persons are invited to submit written data, views and arguments on the petition of Wayne Corporation described above. Comments should refer to the docket number and be submitted to: Docket

Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 25, 1986.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on June 20, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-14380 Filed 6-24-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 21-86]

Treasury Notes, Series AB-1988

Washington, June 19, 1986.

The Secretary announced on June 18, 1986, that the interest rate on the notes designated Series AB-1988, described in Department Circular—Public Debt Series—No. 21-86 dated June 12, 1986, will be 7 percent. Interest on the notes will be payable at the rate of 7 percent per annum.

John A. Kilcoyne,

Acting Fiscal Assistant Secretary.

[FR Doc. 86-14332 Filed 6-24-86; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 122
Wednesday, June 25, 1986

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

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., July 3, 1986.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: CLOSED.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-14388 Filed 6-23-86; 8:56 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., July 11, 1986.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: CLOSED.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-14389 Filed 6-23-86; 8:56 am]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., July 18, 1986.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-14390 Filed 6-23-86; 8:56 am]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., July 25, 1986.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-14391 Filed 6-23-86; 8:56 am]

BILLING CODE 6351-01-M

5

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 30, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 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: June 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-14386 Filed 6-20-86; 5:10 pm]

BILLING CODE 6210-01-M

6

POSTAL SERVICE

(Board of Governors)

Amendment to Notice of Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 22164, June 18, 1986.

PREVIOUSLY ANNOUNCED DATE OF MEETING: June 25, 1986.

CHANGE: The place of the meeting is changed from Denver, Colorado, to U.S. Postal Service headquarters, 475 L'Enfant Plaza, SW., Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,

Secretary.

Paul J. Kemp,

Alternate Liaison Officer for the U.S. Postal Service.

[FR Doc. 86-14466 Filed 6-23-86; 2:45 pm]

BILLING CODE 7710-12-M

7

POSTAL SERVICE

(Board of Governors)

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, July 8, 1986, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, July 7, 1986, but it will consist entirely of briefings and not open to the public.

Agenda

Tuesday Session

July 8, 1986-8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 2-3, 1986.
2. Remarks of the Postmaster General.
3. Report on Operations Support Group Programs.

(Mr. Coughlin, Senior Assistant Postmaster General, Operations Group.)
4. Quarterly Report on Financial Performance.
(Mr. Porras, Assistant Postmaster General, Department of the Controller.)
5. Capital Investments:
a. Topeka, Kansas, General Mail Facility.
(Mr. Lee, Regional Postmaster General, Central Region.)
b. Upgrade Postal Data Center Central Process Units.
(Mr. Hunter, Senior Assistant Postmaster General, Management Information and Research Technology.)
6. Tentative agenda for August 4–5, 1986, meeting in San Francisco, California.

David F. Harris,

Secretary.

[FR Doc. 86–14467 Filed 6–23–86; 2:45 pm]

BILLING CODE 7710-12-M

8

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1369]

TIME AND DATE: 9:00 a.m. (EDT), June 27, 1986.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on June 13, 1986.

Action Items

Old Business Items

1. Supplement to personal services contract with Management Analysis Company, San Diego, California, Providing for Services to TVA in Connection with the Implementation of the Regulatory Performance Plan for the Browns Ferry Nuclear Plant, Requested by the Office of Nuclar Power.

New Business Items

A—Budget and Financing

A1. Fiscal year 1987 capital budget financed from power proceeds and borrowings (exclusive of nuclear capital facilities), comprising expenditures for ongoing and new projects during the fiscal year and the estimated total project cost for those projects.

B—Purchase Awards

B1. Amendment to indefinite quantity term agreement (84KJ3–663301–2) with Wang Laboratories, Inc. for automated office systems.

C1. Renewal power contract with Sweetwater, Tennessee.

C2. Contract No. TV–64524A between Georgia-Pacific Corporation and TVA for sale of by-product gypsum from Paradise Steam Plant.

C3. Supplement to Contract No. TV–50942A between Electric Power Research Institute and TVA covering arrangements for a test program for development and implementation of the Atmospheric Fluidized Bed Combustion Pilot Plant Project.

D—Personnel Items

D1. Supplement to personal services contract with General Physics Corporation, Columbia, Maryland, for engineering and related support services at Browns Ferry Nuclear Plant, requested by Office of Nuclear Power.

D2. Supplement to personal services contract with Gilbert/Commonwealth, Inc., Reading, Pennsylvania, providing for the performance of general engineering, design, and architectural services, requested by Office of Nuclear Power.

D3. Consulting contract with Charles F. Reeves of Belmont, Massachusetts, for consulting services in the broad areas of civil, mechanical and construction engineering with emphasis on structures, piping, and equipment response to earthquake ground motion, requested by the Office of Nucler Power.

E—Real Property Transactions

E1. Grant of permanent easement to Tri-State Electric Membership Corporation for location of its new substation facility, affecting a 3.84-acre portion of the Blue Ridge Hydro Plant Property.

E2. Filing of condemnation cases.

F—Unclassified

F1. Agreement between TVA and Northern States Power Company covering arrangements for cooperation on a cost-sharing basis in a manifold assembly testing program.

F2. Supplement No. 4 to Subagreement No. 1 under the technical assistance plan and interagency agreement between TVA and U.S. Department of Energy (TV–68345A) providing for Phase II of the TVA Weld Quality Evaluation for Watts Bar Unit I.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: June 20, 1986.

W.F. Willis,

General Manager.

[FR Doc. 86–14399 Filed 6–23–86; 9:43 am]

BILLING CODE 8120-01-M

Federal Register

Wednesday
June 25, 1986

Part II

Occupational Safety and Health Review Commission

29 CFR Part 2200
Rules of Procedure; Proposed Rule

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes a thorough revision of the procedural rules for adjudicative proceedings before the Occupational Safety and Health Review Commission and its Administrative Law Judges. The Commission's experience under its existing procedural rules, including the adjudication of various procedural issues, revealed a need for a comprehensive review of those procedural rules. This review has led to numerous proposed changes in the procedural rules, including the codification of rules that had been developed by Commission decisions and the modification of several existing rules to remedy recurring procedural problems. The revised regulations will allow the parties to conduct their litigation before the Commission with greater simplicity, speed and economy.

DATE: Comments must be submitted on or before July 10, 1986.

ADDRESSES: Comments may be mailed to— Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission, Room 402–A, 1825 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr. at (202) 634–4015.

SUPPLEMENTARY INFORMATION:

Development of the Proposed Rules

Adjudications by the Occupational Safety and Health Review Commission and its Administrative Law Judges are governed by the regulations published at 29 CFR Part 2200—Rules of Procedure. Based on its experience under these procedural rules, the Commission concluded that significant revisions of the rules were necessary to remedy several problems that had arisen. However, instead of revising the rules on a piecemeal basis, the Commission decided to undertake a thorough and comprehensive review of all of the rules in Part 2200. The proposed revised rules in this document are the product of that comprehensive review.

The Commission's rules have not been comprehensively amended since they were initially adopted in 1972. Several changes, including some significant revisions, have been made in the rules since their initial promulgation, but these revisions have been piecemeal. Not since 1976 has the Commission looked at Part 2200 as a whole. Although a major proposal was published at that time, 41 FR 26707–26716 (June 29, 1976), no action was taken. The last significant changes in the rules were made in 1979.

In view of these and other factors indicating a need for a thorough review of the Commission's rules, the Commission's Chairman, E. Ross Buckley, appointed a committee to study the rules and to recommend changes. The committee consisted of two of the Commission's Administrative Law Judges, the General Counsel, the Deputy General Counsel and the Executive Secretary. This committee developed a comprehensive set of recommendations, which were then considered and substantially amended by the Commission during a series of meetings opened to the public under the Government in the Sunshine Act, 5 U.S.C. 552b. The proposed rules set forth in this document were developed through this deliberative process.

Definitions

Three of the definitions in § 2200.1 would be modified. The definition of "Act" in paragraph (a) has been updated to reflect the codification of the Occupational Safety and Health Act in the United States Code. The definition of "affected employee" in paragraph (e) has been revised to reflect current Commission precedent on employee access. Paragraph (f) (defining "Judge") has been modified to reflect the change in title from "hearing examiner" to "administrative law judge" that Congress made in the Occupational Safety and Health Act in 1978.

In addition, a new definition would be included. Proposed paragraph (n) (defining "pleadings") is new. It has been added so that the new pleadings rules can use the word "pleadings" instead of repeating the list of all pleadings in each rule. The provision is a rough analogue of Federal Rule of Civil Procedure (FRCP) 7(a). It also makes clear that, as in federal practice, a motion is not a pleading. See 2A "Moore's Federal Practice" ¶ 7.05, pp. 7–14 to 7–15 (1985).

Scope of Rules and Related Matters

Paragraph (c) of § 2200.2 would be added as a new provision. Paragraphs (a) and (b) are unchanged. Paragraph (c) is a general admonition that is based on similar provisions in the FRCP, many state codes, and the rules of many other governmental agencies. The language has been interpreted as implying a desire to achieve simplicity, speed and financial economy in litigation. It is a statement of general policy in the rules that could be used to guide the Commission and its Judges in exercising their discretion under other provisions of these rules. For example, it could provide guidance in ruling on such matters as discovery requests that could be quite expensive or requests that are sought over a long period of time.

Retained Rules

The Commission proposes to retain several of the existing rules in Subpart A in their present form. These are the rules published at §§ 2200.3, 2200.7, 2200.9 and 2200.10.

Computation of Time

Under the proposal, paragraph (a) of § 2200.4 would not be changed. Paragraph (b) would be revised to make clear that the rule does not apply to petitions for discretionary review and that the period of time for filing a PDR is governed by proposed § 2200.91(b). The present paragraph (b) makes no exception for a PDR. Paragraph (b) has also been expanded to provide that service within the meaning of the rule includes issuance of documents by the Commission or Judge.

Extensions of Time

It is proposed that § 2200.5 be completely revised. Several comments were received from the Judges concerning the fact that the present rule does not expressly permit the untimely filing of a request for time extension. The present rule states that the request for extension must be received in advance of the date on which the document is due to be filed. The Commission in *Carhar Contracting Co.*, 81 OSAHRC 4/F14, 9 BNA OSHC 1237, 1981 CCH OSHD ¶ 25,133 (No. 80–3347, 1981), implicitly endorsed more flexibility concerning enlargements of time than the present rule permits.

The proposed rule expressly provides that an extension of time can be granted even though the request is filed after the designated time for filing has expired, provided good cause for the delay is shown. The proposed rule requires that all requests for extensions be made by written motion. The present rule does not require a written motion and many attorneys practicing before the Judges tend to conduct their motions' practice by telephone. This sometimes leaves an incomplete record and, on occasions, the other party has not even been advised of the request. A written motion eliminates these problems.

The proposed revision allows the Judge to act upon the motion without waiting for the expiration of the ten-day

response period provided by proposed § 2200.40(c). The Commission is of the view that there is no reason why such motions may not be ruled upon during the ten-day response period. Motions for extension are often made at the last possible moment, and there is no reason to hold a ruling in abeyance for ten days since such motions do not affect the merits of the case.

Record Address

It is proposed that § 2200.6 be revised to require that every pleading or document contain record address information. On some occasions, the current address of the party or his representative has not been furnished and this has caused a problem in furnishing notice of hearing and orders. Having this information on every pleading or document would assist in determining the correct address if a party or intervenor failed to notify the Commission of a change.

Filing

The Commission proposes to make several minor revisions in § 2200.8. Under the present paragraph (a), parties are required to file their papers with the Judge until the issuance of the Judge's decision. After that event, the parties must file their papers with the Executive Secretary. Under the proposed paragraph (a), this transition occurs when the Judge's report is docketed with the Commission rather than when the Judge's decision is issued to the parties. Similar revisions have been made throughout the proposed rules to reflect the Commission's view that the Judge retains jurisdiction over the case until his report has been docketed with the Commission. See proposed § 2200.90.

Paragraph (b) of the rule would not be changed. Paragraph (c) of the proposed rule is a new provision. Past experience has revealed that parties are often unsure as to how many copies of documents need to be filed. This has resulted in needless copies of documents being filed by the parties. The rule has been revised to make explicit the number of copies to be filed before the Judge and the Commission.

Paragraph (c) of the present rule has been revised in paragraph (d) of the proposed rule to reflect that petitions for discretionary review are filed at the time of their receipt. Under the present rule, a party can mail its petition on the last day of the 30-day review period with the result that it legally might be "filed" in time but not actually be before the Commissioners for review. The proposed change eliminates this possibility and is consistent with the proposed change in § 2200.4.

Trade Secrets and Other Confidential Information

Under the proposal, § 2200.11 would be greatly expanded. The present rule does not specify the procedure for obtaining a protective order for trade secrets. The Commission's experience is that parties that seek protection for alleged trade secrets do not specifically identify the alleged trade secrets, and that neither the proponents nor the opponents of a protective order support their positions with evidence. The proposed rule codifies much of the Commission's case law on the procedure for obtaining a protective order, which is akin to the procedure for obtaining a summary judgment. *See Owens-Illinois, Inc.*, 78 OSAHRC 105/C8, 6 BNA OSHC 2162, 2168–2169, 1978 CCH OSHD ¶ 23,218, p. 29,073 (No. 77–648, 1978). It adds a provision permitting the record to be temporarily sealed. Like the present rule, the proposed rule uses the term "person" rather than "party" to describe who may apply for a protective order.

Under the proposed rule, the Judge must, in all cases, pass on the merits of the trade secrets claim. *Owens-Illinois, Inc.*, implies that a protective order should be entered where the Secretary does not interpose an objection. The Secretary in many instances does not oppose a motion for protective order for trade secrets even though there may not in fact be a bona fide trade secret. He concurs in order to avoid further work on his part. Since section 12(g) of the Act requires the Commission's records to be open to the public, a conflict could arise between § 12(g) requirements and trade secret protective orders where no determination has been made on the merits of the motion.

Citation Forms

Proposed § 2200.12 is a new rule that updates and expands the rule presently found at § 2200.30(d). It codifies current Commission practice on the citing of cases. The rule is included for informational purposes, as a guide to practitioners before the Commission. Although the rule uses the term "should," counsel representing parties are nevertheless expected to be guided by the rule and thereby to fulfill their responsibilities to be helpful and informative to the Commission.

Party Status

Paragraph (a) of § 2200.20 has been revised under the proposal to insert a time limitation on the election of party status and to make clear that affected employees and their unions (or other authorized employee representatives) have only those rights conferred by the Act.

The present rule allows affected employees or their representative to elect to participate at anytime before the commencement of the hearing or after the hearing upon a showing of good cause. The present rule does not place any limitations on the rights of affected employees or their union once an election is made.

When party status is granted on the day of the hearing, the other parties can be prejudiced since the affected employees or the union party may raise matters that had not previously been raised. Affected employees or their representatives are encouraged to seek party status, but the election should be made in sufficient time to apprise all parties of the election prior to hearing. The proposed rule requires the election to be made at least ten days before the hearing.

The same time limitation has been inserted in paragraph (b), thereby restricting the right of employers to elect party status in a proceeding initiated by an employee or union notice of contest.

Intervention

Paragraph (a) of § 2200.21 has been modified to insert a time limitation on the right to intervene. Under the proposed rule, the petition for leave to intervene may be filed at any time prior to ten days before commencement of the hearing. The time limitation is consistent with the proposed revision to § 2200.20.

Representation of Parties and Intervenors

Proposed § 2200.22 is in a different format than the present rule, but it includes the provisions of the present rule's paragraphs (a), (b), (c) and (d). Paragraph (e) of the present rule would be deleted because a new rule, proposed § 2200.23, has been developed to cover the subject of withdrawals (as well as appearances).

A new provision indicating that corporations or unincorporated associations may be represented by an authorized officer or agent has been added to paragraph (a) of § 2200.22. In addition, paragraph (d) of the present rule has been included in somewhat different language in paragraph (a) of the proposed rule.

Paragraph (b) of the proposed rule would change the rule in present paragraph (c) to allow members of collective bargaining units to elect party status if the authorized employee representative does not so elect. The proposal codifies the Commission's holding in *United States Steel Corp.*, 83

OSAHRC 28/D12, 11 BNA OSHC 1361, 1983 CCH OSHD ¶ 26,523 (No. 80-2425, 1983).

Proposed paragraph (c) makes a positive statement that affected employees who are not members of a collective bargaining unit may also elect party status. This addition was made to be certain there was no misunderstanding as to the rights, under proposed § 2200.20(a), of employees who are not members of a collective bargaining unit.

Appearances and Withdrawals

Proposed § 2200.23 is a new rule. The present rules have no provisions relating to when or how an appearance is made by a representative in proceedings before the Commission. On some occasions, the representative for the party has appeared at the hearing without having filed an entry of appearance with the Commission even though he has been actively representing the interests of the employer. This has occurred in numerous cases where new counsel has been retained by an employer shortly before the hearing. Paragraph (a) details how an appearance is to be made before the Commission.

