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Thursday
January 14, 1988

Briefing on How To Use the Federal Register—
For information on briefings in Seattle, WA, and San Francisco, CA, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 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.

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WHEN: February 11; at 9:00 a.m.
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WHERE: Room 2007, Federal Building, 450 Golden Gate Avenue, San Francisco, CA.
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Presidential Documents

Title 3—

The President

Proclamation 5760 of January 12, 1988

Martin Luther King, Jr., Day, 1988

By the President of the United States of America

A Proclamation

Twenty years ago this coming April, Dr. Martin Luther King, Jr., was slain by an assassin in Memphis, Tennessee. Violence and hatred, the enemies against which he offered an uncompromising message of brotherhood and hope, had claimed another victim in a decade of tumult that plumbed the very spirit of this Nation. Martin Luther King was martyred not only for his beliefs, but for the passionate conviction and consistency with which he espoused them. That those convictions prevailed, that his dream of the death of bigotry did not die with his life's ebbing, offered immutable confirmation of his fervent belief that "unarmed truth and unconditional love will have the final word in reality."

Martin Luther King's leadership was of the same character as his dream. It was larger than personality and broader than history. It bore the stamp of the religious tradition that formed his early life and led him to an assistant pastorship at Ebenezer Baptist Church in Atlanta at age 18. It took anchor in what he called the "magnificent words" of the Declaration of Independence and in the Constitution, words he echoed and to which he so often appealed in his speeches and writings against the cruelty and irrationality of segregation and prejudice. His was leadership that spoke to the best in every person's nature and that never failed, even in the face of curses and threats, iron bars and police lines, to turn men's eyes toward "the bright and glittering daybreak of freedom and justice."

Arrested in a march for desegregation on Good Friday, 1963, Martin Luther King wrote from the Birmingham City Jail of his faith in this ultimate dawning of equality: "We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom. Abused and scorned though we may be, our destiny is tied up with the destiny of America. . . . If the inexpressible cruelties of slavery could not stop us, the opposition we now face will surely fail. We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands." Those demands, he saw, were claims to the orginal promise of the truths our Founders proclaimed "self-evident"—that "all men are endowed by their Creator with certain unalienable rights," among them the "rights to Life, Liberty and the pursuit of Happiness." He called these words a "promissory note to which every American was to fall heir," and he insisted that what was centuries overdue could no longer be delayed.

Martin Luther King's words were eloquent because they were borne not by his tongue alone but by his very being; not by his being alone but by the beings of every one of his fellow black Americans who felt the lash and the sting of bigotry; and not by the living alone but by every generation that had gone before him in the chains of slavery or separation. He brought light to the victims of segregation, but he brought light as well—in a way, illumined by faith, more sorely needed—to its perpetrators. He saw how evil could crush the spirit of both the oppressor and the oppressed, but whereas "unearned suffering" was redemptive, those who were motivated by hatred and inflicted pain had no recourse but to abandon the instruments of prejudice and to change heart.

Through his evocation, by his words and his presence, of transcendent ideals, Martin Luther King pierced to the heart of American society and changed it, irrevocably, for the better. He, and all those who marched with him, overcame. As they did so, so too did the America that Lincoln had said could not stand divided—transmuted now through the toil and blood of its fallen heroes into a land more wholly free. The work of justice and freedom continues, but its goal is less distant, its hardships more tolerable, and its triumph more sure. For these gifts to our Nation, during his lifetime and in the decades past and to come, all Americans join in fitting celebration of the birth of Martin Luther King, Jr.

By Public Law 98–144, the third Monday in January of each year has been designated as a public holiday in honor of the "Birthday of Martin Luther King, Jr."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 18, 1988, as Martin Luther King, Jr., Day.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of January, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88–819
Filed 1–12–88; 4:44 pm]
Billing code 3195–01–M

Editorial note: For the President's remarks of Jan. 12 on signing Proclamation 5760, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 2).

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 353

Restoration to Duty From Military Service or Compensable Injury

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing the restoration rights of employees who perform military duty or are injured on the job. This revision is being issued together with a comprehensive revision of Chapter 353 of the Federal Personnel Manual (FPM). The principal purpose of the revision is to update, simplify, and clarify the regulations and instructions.

EFFECTIVE DATE: February 16, 1988.

FOR FURTHER INFORMATION CONTACT: Raleigh M. Neville, (202) 632-6817.

SUPPLEMENTARY INFORMATION: On April 10, 1987, OPM published (at 52 FR 11657) proposed regulations to amend 5 CFR Part 353 governing the restoration rights of employees who perform military duty or sustain compensable injuries or illnesses. At the same time, the corresponding FPM chapter was sent to agencies and unions for comment, and was made available to the general public. We received comments from 22 agencies, almost all of which were supportive of the new proposal and saw it as a substantial improvement. We also received comments from 3 unions and 1 individual. Key aspects of the proposal are summarized below along with a discussion of the more significant comments received on both the regulations and the FPM, and OPM's decision.

Key Provisions

—Revises § 353.102 to clarify that restoration rights following compensable injury apply only to Federal employees. Also, adds a definition of "equivalent position" and includes "furlough" in the definition of "leave of absence."

—Deletes material in §§ 353.104 and 353.105 pertaining to how employees on military duty or injury compensation are to be carried. (This information is covered in more detail in FPM Chapter 353.)

—Revises § 353.106 pertaining to notification of rights and obligations to make clear that an employee has an obligation to use due diligence in ascertaining his or her rights, and to return to duty as soon as he or she is able.

—Revises § 353.201(b) to provide that an employee whose position is reclassified during his or her absence is entitled to be considered for the regraded position in accordance with the provisions of Part 335 of this chapter.

—Revises § 353.201(c) to clarify that the prohibition on demoting or separating an employee absent on military duty applies only when the individual has restoration rights under title 38 of the U.S. Code.

—Revises § 353.203 to clarify that OPM will provide placement assistance to an employee returning from military duty when it is not feasible for the employing agency to restore the individual.

—Revises § 353.302 to change the focus from the time limits to who is entitled to mandatory restoration.

—Deletes material in § 353.303 pertaining to the position to which restored to reflect the provisions of 38 U.S.C. 2021(a)(A)(i) and the expiration of the so-called Whitten Amendment that effectively removed the requirement to obligate the position of an employee entering military service.

—Deletes material in § 353.305 pertaining to conflicting restoration rights, since conflicting restoration rights should rarely be an issue. (These rights are discussed in FPM Chapter 353.)

—Deletes most of the material in § 353.308 on notice of appeal rights. The right to appeal is covered in the new § 353.104.

—Adds a new § 353.306 specifying that Reservists are entitled to a leave of absence to perform military duty.

—Revises § 353.401 to remove repetitive and unnecessary material and to clarify that employees of the legislative and judicial branches do not have appeal rights to the MSPB. Also provides a limited right for partially recovered employees to appeal an agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

—Transfers material in Subpart E on the restoration rights of TAPER (temporary appointments pending establishment of a register) employees to § 353.305.

Comments Received

—Two agencies suggested extending the 30-day period following receipt of a request for restoration, within which the agency is required to restore an individual returning from military duty. We are unable to comply with this request for two reasons:

1. Congress clearly intended that an employee returning from military duty be restored as soon as practicable; and

2. The current 30-day provision is one of longstanding which has been generally accepted and proven workable. As such, it has taken on the characteristics of a law and cannot be arbitrarily changed.

—The proposed regulations provide for OPM placement assistance for executive branch employees returning from military duty when it is "not feasible" for their former agencies to restore them. A few agencies asked for further guidance as to the specific circumstances which would permit an agency to claim it was not feasible to restore such an individual. Given the many differences in agencies and individual employee circumstances, we believe it would be virtually impossible and counterproductive to attempt to define this further in a way that would cover all eventualities. We believe this is best left to individual determinations. In general, however, it is intended that the agency must have exhausted all efforts to place the individual before referral to OPM for placement assistance. On this basis, we have changed "not feasible" to "not possible."

—A few agencies suggested we add a requirement specifically requiring individuals returning from military duty or injury compensation to request restoration in writing and to state that they were requesting restoration under one of these two laws. This would put their agencies on notice that special treatment was required. We have not adopted this suggestion because we believe it is unnecessary and goes beyond the law. Neither of the governing statutes makes any mention of an employee having to apply for restoration in a certain manner. In essence, this proposal would mainly be for the convenience of the personnel office—but at the expense of the employee.