Paragraph (b) deals with the problem of counsel withdrawing from a case. This has been a problem because, in most cases, withdrawal occurs just prior to a hearing and, in some cases, it occurs at the commencement of the scheduled hearing. Present § 2200.22(e) allows an automatic withdrawal by filing a notice of withdrawal and serving a copy on all the parties and intervenors. Under the proposed rule, a motion to withdraw would not be granted automatically.

Revision of the Rules on Pleadings and Motions

The Commission proposes to substantially revise Subpart C of the Commission's rules, governing pleadings and motions. These proposed rules would impose strict requirements on pleadings, particularly complaints. Their philosophy departs significantly from that of the FRCP, which permits but does not require the specificity that would be required under the Commission's proposed rules.

Pleadings filed under the present rules are of limited value. One primary function of a pleading is to formulate and narrow the issues. Yet, pleadings filed under the present rules rarely do this. Except for introducing an allegation of commerce coverage and raising affirmative defenses, pleadings typically add nothing to the citation and the notice of contest. In the usual case, the Secretary files a standardized complaint that merely incorporates the citation by reference and adds an allegation of commerce coverage. Because the present rules do not demand more detail than the citation contains, the Solicitor's Office generally does not review the case and focus on the issues until long after the complaint is filed. As a result, problems with the Secretary's case that could be discovered and corrected at an early stage are frequently overlooked and the proceedings are unnecessarily prolonged. The problem is continued in the answers filed by employers. Because the typical answer broadly denies the substantive allegations of the complaint, i.e., that violations occurred as described in the citation, it does not narrow the issues significantly. In fact, the only narrowing of the issues that occurs in the typical answer is an admission of the allegation of commerce coverage. Although answers sometimes plead affirmative defenses, the present rules do not expressly require that they be pleaded.

The Commission therefore proposes to revise its rules to require much more detail and forethought in the pleadings. The proposed rules require the complaint to separately allege each element of the Secretary's case. Concomitantly, the proposed rules require that the employer's answer "specifically admit or deny each [of the detailed allegations of the complaint]." The employer must also plead affirmative defenses. The proposed rules additionally incorporate the new implied certification in FRCP 11. The Commission anticipates that pleadings filed under the proposed rules would more sharply define and limit the issues sooner, isolate weaknesses in a party's claim or defense at an early stage, and thereby limit the scope and number of cases that go to hearing.

General Provisions Relating to Pleadings and Motions

Paragraph (a) of the proposed § 2200.30 corresponds to paragraph (b) of the present rule. It prescribes uniform margins of 1½ inches.

Paragraph (d) is consistent with FRCP 8 and Commission precedent, both of which permit and indeed encourage alternative pleading.

Paragraph (f) is intended to alleviate the fear of a party that, by pleading a matter, he necessarily assumes the burden of proving it.

Paragraph (g) makes clear that, under the proposal, the Commission and its Judges could enforce the new pleadings rules by refusing to accept documents that do not comply with them.

Retained Rule

The Commission proposes that § 2200.31 be retained in its present form.

Signing of Pleadings and Motions

Proposed § 2200.32 corresponds to present § 2200.30(c). It reflects the 1983 change to FRCP 11, stating that the signature of a party's representative constitutes his certificate that, to the best of his knowledge and belief, "formed after reasonable inquiry," the paper is "well grounded in fact and is warranted by existing law or a good faith argument for" the modification of existing law.

Notices of Contest

Proposed § 2200.33 corresponds to present § 2200.32. The proposed rule enlarges the time for the Secretary to forward to the Commission papers that indicate an intent to contest. That period is changed from 7 days to 15 working days. The proposed rule also adheres more closely to the language of section 10 of the Act.

Employer Contests

Proposed § 2200.34 includes provisions found in the present § 2200.33 as well as several new provisions. Paragraph (a) extends the time for filing a complaint to 30 days; the present rule at § 2200.33(a)(1) prescribes a 20-day period. The longer period is provided in order to allow the Secretary to comply with the detailed pleading requirements in the rest of the rules.

Paragraph (b) borrows from FRCP 12(e) on motions for a more definite statement. The Commission rule, however, includes a filing deadline and the statement that prompt filing of an amended complaint may obviate a ruling on the motion.

Paragraph (d) requires that the answer be filed within 30 days; the present rule at § 2200.33(b)(1) imposes a 15-day deadline. The proposed rule also prescribes deadlines if an amended complaint is filed voluntarily before the answer is served or is compelled by Commission order, a motion to dismiss is denied, or a motion for a more definite statement is denied.

Complaints

Proposed § 2200.35 replaces and greatly expands upon present § 2200.33(a)(2). Paragraph (a) makes clear that incorporation by reference of the citation in the complaint does not satisfy the proposed pleading requirements. Paragraph (b) is the heart of the proposed rule. It would require that the Secretary state each allegation necessary to support a citation alleging

a violation of the Act. Paragraph (c) requires the Secretary in a section 5(a)(1) case to identify the alleged hazard and specify the feasible means of abating the violation. Paragraph (d) requires the Secretary, when violations of certain general standards are alleged, to identify the alleged hazards and specify feasible abatement methods or, if the standard permits the use of alternative methods, to identify those methods not used. Paragraph (f) permits the Secretary to amend his complaint once as a matter of course before the answer is served, in the circumstances stated. The provision also expressly crossreferences FRCP 15 as the rule governing all other amendments to pleadings.

Answers

Proposed § 2200.36 replaces and greatly expands upon present § 2200.33(b)(2). This proposed rule would require the employer to "specifically" admit or deny each allegation of the complaint. Paragraph (b) expressly requires that the employer state in the answer matters that may constitute an avoidance or affirmative defense. Paragraph (b) also includes, for the benefit of the pro se employer, examples of some avoidances and affirmative defenses, but it makes clear that the employer who pleads these matters may argue that the burden of persuasion is nevertheless on the Secretary.

Redesignated Rules

Under the proposal, three rules presently in Subpart C, §§ 2200.34, 2200.35, and 2200.36, would be redesignated, as §§ 2200.37, 2200.38 and 2200.39, respectively. The rules themselves, however, would not be changed.

Motions and Requests

Proposed new § 2200.40 includes the present § 2200.37 and several new provisions. The present rule at § 2200.37 contains no substantive provisions concerning motions. It provides only that the party upon whom the motion is served has 10 days from service to file a response. The rule has been expanded under the proposal to provide that the motion be in writing, state with particularity the grounds on which it is based, state whether the other party objects to the motion, and set forth the relief sought. There is presently little uniformity in motions filed by the parties. Some motions filed have been deficient in providing the information specified in the proposed rule. The proposal also would require that motions be separately stated, in accordance with the statement of the Commission in *McWilliams Forge Co.*, 84 OSAHRC 36/C12, 11 BNA OSHC 2128, 1984 CCH OSHD ¶ 26,979 (No. 80-5868, 1984).

The Commission's position is that motions should be made in writing. Too many motions are presently being made orally over a telephone. The proposed rule requires motions to be in writing, except that, in exigent circumstances, they may be made orally and followed by a written motion. Paragraph (c) continues the 10-day time to file responses but provides that procedural motions may be ruled upon prior to the expiration of the time for response. Where a ruling is made prior to the 10-day response period, the party adversely affected may file a motion for reconsideration.

Sanctions for Failure To Obey Rules

Proposed new § 2200.41 would replace and expand upon present § 2200.38. The present rule at § 2200.38 pertains to sanctions imposed for failure to file a pleading. The new rule has been expanded to cover the failure by a party to obey any provision of the Commission's Rules of Procedure. For example, proposed § 2200.41 could be used to assist the Judge in disposing of cases where the current address of the employer or his representative is unknown. Or it could be used in cases where the employer simply fails to respond to any order or communication after the filing of the notice of contest. In such cases, the employer in essence abandons his rights and makes no further communication even though orders and notices are sent to him at his last known address. The proposed rule further makes clear the type of sanction that might be imposed. Under the present rule, the party is advised that his failure to file any pleading may constitute a waiver to further participation in the proceeding. The present rule does not state, however, that the Commission or Judge may enter a decision against that party. The new rule, in contrast, specifies that the party may be declared in default and allows the Commission or Judge to enter a decision against him or to strike any pleading or document not filed in accordance with the rules.

Revision of the Rules on Prehearing Procedures and Discovery

Subpart D of the Commission's rules, governing discovery and other prehearing matters, has also been substantially revised under the proposal. The proposed rules provide more specifics concerning discovery procedures. A comprehensive rule, § 2200.52, on general provisions concerning discovery has been included. Specific methods of discovery are covered in §§ 2200.53, 2200.54, 2200.55 and 2200.56.

Prehearing Conferences and Orders

Section 2200.51 has been totally rewritten. The proposed rule attempts to stimulate greater use of prehearing conferences and includes a statement that a prehearing conference may be conducted by a telephone conference call. This provision appears in the rules of several other agencies and is aimed at economy for both the government and private parties. A telephone conference call should be sufficient in most cases, and the Judge should encourage its use since it can save money for both parties.

Under the proposed rule, FRCP 16 is expressly made applicable to proceedings before the Judges. The provisions of the Federal Rule are supplemented by the provisions of the Commission's rule. For example, FRCP 16 lists six subjects that are properly considered at a prehearing conference and proposed § 2200.51 adds three more.

FRCP 16 requires the Judge to issue an order detailing the agreements reached during the conference. In the past some Judges have issued such an order, but others have simply left the parties to their recollection of what transpired at the conference. Under the present rule, it is discretionary with the Judge as to whether to issue such an order. In one case, the Judge failed to issue an order and there was total disagreement some two months later as to what had been agreed to by the parties. A written order would avoid last minute disputes over agreements reached by the parties.

The proposed rule also provides for an alternative procedure when a prehearing conference is not held. Under this procedure, the parties would be ordered to confer with each other and to prepare an agreed prehearing order covering the matters listed in the rule.

General Provisions Governing Discovery

Proposed § 2200.52 is a new rule. The Commission has concluded that an expansion of its own discovery rules is preferable to relying on the FRCP. Accordingly, proposed § 2200.52 sets forth general provisions for discovery. As noted in proposed paragraph (a), however, provisions of the FRCP would continue to apply to discovery procedures to the extent that they are not covered under the Commission's revised rules.

Proposed paragraph (a) lists the types of discovery that would be available in Commission proceedings and the

corresponding Commission rules that would govern each type. Under the proposed revised rules, requests for production of documents or things, requests for permission to enter upon land or other property for inspection and other purposes, a limited number of requests for admissions, and a limited number of interrogatories would be allowed without leave of the Commission or Judge. This deviates from present § 2200.53, which requires a special order from the Commission or Judge to serve any interrogatories. Permission of the Commission or Judge would still be required to conduct discovery depositions.

Generally, under the proposed rules, discovery could be compelled through the sanctions provisions of the Commission's rules or of the FRCP, if no Commission rule applies. Proposed paragraph (a)(1) states, however, that these sanction provisions cannot be applied to compel an entry upon land or other property for inspection or other purposes. The Commission is of the view that, like search warrants, orders compelling entry upon land cause governmental intrusion onto private property and should therefore be subject to the same requirements laid down for search warrants in *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978). Accordingly, under the proposed rules, entry upon land for discovery purposes would be compelled only through a search warrant issued by a federal district court.

The proposed rules are premised on the view that discovery should commence at an early date. The new rule at § 2200.52(a)(2) specifies that discovery can commence at any time after the filing of the first responsive pleading. Under present procedures, most discovery does not commence until all pleadings have been filed and an order of the Judge has been issued allowing interrogatories and depositions. Delays in discovery are often the basis for several continuances in a case. The parties should be encouraged to commence the discovery process at an early date.

Proposed paragraph (b) on the scope of discovery is essentially a shortened version of FRCP 26(b)(1). Proposed paragraph (c) on the limitations of discovery essentially codifies case law under the FRCP and the Commission's rules. Proposed paragraph (d) on protective orders is an adaptation of FRCP 26(c). Proposed paragraph (e) on sanctions for failure to comply with discovery orders is an adaptation of FRCP 37.

In addition, a paragraph has been added on unreasonable delays in conducting discovery. Delay in conducting discovery has been a constant problem in Commission proceedings. Accordingly, under proposed paragraph (f), unreasonable delay could result in a termination of the party's right to obtain discovery. Proposed paragraph (a)(2)'s time limit on discovery would also aid the Judge in persuading the parties to conduct their discovery without undue delay.

Production of Documents and Things

Proposed § 2200.53 is also a new rule. The present rules make no reference to the production of documents and things or to entry upon land for inspection and other purposes; hence, Rule 34 of the FRCP is applicable. Unfortunately, many of the attorneys appearing before the Judges file motions requesting leave to request documents or to conduct discovery inspections. For some unexplained reason, they seem to think permission of the Judge is required. In some instances, for example, parties have declined to turn over documents until the Judge has issued an order granting the parties the right to seek documents. This confusion has caused unnecessary delays in the processing of cases. This new rule, read in conjunction with proposed § 2200.52(a), would make it explicit that the permission of the Judge or Commission is not required for this type of discovery.

Requests for Admissions

Proposed § 2200.54 corresponds to, but is substantially different from, present § 2200.52. Under paragraph (a) of the proposed rule, the parties would be given an automatic right to serve 25 requested admissions. Any requests in excess of 25 would have to be authorized by the Judge. The limitation has been imposed because the number of interrogatories under the proposed rules is also limited. In the absence of this limitation, parties might unduly expand their requests for admissions to compensate for the limitation on the number of interrogatories.

Paragraph (c) of the proposed rule differs substantially from present § 2200.52(a). Under the present rule, a request is deemed admitted unless a written response is received in fifteen days. Many instances have occurred where a pro se party has failed to understand the significance of his failure to reply and, as a result, has been saddled with admissions that were not correct. The proposed rule grants the Judge or the Commission the authority to permit withdrawal or modification of admissions under certain circumstances. The present rule at § 2200.52(a) has been construed to mean that the Judge lacks authority to permit withdrawal or modification. *See West Point-Pepperell, Inc.*, 77 OSAHRC 118/E11, 5 BNA OSHC 1809, 1977-78 CCH OSHD ¶ 21,733 (No. 76-909, 1977) (ALJ).

Interrogatories

Present § 2200.53 covers both interrogatories and discovery depositions. Under the proposed rules, these two types of discovery would be governed by separate rules, §§ 2200.55 and 2200.56, respectively. Present § 2200.53 does not allow interrogatories except by special order of the Judge or Commission. The proposed rule at § 2200.55 allows service of 25 interrogatories without leave of the Judge or Commission. The limitation on the number of interrogatories obviates the need for a party to seek the permission of the Commission or Judge before serving interrogatories.

Past difficulties concerning interrogatories have centered on attempts to serve an excessive and unnecessary number of interrogatories. In some instances, parties have served voluminous sets of standardized interrogatories that included several bearing little or no relevance to the proceeding at hand. In accordance with the views of the Commission's Judges, the proposed rule therefore would limit the number of interrogatories to 25, a reasonable number for the average case.

Depositions

New § 2200.56 would govern depositions, a matter that is now covered under present § 2200.53. The Commission's Judges have strongly expressed their view that the Commission should retain the requirement for an order of the Commission or Judge to take depositions. Many Judges believe they need to control this method of discovery to prevent abuse and to protect the opposing party from costly proceedings. Others believe that depositions are often taken when they add little to trial preparation but add considerably to costs and delay. The new rule continues to require an order of the Commission or Judge prior to taking depositions, except where the depositions are taken by mutual agreement of the parties. A strict reading of the present rule at § 2200.53 indicates that the parties are prohibited from conducting any depositions except by order of the Commission or Judge. Where both parties are in agreement that a deposition is needed, there is no good reason why they should have to seek an order of the Commission or Judge before taking the deposition. It seems unlikely that a Judge would deny

such a request since both parties concur in their need for the deposition.

The proposed rule requires a ten-day notice to the other parties prior to the taking of a deposition. The parties would be allowed to waive this requirement. The present rule has no such notice requirement. The proposed rule also makes clear who will pay for the deposition. In addition, the new rule specifies that certain matters relating to depositions would continue to be covered by the Federal Rules of Civil Procedure. Thus, FRCP 30 would be made expressly applicable to the procedures followed in taking depositions, and FRCP 32 would be made expressly applicable in determining how the depositions are to be used.

Subpenas

No change is proposed in the rule on subpenas. The present rule at § 2200.55, however, would be redesignated as § 2200.57.

Notice of Hearing

Section 2200.60 has been revised, under the proposal, to include a new provision, which advises the parties that the Judge will designate a place and time of hearing that involves as little inconvenience and expense to the parties as practicable. The present rules make no reference to the place of hearing. Since the Commission now has only four offices, the Judge assigned to a particular case may be located some distance from the employer. Instances have arisen where the employer had the impression that he would have to travel to the city where the assigned Judge was located.

The rule has also been revised to distinguish between hearings that are being set for the first time and those that are being rescheduled. Less advanced notice is required in the latter instance. The rule also specifies other circumstances where a shorter period of advance notice is permitted.

Submission of the Case Without a Hearing

Proposed § 2200.61 is a new rule. It formalizes and encourages a practice that has existed for several years. The proposed rule simply advises the parties that cases can be fully stipulated. Formalizing the practice would encourage and stimulate its use by the parties in certain types of cases, e.g., where the dispute is legal and not factual.

Postponement of the Hearing

Proposed § 2200.62 corresponds to present § 2200.61. Motions for postponement are a constant problem for the Commission's Judges. In most instances, the motions are made at the last minute even though the moving party knew of the need for a continuance long before he filed the motion. This has resulted in the Commission having to pay appearance fees to court reporters because they were not advised of the cancellation 24 hours prior to the scheduled hearing date. The proposed rule requires that the motion be received by the Judge at least seven days before the date of hearing, unless good cause is shown for a late filing, and that it state the position of the other parties. This would stimulate the parties to file their motions at an earlier date. The proposed rule also attempts to deal with the problems of conflicting engagements of counsel and employment of new counsel. In many instances, attorneys have waited until the last minute to advise the Judge that they have a conflicting engagement.

Paragraph (c) of the present rule has been construed to limit the authority of the Judge to continue a case. Under this interpretation, the Judge cannot grant a continuance in excess of 30 days. This appears to be too short a period. Paragraph (d) of the proposed rule would permit continuances in excess of 60 days with the concurrence of the Chief Administrative Law Judge (Chief Judge). This provision formalizes the present informal policy of the Commission in allowing the Chief Judge to authorize continuances in excess of 30 days.

Stay of the Proceedings

Proposed § 2200.63 is a new rule. It grants authority to the Judge, with the concurrence of the Chief Judge, to stay a case assigned to him. The Judge has no such authority under the Commission's present rules. The Commission has been ruling on stays. In many instances the motion for a stay is filed a day or two before a scheduled hearing. This places the Judge in a predicament concerning the scheduled hearing since it is not always easy to get an immediate ruling on a motion for a stay from the Commission.

The Commission's position is that, once a case has been assigned to a particular Judge, he has jurisdiction over it. By allowing rulings at the Judge's level, this new rule should result in faster rulings for the parties and also eliminate a source of problems for the Commission members and their staffs. The proposed rule does not grant unbridled discretion to the Judge since he would have to have the concurrence of the Chief Judge to grant a motion for stay. The Commission anticipates that the Chief Judge would be able to make certain that the Judges decided the motions on a consistent basis and would also be able to guard against the unwarranted granting of such motions.

When cases are stayed by the Commission, there is some question under the Commission's present rules as to whether the Judge has authority to require periodic reports on the status of the case. Most Judges take no further action in the case until the Commission lifts the stay. Unless the Commission periodically follows up on a stay, there is no effective control over the case. Paragraph (c) of the proposed rule makes it clear that the Judge, after the stay is granted, would have authority to direct the parties to submit periodic reports.

Failure to Appear

Proposed § 2200.64 corresponds to present § 2200.62. Paragraph (a) of the proposed rule concisely states that the failure of a party to appear may result in a decision against him. Because the present rule speaks in terms of a "waiver" of rights, a party failing to appear may not understand that a decision may be entered against him. The proposed rule unequivocably advises all parties of the probable consequences of a failure to appear.

Reporter's Fees

The proposed rules do not include the present rule, at § 2200.64, on reporter's fees. When the present rule was first promulgated, the Commission paid for all copies of the transcript and provided the parties with free copies. Since the present rule states that "[r]eporter's fees shall be borne by the Commission," there have been numerous instances where the parties have expected the Commission to furnish them a copy of the transcript. When the Commission changed its policy and no longer furnished a free copy of the transcript to the parties, the rule was not changed. This has led to confusion on the part of some parties before the Commission. The present rule has therefore been deleted and new provisions on the payment for transcripts have been included in the proposed § 2200.66.

Transcripts

Proposed § 2200.66 represents a modification and expansion of the present rule at § 2200.65. The proposed rule deletes the requirement that the Judge serve notice upon each of the parties of the filing of the transcript. Apparently, the purpose of this requirement was to assist the parties in determining when their post-hearing briefs were due. However, under the

proposed rule at § 2200.75, the existing reference to the receipt of transcripts is deleted and the time for filing briefs may be calculated from the date of the hearing. The parties therefore have no compelling need to know when the Judge receives the transcript. Because there is no necessity for such notice, the present rule creates unnecessary administrative work.

Paragraph (b) contains the provisions for payment of reporter's fees. The parties are informed that they are individually responsible for securing and paying for their own copies of the transcript. Some Judges make this clear at the beginning of their hearings, but others do not.

Paragraph (c) is a new provision concerning the procedure to correct errors in the transcript. While most attorneys know how to correct a transcript, most pro se parties do not. The new provision attempts to be informative and to provide necessary procedural details.

Examination of Witnesses

Proposed § 2200.69 corresponds to present § 2200.68. The word "affirmation" has been added to the present rule. The change is designed to afford flexibility required in dealing with religious adults, atheists and conscientious objectors. Affirmation is simply a solemn undertaking to tell the truth and is recognized by Federal law.

Affidavits

Present § 2200.69 has been deleted from the proposed rules. The Commission is of the view that the use of affidavits is adequately covered by the Federal Rules of Evidence and the Federal Rules of Civil Procedure. Therefore, no separate Commission rule is necessary.

Use of Depositions at the Hearing

Present § 2200.70 has also been deleted. There has been some confusion concerning discovery depositions and the use of depositions to preserve testimony. Accordingly, these proposed rules delete the text of the present rule at § 2200.70 and have only one rule on the taking of depositions (§ 2200.56). New § 2200.56(e) would govern the ways in which depositions could be used.

Exhibits

Proposed § 2200.70 corresponds to present § 2200.71. The present rule has been substantially revised to provide more guidelines to the Judges and the parties concerning exhibits. Several problem areas are not covered by the present rule.

Paragraph (a) of the proposed rule requires that all exhibits be marked with the case docket number. The present rule does not impose this requirement. Exhibits have been separated from the case files, and great difficulty has been incurred in matching the exhibits at a later date with the right files.

Paragraph (b) of the proposed rule informs the parties that the Judge can, in his discretion, permit the substitution of a duplicate for any original document. It also makes clear that no exhibit may be removed from the official record without the permission of the Judge. While an attorney would ordinarily be aware of these matters, most pro se parties have no knowledge of these procedures. These provisions are therefore included in the rules so that all parties will be advised of the procedures.

Paragraph (c) addresses a situation that arises quite frequently, i.e., large physical objects offered as exhibits. Over the years, many large physical objects, e.g., automobile parts, boxes of dirt, small pieces of machinery, have been offered into evidence at hearings. Most of the Judges have denied their admission into evidence, but some have admitted large objects. The admission of large objects presents problems of transporting and storing that the Commission and Judge are not equipped to handle. Paragraph (c) would provide authorization for a Judge to deny admission of an exhibit where the exhibit is too large or heavy to keep with the case file.

Paragraphs (e) and (f) provide for instances in which a party or a member of the public requests custody or return of a physical exhibit for use in another proceeding. These paragraphs clarify the present practice.

Paragraph (g) would permit the Executive Secretary to destroy physical exhibits where the cases are fully concluded. This provision appears necessary because some exhibits may be unacceptable for storage at the National Archives and Record Administration.

Rules of Evidence

Proposed § 2200.71 corresponds to present § 2200.72. This rule governs the admissibility of evidence in Commission proceedings. Under the present rule, the Federal Rules of Evidence are applicable "insofar as practicable." Under the proposed rule, this qualifying language would be eliminated.

The proposed rule has the advantage of being simpler and more predictable. Parties would be able to prepare their cases with a high degree of certainty as to what evidence will be admissible and what evidence will not. In this regard, it is noted that U.S. district courts are not the only courts that follow the Federal Rules of Evidence. Twenty-nine states, the United States armed forces and Puerto Rico have also adopted the Federal Rules of Evidence in various forms. 1 "Weinstein's Evidence," p. T–1 (1985 supplement). Thus, there is widespread familiarity with this set of evidentiary rules, as well as widespread acceptance of the rules as fair and effective guidelines for resolving evidentiary disputes.

In contrast, the present rule at § 2200.72 creates uncertainty, particularly as to the meaning of the phrase "insofar as practicable." It is difficult to imagine a situation in which it would not be "practicable" to follow the Federal Rules of Evidence, and indeed it appears that the present rule has never been applied literally. The Commission's major deviation from the Federal Rules has been in the area of hearsay evidence. Despite the present rule, Commission precedent allows for a broad use of hearsay in Commission proceedings without regard to whether the evidence falls within any of the recognized exceptions to the hearsay rule. In contrast, under Rule 802 of the Federal Rules of Evidence, hearsay is generally inadmissible unless it falls within one of the exceptions listed in Rules 803 or 804. The proposed rule would eliminate this inconsistency and the confusion it can engender.

In practice, the Commission expects that the revision of its rule on the admissibility of evidence would have only a limited effect on Commission proceedings. As noted above, hearings are already governed largely by the Federal Rules of Evidence. Even as to hearsay, where the Federal Rules were previously not followed strictly, the change to strict application of the hearsay rules probably will not result in a significantly different resolution of factual issues. Often, evidence admitted under the Commission's lenient policy toward hearsay also would have been admissible under the Federal Rules, either because it was not hearsay to begin with, see, e.g., Rule 801(d)(2), or because it was covered by an exception to the hearsay rule.

Redesignated Rules

No changes are proposed in the rules on burden of proof and on objections. The present rules at §§ 2200.73 and 2200.74 would be redesignated, however, as §§ 2200.72 and 2200.73, respectively.

Interlocutory Review

Proposed § 2200.74 corresponds to present § 2200.75. The present rule has

been revised to eliminate the Judge from the interlocutory review process and to substitute the term "interlocutory review" in place of "interlocutory appeal." Under the present rule, the Judge cannot require the Commission to hear an interlocutory review. As a practical matter, the Judge's ruling is nothing more than advisory. The administrative burden on the parties of filing with the Judge and the subsequent delay before the matter is considered by the Commission appears to outweigh any benefit of involving the Judge in the review process.

Proposed paragraph (a) expands the grounds on which an interlocutory review may be ordered. A petition for interlocutory review may be granted, under the proposed rules, where a party seeks review of a ruling that allegedly would result in the disclosure of privileged information.

Paragraph (b) adds a new provision that the petition "is denied unless granted within 30 days of the date of receipt by the Commission's Executive Secretary." The present rule imposes no such time limitation. Petitions for interlocutory review should be acted on quickly since one of the purposes of an interlocutory review is to expedite the final disposition of the proceedings.

Paragraph (e) of the proposed rule provides that the Judge may be requested to provide his written views on whether the petition is meritorious. This paragraph is included to give the Commission the opportunity to obtain the Judge's views on a petition for interlocutory review in those cases where the Commission determines this guidance would be beneficial.

Post-Hearing Submissions to the Judge

Proposed new § 2200.75 corresponds to present § 2200.76. Paragraph (a) allows the Judge to permit or direct the parties to file memoranda or statements of authorities in lieu of briefs. This practice has been followed in the past by some Judges. Those Judges who have followed the practice feel that a statement of authorities is useful and should be provided for in the rules.

Paragraph (b) differs substantially from the present rule. Under the present rule, the Judge may fix a reasonable period of time for filing briefs, but this period cannot exceed 20 days from the time the parties receive the transcript. Generally, the Judge does not know when the parties receive their copy of the transcript. The proposed rule provides that the Judge will establish the briefing deadline. The reference to the receipt of the transcript is deleted and no limit is placed on the Judge's authority. This would give the Judges the discretion to establish a deadline that is not tied in to the receipt of the transcript.

The proposed rule also provides that extensions of time for filing any brief shall be made at least three days prior to the due date. Difficulties have arisen because one party has waited to the last minute to orally request an extension and the other party has already mailed his brief to the Judge and the other party. The proposed rule also explicitly informs the parties that reply briefs are not allowable except by order of the Judge. In some cases reply briefs have been filed by one of the parties, and the Judges have been faced with the problem of whether to accept them.

Paragraph (c) is a new provision that gives the Judge authority to refuse any party's brief that is untimely filed. Late briefs have been a problem faced by all the Judges at varying periods of time. However, the Commission anticipates that this new provision would help to alleviate the problem because a party who has to justify his delay would make a more conscientious effort to meet the time limitation.

Decisions of the Judges

Section 2200.90 has been reorganized under the proposal, with only minor revision of its substantive provisions. Present paragraph (a) has been divided into two paragraphs, (a) and (b). Proposed paragraph (b) (2) also includes the provisions of present paragraph (b)(1). Proposed paragraph (a) states the contents of a Judge's decision and is a restatement of 5 U.S.C. § 557(c)(3). Proposed paragraph (b) explains the procedure for transmitting the Judge's report to the Executive Secretary. The 20-day period between the issuance of the Judge's decision to the parties and the date of docketing of the Judge's report has been retained. However, the proposed rule makes clear that the Judge will wait until the end of this period before filing his report with the Executive Secretary. Under the present rule, the Judge could file his report at any time during the 20-day period.

Proposed paragraph (b)(3) is a new provision expressly permitting the Judge to correct certain types of errors in his decision at any time before the case is either directed for review or becomes a final order in the absence of a direction for review. This authority is not stated in the present rules. However, Commission precedent establishes that this authority resides in the Judges. In addition, the rule provides a procedure for correcting errors in a Judge's decision while a case is pending on review before the Commission. The Commission is of the view that the types of errors covered under proposed paragraph (b)(3) should be corrected at an early date. The Commission anticipates that the parties would be more likely to move for correction of errors at an early date under rules that are explicit on the Judge's authority to make such changes. Proposed paragraph (b)(3) also provides that reinstatement can be granted by the Judge to a defaulting party during the 20-day period before the Judge's report is docketed by the Commission.

Proposed paragraphs (c) and (d) are essentially restatements of present paragraphs (b)(2) and (3). Proposed paragraph (c) has been revised to include an exception for papers filed with the Judge under proposed paragraph (b)(3). No substantive changes have been made in proposed paragraph (d).

Petitions for Discretionary Review and Related Matters

The Commission proposes to reorganize § 2200.91 in conjunction with § 2200.92, which relates to directions for review by the Commissioners. Both rules have also been rewritten in large part. Proposed § 2200.91(a) corresponds to present § 2200.92(a). It states that review by the full Commission is within the sound discretion of each Commissioner.

Proposed paragraph (b) incorporates provisions from paragraphs (a) and (b) of the present § 2200.91. However, three significant changes are proposed in the rules. First, the description of who may file a petition for discretionary review would be changed. Present paragraph (a) uses the terms "party aggrieved by the decision of a judge." Proposed paragraph (b) expands the category to include also a "party adversely affected . . . by the decision of the Judge."

Second, the proposed rule would limit the time period for filing a petition for discretionary review by establishing a deadline of 20 days after the date of docketing of the Judge's report. Present paragraph (b)(3) allows a petition to be filed at any time up to the Commission's statutory deadline for issuing a direction for review. See section 12(j) of the Act, 29 U.S.C. 661(j). The purpose of the change is to discourage the filing of last-minute petitions, thereby allowing the Commissioners more time to consider the merits of the petitions.

Third, the proposed rule would provide expressly for the filing of cross-petitions and conditional petitions for discretionary review. A deadline of 27 days after the docketing of the Judge's report would be established for the filing of a cross-petition under proposed

paragraph (c). This procedure is needed to deal with situations where the nonaggrieved party seeks to expand the scope of review beyond the issues raised by the aggrieved party. For example, there are frequently situations where a party presents alternative grounds for sustaining the Judge's disposition of a citation item even though the Judge may have erred in relying on the particular grounds that served as the basis of his decision. In addition, the new procedure could be used in situations where a party wishes to raise an issue, e.g., the classification of a violation, only if the other party raises a related issue, e.g., the existence of the violation. The proposed rule formalizes practices that have long existed informally.

Proposed paragraph (d) includes several changes to the present paragraph (c). The proposed rule would require greater specificity in petitions of the matters on which review is sought. As guidance to the parties, some considerations are listed in the rule that are relevant in determining whether review should be directed. This list is currently found in present § 2200.92(b). Relocating it in § 2200.91 would give more guidance to the parties on what to include in their petitions for discretionary review.

Proposed paragraph (d) also includes provisions designed to limit the size of petitions, such as a prohibition against incorporating briefs or legal memoranda by reference. The Commission encourages parties to file short and concise petitions for discretionary review that focus on the alleged errors in the Judge's decision and the reasons why review should be directed. Too often parties seek to force the Commissioners to review the entire record in a case by merely resubmitting the same arguments that were submitted to the Judge in their post-hearing briefs or by filing "shotgun" petitions covering every issue ruled on by the Judge. The strict statutory limitation on the length of time the Commission has to review the reports of its Judges precludes this type of review. Through these proposed rules, the Commission seeks to encourage the filing of petitions that will aid the Commissioners in their review of Judge's reports rather than petitions that merely add to the burden.