—Several agencies questioned or suggested changes in provisions which are essentially matters of law. For example, they questioned why an employee on military duty should be protected from reduction in force and why we need a provision protecting the vacation privileges of employees on a leave of absence to perform military duty. These provisions are based on 38 U.S.C. 2021, *et seq.*

—One agency felt strongly that we were going too far in giving employees absent because of military duty or compensable injury, the right to be considered automatically for all promotions. The agency pointed out that this places an enormous burden on the agency and rarely, if ever, results in a promotion for the employee. We have taken a closer look at this and agree with the agency. Accordingly, we have modified this section to *require* automatic promotion consideration only when an employee is in a career ladder, in an apprenticeship program, or when his or her position is reclassified at a higher grade.

—One agency suggested we clarify at what point an employee on the reemployment priority list is entitled to be considered outside the commuting area. Rather than regulate this issue, we prefer to leave these decisions to individual agencies, based on the circumstances in each case.

—One agency and a union believe we were diminishing the restoration rights of individuals returning from military duty by not giving them mandatory rights to the positions they left. Actually, this would go beyond the law. The law provides restoration rights only to the position the employee left *or an equivalent one.*

—One agency opposed the extension of appeal rights that allows partially recovered employees to appeal failure to credit time spent on compensation for purposes of rights and benefits based upon length of service, e.g., within grade increases. We believe, however, that 5 U.S.C. 8151 clearly reflects Congress' intent that time spent on compensation be credited for all purposes based on length of service—including within-grade increases. In this connection, the law makes no distinction between partially and fully recovered employees; it merely says that upon reemployment, the employee shall be entitled to all rights and benefits based upon length of service, including within-grade increases. Accordingly, a limited appeal right is appropriate to ensure that the law is given effect.

—One organization asked that, to avoid confusion, we delete references to restoration rights under 5 U.S.C. 3551 because this section is out-of-date and duplicates restoration rights in Title 38, United States Code. We have done so.

—One union asked that we include references to employee grievance rights under negotiated grievance procedures. We have done so.

—One organization and a union questioned the definition of "equivalent position." We have deleted this definition because of the broad range of positions in the Federal service and the difficulty of arriving at a definition which accurately encompasses all possibilities. We believe the determination of what constitutes an equivalent position is best left to individual judgments based on the particular circumstances in each case.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined by 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 pertains only to internal Federal personnel matters.

List of Subjects in 5 CFR Part 353

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 353 of Title 5, Code of Federal Regulations, as follows:

1. The authority citation for Part 353 is revised to read as follows:

Authority: 38 U.S.C. 2021 et seq., and 5 U.S.C. 8151.

2. The heading for Part 353 is revised to read as follows:

PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR COMPENSABLE INJURY

3. Section 353.101 is revised to read as follows:

§ 353.101 Scope.

The rights and obligations of employees and agencies in connection with leaves of absence or restoration to duty following military service under 38 U.S.C. 2021, et seq., and restoration under 5 U.S.C. 8151 for employees who sustain compensable injuries, are subject to the provisions of this part and to corresponding material published in Chapter 353 of the Federal Personnel Manual.

4. Section 353.102 is amended by removing the paragraph designations, alphabetizing the definitions, and revising the definitions of "agency," "leave of absence," and "military duty," to read as follows:

§ 353.102 Defintions.

* * * * *

"Agency" means (1) with respect to restoration following a compensable injury, any department, independent estalishment, agency, or corporation in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, and any agency in the legislative or judicial branch; and (2) with respect to restoration following military duty, all of the foregoing except for any agency in the legislative or judicial branch, but including the Government of the District of Columbia

* * * * *

"Leave of absence" means military leave, annual leave, leave without pay (LWOP), furlough, continuation of pay, or any combination of these.

"Military duty" means a period of (1) active duty for training or for service in the Armed Forces of the United States; (2) inactive duty training in the Armed Forces of the United States; and (3) active duty in the Public Health Service that is covered by 38 U.S.C. 2024(b). For the purpose of this paragraph, full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. 316, 502, 503, 504, or 505 is considered active duty for training in the Armed Forces of the United States. Inactive duty training performed by a member of the National Guard under 32 U.S.C. 502 or 37 U.S.C. 206, 301, 309, 402, or 1002 is considered

inactive duty training in the Armed Forces of the United States.

5. In § 353.103, paragraph (c) is redesignated as paragraph (b), and the original paragraph (b) is redesignated as paragraph (c). Both paragraphs are revised to read as follows:

§ 353.103 Persons covered.

* * * * *

(b) The provisions of this part concerning employee injury cover a civil officer of employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States, who was separated or furloughed from an appointment without time limitation as a result of a compensable injury; but do not include—

(1) A commissioned officer of the Regular Corps of the Public Health Service;

(2) A commissioned officer of the Reserve Corps of the Public Health Service on active duty; or

(3) A commissioned officer of the National Oceanic and Atmospheric Administration.

(c) Section 353.305 covers the restoration rights of employees serving under temporary appointments pending establishment of register (TAPER).

§§ 353.104 and 353.105 [Removed]

6. Sections 353.104 and 353.105 are removed.

7. Section 353.106 is redesignated as § 353.104 and revised to read as follows:

§ 353.104 Notification of rights and obligations.

When an agency separates, places on leave of absence, restores or fails to restore an employee because of military duty or compensable injury, it shall notify the employee of his or her rights, obligations, and benefits relating to Government employment, including any appeal rights to the Merit Systems Protection Board (MSPB) as required by § 1201.21 of this title, or where appropriate, the right to grieve under a negotiated grievance procedure. However, regardless of notification, an employee is still obligated to exercise due diligence in ascertaining his or her rights, and to seek reemployment within the time limits provided by Chapter 43 of Title 38 of the U.S. Code, for reemployment after military service or as soon as he or she is able after a compensable injury.

§ 353.107 [Redesignated as § 353.105]

8. Section 353.107 is redesignated as § 353.105.

9. Section 353.201 is revised to read as follows:

§ 353.201 Personnel actions.

(a) Agency promotion plans must provide a mechanism by which employees who are absent because of compensable injury or military duty can be considered for promotion.

(b) An employee whose position is reclassified while he or she is absent because of injury or military duty shall be considered for that position in accordance with the provisions in Part 335 of this chapter.

(c) An employee with restoration rights, absent on military duty, may not be demoted or separated (other than military separation). If the employee's position is abolished during such absence, the agency must reassign the employee to another position of like seniority, status, and pay.

(d) An employee absent because of compensable injury is subject to the same terms and conditions of employment with respect to demotion, separation, reduction in force (RIF), etc., as though he or she had not been injured. An employee who receives compensation during a period of LWOP or separation not due to compensable injury (e.g., expiration of appointment or RIF) or during a period when he or she would not normally be expected to work (e.g., seasonal employment) is not entitled to any greater rights or benefits than he or she would have received if not entitled to workers' compensation.

10. Section 353.203 is revised to read as follows:

§ 353.203 OPM placement assistance.

OPM will provide placement assistance to employees returning from military duty or compensable injury when the employing agency has been abolished and its functions were not transferred to another agency. Upon request, OPM will also provide placement assistance to an employee returning from military duty when it is not possible for the employing agency to restore the individual.

§ 353.301 [Removed]

11. Section 353.301 is removed.

12. Section 353.302 is redesignated as § 353.301 and revised to read as follows:

§ 353.301 Military returnees and injured employees who recover within 1 year.

The following individuals are entitled to mandatory restoration to their former positions or equivalent ones.

(a) An individual returning from military duty who is entitled to restoration rights under 38 U.S.C. 2021 or 2024 (a), (b), or (c). This eligible individual must be restored as soon as possible after making application but in no event later than 30 days after the application is received by the agency.

(b) An individual who fully recovers from a compensable injury within 1 year of the date compensation begins, or from the time compensable disability recurs if the recurrence begins after the employee resumes regular employment with the United States. Such an individual must be restored immediately and unconditionally.

§ 353.304 [Redesignated as 353.302]

13. Section 353.304 is redesignated as § 353.302 and revised to read as follows:

§ 353.302 Physical disqualification.

An individual who is physically disqualified for the former position or equivalent because of disability sustained during military service or because of compensable injury shall be placed in the agency in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation consistent with the circumstances in each case. For an employee who sustains a compensable injury, this right applies for a period of 1 year from the date compensation begins.

§§ 353.303, 353.305, and 353.308 [Removed]

14. Sections 353.303, 353.305, and 353.308 are removed.

§ 353.307 [Redesignated as § 353.303]

15. Section 353.307 is redesignated as § 353.303.

§ 353.306 [Redesignated as § 353.304]

16. Section 353.306 is redesignated as § 353.304.

§ 353.501 [Redesignated as § 353.305]

17. Section 353.501 is redesignated as 353.305 and revised to read as follows:

§ 353.305 Restoration rights of TAPER employees.

An employee serving in the competitive service under a TAPER appointment under § 316.201 of this chapter (other than an employee serving in grade GS-16, GS-17, or GS-18), is entitled to be restored to the position he or she left, or an equivalent position in the same commuting area.

18. A new § 353.306 is added to read as follows:

§ 353.306 Leaves of absence.

Documentation, reporting, and other requirements relating to leaves of absence shall be specified from time to time in the FPM System. The following employees are entitled under Title 38 of the U.S. Code, to a leave of absence in connection with military duty.

(a) A member of a Reserve component who performs active duty for training or inactive duty (38 U.S.C. 2024(d)).

(b) An employee who reports for enlistment, induction, or physical examination (38 U.S.C. 2024(e)).

19. Section 353.401 is revised to read as follows:

§ 353.401 Appeals to the Merit Systems Protection Board.

(a) Except as provided below, an employee or former employee of an agency in the executive branch (including the U.S. Postal Service and Postal Rate Commission) who is covered by this part may appeal to the MSPB an agency's failure to restore or improper restoration. All appeals are to be submitted in accordance with the MSPB's regulations.

(b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in Parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.

(c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

Subpart E—[Heading Removed]

20. The heading for Subpart E is removed.

[FR Doc. 88-693 Filed 1-13-88; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 890

Federal Employees Health Benefits Program; Medically Underserved Areas for 1988

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is amending its Federal Employees Health Benefits (FEHB) Program regulations pertaining to benefits for individuals in Medically Underserved Areas. This amendment is necessary to comply with a provision of FEHB law, which mandates special consideration for enrollees of certain FEHB plans who receive covered health services in states with critical shortages of primary care physicians.

DATES: Interim rule effective January 1, 1988. Comments must be received on or before March 14, 1988.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Myers (202) 632-4634.

SUPPLEMENTARY INFORMATION: Pub. L. 99-251, enacted on February 27, 1986, and entitled the "Federal Employees Benefits Improvement Act of 1986," amended the FEHB law by requiring restoration of payment to all qualified providers in Medically Underserved Areas effective January 1, 1985. Each year, OPM compares the latest Department of Health and Human Services state-by-state population counts on primary medical care manpower shortage areas with U.S. Census figures on state resident population and determines which states qualify as Medically Underserved Areas for the next calendar year.

OPM has determined that for 1988 the following six states are Medically Underserved Areas for purposes of the FEHB Program: Alabama, Louisiana, Mississippi, North Dakota, South Dakota, and West Virginia. This differs from OPM's determination for 1987 in that the states of North Dakota and South Dakota have been added to the group of states designated as medically underserved and the state of Wyoming is no longer included.

Waiver of Notice of Proposed Rulemaking

Under sections 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice is being waived because OPM's annual determination of Medically Underserved Areas, which takes effect on January 1 of each year, is a purely mechanical calculation based on statistical data and cannot be changed under current law.

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 they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

1. The authority citation for Part 890 continues to read as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.701, the second through fourth sentences of the paragraph defining "Medically underserved area" are removed and the following is added to the end of the definition to read as follows:

§ 890.701 Definitions.

* * * * *

"Medically underserved area" * * * OPM has determined that effective January 1, 1988, the following states are "medically underserved areas" for purposes of this subpart: Alabama, Louisiana, Mississippi, North Dakota, South Dakota, and West Virginia.

[FR Doc. 88-695 Filed 1-13-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Minimum Size Requirements for Florida Grapefruit and Tangerines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule the provisions of an interim final rule which relaxed the minimum size requirements for fresh shipments of domestic and imported pink seedless grapefruit from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter), and the minimum size requirement for fresh domestic shipments of Dancy tangerines from size 176 (2 6/16 inches in diameter) to size 210 (2 4/16 inches in diameter).

These fruits can be shipped from the production area to any point in the continental United States, Canada, or Mexico. The maturity level of, size composition of, and market demand conditions for these fruits warrant these relaxations.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: 202-475-3918.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act. This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order, approximately 15,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and approximately 26 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, producers, and importers may be classified as small entities.

The interim final rule was issued October 22, 1987, and published in the **Federal Register** (52 FR 41400, October 28, 1987). That rule amended § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, issued under Marketing Order 905. That rule provided that interested persons could file public comments through November 27, 1987. No comments were received. The interim final rule temporarily relaxed the minimum size requirements for domestic and import shipments of pink seedless grapefruit from size 48 ($3\frac{9}{16}$ inches in diameter) to size 56 ($3\frac{5}{16}$ inches in diameter) effective October 22, 1987, and the minimum size requirement for domestic shipments of Dancy tangerines from size 176 ($2\frac{6}{16}$ inches in diameter) to size 210 ($2\frac{4}{16}$ inches in diameter) effective November 30, 1987. The relaxations for grapefruit and tangerines will remain in effect through August 21, 1988, by which time shipments for the 1987-88 season will be finished. The resumption of tighter requirements for 1988-89 season shipments is based upon the maturity, size, quality, and flavor characteristics of these fruits early in the shipping season.

The Citrus Administrative Committee recommended relaxation of the size requirements for Florida grapefruit and tangerines at its September 22, 1987, meeting. It recommended the relaxation for grapefruit be made effective as soon as possible, and that for tangerines be made effective on November 9, 1987. On October 16, 1987, the committee modified its September 22, 1987, recommendation to provide that the relaxation for tangerines be made effective November 30, 1987. The committee indicated that the tangerine crop was not maturing as rapidly as anticipated.

The committee believes that grapefruit shipments to Canada can be significantly increased by relaxing the size requirement early in the season rather than waiting until later in the season as has been the practice in prior years. The committee's recommendation to relax the size requirement for Dancy tangerines follows the practice of prior years of lowering the size requirement when the crop has reached an acceptable level of maturity, flavor and size.

Section 8e of the Act (7 U.S.C. 608e-1) provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this action continues the relaxed minimum size requirement for domestically produced pink seedless grapefruit, the continued relaxation is also applicable to imported pink seedless grapefruit.

Grapefruit import requirements are specified in § 944.106 (7 CFR Part 944), which requires that the various varieties of grapefruit imported into the United States meet the same grade and size requirements as those specified for Florida grapefruit in Table I of paragraph (a) in § 905.306. Section 944.106 was issued under Section 8e of the Act.

The minimum size requirements, specified herein, reflect the committee's and the Department's appraisal of the need to relax the minimum size requirements applicable to domestic shipments of pink seedless grapefruit and the minimum size requirement applicable to the domestic shipments of Dancy tangerines. This rule recognizes current and prospective supply and demand for such fruit and is necessary to permit handlers to ship smaller sized fruit to meet market needs. No problems with fruit quality, maturity, and size are expected in the marketplace because of the relaxations.

Some Florida tangerine and grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provisions. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Therefore, the Department's view is that the impact of this action upon producers, handlers, and importers will be beneficial, because it will enable handlers to provide tangerines and grapefruit consistent with buyer requirements. The application of minimum size requirements to Florida grapefruit and tangerines, and to imported grapefruit over the past several years, has resulted in fruit of acceptable size being shipped to fresh markets.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, the information contained in the interim final rule, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act. Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains the same handling requirements currently in effect for Florida and imported pink seedless grapefruit and Dancy tangerines; (2) such handling requirements only apply to the remaining 1987–88 season shipments of these fruits; (3) the grapefruit import requirements are mandatory under section 8e of the Act; and (4) the interim final rule provided a 30-day period for filing written comments, and none were received; and (5) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, grapefruit, oranges, tangelos, tangerines.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 905 is taken:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

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

§ 905.306 [Amended]

2. Accordingly, the interim final rule amending § 905.306 which was published at 52 FR 41400 on October 28, 1987, is adopted as a final rule without change.

Dated: January 5, 1988.