Proposed paragraph (e) is a new provision informing the parties they need only file one petition (with the Judge or the Commission but not with both) and further establishing that the date of filing is the date the petition is received by the Commission or the Judge. This is an exception to the Commission's general rule that filing is effective on the date of mailing. The exception is necessary to eliminate situations where a party legally files its petition at the last minute but the Commission does not receive it in time to consider whether to direct review on the issues that have been raised.

Proposed paragraph (f) is a provision presently found in paragraph (a) of the rule. Proposed paragraph (g) corresponds to present paragraph (e), and proposed paragraph (h) corresponds to present paragraph (f). Present paragraphs (b)(2), (b)(4) and (d) would be deleted under the Commission's proposed rules. The Commission proposes that present paragraph (d) be deleted because it is unnecessary.

Review by the Commission

Section 2200.92 has been substantially revised under the proposal, in accordance with the Commission's decision in *Hamilton Die Cast, Inc.*, 86 OSAHRC ———, 12 BNA OSHC 1797, 1986 CCH OSHD ¶ 27,576 (No. 83–308, 1986). Proposed paragraph (a) corresponds to, but completely changes present paragraph (c). The proposed rule makes clear that a direction for review vests jurisdiction in the Commission over the entire case. The Commission has the discretion to determine what issues it will decide, although review will ordinarily be limited to the matters described in the rule. Proposed paragraph (a) also makes clear to the parties that the Commission has considerable discretion in selecting issues for decision, and it discourages piecemeal review of the Judge's report.

Proposed paragraph (b) is essentially the same as the first part of present paragraph (d). As in paragraph (a), the rule has been revised to allow consideration of issues not specified in a direction for review but specified in a later Commission order.

Proposed paragraph (c) corresponds to the last sentence of present paragraph (d). Under the present rule, the Commission may only consider issues that were not raised before the Judge when there are "extraordinary circumstances." The proposed rule eliminates this restriction, giving the Commission greater flexibility. Proposed paragraph (c) sets out some factors to be considered by the Commission in determining whether to rule on issues not raised before the Judge.

Present paragraphs (a) and (b) have been deleted from this rule. As indicated, the substance of these paragraphs is covered under proposed § 2200.91.

Briefs Before the Commission

Proposed § 2200.93 follows the same format as the present rule, with the exception of paragraph (b), which has been wholly rewritten. Proposed paragraph (a) has been expanded to clarify the options that are available to a party in response to a direction for review. The proposed rule gives the parties more options.

Proposed paragraph (b) establishes a simultaneous briefing schedule that replaces the sequential briefing schedule under present paragraph (b). The Commission is of the view that the present rule unduly emphasizes the distinction between cases where a direction for review is issued in response to a petition for discretionary review and cases where review is directed by a Commissioner sua sponte. Under the present rule, a sequential briefing schedule is followed in the former instance while a simultaneous briefing schedule is followed in the latter. In practice, however, the distinction between the two categories has become increasingly blurred in recent years as the format of directions for review has changed. Moreover, the proposed rule more accurately reflects the reality that in all cases it is the directing Commissioner or the Commission as a whole, and not the petitioning party, that determines what issues are to be briefed on review. Also, for a number of reasons, the new procedure would be more administratively convenient for the Commission.

Proposed paragraph (b)(2) also modifies the restriction on the filing of additional briefs without leave of the Commission. As a matter of course, each party would be permitted under the proposed rule to file a reply brief within 30 days after service of the opposing party's main brief. Since each party would thereby be given an opportunity to respond to the arguments of his opponent, the most desirable feature of a sequential briefing system (i.e., the opportunity to respond) would therefore be retained under the proposed rule.

The proposed rule also contains a new provision, in paragraph (b)(1), that expressly permits a non-petitioning party to move that the direction for review be vacated if the petitioning party fails to respond in a timely fashion. Under paragraph (d), the Commission in its discretion could respond to this motion by vacating the direction for review for lack of party interest or it could decide the case without the benefit of the petitioning party's brief. The Commission currently

has this authority under the present rule, but the present rule contains no provision allowing the non-petitioning party to move for Commission action.

Paragraph (c) has been revised to give the Commission greater flexibility in responding to motions for extension of time for filing briefs. The present rule states that such motions "shall not be granted except in extraordinary circumstances". The proposed rule states that such motions "will ordinarily not be granted except for good cause shown." The rule has been changed to more accurately reflect the Commission's current practice. The change should not be construed by the parties as an indication that the Commission intends to change its current practice. The Commission will continue to strictly enforce its filing deadlines unless good cause is shown for relaxing them.

Paragraphs (d), (f), (g) and (h) have been retained in the proposed rule in their present form. Paragraph (e) has been revised to establish more stringent limitations on the length of briefs, a change made necessary by abuses of the present rule. Under the proposed rule, briefs and legal memoranda incorporated by reference into a main brief would be included in determining whether the brief meets the 35-page limitation. A new limitation of 20 pages would be established for reply briefs, including incorporated material.

Retained Rules

The rules at §§ 2200.94 and 2200.95 have been retained in the proposed rules without change.

Settlement

The Commission proposes several changes in § 2200.100. Under the proposal, paragraph (b) of the present rule would be revised to delete the list of requirements for settlement agreements. In addition, the statement in present paragraph (a) that settlement agreements will be approved only when they are "consistent with the provisions and objectives of the Act" would be eliminated. The Commission is of the view that these provisions are inconsistent with its role as an adjudicative agency. The proposed rule does require, however, that the specific disposition of each contested item be set forth in the settlement agreement to provide an accurate record of the items that have been contested before the Commission. Proposed paragraph (b) also includes a new provision establishing that withdrawals are presumed to be with prejudice unless the settlement agreement expressly states otherwise.

Paragraph (c) of the proposed rule would significantly change the service requirements for settlement agreements. The proposed rule would limit service of executed agreements to parties and any affected employees eligible to elect party status. Eligibility would be determined by reference to the 10-day limitation of proposed § 2200.20(a). Absent a timely election, service would no longer be required on affected employees. The proposed change would be one consequence of a failure to timely elect party status. The Commission is of the view that this proposed rule would expedite the disposition of settled cases while preserving an affected employee's right to participate. It represents a balancing of the interests involved.

A provision relating to filing of settlement agreements with the Executive Secretary has been slightly modified and moved from present paragraph (a) to proposed paragraph (c). Paragraph (d) of the present rule is retained under the proposal.

Settlement Judges

Proposed § 2200.101 is a new rule. It would establish within the Commission a new position, that of Settlement Judge. It would also give authority to the Chief Judge and to the Chairman of the Commission to assign cases to Settlement Judges when "there is a reasonable prospect of substantial settlement." The proposed rule sets forth the powers and the duties of the Settlement Judges, outlines the procedures they would follow in attempting to negotiate settlements, and provides for the reassignment of a case to a different Judge in the event the efforts to achieve a settlement fail and the parties elect to proceed to a hearing. Proposed § 2200.101 is presented by the Commission as an innovative and experimental response to the recurring problem of cases that go to hearing and even as far as the courts of appeals despite the fact that, under any objective analysis of the situation, the cases are not worth the time, energy and money expended on them by both the litigators and the adjudicators. The Commission anticipates that, by providing the parties this alternative method of resolving their disputes, it would reduce the number of cases that needlessly proceed to the hearing stage and beyond.

Withdrawals

The Commission proposes to broaden the scope of present § 2200.100a, which is limited to withdrawals of notices of contest. Proposed § 2200.102 is a general rule governing all withdrawals encountered in Commission proceedings, including withdrawals of citations, notifications of proposed penalty, and petitions for modification of the abatement period. The proposed rule establishes service and posting requirements for withdrawals and provides that withdrawals are with prejudice unless the Commission or the Judge orders otherwise.

Expedited Proceedings

Proposed § 2200.103 corresponds to present § 2200.101. The rule has been reorganized, but most of its provisions have not been changed substantively. Paragraphs (a), (b) and (d) of the proposed rule are all provisions that are found in the present rule, although in different language and different locations.

Only two substantive changes are made in these three paragraphs. Under the present rule, a single Commissioner can order that a proceeding be expedited. Under the proposed rule, only the Commission as a whole would be able to issue such an order. This change would bring the rule into conformity with the general principle set forth in section 12(f) of the Act, 29 U.S.C. 661(f), that "official action [by the Commission] can be taken only on the affirmative vote of at least two members." The other change is in proposed paragraph (d). Under the present rule, the Judge is required to order daily transcripts of the hearing. Under the proposed rule, this authority would be discretionary rather than mandatory. It is not always necessary to have a daily transcript in an expedited proceeding. In view of the considerable expense of daily transcripts, they should be used sparingly.

Paragraph (c) of proposed § 2200.103 is a new provision intended to give greater effect to an order expediting a case. It would require the Judge or the Commission to give the expedited case precedence over all other cases that are not expedited and to set the case for hearing or for briefing "at the earliest practicable date."

Standards of Conduct

Proposed § 2200.104 corresponds to present § 2200.102. However, the rule has been totally rewritten, partly in response to a strong feeling among the Commission's Judges that the rules should have some provisions to assist them in dealing with recalcitrant parties or attorneys. The Commission is of the view that the proposed rule would be beneficial even if it is seldom applied. The mere existence of the rule should enable the Judges to maintain greater

discipline in proceedings before them. Paragraph (b) of the proposed rule states a procedure by which the Judges could exercise their power to exclude persons from proceedings. Paragraph (c) states expressly a procedure by which the Commission would exercise its power to take other disciplinary action, including disbarment from practice in Commission proceedings. It is based largely on Federal Rule of Appellate Procedure 46(c).

Ex Parte Communication

Proposed § 2200.105 corresponds to present § 2200.103. Three changes are proposed in the present rule. First, an exception would be established for communications under proposed § 2200.101. Thus, the Settlement Judge would be permitted to engage in ex parte communications in exercising his authority under § 2200.101. It bears emphasis in this regard that the Settlement Judge would not be the Judge who hears and decides the case in the event the settlement process does not prove to be fruitful. A second change, in paragraph (b) of the proposed rule, ties the imposition of sanctions for ex parte communications into the disciplinary procedures established under proposed § 2200.104. The third proposed change is the addition of a new paragraph (c), which would require that all ex parte communications be placed on the public record. Proposed paragraph (c) would codify the Commission's current policy and practice and would create consistency between the Commission's rule and provisions of the Government in the Sunshine Act.

Deleted Rules

The Commission proposes that four of the rules presently found in Subpart G be deleted from the Commission's rules. Present § 2200.104, which prohibits participation by the Secretary in the making of the Judge's report or the Commission's decision, serves no useful purpose at this time. When the Commission was first created, the rule probably had some value in assuring the public that the Commission is independent from the Secretary. However, that point has been clear for several years. Present § 2200.105, on requests for inspection and reproduction of Commission documents, is also obsolete. The subject is now governed by 29 CFR Part 2201—Regulations Implementing the Freedom of Information Act. Similarly, present § 2200.106 is no longer needed because appearances of former employees before the Commission is a matter now governed by 29 CFR Part 2202—Rules of Ethics and Conduct of Review Commission Employees. Finally, the Commission proposes to delete present § 2200.109, which declares that the Commission imposes civil and not criminal penalties. There is no present need for this rule.

Retained Rules

Three rules in Subpart G are retained under the proposal with little or no revision. Present § 2200.107 is redesignated as § 2200.106 and revised to provide that any suggestions for rule changes should be sent to the Executive Secretary. Present § 2200.108 is redesignated as § 2200.107 and revised to grant authority to Judges to waive Commission rules. Under the present rule, only the Commission has this authority. However, Judges sometimes need the authority to waive rules in order to fairly and efficiently dispose of cases. Finally, present § 2200.110 is redesignated as § 2200.108, but not otherwise changed.

Simplified Proceedings

The Commission is not proposing any changes in Subpart M—Simplified Proceedings at this time. The Commission intends to review Subpart M and to propose any needed changes shortly.

Public Comment

This document sets forth proposed revisions to agency rules of procedure and practice. The Commission has the authority under 5 U.S.C. 553(b)(A) to revise these regulations without prior notice or public comment. Nevertheless, the Commission values public comments and therefore invites them. Comments may be mailed to the General Counsel at the address previously stated. Comments may not be considered if they are not received on or before the date previously stated.

List of Subjects in 29 CFR Part 2200

Hearing and appeal procedures, Administrative practice and procedure, Ex parte communications, Lawyers.

For the reasons set out in the preamble, it is proposed to amend 29 CFR Part 2200 as follows:

1. The authority citation for Part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g), unless otherwise noted.

2. Subpart A, B, C, D, E, F, and G are revised to read as follows:

PART 2200—RULES OF PROCEDURE

Subpart A—General Provisions

Sec.

Subpart B—Parties and Representatives

Subpart C—Pleadings and Motions

Subpart D—Prehearing Procedures and Discovery

Subpart E—Hearings

Sec.

* * * * *

Subpart A—General Provisions

§ 2200.1 Definitions.

As used herein:

(a) "Act" means the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678.

(b) "Commission," "person," "employer," and "employee" have the meanings set forth in Section 3 of the Act.

(c) "Secretary" means the Secretary of Labor or his duly authorized representative.

(d) "Executive Secretary" means the Executive Secretary of the Commission.

(e) "Affected employee" means an employee of a cited employer who is exposed to or has access to the hazard arising out of the allegedly violative circumstances, conditions, practices or operations.

(f) "Judge" means an Administrative Law Judge appointed by the Chairman of the Commission pursuant to 12(j) of the Act, 29 U.S.C. 661(j), *as amended by* Pub. L. 95–251, 92 Stat. 183, 184 (1978).

(g) "Authorized employee representative" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.

(h) "Representative" means any person, including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

(i) "Citation" means a written communication issued by the Secretary to an employer pursuant to § 9(a) of the Act.

(j) "Notification of proposed penalty" means a written communication issued by the Secretary to an employer pursuant to § 10 (a) or (b) of the Act.

(k) "Day" means a calendar day.

(l) "Working day" means all days except Saturdays, Sundays, or Federal holidays.

(m) "Proceeding" means any proceeding before the Commission or before a Judge.

(n) "Pleadings" are complaints and answers filed under § 2200.34, statements of reasons and contestants' responses filed under § 2200.38, and petitions for modification of abatement and objecting parties' responses filed under § 2200.37. A motion is not a "pleading" within the meaning of these rules.

§ 2200.2 Scope of rules; Applicability of Federal Rules of Civil Procedure; Construction.

(a) *Scope.* These rules shall govern all proceedings before the Commission and its Judges.

(b) *Applicability of Federal Rules of Civil Procedure.* In the absence of a specific provision, procedure shall be in accordance with the Federal Rules of Civil Procedure.

(c) *Construction.* These rules shall be construed to secure an expeditious, just and inexpensive determination of every case.

§ 2200.3 Use of gender and number.

(a) *Number.* Words importing the singular number may extend and be applied to the plural and vice versa.

(b) *Gender.* Words importing the masculine gender may be applied to the feminine gender.

§ 2200.4 Computation of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and Federal holidays shall be excluded from the computation.

(b) *Service by mail.* Where service of a document, other than a petition for discretionary review, is made by mail pursuant to § 2200.7, three days shall be added to the prescribed period for the filing of a response. The period of time for filing a petition for discretionary review is governed by § 2200.91(b). Service within the meaning of this rule includes issuance of documents by the Commission or Judge.

§ 2200.5 Extensions of time.

Upon motion of a party for good cause shown, the Commission or Judge may enlarge any time prescribed by these rules. All such motions shall be in writing, but in exigent circumstances in cases pending before Judges, an oral request may be made and followed by a written motion. A request for an extension of time should be received in advance of the date on which the pleading or document is due to be filed. However, an extension of time may be granted even though the request was filed after the designated time for filing has expired, but in such circumstances, the party requesting the extension must show good cause for his failure to make the request before the time prescribed for the filing had expired. The motion may be acted upon before the time for response has expired.

§ 2200.6 Record address.

Every pleading or document filed by any party or intervenor shall contain the name, current address and telephone number of his representative, or, if he has no representative, his own name, current address and telephone number. Any change in such information shall be communicated promptly in writing to the Judge or the Executive Secretary if no Judge has been assigned, and to all other parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

§ 2200.7 Service and notice.

(a) *When service is required.* At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

(b) *Service on represented parties or intervenors.* Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(c) *How accomplished.* Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(d) *Proof of service.* Proof of service shall be accomplished by a written statement of the same which sets forth

the date and manner of service. Such statement shall be filed with the pleading or document.

(e) *Proof of posting.* Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

(f) *Service on represented employees.* Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in paragraph (c) of this section.

(g) *Service on unrepresented employees.* In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer), Your employer has been cited by the Secretary of Labor for violation of the Occupational Safety and Health Act of 1970. The citation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION in its Rules of Procedure. Notice of intent to participate should be sent to: Occupational Safety and Health Review Commission, 1825 K Street, NW., Washington, DC 20006.

All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Secretary of Labor for abatement of the violation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(h) *Special service requirements; Authorized employee representatives.* The authorized employee representative, if any, shall be served with the notice set forth in paragraph (g) of this section and with a copy of the notice of contest.