Robert C. Keeney,

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

[FR Doc. 88–685 Filed 1–13–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 928

[Docket No. AO-371-A1]

Papayas Grown in Hawaii; Order Amending the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 928 for papayas grown in Hawaii. The amendment provisions: (1) Authorize a public member of the committee and changes in the size and composition of the committee, and limit committee member tenure to 3 consecutive 2-year terms of office; (2) provide an additional method of nominating persons to fill committee vacancies; (3) require an affirmative vote by a majority of the committee members to take any action; (4) authorize a late payment charge on past due assessments; (5) authorize container marking regulations, and container identification of inspected papayas; (6) provide for different grade, size, container, container marking, and pack regulations for papayas shipped to different geographical areas and market types; (7) provide for periodic continuance referenda every 6 years; and (8) make conforming changes. The amendments are designed to improve the effectiveness of the marketing order program.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: 202–475–3918.

SUPPLEMENTARY INFORMATION: Prior Documents in this Proceeding: The Notice of Hearing was issued November 8, 1985, and published in the **Federal Register** (50 FR 46773, November 13, 1985). The Recommended Decision was issued February 5, 1987, and published in the **Federal Register** (52 FR 4462, February 11, 1987). The Secretary's Decision was issued May 29, 1987, and published in the **Federal Register** (52 FR 21065, June 4, 1987; 52 FR 22888, June 16, 1987).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

Preliminary Statement

This final rule was formulated on the record of a public hearing held at Hilo, Hawaii, on November 20–21, 1985, to consider the proposed amendment of Marketing Order No. 928 regulating the handling of papayas grown in Hawaii, hereinafter referred to as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900). The Notice of Hearing contained several amendment proposals submitted by the Papayas Administrative Committee established under the order, hereinafter referred to as the committee. The Department of Agriculture proposed that it be authorized to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator, on February 5, 1987, filed with the Hearing Clerk, U.S. Department of Agriculture, the Recommended Decision containing the notice of the opportunity to file written exceptions thereto by March 13, 1987. No exceptions were filed.

The Secretary's Decision was issued May 29, 1987, directing that a referendum be conducted during the period June 22–30, 1987, among papaya producers in Hawaii to determine whether they favored various amendment proposals to the order. In that referendum, Hawaiian papaya producers voted, by volume, number, or both, in favor of all the amendment proposals listed in the referendum ballot.

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), 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. As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing of the probable regulatory and informational impact of the amendment proposals on small businesses for purposes of the RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the Recommended Decision and in the Secretary's Decision. Those findings and conclusions are incorporated herein.

There are approximately 122 handlers of papayas subject to regulation under the Hawaiian Papaya Marketing Order who handled papayas for fresh market with an estimated crop value of $10,872,000 during the marketing season which ended December 31, 1986. There are approximately 344 papaya producers in Hawaii.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural services firms are

defined as those whose gross annual receipts are less than $3,500,000. The majority of Hawaiian papaya handlers and producers may be classified as small entities.

List of Subjects in 7 CFR Part 928

Marketing agreements and orders, Papayas, Hawaii.

Order Amending the Order—Regulating the Handling of Papayas Grown in Hawaii

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the Marketing Agreement and Marketing Order No. 928 (7 CFR Part 928) regulating the handling of papayas grown in Hawaii.

Upon the basis of the record, it is found that:

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

(2) The order, as hereby amended, regulates the handling of papayas grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as hereby amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of papayas grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of papayas grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Additional Findings

It is necessary and in the public interest to make this order amending the order effective not later than the date of publication in the **Federal Register.** Any delay beyond that date would tend to interfere with effective functioning and administration of the order. The amendatory order authorizes changes in the operation and functioning of the order, which should be made effective as soon as possible. The specified effective date is necessary to meet these objectives.

Changes are authorized in the size, composition, and voting requirements of the committee. In addition, late payment charges on unpaid assessments are authorized to foster timely payments. The committee has experienced difficulty in collecting assessments from some handlers in a timely manner and has expressed interest in implementing late payment charges to encourage handlers to pay their assessments on time.

Moreover, additional types of handling regulations to meet the needs of specific markets are permitted by the amendment. The committee needs to meet and recommend program changes before they can be implemented by the Secretary. The committee would like to meet as soon as possible to consider needed changes authorized by this action. The committee needs to make timely decisions relating to handling regulations and financial operations when it meets, because Hawaiian papayas are shipped to market on a continuous basis 12 months a year.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective upon publication in the **Federal Register,** and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) Determinations

It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Papayas Grown in Hawaii" upon which the aforesaid public hearing was held has not been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping covered by the said order, as hereby amended) who, during the period January 1, 1986, through December 31, 1986, handled not less than 50 percent of the volume of such papayas covered by the said order as hereby amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval or produced for market at least two-thirds of the volume of such commodity represented in the referendum, all of such producers during the period January 1, 1986, through December 31, 1986 (which has been deemed to be a representative period), having engaged within Hawaii, in the production of papayas for market.

(3) The refusal or failure of sufficient handlers to sign the proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act.

(4) In the absence of a requisite number of handlers, by volume, signing the proposed marketing agreement, the issuance of the following amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of the papaya producers in Hawaii.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of papayas grown in Hawaii shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on February 5, 1987, and published in the **Federal Register** (52 FR 4462, February 11, 1987), and in the Secretary's Decision issued by the Deputy Assistant Secretary on May 29, 1987, and published in the **Federal Register** (52 FR 21065, June 4, 1987 and as corrected at 52 FR 22888, June 16, 1987), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR Part 928 continues to read as follows:

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

2. Revise § 928.11 to read as follows:

§ 928.11 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 928.31(o):

(a) District 1 shall include the island of Hawaii.

(b) District 2 shall include the county of Kauai which consists of the islands of Kauai and Niihau; the county of Maui which consists of the islands of Maui, Molakai, Lanai, and Kahoolawe; and Kalawao County.

(c) District 3 shall include the county of Honolulu which includes all of the island of Oahu.

3. Revise § 928.20 to read as follows:

§ 928.20 Establishment and membership.

There is hereby established a Papaya Administrative Committee consisting of 13 members, each of whom shall have an alternate who shall have the same qualifications as the member. Ten of the members and their alternates shall be growers and are referred to as "grower" members of the committee. Seven of the grower members and their alternates shall be producers of papayas in District 1, two grower members and their alternates shall be producers of papayas in District 2, and one grower member and alternate shall be procducers of papayas in District 3. No grower organization shall be permitted to have more than three members on the committee. Three of the members and their alternates shall be representatives of handlers and are referred to as "handler" members of the committee. The three handler members and their alternates shall be selected from the production area at large. No handler organization shall be permitted to have more than one handler member on the committee. The number of grower and handler members and alternates on the committee, and the composition of the committee between growers and handlers may be changed as provided in § 928.31(o). The committee also may be increased by one public member and one alternate public member nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe the qualifications of, and the nominating procedure for, the public member and alternate.

4. Revise § 928.21 to read as follows:

§ 928.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning July 1 and ending on the second succeeding June 30, or such other dates recommended by the committee and established by the Secretary. The consecutive terms of office of a member shall be limited to three 2-year terms. Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

5. Amend § 928.22 by removing paragraph (a), by redesignating current paragraph (b) as (a), by revising the first sentence of new paragraph (a)(1), and by adding a new paragraph (b) to read as follows:

§ 928.22 Nomination

(a) *Successor Members.* (1) The committee shall hold or cause to be held, not later than 45 days before the beginning of the term of office of committee members, separate meetings of growers in each district and a meeting of handlers for the purpose of designating nominees for successor members and alternate members of the committee, which shall be publicized and open to all growers and handlers. * * *

(b) In the event that nominees for all available positions are not provided by the aforesaid procedure, then such unfilled positions shall be treated as vacancies and the provisions of § 928.26 shall apply.

6. Revise § 928.23 to read as follows:

§ 928.23 Selection.

The Secretary shall select the grower, handler, and public members, and an alternate for each, from nominations made under §§ 928.20, 928.22 and 928.26, or from other qualified persons.

7. Revise § 928.24 to read as follows:

§ 928.24 Failure to nominate.

If nominations are not made in the time and manner prescribed in §§ 928.20, 928.22 and 928.26, the Secretary may without regard to nominations select the members and alternate members of the committee.

8. Revise § 928.26 to read as follows:

§ 928.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 928.20, 928.22, and 928.23: *Provided,* That the committee may in its discretion submit its recommendation to the Secretary of a nominee eligible to serve in accordance with the requirements specified in § 928.20. To the extent practicable, the committee's recommended nominee for a grower member or alternate grower member position to represent a particular district shall be a grower recommended to the committee by the incumbent grower representatives of the committee from a particular district, or such nominee shall be a qualified grower recommended by the grower group with which the former member was associated immediately prior to vacating the position; and the recommended nominee for a handler member or alternate handler member position shall be the handler recommended to the committee by the incumbent handler representatives of the committee, or such nominee shall be a qualified handler recommended by the packinghouse with which the former member was associated immediately prior to vacating the position.

9. Amend § 928.31 by revising paragraph (o) to read as follows:

§ 928.31 Duties.

* * * * *

(o) With the approval of the Secretary, to redefine the districts into which the production area is divided, to reapportion the grower member representation on the committee among the districts, to increase or decrease the number of grower and handler members and alternates on the committee, and to change the composition of the committee by changing the ratio between grower and members including their alternates. Any such changes within the papaya industry and shifts in papaya production among the districts within the production area.

10. Amend § 928.32 by revising paragraph (a) to read as follows:

§ 928.32 Procedure.

(a) A majority of all members of the committee, including alternates acting for members, shall be necessary to constitute a quorum and such majority must concur to approve any committee action.

* * * * *

11. Amend § 928.41 by revising the last sentence in paragraph (b) to read as follows:

§ 928.41 Assessments.

* * * * *

(b) * * * Assessments not paid within a period of time prescribed by the committee may be made subject to

interest or late payment charges, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the committee and approved by the Secretary. When such interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

12. Amend § 928.52 by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 928.52 Issuance of regulations.

(a) * * *

(3) Fix the size, capacity, weight, dimension, marking, or pack of the container, or containers, which may be used in the packaging or handling of papayas.

(4) Prescribe different requirements under paragraphs (a)(1) through (a)(3) of this section for the handling of any variety of papayas to destinations within any geographical area or market type identified and recommended by the committee and approved by the Secretary.

* * * * *

13. Amend § 928.55 by adding a new paragraph (c) to read as follows:

§ 928.55 Inspection and certification.

* * * * *

(c) The committee, with the approval of the Secretary, may prescribe such rules and regulations as it may deem necessary to assure compliance with this section and provide for identification of containers of papayas which have been inspected and certified for handling.

14. Revise § 928.64 to read as follows:

§ 928.64 Termination.

(a) The Secretary may at any time terminate the provisions of this order by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this order whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this order at the end of any fiscal year whenever the Secretary finds by a referendum or otherwise that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production area in the production of papayas for market: *Provided,* That such majority has produced for market during such period more than 50 percent of the volume of papayas produced in the production area. Such termination shall be effective only if announced on or before December 15 of the then current fiscal year.

(d) Upon recommendation of the committee, received not later than October 1 of an even-numbered year, the Secretary shall conduct a referendum prior to December 1 of such year to ascertain whether continuance of this order is favored by the producers.

(e) The Secretary shall conduct a continuance referendum every sixth fiscal year prior to October 1, with the first such referendum to be conducted within six years from the effective date of this amendment of this section, to ascertain whether continuance of this order is favored by producers. The Secretary may terminate the provisions of this order at the end of any fiscal year in which the Secretary has found that continuance of this order is not favored by producers, who, during a respresentative period determined by the Secretary, have been engaged in the production for market of papayas in the production area. Such termination of the order shall be effective only if announced on or before December 15 of the then current fiscal year.

(f) The provisions of this order shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

Effective date: January 14, 1988.

Signed at Washington, DC, on: January 6, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-630 Filed 1-13-88; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 75]

Staff Accounting Bulletin No. 75

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding certain accounting and disclosure issues relevant to a proposed Mexican Debt Exchange transaction.

DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Jones, Office of the Chief Accountant (202/272-2130); or Howard P. Hodges, Jr., Division of Corporation Finance (202/272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

January 4, 1988.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 75 to the table found in Subpart B.

Staff Accounting Bulletin No. 75

The staff hereby adds Sub-Section 2 to Topic 11.H of the staff accounting bulletin series. Topic 11.H.2 discusses the staff's views regarding certain accounting and disclosure issues relevant to a proposed Mexican Debt Exchange transaction.

Topic 11: Miscellaneous Disclosure

* * * * *

H. Disclosures by Bank Holding Companies Regarding Certain Foreign Loans

* * * * *

2. Accounting and Disclosures by Bank Holding Companies for a "Mexican Debt Exchange" transaction

Facts: Inquiries have been made of the staff regarding certain accounting and disclosure issues raised by a proposed "Mexican Debt Exchange" transaction which could involve numerous bank holding companies with existing obligations of the United Mexican States ("Mexico") or other Mexican public sector entities (collectively, "Existing Obligations"). The key elements of the Mexican Debt Exchange are as follows:

Mexico will offer for sale bonds ("Bonds"), denominated in U.S. dollars, which will pay interest at a LIBOR-based floating rate and mature in twenty years. Mexico will undertake to list the Bonds on the Luxembourg Stock Exchange. The Bonds will be secured, as to their ultimate principal value only, by non-interest bearing securities of the U.S. Treasury ("Zero Coupon Treasury Securities") which will be purchased by Mexico. The Zero Coupon Treasury

Securities will be pledged to holders of the Bonds and held in custody at the Federal Reserve Bank of New York and will have a maturity date and ultimate principal value which match the maturity date and principal value of the Bonds. While the Bonds will have default and acceleration provisions, the holder of a Bond will not be permitted to have access to the collateral prior to the final scheduled maturity date, at which time the proceeds of the collateral will be available to pay the full principal amount of the Bonds. As such, the holder of a Bond ultimately will be secured as to principal at maturity; however, the interest payments will not be secured. The Bonds will not be subject to future restructurings of Mexico's Existing Obligations, and Mexico has indicated that neither the Bonds nor the Existing Obligations exchanged therefor will be considered part of a base amount with respect to any future requests by Mexico for new money.

The Mexican Debt Exchange will be structured in such a way that potential purchasers of the Bonds will submit bids on a voluntary basis to the auction agent. These bids will specify the face dollar amount of existing restructured commercial bank obligations of Mexico or of other Mexican public sector entities that the potential purchaser is willing to tender and the face dollar amount of Bonds that the purchaser is willing to accept in exchange for the Existing Obligations. Following the auction date, Mexico will determine the face dollar amount of Bonds to be issued and will exchange the Bonds for Existing Obligations taking first the offer of the largest face dollar amount of Existing Obligations per face dollar amount of Bonds, and so on, until all Bonds which Mexico is willing to issue have been subscribed. It is therefore possible that a greater amount of Existing Obligations could be tendered than Mexico is willing to accept.

Question 1: How should the Mexican Debt Exchange transaction be accounted for?

Interpretive Response: GAAP allows loans to be carried at historical cost only if the holder has both the intent and ability to hold the loans to maturity. The staff believes that tendering Existing Obligations to the auction agent is inconsistent with an intent to hold such tendered loans to maturity. Accordingly, the tender of the obligations is an event that must be given accounting recognition either (i) by writing the loans down to the price at which the bank has agreed to accept Bonds in the tender (tender price) or (ii) by increasing as necessary the allowance for loan losses to an amount sufficient to result in a net carrying value for the loans tendered that equals the tender price.

Under the second approach, the staff believes that at the tender date, management has a responsibility to assess the allowance for losses relative to its LDC portfolio to determine if it is sufficient to result in a net carrying value for the loans tendered which is the same as the tender price. If it is not sufficient, an increase in the allowance through a provision for loan losses charged to income in necessary. Disclosure of the amount and nature of any change to the allowance or the reasons why one is not considered necessary should be made.

Under the second approach, at the date the Existing Obligations are accepted by Mexico and the bank receives the Bonds, the Existing Obligations accepted should be removed as an asset from the balance sheet, the fair value of the Bonds received should be recorded as an asset, and the allowance for losses should be reduced by the difference between these two amounts.

Of course, pursuant to Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies," management has a continuing responsibility to assess the adequacy of the allowance for loan losses relative to the Mexican debt not tendered and the remaining LDC portfolio to insure that the allowance is adequate to provide for losses due to ultimate collectibility including anticipated losses from sale, swap or other exchange of loans.

Question 2: What financial statement and other disclosure issues regarding the Mexican Debt Exchange and the Bonds received should be considered by registrants?