(i) *Notice of hearing to unrepresented employees.* A copy of the notice of the hearing to be held before the Judge shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

(j) *Notice of hearing to represented employees.* A copy of the notice of the hearing to be held before the Judge shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph (c) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

(k) *Employee contest; Service on other employees.* Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with § 2200.38, serve a copy thereof on such authorized employee representative in the manner prescribed in paragraph (c) of this section and shall file proof of such service.

(l) *Employee contest; Service on employer.* Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in paragraph (g) of this section.

(m) *Employee contest; Service on other authorized employee representatives.* An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

(n) *Duration of posting.* Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

§ 2200.8 Filing.

(a) *Where to file.* Prior to the assignment of a case to a Judge, all papers shall be filed with the Executive Secretary at 1825 K Street, NW., Washington, DC 20006. Subsequent to the assignment of the case to a Judge, all papers shall be filed with the Judge at the address given in the notice informing of such assignment. Subsequent to the docketing of the Judge's report, all papers shall be filed with the Executive Secretary, except as provided in § 2200.90(b)(3).

(b) *How to file.* Unless otherwise ordered, all filing may be accomplished by first class mail.

(c) *Number of copies.* Unless otherwise ordered or stated in this Part:

(1) *Pleadings.* Only the original of a pleading shall be filed.

(2) *Cases before Judges.* If a case is before a Judge, only the original of a document shall be filed.

(3) *Cases before Commission.* If a case is before the Commission, the original and four copies of a document shall be filed.

(d) *Filing date.* Filing is deemed effected at the time of mailing, except petitions for discretionary review are deemed to be filed at the time of receipt. See § 2200.91.

§ 2200.9 Consolidation.

Cases may be consolidated on the motion of any party, on the Judge's own motion, or on the Commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

§ 2200.10 Severance.

Upon its own motion, or upon motion of any party or intervenor, the Commission or the Judge may, for good cause, order any proceeding severed with respect to some or all issues or parties.

§ 2200.11 Protection of trade secrets and other privileged information.

A person seeking to maintain the confidentiality of a trade secret, other matter protected by 18 U.S.C. 1905, or other privileged information shall file a motion seeking the protection of such information from improper disclosure. The motion shall identify the information for which protection is sought and state with specificity the facts showing that the information is a trade secret or otherwise privileged and that its disclosure would be harmful. The motion shall be supported by affidavits, depositions or testimony and shall specify the protection sought. A party opposing the motion may respond within 15 days, but if the motion is made during a hearing, the Judge may prescribe a shorter time or require that the response be made during the hearing. A response contravening the facts stated in the motion shall be supported by affidavits, depositions or testimony. The Commission or Judge may temporarily seal the portions of the record containing the alleged trade secret or other privileged information while the motion is pending. The Judge

shall review the allegedly privileged information in camera. Upon good cause shown, the Judge shall permanently seal that portion of the record or other files of the Commission containing the privileged information, permitting access only to the Commission and any reviewing court, the parties, their attorneys or others subject to any protective order that is issued, and issue such protective orders as are necessary to protect the confidentiality of such matters. A party whose claim of privilege has been overruled by the Judge may obtain as of right an order sealing those portions of the record containing the material alleged to be privileged pending review of the ruling or final disposition of the case by the Commission. Any interlocutory review of such an order shall be given priority consideration by the Commission.

§ 2200.12 References to cases.

(a) *Citing decisions by Commission and Judges*—(1) *Generally.* Parties citing decisions by the Commission should include in the citation the name of the employer, a citation to either the Bureau of National Affairs' Occupational Safety & Health Cases ("BNA OSHC") or Commerce Clearing House's Occupational Safety and Health Decisions ("CCH OSHD"), the OSHRC docket number and the year of the decision. For example, *Clement Food Co.*, 11 BNA OSHC 2120 (No. 80-607, 1984).

(2) *Parenthetical statements.* When citing the decision of a Judge, the digest of an opinion, or the opinion of a single Commissioner, a parenthetical statement to that effect should be included. For example, *Rust Engineering Co.*, 1984 CCH OSHD ¶ 27,023 (No. 79-2090, 1984) (view of Chairman_____), *vacating direction for review of* 1980 CCH OSHD ¶ 24,269 (1980)(ALJ) (digest).

(3) *Additional reference to OSAHRC Reports optional.* A parallel reference to the Commission's official reporter, OSAHRC Reports, which prints the full text of all Commission and Judges' decisions in microfiche form, may also be included. For example, *Texaco, Inc.*, 80 OSAHRC 74/B1, 8 BNA OSHC 1758 (No. 77-3040, 1980). *See generally* 29 CFR 2201.4(c) (on OSAHRC Reports).

(b) *References to court decisions*—(1) *Parallel references to BNA and CCH reporters.* A parallel reference to either the Bureau of National Affairs' Occupational Safety & Health Cases ("BNA OSHC") or Commerce Clearing House's Occupational Safety and Health Decisions ("CCH OSHD") should be included in a citation to a court decision. For example, *Simplex Time Recorder Co.* v. *Secretary of Labor*, 766 F.2d 575, 12 BNA OSHC 1401 (D.C. Cir. 1985); *Deering Milliken, Inc.* v. *OSHRC*, 630 F.2d 1094, 1980 CCH OSHD ¶ 24,991 (5th Cir. 1980).

(2) *Name of employer to be indicated.* When a court decision is cited in which the first-listed party on each side is either the Secretary of Labor (or the name of a particular Secretary of Labor), the Commission, or a labor union, the citation should include in parenthesis the name of the employer in the Commission proceeding. For example, *Donovan* v. *Allied Industrial Workers (Archer Daniels Midland Co.)*, 760 F.2d 783, 12 BNA OSHC 1310 (7th Cir. 1985); *Donovan* v. *OSHRC (Mobil Oil Corp.)*, 713 F.2d 918, 1983 CCH OSHD ¶ 26,627 (2d Cir. 1983).

Subpart B—Parties and Representatives

§ 2200.20 Party status.

(a) *Affected employees.* Affected employees and authorized employee representatives, by notice of election filed at least ten days before the hearing, may elect party status concerning any matter in which the Act confers a right to participate. A notice of election filed less than ten days prior to the hearing is ineffective unless good cause is shown for not timely filing the notice.

(b) *Employee contest.* Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status by a notice filed at least ten days before the hearing. A notice filed less than ten days prior to the hearing is ineffective unless good cause is shown for not timely filing the notice.

§ 2200.21 Intervention; appearance by non-parties.

(a) *When allowed.* A petition for leave to intervene may be filed at any time prior to ten days before commencement of the hearing. A petition filed less than ten days prior to the commencement of the hearing will be denied unless good cause is shown for not timely filing the petition.

(b) *Requirements of petition.* The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unduly delay the proceeding.

(c) *Granting of petition.* The Commission or Judge may grant a petition for intervention to such an extent and upon such terms as the Commission or the Judge shall determine.

§ 2200.22 Representation of parties and intervenors.

(a) *Representation.* Any party or intervenor may appear in person, through an attorney, or through another representative who is not an attorney. A representative must file an appearance in accordance with § 2200.23. In the absence of an appearance by a representative, a party or intervenor will be deemed to appear for himself. A corporation or unincorporated association may be represented by an authorized officer or agent.

(b) *Affected employees represented by union.* Where an authorized employee representative (see § 2200.1(g)) elects to participate as a party, affected employees who are members of the collective bargaining unit may not separately elect party status. If the authorized employee representative does not elect party status, affected employees who are members of the collective bargaining unit may elect party status in the same manner as affected employees who are not members of the collective bargaining unit. See § 2200.20(a).

(c) *Affected employees not represented by union.* Affected employees who are not members of a collective bargaining unit may elect party status under § 2200.20(a). If more than one employee so elects, the Judge shall provide for them to be treated as one party.

(d) *Control of proceeding.* A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

§ 2200.23 Appearances and withdrawals.

(a) *Entry of appearance*—(1) *General.* A representative of a party or intervenor shall enter an appearance by signing the first document filed on behalf of the party or intervenor in accordance with paragraph (a)(2) of this section, or thereafter by filing an entry of appearance in accordance with paragraph (a)(3).

(2) *Appearance in first document or pleading.* If the first document filed on behalf of a party or intervenor is signed by a representative, he shall be recognized as representing that party. No separate entry of appearance by him is necessary, provided the document contains the information required by § 2200.6.

(3) *Subsequent appearance.* Where a representative has not previously appeared on behalf of a party or intervenor, he shall file an entry of appearance with the Executive Secretary, or Judge if the case has been assigned. The entry of appearance shall be signed by the representative and contain the information required by § 2200.6.

(b) *Withdrawal of counsel.* Any counsel or representative of record desiring to withdraw his appearance, or any party desiring to withdraw the appearance of counsel or representative of record for him, must file a motion with the Commission or Judge requesting leave therefor, and showing that prior notice of the motion has been given by him to his client or counsel or representative, as the case may be. The motion of counsel to withdraw may, in the discretion of the Commission or Judge, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party or intervenor.

Subpart C—Pleadings and Motions

§ 2200.30 General rules.

(a) *Format.* Pleadings and other documents (other than exhibits) shall be typewritten, double spaced, on letter size opaque paper (approximately 8½ inches by 11 inches). All margins shall be approximately 1½ inches. Pleadings and other documents shall be fastened at the upper left corner.

(b) *Clarity.* Each allegation or response of a pleading or motion shall be simple, concise and direct.

(c) *Separation of claims.* Each allegation or response shall be made in separate numbered paragraphs. Each paragraph shall be limited as far as practicable to a statement of a single set of circumstances.

(d) *Alternative pleading.* A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them would be sufficient if made independently, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may state as many separate claims or defenses as he has regardless of consistency or the grounds on which based. All statements shall be made subject to the signature requirements of § 2200.32.

(e) *Content of motions and miscellaneous pleadings.* A motion shall contain a caption complying with § 2200.31, a signature complying with § 2200.32, and a clear and plain statement of the relief that is sought, together with the grounds therefor. These requirements also apply to any pleading not governed by more specific requirements in this Subpart.

(f) *Burden of persuasion.* The rules of pleading established by this Subpart are not determinative in deciding which party bears the burden of persuasion on an issue. By pleading a matter affirmatively, a party does not waive its right to argue that the burden of persuasion on the matter is on another party.

(g) *Enforcement of pleading rules.* The Commission or the Judge may refuse for filing any pleading or motion that does not comply with the requirements of this Subpart.

§ 2200.31 Caption; Titles of cases.

(a) *Notice of contest cases.* Cases initiated by a notice of contest shall be titled:

Secretary of Labor, Complainant v. (Name of Contestant), Respondent.

(b) *Petitions for modification of abatement period.* Cases initiated by a petition for modification of the abatement period shall be titled:

(Name of employer), Petitioner v. Secretary of Labor, Respondent.

(c) *Location of title.* The titles listed in paragraphs (a) and (b) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

(d) *Docket number.* The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Commission.

§ 2200.32 Signing of pleadings and motions.

Pleadings and motions shall be signed by the filing party or by the party's representative. The signature of a representative constitutes a representation by him that he is authorized to represent the party or parties on whose behalf the pleading is filed. The signature of a representative or party also constitutes a certificate by him that he has read the pleading, motion, or other paper, that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 2200.33 Notices of contest.

Within 15 working days after receipt of—

(a) Notification that the employer intends to contest a citation or proposed penalty under section 10(a) of the Act, 29 U.S.C. 659(a); or

(b) Notification that the employer wishes to contest a notice of a failure to abate or a proposed penalty under section 10(b) of the Act, 29 U.S.C. 659(b); or

(c) A notice of contest filed by an employee or representative of employees under section 10(c) of the Act, 29 U.S.C. 659(c),

the Secretary shall notify the Commission of the receipt in writing and shall promptly furnish to the Executive Secretary of the Commission the original of any documents or records filed by the employer and copies of all other documents or records relevant to the contest.

§ 2200.34 Employer contests.

(a) *Filing deadline for complaint.* The Secretary shall file with the Commission a complaint conforming to the requirements of § 2200.35 no later than 30 days after the filing of the Secretary's notice to the Commission pursuant to § 2200.33.

(b) *Motion for more definite statement.* Upon a showing by the employer that it cannot frame a responsive answer to the allegations of the complaint, the employer may move for a more definite statement of the Secretary's allegations before filing an answer. The motion shall be filed within twenty days after service of the complaint and shall point out the defects complained of and the details desired. The prompt filing of an amended complaint meeting the objections of the moving party may obviate the necessity for the Judge to rule on the motion.

(c) *Order to file amended complaint.* In response to a motion for more definite statement or upon the Commission's or the Judge's own initiative, the Secretary may be ordered to file an amended complaint. The order will require the Secretary to supply such additional information or further particularization of the complaint's allegations as the Commission or the Judge deems necessary.

(d) *Time to file answer*—(1) *Generally.* Except as provided in paragraph (d)(2) of this section, the employer shall file with the Commission an answer conforming to the requirements of § 2200.36 within 30 days after service of the complaint.

(2) *Exceptions.* If a motion to dismiss or a motion for a more definite

statement has been filed, the answer shall be filed within 15 days after the motion is denied. If a motion to amend the complaint or a motion for a more definite statement has been granted, or if an amended complaint has been filed voluntarily under § 2200.35(f) before an answer is served, the answer shall be filed within 30 days after service of the amended complaint.

§ 2200.35 Complaints.

(a) *General requirements.* The purpose of this section is to insure the early ascertainment of the issues to be litigated. Attachment of the citation or notification of failure to abate to the complaint and incorporation of its terms by reference do not comply with this section. The complaint shall contain the following allegations in separately designated paragraphs:

(1) The employer is engaged in a business affecting commerce within the meaning of section 3(5) of the Act, 29 U.S.C. 652(5);

(2) The employer's name, principal place of business and type of business conducted as of the date of the alleged violation or failure to abate; and

(3) The time and place of each alleged violation or failure to abate.

(b) *Complaints concerning contested alleged violations.* Each alleged violation shall be set out in a separate numbered paragraph, which shall have the subparagraphs described below. All allegations that relate to the same alleged violation shall be placed in one paragraph. A paragraph alleging a violation shall state the basis for the alleged violation and shall in separate subparagraphs state clearly and concisely—

(1) The general duty clause, standard, regulation, order or other rule that was violated and the item number of the citation in which the alleged violation is set forth;

(2) The applicability of any cited standard or regulation;

(3) The circumstances, conditions, practices or operations that are the basis for the alleged violation;

(4) Where pertinent, that employees had access to or were exposed to the cited circumstances, conditions, practices or operations;

(5) That the employer knew or could have known with the exercise of reasonable diligence of the cited circumstances, conditions, practices or operations;

(6) If the violation is alleged to be serious, or it is alleged that the employer willfully committed the alleged violation, the basis for the classification;

(7) If the employer is alleged to have repeatedly committed the alleged violation, the basis for the classification, each prior citation and item number that serves as the basis for the classification, and the date that each became a final order of the Commission;

(8) The appropriateness of the proposed penalty, specifying the amount; and

(9) The reasonableness of the proposed abatement date, specifying the date.

(c) *Additional requirements for complaints alleging violations of the General Duty Clause.* With respect to each alleged violation of § 5(a)(1) of the Act, 29 U.S.C. § 654(a)(1), the complaint shall also identify the alleged hazard and specify the feasible means by which the employer could have eliminated or materially reduced the alleged hazard.

(d) *Additional requirements for complaints alleging violations of general standards.* With respect to each alleged violation of any standard or regulation under which the obligation of the employer is contingent upon the existence of a hazard (e.g., 29 CFR 1910.94(d)(7)(iii), 1910.94(d)(9)(i), 1910.132(a) and 1926.28(a)), the complaint shall also identify the particular hazard created by the circumstances, conditions, practices or operations that are the basis for the alleged violation. With respect to each alleged violation of any standard or regulation that does not specify a means of abatement and does not provide a specific performance criterion, the complaint shall also identify the feasible means by which the employer should have abated the allegedly violative condition. If the cited standard or regulation lists a number of alternative means of abatement, the complaint shall also state which the employer failed to use.

(e) *Complaints alleging failure to abate.* With respect to each contested allegation of failure to abate a violation, the complaint shall allege with particularity the failure to abate, specifying its date, location and circumstances. The complaint also shall state the penalty proposed, and allege that the penalty is "appropriate" under section 17(j) of the Act, 29 U.S.C. 666(j). The complaint shall also identify the citation and item number in which the violation was previously cited, the date on which this prior citation became a final order of the Commission, and the date by which abatement was required.

(f) *Amendment of the citation and complaint.* A contested citation, notification of proposed penalty, or notification of failure to abate may be amended once as a matter of course in the complaint before an answer is served if:

(1) The amended allegation arises out of the same conduct, occurrence or hazard described in the citation;

(2) The amendment does not result in incurable harm to the employer in the preparation or presentation of its case; and

(3) The complaint clearly identifies the change that is being made in the allegation.

All other amendments of the Secretary's allegations, as well as any amendments of the employer's responses, are governed by Federal Rule of Civil Procedure 15.