Interpretive Response: The staff believes that disclosure of the nature of the transaction would be necessary, including:

—Carrying value and terms of Existing Obligations exchanged;

—Face value, carrying value, market value and terms of Bonds received;

—The effect of the transaction on the allowance for loan losses and the provision for losses in the current period; and

—Annual interest income on Existing Obligations exchanged and annual interest income on Bonds received.

On an ongoing basis, the staff believes that the terms, carrying value and market value of the Bonds should be disclosed, if material, due to their unique features.

Question 3: What disclosure with respect to the Bonds received would be acceptable under Industry Guide 3?

Interpretive Response: Instruction (4) to Item III.C.3. of Industry Guide 3 states: "The value of any tangible, liquid collateral may also be netted against cross-border outstandings of a country if it is held and realizable by the lender outside of the borrower's country." Given the unique features of the Bonds in that the ultimate repayment of the principal amount (but not interest) at maturity is assured, the staff will not object to either of two presentations. Under the first presentation, the carrying value of the Bonds, including any accrued but unpaid interest, would be included as a "cross-border outstanding" to the extent it exceeds the current fair value of the Zero Coupon Treasury Securities which collateralize the bonds. Alternatively, under the second presentation, the carrying value of the bond principal would be excluded from Mexican cross-border outstandings provided (a) disclosure is made of the exclusion, (b) for purposes of determining the 1% and .75% of total assets disclosure thresholds of Item III.C.3. of Industry Guide 3, such carrying values are not excluded, and (c) all the Guide 3 disclosures relating to cross-border outstandings continue to be made, as discussed further below.

For registrants that adopt the alternative disclosure approach and whose Mexican cross-border outstandings (excluding the carrying value of the Bond principal) exceed 1% of total assets, appropriate footnote disclosure of the exclusions should be made. Such footnote should indicate the face amount and carrying value of the Bonds excluded, the market value of such Bonds, and the face amount and current fair value of the Zero Coupon Treasury Securities which secure the Bonds.

If the Mexican cross-border outstandings (excluding the carrying value of the Bond principal) are less than 1% of total assets but with the addition of the carrying value of the Bond principal would exceed 1%, the carrying value of the Mexican cross-border outstandings may be excluded from the list of countries whose cross-border outstandings exceed 1% of total assets provided that a footnote discloses the amount of Mexican cross-border outstandings (excluding the carrying value of the Bond principal) along with the footnote-type disclosure concerning the Bonds discussed in the previous paragraph. This disclosure and any other material disclosure specified by Item III.C.3. of Industry Guide 3 would

continue to be made as long as Mexican exposure, including the carrying value of the Bond principal, exceeded 1%.

If the Mexican cross-border outstandings (excluding the carrying value of the Bond principal) are less than .75% of total assets but with the addition of the carrying value of the Mexican Bond principal would exceed .75% but be less than 1%, cross-border outstandings disclosed pursuant to Instruction (7) to Item III.C.3. of Industry Guide 3 may exclude Mexico provided a footnote is added to the aggregate disclosure which discloses the amount of Mexican cross-border outstandings and the fact that they have not been included. The carrying value of the Bond principal may be excluded from the amount of Mexican cross-border outstandings disclosed in the footnote provided the footnote-type disclosure discussed in the second preceding paragraph is also made.

In essence, the alternative discussed herein results in a change only in the method of presenting information, not in the total information required.[1]

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[1] The following represents proposed disclosure using the alternative method discussed above. Of course, it would be necessary to supplement this disclosure with the additional disclosures regarding foreign outstandings that are called for Guide 3 (e.g., an analysis of the changes in aggregate outstandings), and the disclosures called for by the Interpretive Responses to Questions 1 and 2.

The appropriate disclosure would depend on the level of Mexican cross-border outstandings as follows:

A. Assuming that the remaining Mexican cross-border outstandings are in excess of 1% of total assets:

—Mexican cross-border outstandings (which excludes the total amount of the carrying value of Bond principal) would be disclosed in the table presenting all such outstandings in excess of 1%.

—Proposed footnote disclosure—

Not included in this amount is $—— million of Mexican Government Bonds maturing in 2008, with a carrying value of $—— million [if different from face value]. These Mexican Government Bonds had a market value of $—— million on [reporting date].

The principal amount of these bonds is fully secured, at maturity, by $—— million face value of U.S. zero coupon treasury securities that mature on the same date. The current fair value of these U.S. Government securities is $—— million at [reporting date]. This collateral is pledged to holders of the bonds and held in custody at the Federal Reserve Bank of New York.

The details of the transaction in which these bonds were acquired was reported in the Corporation's Form (8-K, 10-Q or 10-K) for (date). Accrued interest on the bonds, which is not secured, is included in the outstandings reported [amount to be disclosed if material]. Future interest on the bonds remains a cross-border risk.

B. Assuming that remaining Mexican cross-border outstandings are less than 1% of total assets but with the addition of the carrying value of the Mexican Bond principal would exceed 1%:

—There would not be any disclosure included in any cross-border table.

—The total amount of remaining cross-border Mexican outstandings would be disclosed in a footnote to the table. Such footnote would also explain that the Mexican outstandings are excluded from the table.

—Additional footnote disclosure—(same disclosure in A above).

—The disclosure required under this paragraph (plus any other disclosure required by Item III.C.3. of Guide 3) would continue so long as Mexican exposure, including the carrying value of the Mexican Bond principal, exceeded 1%.

C. Assuming that the remaining Mexican cross-border outstandings is less than .75% of total assets but with the addition of the carrying value of the Mexican Bond principal is greater than .75% but less than 1%:

—Mexico would not be included in the list of names of countries required by Instruction 7 to Item III.C.3. of Industry Guide 3 and the amount of Mexican cross-border outstandings would not be included in the aggregate amount of outstandings attributable to all such countries.

—A footnote would be added to this disclosure of aggregate outstandings which discusses the Mexican outstandings and the Mexican Bonds. An example follows:

Not included in the above aggregate outstandings are the Corporation's cross-border outstandings to Mexico which totalled $—— million at (reporting date). This amount is less than .75% of total assets. (The remaining portion of this footnote is the same disclosure in A above.)

D. Assuming that the total of the Mexican cross-border outstandings plus the carrying value of the Bond principal is less than the .75% of total assets:

—No disclosure would be required.

—However, same disclosure as in A above would be provided if any other aspects of the financial statements are materially affected by this transaction (such as the allowance for loan losses).

* * * * *

Changes in aggregate outstandings to certain countries experiencing liquidity problems are required to be presented in tabular form in compliance with Instruction (6)(b) to Item III.C.3. In this table, Existing Obligations exchanged for the Bonds would generally be included in the aggregate cross-border outstandings at the beginning of the period during which the exchange occurred. For registrants using the alternative method, the amount of Existing Obligations which were exchanged would be included as a deduction in the "other changes" caption in the table. In addition, a footnote will be provided to the table as follows:

—Relates primarily to the exchange of unsecured Mexican outstandings for Mexican bonds. The principal amount of these bonds is secured at maturity by $— —face U.S. Zero Coupon Treasury Securities which mature on the same date and have a current fair value of $——. Future interest on the bonds remains a cross-border risk.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 270, 273, 375, and 381

[Docket No. RM86-14-001]

Revisions to the Purchased Gas Adjustment Regulations

Issued: January 11, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for purpose of further consideration.

SUMMARY: On November 10, 1987, the Federal Energy Regulatory Commission issued a final rule to amend its regulations governing the procedures by which an interstate natural gas pipeline company passes through the cost of purchased gas to its jurisdictional customers.

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: January 11, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew S. Katz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8020.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt, and C. M. Naeve.

Order Granting Rehearing Solely for the Purpose of Further Consideration

On November 10, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule to amend its regulations governing the procedures by which an interstate natural gas pipeline company passes through the cost of purchased gas to its jurisdictional customers. Revisions to the Purchased Gas Adjustment Regulations, 52 FR 43854 (Nov. 17, 1987) (to be codified at 18 CFR 154.301, *et. seq.*).

The Commission received petitions for rehearing of this final rule by the persons listed in the Appendix to this order. To have sufficient time to consider the issues raised in these petitions, the Commission grants rehearing of its final rule solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of a petition on its merits, either in whole or in part. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR 385.713), no answers to these petitions will be entertained by the Commission.

By the Commission.

Lois D. Cashell,

Acting Secretary.

Appendix

ANR Pipeline Company
Colorado Interstate Gas Company
Arizona Direct Customers
Northwest Pipeline Corporation
Consolidated Gas Transmission Corporation
Natural Gas Pipeline Company of America
Transcontinental Gas Pipe Line Corporation
Northwest Natural Gas Company
El Paso Natural Gas Company

Tennessee Gas Pipe Line Company
Enron Interstate Pipelines
Columbia Gas Distribution Companies
Great Lakes Gas Transmission Company
Williams Natural Gas Company
Panhandle Eastern Pipe Line Company
Trunkline Gas Company
National Fuel Gas Supply Corporation
Texas Eastern Transmission Corporation
Producer Associations
Columbia Gas Transmission Corporation

[FR Doc. 88-677 Filed 1-13-88; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary of Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-88-1233; FR-2064]

Mutual Mortgage Insurance and Rehabilitation Loans; Conveyance of One- to Four-Family Properties Occupied by Tenants or Former Mortgagors

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the current regulations at 24 CFR 203.670 through 203.683 under the general heading of Occupied Conveyance. Included in this rule are revised criteria for determining when HUD will accept conveyance of a one- to four-family property by a mortgagee when there are tenants or former mortgagors in occupancy. The purpose of this rule include: (1) Modification of the habitability and eligibility criteria for occupied conveyance in accordance with the Department's policy of maximizing its ability to reduce its inventory of acquired properties, while providing necessary protections for the occupants of acquired properties; and (2) Revision of the notice and occupant appeal procedures governing departmental decisions involving occupied conveyance. This rule modifies the proposed rule published in the **Federal Register** of February 25, 1986 (51 FR 6556).

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

FOR FURTHER INFORMATION CONTACT: Jacqueline B. Campbell, Director, Single Family Property Disposition Division, Department of Housing and Urban Development, Room 9172, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 755-5740. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

Under the Department's single family mortgage insurance programs, HUD insures mortgages securing loans for the purchase of one- to four-family properties. *See*, e.g., section 203, 204 and 221(d)(2) of the National Housing Act, 12 U.S.C. 1709, 1710 and 17151(d)(2). The insurance contact provides that HUD will pay an insurance claim to a mortgagee upon the assignment of the mortgage or upon conveyance of the property to HUD after a default. As a condition to the receipt of mortgage insurance benefits in connection with a foreclosure or a deed in lieu of foreclosure, a mortgagee must ensure that the property is vacant, and must transfer good marketable title to the property to the Secretary of HUD. In addition, section 204(g) of the National Housing Act (12 U.S.C. 1710(g)) provides a broad authorization to the Secretary to manage and dispose of property acquired through the mortgage insurance program: "Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, the Secretary shall have power to deal with, complete, rent, renovate, modernize, insure, or sell for cash or credit, in his discretion, any properties conveyed to him * * *."

HUD regulations at 24 CFR Part 203, Subpart B contain the terms of the contract of mortgage insurance, as well as provisions for the conveyance of a one- to four-family property to HUD upon the foreclosure of a HUD-insured mortgage. In certain circumstances, HUD will accept transfer of the property with tenants or former mortgagors in occupancy. The criteria and procedures governing "occupied conveyance" were stated in 24 CFR 203.670 through 203.683, as promulgated in regulations published in the **Federal Register** of September 10, 1980 (45 FR 59563).

Under current HUD regulations, HUD may approve occupied conveyance in the following situations:

1. (a) Occupancy of the property is essential to protect it from vandalism; *or* HUD owns a number of vacant homes in the area; *or* (in the case of two- to four-family dwellings) the property's marketability would be enhanced by occupied conveyance; *or*

(b) A resident suffers from a temporary illness or injury that would be aggravated by the process of moving from the property; *and*

2. The property is habitable; *and*

3. The occupants meets specified eligibility criteria.

This final rule makes a number of changes to the above-summarized criteria, and to the procedures governing "occupied conveyances." In addition, it makes several revisions to the proposed rule published on February 25, 1986 (51 FR 6556). In promulgating these revisions, HUD believes that the following policies, reflected in the current regulations, are important for implementing section 204(g) of the NHA:

(1) HUD's Single Family Property Disposition Program must remain essentially a sales program, and its primary objective must be to reduce the inventory of acquired properties in a manner that will ensure the maximum return to the mortgage insurance funds.

(2) Because HUD does not have the resources to perform effectively the role of a large scale landlord in conjunction with its Property Disposition Program, occupied conveyance should be approved only as a temporary measure to support the sales program.

In the preamble to the proposed rule, which was published in 1986 (51 FR 6557), HUD cited various nationwide trends since the promulgation of the current regulations in 1980. Included among the nationwide trends from 1980 to 1985 cited in that preamble were the nationwide decrease in the size of HUD's inventory for acquired properties and HUD's significantly improved turnover rate for acquired one- to four-family properties. However, since the publication of the proposed rule, HUD's inventory of acquired properties has increased substantially.

From September 1985 to September 1987, HUD's inventory of acquired one- to four-family properties has increased from 16,000 to 38,000 properties. This increase has been particularly significant for HUD Regions VI-X. The inventory of acquired properties in those Regions, as a percentage of HUD's nationwide total, has increased from 50 percent in September 1985 to 72 percent in September 1987. HUD's turnover rate for the sale of acquired one- to four-family properties has increased from 5.3

months in September 1985 to 7.2 months in September 1987.

II. Final Rule

The key distinctions between the proposed rule and the current regulations were discussed in the preamble of the proposed rule at 51 FR 6556–6559. The following paragraphs summarize the key distinctions between this final rule and the current regulations, with references to the proposed rule where appropriate.

A. Properties Eligible for Occupied Conveyance

This rule maintains the criteria for determining the Secretary's interest under current § 203.671 and the definition of "residential area" under current § 203.672. However, it revises § 203.670 to eliminate any examination of the habitability of a HUD-owned property as affecting persons suffering from a temporary illness or injury which would be aggravated by the process of moving from the property. This revision reflects HUD's concern that a requirement that properties occupied by ill or injured persons be "habitable" would require HUD to make substantial repairs on those acquired properties. In addition, HUD's expenditure for these repairs would be unwarranted, given the temporary (maximum of three months) duration of the occupancy.

The proposed rule would have eliminated the criteria pertaining to vandalism and the presence of HUD-owned vacant, unsold properties in a designated "residential area." In addition, the proposed rule would have limited the occupied conveyance of one-family properties to situations involving a temporary illness or injury. Although HUD is aware of situations where occupied one-family properties generally result in decreased marketability, the Department has determined that there does not currently exist sufficient nationwide data to justify revising current §§ 203.670 and 203.671 to limit HUD's approval of continued occupancy in acquired one-family properties.

A new paragraph (c) is added to current § 203.670 to provide for HUD's acceptance of occupied conveyance where: (1) The Department has notified the mortgagee that it was considering a request for continued occupancy, (2) no further notification of HUD's decision on the request has been received by the mortgagee, and (3) ninety days have elapsed since the mortgagee notified HUD of pending acquisition. (However, where the mortgagee is *not* notified by HUD, within forty-five days from the date of HUD's notification of pending acquisition, that a request for continued occupancy is under consideration, the mortgagee must convey the property vacant unless otherwise directed by HUD (*see* § 203.678(b)). These revisions are designed to create greater predictability for mortgagees concerning HUD's occupied conveyance decisions.

B. Modification of the Habitability Criteria for Occupied Conveyance Decisions

Section 203.673 of this rule substantially revises the current habitability criteria. This final rule includes the following restrictions on HUD's repair costs to bring the property up to minimum standards of habitability as defined in revised § 203.673:

(1) Limitation of repair costs to five percent of the fair market value of the property (excluding the cost of abating any lead-based paint hazards); and

(2) Replacement of certain standards for the performance of mechanical systems in occupied properties with standards more focused on "habitability" or hazard-prevention concerns—e.g., that the property be free from hazards that may adversely affect the health and safety of the occupants (*see* § 203.673(b)(2)).

Proposed § 203.671(a) has been revised to exclude from the cost limitations (five percent of the fair market value of the property) necessary repair costs related to the abatement of lead-based paint hazards as required by HUD regulations promulgated under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846).