§ 2200.36 Content of the answer.

(a) *Response to the Secretary's allegations.* The answer shall contain in short and plain terms a response to each allegation of the complaint. It shall specifically admit or deny each allegation or, if the employer is without knowledge of the facts, the answer shall so state. A statement of lack of knowledge has the effect of a denial. A failure to respond to an allegation shall be treated as an admission that the allegation is true. Amendment of the answer to correct a failure to respond may be permitted when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the Commission or Judge that the amendment will prejudice him in presenting his case or defense on the merits.

(b) *Affirmative defenses.* (1) The employer shall state in its answer in separate numbered paragraphs any matter that may constitute an avoidance or an affirmative defense including, but not limited to, the following: creation of a greater hazard by complying with a cited standard; exemption under section 4(b)(1) of the Act, 29 U.S.C. 653(b)(1); failure to issue a citation with reasonable promptness; infeasibility of compliance; invalidity of the cited standard; preemption of section 5(a)(1) of the Act, 29 U.S.C. 654(a)(1), by a specific standard; preemption of a standard by a more specifically applicable standard under 29 CFR 1910.5(c)(1); res judicata; the six-month limitation period in section 9(c) of the Act, 29 U.S.C. § 658(c); or unpreventable employee conduct.

(2) By pleading an avoidance or affirmative defense, the employer does not waive its right to argue that the Secretary has the burden of persuasion concerning the matter. See § 2200.30(f).

§ 2200.37 Petitions for modification of the abatement period.

(a) *Grounds for modifying abatement date.* An employer may file a petition for modification of abatement date when such employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond the employer's reasonable control.

(b) *Contents of petition.* A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(c) *When and where filed; Posting requirement; Responses to petition.* A petition for modification of abatement date shall be filed with the Area Director of the United States Department of Labor who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near each location where the violation occurred. The petition shall remain posted for a period of ten (10) days.

(2) Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Area Director. Failure to file such objection within ten (10) working days of the date of posting of such petition shall constitute a waiver of any further right to object to said petition.

(3) The Secretary or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to paragraphs (b) and (c) of this section. Such uncontested petitions shall become final orders pursuant to sections 10 (a) and (c) of the Act.

(4) The Secretary or his authorized representative shall not exercise his approval power until the expiration of fifteen (15) working days from the date the petition was posted pursuant to paragraphs (c) (1) and (2) of this section by the employer.

(d) *Contested petitions.* Where any petition is objected to by the Secretary or affected employees, such petition shall be processed as follows:

(1) The petition, citation and any objections shall be forwarded to the Commission within three (3) working days after the expiration of the fifteen (15) day period set out in paragraph (c)(4) of this section.

(2) The Commission shall docket and process such petitions as expedited proceedings as provided for in § 2200.103 of this Part.

(3) An employer petitioning for a modification of the abatement period shall have the burden of proving in accordance with the requirements of 29 U.S.C. 659(c), that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

(4) Within ten (10) working days after the receipt of notice of the docketing by the Commission of any petition for modification of the abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

§ 2200.38 Employee contests.

(a) *Secretary's statement of reasons.* Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the Secretary shall, within 10 days from his receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.

(b) *Response to Secretary's statement.* Not later than 10 days after receipt of the statement referred to in paragraph (a) of this section, the contestant shall file a response.

(c) *Expedited proceedings.* All contests under this section shall be handled as expedited proceedings as provided for in § 2200.103 of this part.

§ 2200.39 Statement of position.

At any time prior to the commencement of the hearing before the Judge, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

§ 2200.40 Motions and requests.

(a) *How to make.* A request for an order shall be made by motion. Motions shall be in writing or, unless the Judge directs otherwise, may be made orally during a hearing on the record and shall be included in the transcript. In exigent circumstances in cases pending before Judges, a motion may be made telephonically if it is reduced to writing and filed within a short time. A motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. A motion shall not be included in another document, such as a brief or a petition for discretionary review, but shall be made in a separate document. Unless a motion is made by all parties, the moving party shall state in the motion any opposition or lack of opposition of which he is aware.

(b) *When to make.* A motion filed in lieu of an answer pursuant to § 2200.34(b) shall be filed no later than twenty days after the service of the complaint. Any other motion shall be made as soon as the grounds therefor are known.

(c) *Responses.* Any party or intervenor upon whom a motion is served shall have ten days from service of the motion to file a response. A procedural motion may be ruled upon prior to the expiration of the time for response. A party adversely affected by the ruling may within five days of service of the ruling seek reconsideration.

(d) *Postponement not automatic upon filing of motion.* The filing of a motion, including a motion for a postponement, does not automatically postpone a hearing. See § 2200.62 with respect to motions for postponement.

§ 2200.41 Failure to obey rules.

(a) *Sanctions.* When any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or Judge, he may be declared to be in default either:

(1) On the initiative of the Commission or Judge, after having been afforded an opportunity to show cause why he should not be declared to be in default; or

(2) On the motion of a party. Thereafter, the Commission or Judge, in their discretion, may enter a decision against the defaulting party or strike any pleading or document not filed in accordance with these rules.

(b) *Motion to set aside sanctions.* For reasons deemed sufficient by the Commission or Judge and upon motion expeditiously made, the Commission or Judge may set aside a sanction imposed under paragraph (a) of this section.

Subpart D—Prehearing Procedures and Discovery

§ 2200.51 Prehearing conferences and orders.

Prehearing conferences are encouraged. Prehearing conferences may be conducted by a telephone conference call. In addition to the prehearing and scheduling procedures set forth in Fed.R.Civ.P. 16, the Judge may upon his own initiative or on the motion of a party direct the parties to confer among themselves to consider settlement, stipulation of facts or any other matter that may expedite the hearing. Where a prehearing conference is not held, the Judge may in his discretion require the attorneys for the parties to prepare and submit an agreed prehearing order setting forth any stipulations between the parties, the disputed issues of fact and law, the names and addresses of witnesses, the exhibits expected to be called by each party in its case-in-chief, the possibility of settlement, the estimated hearing time, and a proposed hearing date or dates.

§ 2200.52 General provisions governing discovery.

(a) *General*—(1) *Methods and limitations.* In conformity with these rules, any party may, without leave of the Commission or Judge, obtain discovery by one or more of the following methods:

(i) Production of documents or things or permission to enter upon land or other property for inspection and other purposes (§ 2200.53);

(ii) Requests for admission (§ 2200.54); and

(iii) Interrogatories to the extent provided in § 2200.55.

Discovery is not available under these rules through depositions except to the extent provided in § 2200.56. In the absence of a specific provision, procedure shall be in accordance with the Federal Rules of Civil Procedure. However, entry upon land or other property may not be compelled by the imposition of sanctions under these rules or Fed.R.Civ.P. 34. If a party objects and refuses permission to enter upon land or other property, such entry shall be sought by application for a search warrant from a federal district court.

(2) *Time for discovery.* A party may initiate all forms of discovery in conformity with these Rules at any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss. Discovery requests shall be completed no later than seven days prior to the date set for hearing unless the Judge orders otherwise.

(b) *Scope of discovery.* The information or response sought through discovery may concern any matter not privileged and that is relevant to the subject matter involved in the pending case. It is not ground for the objection that the information or response sought will be inadmissible at the hearing, if that information or response appears reasonably calculated to lead to discovery of admissible evidence, regardless of which party has the burden of proof.

(c) *Limitations.* The frequency or extent of the discovery methods provided by these rules may be limited by the Commission or Judge if it is determined that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity to obtain the information sought by discovery in the action; or

(3) The discovery is unduly burdensome or expensive, taking into account the needs of the case, limitations on the parties' resources, and the importance of the issues in litigation.

(d) *Protective orders.* In connection with any discovery procedure, the Commission or Judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That discovery may be had only on specified terms and conditions, including a designation of the time and place, or that the scope of discovery be limited to certain matters;

(3) That discovery be conducted with no one present except persons designated by the Commission or Judge; and

(4) That confidential information not be disclosed or that it be disclosed only in a designated way. See also § 2200.11 on trade secrets.

(e) *Failure to cooperate; Sanctions.* A party may apply for an order compelling discovery when another party refuses or obstructs discovery. For purposes of this paragraph, an evasive or incomplete answer is to be treated as a failure to answer. If a Judge enters an order compelling discovery and there is a failure to comply with that order, the Judge may make such orders with regard to the failure as are just. The orders may issue upon the initiative of a Judge after affording an opportunity to show cause why the order should not be entered, or upon the motion of a party. The orders may include the following:

(1) An order that designated facts shall be taken to be established for purposes of the case in accordance with the claim of the party obtaining that order;

(2) An order refusing to permit the disobedient party to support or to oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence; and

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed.

(f) *Unreasonable delays.* None of the discovery procedures set forth in these rules shall be used in a manner or at a time which shall delay or impede the progress of the case toward hearing status or the hearing of the case on the date for which it is scheduled, unless, in the interests of justice, the Judge shall order otherwise. Unreasonable delays in utilizing discovery procedures may result in termination of the party's right to conduct discovery.

§ 2200.53 Production of documents and things.

(a) *Scope.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his or her behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served;

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon.

(b) *Procedure.* The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. It shall specify a reasonable time, place and manner of making the inspection and performing

the related acts. The party upon whom the request is served shall serve a written response within 30 days after service of the request. The Commission or Judge may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in whole or in part, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, that part shall be specified. To obtain a ruling on an objection by the responding party, the requesting party shall file a motion with the Judge and shall annex thereto his request, together with the response and objections, if any.

§ 2200.54 Requests for admissions.

(a) *Scope.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve upon any other party written requests for admissions, for purposes of the pending action only, of the genuineness and authenticity of any document described in or attached to the requests, or of the truth of any specified matter of fact. Each matter of which an admission is requested shall be separately set forth. The number of requested admissions shall not exceed 25, including subparts, unless the moving party establishes that the complexity of the case necessitates a greater number of requested admissions. The original of the request shall be filed with the Judge.

(b) *Response to requests.* Each matter is deemed admitted unless, within 30 days after service of the requests or within such shorter or longer time as the Commission or Judge may allow, the party to whom the requests are directed serves upon the requesting party (1) a written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so, or (2) an objection, stating in detail the reasons therefor. The response shall be made under oath or affirmation and signed by the party or his representative. The original shall be filed with the Judge.

(c) *Effect of admission.* Any matter admitted under this section is conclusively established unless the Judge or Commission on motion permits withdrawal or modification of the admission. Withdrawal or modification may be permitted when the presentation of the merits of the case will be subserved thereby, and the party who obtained the admission fails to satisfy the Commission or Judge that the withdrawal or modification will prejudice him in presenting his case or defense on the merits.

§ 2200.55 Interrogatories.

(a) *General.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve upon any other party a reasonable number of interrogatories, which shall not exceed 25 questions, including subparts. A greater number of interrogatories may not be served without an order of the Commission or Judge. The party seeking to serve more than 25 questions, including subparts, shall have the burden of persuasion to establish that the complexity of the case necessitates a greater number of interrogatories.

(b) *Answers.* All answers shall be made in good faith and as completely as the answering party's information will permit. The answering party is required to make reasonable inquiry and ascertain readily obtainable information. An answering party may not give lack of information or knowledge as an answer or as a reason for failure to answer, unless he states that he has made reasonable inquiry and that information known or readily obtainable by him is insufficient to enable him to answer the substance of the interrogatory.

(c) *Procedure.* Each interrogatory shall be answered separately and fully under oath or affirmation. If the interrogatory is objected to, the objection shall be stated in lieu of the answer. The answers are to be signed by the person making them and the objections shall be signed by the party or his counsel. The party on whom the interrogatories have been served shall serve a copy of his answers or objections upon the propounding party within 30 days after the service of the interrogatories. The Judge may allow a shorter or longer time. The burden shall be on the party submitting the interrogatories to move for an order with respect to any objection or other failure to answer an interrogatory.

§ 2200.56 Depositions.

(a) *General.* Depositions of parties, intervenors, or witnesses shall be allowed only by mutual agreement of all the parties, or on order of the Commission or Judge following the filing of a motion of a party stating good and just reasons. All depositions shall be before an officer authorized to administer oaths and affirmations at the place of examination. The deposition shall be taken in accordance with the Federal Rules of Civil Procedure, particularly Fed.R.Civ.P. 30.

(b) *When to file.* A motion to take depositions may be filed after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss.

(c) *Notice of taking.* Any depositions allowed by the Commission or Judge may be taken after ten days' written notice to the other party or parties. The ten-day notice requirement may be waived by the parties.

(d) *Expenses.* Expenses for a court reporter, and the preparing and serving of depositions shall be borne by the party at whose instance the deposition is taken.

(e) *Use of depositions.* Depositions taken under this rule may be used for discovery, to contradict or impeach the testimony of a deponent as a witness, or for any other purpose permitted by the Federal Rules of Evidence and the Federal Rules of Civil Procedure, particularly Fed.R.Civ.P. 32.

§ 2200.57 Issuance of subpenas; Petitions to revoke or modify subpenas; Right to inspect or copy data.

(a) *Issuance of subpenas.* On behalf of the Commission or any member thereof, the Judge shall, on the application of any party, issue to the applying party subpenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence or documents, in his possession or under his control. The party to whom the subpena is issued shall be responsible for its service. Applications for subpenas, if filed prior to the assignment of the case to a Judge, shall be filed with the Executive Secretary at 1825 K Street, NW., Washington, DC 20006. After the case has been assigned to a Judge, applications shall be filed with the Judge. Applications for subpenas shall be made ex parte. The subpena shall show on its face the name and address of the party at whose request the subpena was issued.

(b) *Revocation or modification of subpenas.* Any person served with a subpena, whether ad testificandum or duces tecum, shall, within 5 days after the date of service of the subpena upon him, move in writing to revoke or modify the supena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpena was issued. The Judge or the Commission, as the case may be, shall revoke or modify the subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation

or in question in the proceedings or the subpena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpena is otherwise invalid. The Judge or the Commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

(c) *Rights of persons compelled to submit data.* Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

(d) *Failure to comply with subpena.* Upon the failure of any person to comply with a subpena issued upon the request of a party, the Commission by its counsel shall initiate proceedings in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpena would be consistent with law and with policies of the Act. Neither the Commission nor its counsel shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

Subpart E—Hearings

§ 2200.60 Notice of hearing; location.

Except by agreement of the parties, or in an expedited proceeding under § 2200.103, notice of the time, place, and nature of the first setting of a hearing shall be given to the parties and intervenors at least thirty days in advance of the hearing. If a hearing has been previously postponed or if exigent circumstances are present, at least ten days notice shall be given. The Judge will designate a place and time of hearing that involves as little inconvenience and expense to the parties as is practicable.

§ 2200.61 Submission without hearing.

A case may be fully stipulated by the parties and submitted to the Commission or Judge for a decision at any time. The stipulation of facts shall be in writing and signed by the parties or their representatives. The submission of a case under this rule does not alter the burden of proof, the requirements otherwise applicable with respect to adducing proof, or the effect of failure of proof. Motions for summary judgment are covered by Fed.R.Civ.P. 56.

§ 2200.62 Postponement of hearing.

(a) *Motion to postpone.* A hearing may be postponed by the Judge at his own initiative or for good cause shown upon the motion of a party. A motion for postponement shall state the position of the other parties, either by a joint motion or by a representation of the moving party. The filing of a motion for postponement does not automatically postpone a hearing.

(b) *Grounds for Postponement.* A motion for postponement grounded on conflicting engagements of counsel or employment of new counsel shall be filed promptly after notice is given of the hearing, or as soon as the conflict is learned of or the engagement occurs.

(c) *When motion must be received.* A motion to postpone a hearing must be received at least seven days prior to the hearing. A motion for postponement received less than seven days prior to the hearing will generally be denied unless good cause is shown for late filing.

(d) *Postponement in excess of 60 days.* No postponement in excess of 60 days shall be granted without the concurrence of the Chief Administrative Law Judge. The original of any motion seeking a postponement in excess of 60 days shall be filed with the Judge and a copy sent to the Chief Administrative Law Judge.

§ 2200.63 Stay of proceedings.

(a) *Motion for stay.* Stays are not favored. A party seeking a stay of a case assigned to a Judge shall file a motion for stay with the Judge and send a copy to the Chief Administrative Law Judge. A motion for a stay shall state the position of the other parties, either by a joint motion or by the representation of the moving party. The motion shall set forth the reasons a stay is sought and the length of the stay requested.

(b) *Ruling on motion to stay.* The Judge, with the concurrence of the Chief Administrative Law Judge, may grant any motion for stay for the period requested or for such period as is deemed appropriate.

(c) *Periodic reports required.* The parties in a stayed proceeding shall be required to submit periodic reports on such terms and conditions as the Judge may direct.

§ 2200.64 Failure to appear.

(a) *Attendance at hearing.* The failure of a party to appear at a hearing may result in a decision against that party.

(b) *Requests for reinstatement.* Requests for reinstatement must be made, in the absence of extraordinary circumstances, within five days after the scheduled hearing date.

(c) *Rescheduling hearing.* The Commission or the Judge, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

§ 2200.65 Payment of witness fees and mileage; Fees of persons taking depositions.

Witnesses summoned before the Commission or the Judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

§ 2200.66 Transcript of testimony.

(a) *Hearings.* Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Judge before whom the matter was heard.

(b) *Payment for transcript.* The Commission shall bear all expenses for court reporters' fees and for copies of the hearing transcript received by it. Each party is responsible for securing and paying for its copy of the transcript.

(c) *Correction of errors.* Error in the transcript of the hearing may be corrected by the Judge on his own motion, on joint motion by the parties, or on motion by any party. The motion shall state the error in the transcript and the correction to be made. Corrections will be made by hand with pen and ink and by the appending of an errata sheet.

§ 2200.67 Duties and powers of Judges.

It shall be the duty of the Judge to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The Judge shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the Commission, to:

(a) Administer oaths and affirmations;

(b) Issues authorized subpenas;

(c) Rule upon petitions to revoke subpenas;

(d) Rule upon offers of proof and receive relevant evidence;

(e) Take or cause depositions to be taken whenever the needs of justice would be served;

(f) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(g) Hold conferences for the settlement or simplification of the issues;

(h) Dispose of procedural requests or similar matters, including motions referred to the Judge by the Commission and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;

(i) Make decisions in conformity with § 557 of title 5, United States Code;

(j) Call and examine witnesses and to introduce into the record documentary or other evidence;

(k) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(l) Adjourn the hearing as the needs of justice and good administration require;

(m) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the Commission.

§ 2200.68 Disqualification of the Judge.

(a) *Discretionary withdrawal.* A Judge may withdraw from a proceeding whenever he deems himself disqualified.

(b) *Request for withdrawal.* Any party may request the Judge, at any time following his designation and before the filing of his decision, to withdraw on ground of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) *Granting request.* If, in the opinion of the Judge, the affidavit referred to in paragraph (b) of this section is filed with due diligence and is sufficient on its face, the Judge shall forthwith disqualify himself and withdraw from the proceeding.

(d) *Denial of request.* If the Judge does not disqualify himself and withdraw from the proceedings, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision, and the provisions of § 2200.90 shall thereupon apply.

§ 2200.69 Examination of witnesses.

Witnesses shall be examined orally under oath or affirmation. Opposing parties have the right to cross-examine any witness whose testimony is introduced by an adverse party. All parties shall have the right to cross-examine any witness called by the Judge pursuant to § 2200.67(j).

§ 2200.70 Exhibits.

(a) *Marking exhibits.* All exhibits offered in evidence by a party shall be marked for identification before or during the hearing. Exhibits shall be marked with the case docket number, with a designation identifying the party or intervenor offering the exhibit, and numbered consecutively.

(b) *Removal or substitution of exhibits in evidence.* Unless the Judge finds it impractical, a copy of each exhibit shall be given to the other parties and intervenors. A party may remove an exhibit from the official record during the hearing or at the conclusion of the hearing only upon permission of the Judge. The Judge, in his discretion, may permit the substitution of a duplicate for any original document offered into evidence.

(c) *Reasons for denial of admitting exhibit.* A Judge may, in his discretion, deny the admission of any exhibit because of its excessive size, weight, or other characteristic that prohibits its convenient transportation and storage. A party may offer into evidence photographs, models or other representations of any such exhibit.

(d) *Rejected exhibits.* All exhibits offered but denied admission into evidence, except exhibits referred to in paragraph (c) of this section, shall be placed in a separate file designated for rejected exhibits.

(e) *Return of physical exhibits.* A party may on motion request the return of a physical exhibit within 30 days after expiration of the time for filing a petition for review of a Commission final order in a United States Court of Appeals under section 11 of the Act, 29 U.S.C. 660, or within 30 days upon completion of any proceedings initiated thereunder. The motion shall be addressed to the Executive Secretary and provide supporting reasons. The exhibit shall be returned if the Executive Secretary determines that it is no longer necessary for use in any Commission proceeding.

(f) *Request for custody of physical exhibit.* Any person may on motion to the Executive Secretary request custody of a physical exhibit for use in any court or tribunal. The motion shall state the reasons for the request and the duration of custody requested. If the exhibit has been admitted in a pending Commission case, the motion shall be served on all parties to the proceeding. Any person granted custody of an exhibit shall inform the Executive Secretary of the status every six months of his continuing need for the exhibit and return the exhibit after completion of the proceeding.

(g) *Disposal of physical exhibit.* Any physical exhibit may be disposed of by the Commission's Executive Secretary at any time more than 30 days after expiration of the time for filing a petition for review of a Commission final order in a United States Court of Appeals under section 11 of the Act, 29 U.S.C. § 660, or 30 days after completion of any proceedings initiated thereunder.

§ 2200.71 Rules of evidence.

The Federal Rules of Evidence are applicable.

§ 2200.72 Burden of proof.

(a) *Notice of contest cases.* In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the Secretary.

(b) *Petitions for modification of the abatement period.* In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

§ 2200.73 Objections.

(a) *Statement of objection.* Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Judge, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

§ 2200.74 Interlocutory review.

(a) *General.* Interlocutory review of a Judge's ruling is discretionary with the Commission. A petition for interlocutory review may be granted only where the petition asserts and the Commission finds: (1) that the review involves an important question of law or policy about which there is substantial ground for difference of opinion and that immediate review of the ruling may materially expedite the final disposition of the proceedings; or (2) that the ruling will result in a disclosure, before the Commission may review the Judge's report, of information that is alleged to be privileged.

(b) *Petition for interlocutory review.* Within five days following the receipt of

a Judge's ruling from which review is sought, a party may file a petition for interlocutory review with the Commission. Responses to the petition, if any, shall be filed within five days following service of the petition. A copy of the petition and responses shall be filed with the Judge. The petition is denied unless granted within 30 days of the date of receipt by the Commission's Executive Secretary.

(c) *Denial without prejudice.* The Commission's action in denying a petition for interlocutory review shall not preclude a party from raising an objection to the Judge's interlocutory ruling in a petition for discretionary review.

(d) *Stay*—(1) *Trade secret matters.* The filing of a petition for interlocutory review of a Judge's ruling concerning an alleged trade secret shall stay the effect of the ruling until the Commission denies the petition or rules on the merits.

(2) *Other cases.* In all other cases, the filing or granting of a petition for interlocutory review shall not stay a proceeding or the effect of a ruling unless otherwise ordered.

(e) *Judge's comments.* The Judge may be requested to provide the Commission with his written views on whether the petition is meritorious.

(f) *Briefs.* Should the Commission desire briefs on the issues raised by an interlocutory review, it shall give notice to the parties. See § 2200.93—Briefs before the Commission.

§ 2200.75 Filing of briefs and proposed findings with the Judge; Oral argument at the hearing.

(a) *General.* A party is entitled to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the Judge. In lieu of briefs, the Judge may permit or direct the parties to file memoranda or statements of authorities.

(b) *Time.* Briefs shall be filed simultaneously on a date established by the Judge. A motion for extension of time for filing any brief shall be made at least three days prior to the due date and shall recite that the moving party has advised the other parties of the motion. Reply briefs shall not be allowed except by order of the Judge.

(c) *Untimely briefs.* Untimely briefs will not be accepted unless accompanied by a motion setting forth good cause for the delay.

Subpart F—Posthearing Procedures

§ 2200.90 Decisions of judges.

(a) *Contents.* The Judge shall prepare a decision that constitutes his final disposition of the proceedings. The decision shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented on the record. The decision shall include an order affirming, modifying or vacating each contested citation item and each proposed penalty, or directing other appropriate relief. A decision finally disposing of a petition for modification of the abatement period shall contain an order affirming or modifying the abatement period.

(b) *The Judge's report*—(1) *Mailing to parties.* The Judge shall mail or otherwise transmit a copy of his decision to each party.

(2) *Docketing of Judge's report by Executive Secretary.* On the twenty-first day after the transmittal of his decision to the parties, the Judge shall file his report with the Executive Secretary for docketing. The report shall consist of the record, including the Judge's decision, any petitions for discretionary review and statements in opposition to such petitions. Promptly upon receipt of the Judge's report, the Executive Secretary shall docket the report and notify all parties of the docketing date. The date of docketing of the Judge's report is the date that the Judge's report is made for purposes of section 12(j) of the Act, 29 U.S.C. 661(j).

(3) *Correction of errors; Relief from default.* Until the Judge's report has been directed for review or, in the absence of a direction for review, until the decision has become a final order, the Judge may correct clerical errors and errors arising through oversight or inadvertence in decisions, orders or other parts of the record. If a Judge's report has been directed for review, the decision may be corrected during the pendency of review with leave of the Commission. Until the Judge's report has been docketed by the Executive Secretary, the Judge may relieve a party of default or grant reinstatement under §§ 2200.41(b) and 64(b).

(c) *Filing documents after the docketing date.* Except for papers filed under paragraph (b)(3) of this section, which shall be filed with the Judge, on or after the date of the docketing of the Judge's report, all documents shall be filed with the Executive Secretary.

(d) *Judge's decision final unless review directed.* If no Commissioner directs review of a report on or before the thirtieth day following the date of docketing of the Judge's report, the decision of the Judge shall become a final order of the Commission.

§ 2200.91 Discretionary review; Petitions for discretionary review; Statements in opposition to petitions.

(a) *Review discretionary.* Review by the Commission is not a right. A Commissioner may, as a matter of discretion, direct review on his own motion or on the petition of a party.

(b) *Petitions for discretionary review.* A party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a petition for discretionary review. Discretionary review by the Commission may be sought by filing with the Judge a petition for discretionary review within the twenty-day period provided by § 2200.90(b). Review by the Commission may also be sought by filing directly with the Executive Secretary a petition for discretionary review. A petition filed directly with the Executive Secretary shall be filed within 20 days after the date of docketing of the Judge's report. The earlier a petition is filed, the more consideration it can be given. A petition for discretionary review may be conditional, and may state that review is sought only if a Commissioner were to direct review on the petition of an opposing party.

(c) *Cross-petitions for discretionary review.* Where a petition for discretionary review has been filed by one party, any other party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a cross-petition for discretionary review. The cross-petition may be conditional. See paragraph (b) of this section. A cross-petition shall be filed with the Judge during the twenty days provided by § 2200.90(b) or directly with the Executive Secretary within 27 days after the date of docketing of the Judge's report. The earlier a cross-petition is filed, the more consideration it can be given.

(d) *Contents of the petition.* No particular form is required for a petition for discretionary review. A petition should state why review should be directed, including: whether the Judge's decision raises an important question of law, policy or discretion; whether review by the Commission will resolve a question about which the Commission's Judges have rendered differing opinions; whether the Judge's decision is contrary to law or Commission policy; whether a finding of material fact is not supported by a preponderance of the evidence; whether a prejudical error of procedure or an abuse of discretion was

committed. A petition should concisely state the portions of the decision for which review is sought and should refer to the citations and citation items (for example, citation 3, item 4a) for which review is sought. A petition shall not incorporate by reference a brief or legal memorandum. Brevity and the inclusion of precise references to the record and legal authorities will facilitate prompt review of the petition.

(e) *When filing effective.* A petition for discretionary review is filed when received. If a petition has been filed with the Judge, another petition need not be filed with the Commission.

(f) *Failure to file.* The failure of a party adversely affected or aggrieved by the Judge's decision to file a petition for discretionary review may foreclose court review of the objections to the Judge's decision. *See Keystone Roofing Co. v. Dunlop,* 539 F.2d 960 (3d Cir. 1976).

(g) *Statements in opposition to petition.* Statements in opposition to petitions for discretionary review may be filed in the manner specified in this section for the filing of petitions for discretionary review. Statements in opposition shall concisely state why the Judge's decision should not be reviewed with respect to each portion of the petition to which it is addressed.

(h) *Number of copies.* An original and three copies of a petition or of a statement in opposition to a petition shall be filed.

§ 2200.92 Review by the Commission.

(a) *Jurisdiction of the Commission; Issues on review.* Unless the Commission orders otherwise, a direction for review establishes jurisdiction in the Commission to review the entire case. The issues to be decided on review are within the discretion of the Commission but ordinarily will be those stated in the direction for review, those raised in the petitions for discretionary review, or those stated in any later order.

(b) *Review on a Commissioner's motion; Issues on review.* At any time within 30 days after the docketing date of the Judge's report, a Commissioner may, on his own motion, direct that a Judge's decision be reviewed. In the absence of a petition for discretionary review, a Commissioner will normally not direct review unless the case raises novel questions of law or policy or questions involving conflict in Administrative Law Judges' decisions. When a Commissioner directs review on his own motion, the issues ordinarily will be those specified in the direction for review or any later order.

(c) *Issues not raised before Judge.* The Commission will ordinarily not review issues that the Judge did not have the opportunity to pass upon. In exercising discretion to review issues that the Judge did not have the opportunity to pass upon, the Commission may consider such factors as whether there was good cause for not raising the issue before the Judge, the degree to which the issue is factual, the degree to which proceedings will be disrupted or delayed by raising the issue on review, whether the ability of an adverse party to press a claim or defense would be impaired, and whether considering the new issue would avoid injustice or ensure that judgment will be rendered in accordance with the law and facts.

§ 2200.93 Briefs before the Commission.

(a) *Requests for briefs.* The Commission ordinarily will request the parties to file briefs on issues before the Commission. After briefs are requested, a party may, instead of filing a brief, file a letter setting forth its arguments, a letter stating that it will rely on its petition for discretionary review or previous brief, or a letter stating that it wishes the case decided without its brief. The provisions of this section apply to the filing of briefs and letters filed in lieu of briefs.

(b) *Time for filing briefs*—(1) *Main briefs to be filed simultaneously.* Unless the briefing notice specifies otherwise, the parties shall file their main briefs within 40 days after the date of the briefing notice. If the petitioning party fails to timely file a brief or letter, a non-petitioning party may move that the direction for review or order granting interlocutory review be vacated. See paragraph (d) of this section.

(2) *Reply briefs.* A party may file a reply brief within 30 days after an opposing party's main brief was served upon him. The reply brief shall discuss only those issues raised by the opposing party's main brief.

(3) *Additional briefs.* Additional briefs may not be filed except by leave of the Commission.

(c) *Motion for extension of time for filing brief.* An extension of time to file a brief will ordinarily not be granted except for good cause shown. A motion for extension of time to file a brief shall be filed within the time limit prescribed in paragraph (b) of this section, shall comply with § 2200.40, and shall include the following information: when the brief is due; the number and duration of extensions of time that have been granted to each party; the length of extension being requested; the specific reason for the extension being requested; and an assurance that the brief will be filed within the time extension requested.

(d) *Consequences of failure to timely file brief.* The Commission may decline to accept a brief that is not timely filed. If a petitioning party fails to respond to a briefing notice or expresses no interest in review, the Commission may vacate the direction for review, or it may decide the case without that party's brief. If the non-petitioning party fails to respond to a briefing notice or expresses no interest in review, the Commission may decide the case without that party's brief. If a case was directed for review upon a Commissioner's own motion, and any party fails to respond to the briefing notice, the Commission may either vacate the direction for review or decide the case without briefs.

(e) *Length of brief.* Except by permission of the Commission, a main brief, including briefs and legal memorandums it incorporates by reference, shall contain no more than 35 pages of text. A reply brief, including briefs and legal memorandums it incorporates by reference, shall contain no more than 20 pages of text.

(f) *Table of contents.* A brief in excess of 15 pages shall include a table of contents.

(g) *Failure to meet requirements.* The Commission may return briefs that do not meet the requirements of paragraphs (e) and (f) of this section.

(h) *Number of copies.* Five copies of a brief shall be filed. See § 2200.8(c)(3).

§ 2200.94 Stay of final order.

(a) *Who may file.* Any party aggrieved by a final order of the Commission may, while the matter is within the jurisdiction of the Commission, file a motion for a stay.

(b) *Contents of motion.* Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(c) *Ruling on motion.* The Commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

§ 2200.95 Oral argument before the Commission.

(a) *General policy.* Oral argument before the Commission ordinarily will not be allowed.

(b) *Notice of oral argument.* In the event the Commission desires to hear oral argument with respect to any matter, it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least 10 days prior to the date set.

Subpart G—Miscellaneous Provisions

§ 2200.100 Settlement.

(a) *Policy.* Settlement is permitted and encouraged by the Commission at any stage of the proceedings.

(b) *Requirements.* The Commission does not require that the parties include any particular language in a settlement agreement, but does require that the agreement specify the terms of settlement for each contested item, specify any contested item or issue that remains to be decided (if any remain), and state whether any affected employees who have elected party status have raised an objection to the reasonableness of any abatement time. Unless the settlement agreement states otherwise, the withdrawal of a notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period will be with prejudice.

(c) *Filing; Service and notice.* A settlement submitted for approval after the Judge's report has been directed for review shall be filed with the Executive Secretary. When a settlement agreement is filed with the Judge or the Executive Secretary, proof of service shall be filed with the settlement agreement, showing service upon all parties in the manner prescribed by § 2200.7 and the posting of notice to non-party affected employees and authorized employee representatives in the manner prescribed by § 2200.7(g). The parties shall also file a final consent order for adoption by the Judge. If the time has not expired under these rules for electing party status, or if party status has been elected, an order terminating the litigation before the Commission because of the settlement shall not be issued until at least ten days after service to consider any affected employee's or authorized employee representative's objection to the reasonableness of any abatement time. The affected employee or authorized employee representative shall file any such objection within this time. If such objection is filed or stated in the settlement agreement, the Commission or the Judge shall provide an opportunity for the affected employees or authorized employee representative to be heard and present evidence on the objection, which shall be limited to the reasonableness of the abatement time.

(d) *Form of settlement document.* It is preferred that settlement documents be typewritten in conformance with § 2200.30(a). However, a settlement document that is hand-written or printed in ink and is legible shall be acceptable for filing.

§ 2200.101 Settlement negotiations before a Settlement Judge.

(a) *Appointment of Settlement Judge.*—(1) *Designation of Judge.* The Chairman may designate, or order the Chief Administrative Law Judge to designate, one or more Administrative Law Judges to serve in a capacity of Settlement Judge for a period of up to six months from the date of appointment. It is generally expected that a Settlement Judge would be designated in each of the Commission's regional offices and its National office and that designations of Settlement Judges in a particular office shall be in rotation insofar as practicable.

(2) *Case assignment.* Upon motion of any party following the filing of the pleadings (or notice of simplified proceedings, as the case may be), or upon his own motion, the Chief Administrative Law Judge may assign to an appropriate Settlement Judge a case for processing under this section whenever it is determined that there is a reasonable prospect of substantial settlement with the assistance of mediation by a Settlement Judge. In the event there is no objection to the motion of any party or the opposing party or parties consent thereto, the motion shall be granted as a matter of course. The Chairman may exercise a concurrent authority of assignment under this subparagraph.

(3) *Period of case assignment.* The assignment of any case for settlement negotiations under this section shall be for a period not to exceed sixty (60) days.

(b) *Powers and duties of Settlement Judges.*—(1) The Judge shall confer with the parties on subjects and issues of whole or partial settlement of the case.

(2) The Judge may allow or suspend discovery during the time of assignment.

(3) The Judge may suggest privately to each attorney or other representative of a party what concessions his or her client should consider, and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(4) The Judge shall seek resolution of as many of the issues in the case as is feasible.

(c) *Settlement conference and other communication.*—(1) *Types of conferences.* In general it is expected that the Settlement Judge shall communicate with the parties by a conference telephone call. The Settlement Judge, however, may schedule a personal conference with the parties under one or more of the following circumstances:

(i) It is possible for the Settlement Judge to schedule in one day six or more cases for conference at or near the same location;

(ii) The offices of the attorneys or other representatives of the parties, as well as that of the Settlement Judge, are located in the same metropolitan area;

(iii) A conference may be scheduled in a place and on a day that the Judge is scheduled to preside in other proceedings under this Part; and

(iv) Any other suitable circumstances in which, with the concurrence of the Chief Administrative Law Judge, the Settlement Judge determines that a personal meeting with the parties is necessary for a resolution of substantial issues in a case and the holding of a conference represents a prudent use of resources.

(2) *Participation in conference.* The Settlement Judge may direct that the attorney or other representative who is expected to try the case for each party be present, and without regard to the scope of the attorney's or other representative's powers, may also direct that the parties, or agents having full settlement authority be present. Only the Settlement Judge may excuse the absence of any person or party. The parties, their representatives, and attorneys are required to be completely candid with the Settlement Judge so that he may properly guide settlement discussions, and the failure to be present at a settlement conference or the refusal to cooperate fully within the spirit of this rule may result in the termination of the proceeding under this section. The Settlement Judge may make such other and additional requirements of the parties and/or persons having an interest in the outcome as to him shall seem proper in order to expedite an amicable resolution of the case. No evidence of statements or conduct in proceedings under this section will be admissible in any subsequent hearing, except by stipulation of the parties.

(d) *Report of Settlement Judge.* (1) With the consent of the parties, the Settlement Judge may request an enlargement of the time of the settlement period not exceeding thirty (30) days. This request and any action of the Chief Administrative Law Judge in response thereto, may be written or oral.

(2) Under other circumstances the Settlement Judge, following the expiration of the assignment period or at such earlier date that he determines further negotiations would be fruitless, shall promptly notify the Chief Administrative Law Judge in writing of the status of the case. If he has not approved a full settlement pursuant to

§ 2200.100 of these rules, such report shall include written stipulations embodying the terms of such partial settlement as has been achieved during the assignment.

(3) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to a different Administrative Law Judge for appropriate action on the remaining issues. To the extent practical, an assignment of the case shall be to an Administrative Law Judge in the office where the Settlement Judge is located. The Settlement Judge will not discuss the merits of the case with any other person, nor be called as a witness in any hearing of the case.

(e) *Non-reviewability.* Any decision concerning the appointment of a Settlement Judge or the termination of any settlement negotiations is not subject to review by, appeal to, or rehearing by any subsequent presiding officer, the Chief Administrative Law Judge, or the Commission.

§ 2200.102 Withdrawal.

A party may withdraw its notice of contest, citation, notification of proposed penalty, and petition for modification of abatement period at any stage of a proceeding. Unless ordered otherwise, withdrawal is with prejudice. The notice of withdrawal shall be served in accordance with § 2200.7 upon all parties and posted in the manner prescribed in § 2200.7(g) for the benefit of any affected employees not represented by an authorized employee representative who are eligible to elect, but have not elected, party status. Proof of service shall accompany the notice of withdrawal.

§ 2200.103 Expedited proceeding.

(a) *When ordered.* Upon application of any party or intervenor or upon its own motion, the Commission may order an expedited proceeding. When an expedited proceeding is ordered by the Commission, the Executive Secretary shall notify all parties and intervenors.

(b) *Automatic expedition.* Cases initiated by employee contests and petitions for modification of abatement period shall be expedited.

(c) *Effect of ordering expedited proceeding.* When an expedited proceeding is required by these rules or ordered by the Commission, it shall take precedence on the docket of the Judge to whom it is assigned, or on the Commission's review docket, as applicable, over all other classes of cases, and shall be set for hearing or for the submission of briefs at the earliest practicable date.

(d) *Time sequence set by Judge.* The assigned Judge shall make rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, may order daily transcripts of the hearing, and shall do all other things appropriate to complete the proceeding in the minimum time consistent with fairness.

§ 2200.104 Standards of conduct.

(a) *General.* All representatives appearing before the Commission and its Judges shall comply with the letter and spirit of the Model Rules of Professional Conduct of the American Bar Association.

(b) *Misbehavior before a Judge.*—(1) *Exclusion from a proceeding.* A Judge may exclude from participation in a proceeding any person, including a party or its representative, who engages in disruptive behavior, refuses to comply with orders or rules of procedure, continuously uses dilatory tactics, refuses to adhere to standards of orderly or ethical conduct, or fails to act in good faith. The cause for the exclusion shall be stated in writing, or may be stated in the record if the exclusion occurs during the course of the hearing. Where the person removed is a party's attorney or other representative, the Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or other representative.

(2) *Appeal rights if excluded.* Any attorney or other representative excluded from a proceeding by a Judge may, within five days of the exclusion, appeal to the Commission for reinstatement. No proceeding shall be delayed or suspended pending disposition of the appeal.

(c) *Disciplinary action by the Commission.* If an attorney or other representative practicing before the Commission engages in unethical or unprofessional conduct or fails to comply with any rule or order of the Commission or its Judges, the Commission may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action, including suspension or disbarment from practice before the Commission.

§ 2200.105 Ex parte communication.

(a) *General.* Except as permitted by § 2200.101, there shall be no ex parte communication with respect to the merits of any case not concluded, between any Commissioner, Judge, employee, or agent of the Commission who is employed in the decisional process and any of the parties or intervenors, representatives or other interested persons.

(b) *Disciplinary action.* In the event an ex parte communication occurs, the Commission or the Judge may make such orders or take such actions as fairness requires. The exclusion of a person by a Judge from a proceeding shall be governed by § 2200.104(b). Any disciplinary action by the Commission, including suspension or disbarment, shall be governed by § 2200.104(c).

(c) *Placement on public record.* All ex parte communications in violation of this section shall be placed on the public record of the proceeding.

§ 2200.106 Amendment to rules.

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein. The Commission invites suggestions from interested parties to amend or revoke rules of procedure. Such suggestions should be addressed to the Executive Secretary of the Commission at 1825 K Street, NW., Washington, DC 20006.

§ 2200.107 Special circumstances; Waiver of rules.

In special circumstances not contemplated by the provisions of these rules or for good cause shown, the Commission or Judge may, upon application by any party or intervenor or on their own motion, after three days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

§ 2200.108 Official Seal Occupational Safety and Health Review Commission.

The seal of the Commission shall consist of: A gold eagle outspread, head facing dexter, a shield with 13 vertical stripes superimposed on its breast, holding an olive branch in its claws, the whole superimposed over a plain solid white Greek cross with a green background, encircled by a white band edged in black and inscribed "Occupational Safety and Health Review Commission" in black letters.

Dated: June 18, 1986.

E. Ross Buckley,

Chairman.

Dated: June 18, 1986.

Robert E. Rader, Jr.,

Commissioner.

Dated: June 19, 1986.

John R. Wall,

Commissioner.

[FR Doc. 86-14210 Filed 6-24-86; 8:45 am]

BILLING CODE 7600-01-M

Federal Register

Wednesday
June 25, 1986

Part III

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Advisory Committee Meeting and Proposed Action Under Guidelines; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, on September 29, 1986, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. This meeting will be open to the public to discuss:

Scientific issues in human gene therapy;
Amendment of Guidelines; and
Other matters to be considered by the Committee

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such opportunity at the discretion of the Chair.

Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland 20892, telephone (301) 496–6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

Dated: June 18, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 86–14378 Filed 6–24–86; 8:45 am]
BILLING CODE 4140–01–M

Recombinant DNA Research: Proposed Action Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Action under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth a proposed action to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning this proposal. This proposal will be considered by the Recombinant DNA Advisory Committee (RAC) Working Group on Human Gene Therapy at its meeting on August 8, 1986, and by the full RAC at its meeting on September 29, 1986. After consideration of this proposal and comments by the RAC, the Director of the National Institutes of Health will issue a decision on this proposal in accord with the Guidelines.

DATE: Comments received by July 31, 1986, will be reproduced and distributed to the Working Group on Human Gene Therapy for consideration at its August 8, 1986, meeting. Those comments and comments received after July 31, 1986, but prior to September 19, 1986, will be reproduced and distributed to the full RAC for consideration at its September 29, 1986, meeting.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20892. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following action under the Guidelines for Research Involving Recombinant DNA Molecules.

I. Proposal to Modify Section III–A–4 of the NIH Guidelines

The Committee for Responsible Genetics, Boston, Massachusetts, has submitted the following proposal and rationale to modify Section III–A–4 of the Guidelines:

"Proposed Addition to the end of section III–A–4 of the NIH Guidelines on Redombinant DNA Molecules.

"The RAC will not review and the NIH will not approve any human genetic therapy:

"1. That is not aimed solely at the relief of a life-threatening or severely disabling condition; or

"2. That could alter germ line cells.

"Furthermore, the RAC will not review and the NIH will not approve any in vitro recombinant DNA experiments that alter human germ line cells or early human embryos.

"Rationale

"This addition to the NIH Guidelines is proposed in order to place a clear statement in the public record describing NIH's policy on experiments in human genetic engineering. The published "Points to Consider in the Design and Submission of Human Somatic-Cell Therapy Protocols" (sic) define a process for reviewing protocols but set no limitations and place no boundaries on human gene therapy experiments and on research on human germ line cells. This proposal is designed to give assurance to the public that, by opening up possibilities of human genetic engineering in areas where there is wide social consensus or, at least, no strong public opposition, the technology will not be applied to other situations where adequate public debate has not taken place.

"1. Somatic Cell Therapy for the Treatment of Disease.

Medical technologies that have initially been developed with governmental approval for specific purposes are easily adapted to other circumstances without commensurate accountability, once public attention and debate have waned. In our present socioeconomic environment, there are strong professional and business motivations for increasing the application of medical technologies.

"Human somatic cell gene therapy (HSCT) is currently being considered for use in life-threatening diseases. An American scientist already has carried out such experiments outside the United States. But the potential range of applications of HSCT is very broad. Genes regulate numerous biochemical processes including the production of

hormones, enzymes, and antibodies. Once human genetic engineering is established as a clinical treatment for some human disorders it is reasonable to expect, from past experience, that the research community will seek applications of gene therapy beyond the initial range of cases where some social consensus may have been reached. At the present time, beyond the applications of HSCT to the treatment of life-threatening or severely disabling diseases, no justification has been offered for the contention that the potential benefits of such therapy will outweigh the risks to people and serve the general welfare.

"Committees like the RAC or Institutional Review Boards serve their social purpose after society has reached some consensus over broad policy issues. The burden of proof must be on those who wish to introduce a new technology. Once broad consensus is reached, the RAC and the IRBs can then implement those policies and, among other things, render decisions involving grey areas. To date, the prospect of applying HSCT to dread disease has not drawn significant public opposition. Beyond such uses, we begin to enter a range of controversial applications about which there has not been adequate national debate. By stipulating the boundaries within which NIH will review HSCT protocols, acknowledgement is given to the limited nature of public discussion and consensus on the use of human genetic engineering.

"Arguments advanced for forbidding *all* uses of HSCT are based on the prediction that once we begin to accept *any* use of this technology, all uses are legitimized. Support for this thesis is nourished by past failures of our regulatory system to control applications of technology that have been extended beyond their initial public purpose in away that transgress the boundaries of democratic control. The establishment of restricted zones of application of HSCT at the outset will make it possible to support the most urgent and humane applications of HSCT with less fear that such support gives tacit approval to other uses that, propelled by economic and professional pressures, may slip through the review process.

"Many technical problems must be overcome if HSCT is to be used in clinical treatment. It is imperative that this therapy not be used on people, even experimentally, until the technical problems of targeting and delivery to specific cells or tissues have been solved. However, the pressure to test gene therapy on human subjects is building rapidly. Some investigators are even willing to forego the usual requirement that human trials await successful animal tests on the grounds that, as a life-saving measure, a patient is entitled to 'anything available.' We oppose this view. Moreover, we do not believe that informed consent by itself is a sufficient standard for protecting the dignity of individuals with life-threatening or severly disabling illnesses against inappropriate and adventuresome uses of medical technologies.

"2. Enhancement Therapies.

"The application of HSCT for the alteration of human characteristics such as height or skin tone raises profound ethical problems. For example, clinically healthy individuals who wish to receive genetic therapy to increase their height because 'shortness' is devalued in society are seeking a technological solution in response to a social problem. The concept of an ideal height, ideal skin color, or ideal weight is a social construction. Genetic technologies designed to correct normal variations in human phenotypes help to legitimize an ideology that places inferior value on certain expressions of human diversity. Those who would apply genetic therapies to bring an individual closer to a 'normal range' are caught up in an inherent contradiction. First, the measure of 'normal range' changes for each generation and for each culture. Second, the universal application of such therapy would artificially alter the normal range without offering any net benefits. Moreover, the mere availability of growth enhancement therapies, for example, creates a psychological atmosphere that further enhances the social value of 'tallness' and thereby worsens the problem consequently. The potential role of genetics in enhancement therapies must be viewed as a social issue that warrants broad public debate. NIH needs to enunciate clear restraints of the use of HSCT for the purpose of enhancement so as to avoid a slow and incremental drift toward such applications without adequate social assessment.

"3. Genetic Therapy for the Prevention of Disease.

"On the premise that genetic variation may explain differences in the onset of environmentally induced diseases, some companies have initiated genetic screening programs to identify workers who are supposedly at greater risk from exposure to certain chemicals in the workplace. This shifts the responsibility for reducing occupational disease from management to workers. The availability of gene therapy could put undue pressure on workers, who would have to choose between therapy or loss of jobs. Many people in society strongly oppose the alteration of human genome as a means to protect individuals against unnatural, hostile environments. The moral opprobrium over this use of HSCT is independent of personal risks. The proposed addition to the guidelines makes explicit the restriction against the use of human subjects for such purposes.

"4. Genetic Manipulation of the Human Germ Line.

"Considerable opposition has been expressed from many segments of society against any genetic manipulation of human germ line cells. Germ line manipulation through genetic additions or deletions in the sperm, egg, or zygote would be tantamount to experimentation on future generations with no possibility of informed consent. It would also set up a direct path to programs of eugenics. Consequently, NIH should state, at the outset, that no germ line manipulation will be approved."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: June 16, 1986.

Bernard Talbot,

Acting Director, National Institute of Allergy and Infectious Diseases.

[FR Doc. 86-14379 Filed 6-24-86; 8:45 am]

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