HUD is revising the current standard of fifteen percent of the repaired value of the acquired property because:

(1) Given the emphasis of the Single Family Property Disposition Program on protecting HUD's mortgage insurance funds from excessive losses, repair costs must be held to a minimum. (The five percent standard in this rule reflects HUD's statistical data for average repair costs for acquired properties sold during the period August 1986 through August 1987. HUD has determined that the average repair cost for acquired properties sold during the period August 1986 through August 1987 has been approximately $2,000, and the average sales price has been approximately $37,000. The substantial majority of these acquired properties were one-family properties.)

(2) The capacity of most HUD Field Offices successfully to supervise substantial repairs on many aquired properties is limited, particularly with occupants in residence in those properties.

(3) HUD has revisited the administrative record to the 1980 rulemaking on this matter and has found no statistical basis for the current standard of 15 percent of the repaired value of the property.

Although the sale of HUD-acquired properties returns funds to the FHA insurance fund, the average loss during the period of August 1986 through August 1987 was approximately $19,000 per property. HUD does not believe that this trend would be reversed by additional investment in acquired properties. Given the limited staff resources in Field Offices, HUD's capacity to properly supervise substantial repairs is seriously restricted. In addition, repairing properties will require HUD's holding acquired properties in its inventory for longer periods, thereby increasing both the turnover rate and HUD's holding costs for the property.

C. Modification of the Eligibility Criteria for Occupied Conveyance Decisions

Concerning the eligibility criteria for HUD's occupied conveyance decisions, § 203.674 of this rule continues the substance of current § 203.674. Tenants remaining in occupancy after conveyance are required to execute a month-to-month lease with HUD, to pay a "fair market rent" established by HUD based on comparable properties, to permit access by HUD staff or representatives for inspections and repairs, and to permit access by sales brokers. This rule also continues the use of an affordability test for all occupied conveyances. In § 203.674, paragraphs (a)(3) and (b)(5) reduce the standard under current § 203.674(c) from 40 percent to 38 percent of the occupant's "net effective income" (defined in this rule as gross income less Federal income taxes). In addition, this rule includes, as a possible "compensating factor" for allowing a higher percentage of the occupant's net effective income to meet housing costs, situations where the occupant is able to rely on cash savings or contributions from family members. Under the eligibility criteria in this rule, occupants must have occupied the property for at least 90 days before the date the mortgagee acquires title—instead of the minimum of 60 days provided under the current rule. This revision will minimize current mortgagee problems in providing effective notice in typical occupancy situations under this rule, which involve tenancies of more than 90 days. (See section III.E.3 of the preamble for a fuller discussion of the problem.)

Section 203.674(a) of this rule substantially revises the current requirements for continued occupancy based on temporary illness or injury. Included among these revisions are a limitation on continued occupancy to three months (unless extended by the Secretary) and a different treatment of this category (as compared to occupied conveyances based on other criteria) with respect to the habitability standards in revised § 203.673. HUD believes, given its limited capacity for substantial rehabilitation of acquired properties under the Property Disposition Program, the habitability requirements in § 203.673 should not be applied to occupied conveyances based on temporary illness or injury.

D. Notice Requirements for the Inspection of HUD-Acquired Properties

Paragraphs (a)(4) and (b)(5) of § 203.674 of this rule provide that, as a part of the eligibility requirements for continued occupancy, occupants must agree to allow access to the property, during normal business hours and upon at least two days advance notice, by HUD Field Office staff or by a HUD representative, so that the property may be inspected and any necessary repairs accomplished. This notice may consist of a telephone communication with the occupant or a member of the occupant's family, a letter addressed to the occupant, or other method of actual notice. HUD intends that this change in the timing of the notice (from 15 days in advance to two days) provide adequate notice to the occupant while facilitating the HUD Field Office's scheduling of inspections and repairs and the operations of sales brokers.

E. Procedural Requirements for Notice of Pending Acquisition, Requests for Continued Occupancy, and the Department's Final Decision on Requests

This rule retains, in modified form, the procedural guarantees of the current regulations for full notice and participation by occupants of HUD-acquired properties. Under § 203.675 of this rule, notice of pending acquisition must be transmitted by the mortgagee, 60 to 90 days before acquisition, (1) to the mortgagor and to the heads of household who are actually occupying the respective units of the affected property, and (2) to the HUD Field Office. (Under the current regulations, this 60- to 90-day advance notification is only required to be given by the mortgagee to the HUD Field Office, which subsequently notifies the occupant.) During notification from the mortgagee to the occupant will provide more expeditious actual notice than the current practice of the mortgagee's notification to the HUD Field Office, which in turn notifies the occupant.

This rule maintains the substance of other procedural safeguards in the current regulations providing for full participation of occupants in HUD's determination whether to grant occupied conveyances (*see* §§ 203.676 and 203.677). HUD believes that these provisions will continue to provide due process protections for affected occupants, while focusing the scope and time of occupants' review to avoid unnecessary burdens on HUD Field Offices. Section 203.677 specifies that the initial HUD Field Office decision on continued occupancy requests will be made by the Chief, Property Disposition and any appeal will be decided by the Field Office Manager or a designated representative of the Field Office Manager (other than the Chief, Property Disposition).

Revised § 203.677 of this rule limits access to material that directly pertains to the conditions for which continued occupancy was denied, and makes it available only after an appeal or request for a conference has been filed. Current § 203.677(a) permits occupants to review relevant information in HUD's possession after a request for continued occupancy is denied, without regard to whether an appeal is filed. Since HUD's staff resources are limited, the retrieval, assembly, photocopying, mailing and explaining of materials to current occupants who are not requesting a conference or filing an appeal would constitute an administrative burden, particularly since many occupants will not file an appeal. HUD believes that this revision will not sacrifice any essential procedural rights of current occupants in preparing for an informal conference or an appeal of an adverse initial decision.

F. Procedures for the Disposition of HUD-Acquired Properties

Section 203.678 provides for the conveyance of vacant HUD-acquired property where the occupant fails to request permission for continued occupancy within the time period specified in the rule. Section 203.679 maintains the grounds set out in the current regulations for the Department's commencement of eviction actions.

III. Summary of Public Comments on the Proposed Rule

A. Vandalism and Vacancy Criteria in Current § 203.671

Several tenant organizations commented that the proposed elimination of the vandalism and vacancy criteria in current § 203.671 would be detrimental to the interests of occupants of HUD-acquired properties. These organizations stated that because of the adverse impact of the proposed rule on the availability of low income housing in certain cities (e.g., New York City), the rule constitutes an "unreasonable exercise of delegated authority" under certain statutes including the NHA. (These commenters also cited general policy provisions of various Federal statutes, e.g., as stated in 42 U.S.C. 1441 (Housing Act of 1949) and 42 U.S.C. 4621 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), to support their argument that the proposed rule was contrary to "[F]ederal housing policy".) The tenant organizations commented that the national statistics HUD cited in the preamble to the proposed rule do not accurately reflect the need for the occupied conveyance of HUD-acquired properties in specific residential areas with crime or homelessness problems or a lack of affordable housing. A consultant for the mortgage banking industry concurred that there would be little advantage in eliminating the criteria in current § 203.671.

HUD has determined that the vandalism and vacancy criteria in current § 203.671 should be maintained. Concerning these criteria, HUD intends to provide clarification to HUD Field Offices on: (1) The delineation of "residential areas" under § 203.672, and (2) the vandalism and vacancy criteria in § 203.671.

Concerning § 203.672, HUD intends that Field Offices not be limited to any particular delineation of a "residential area" for HUD-acquired properties. However, a Field Office should delineate an area of a manageable size and justify that delineation in writing, based on a defensible rationale. Concerning the appropriate delineation of "residential areas", Field Offices should consult with (and place substantial weight on the comments of) persons active in the local real estate industry (e.g., local real estate boards or appraisers).

B. Temporary Illness or Injury Criteria in Current § 203.674

A tenant organization commented that the temporary illness or injury criterion in the proposed rule (and in the current regulations) is to narrow, and that it should be expanded to cover permanent disabilities (in particular, the permanent disabilities of the elderly). Other tenant organizations commented that the

temporary illness or injury criterion should not be limited to three months.

HUD disagrees with the comments of these tenant organizations and believes that an expansion of the temporary illness or injury criteria in the manner proposed by these organizations would prevent HUD from carrying out its primary objective under section 204(g) of the NHA—disposing of acquired properties in the shortest feasible time. HUD is attempting to balance its interest in accommodating the needs of ill or injured occupants with its interest in rapidly disposing of its inventory of acquired properties. The three-month limit for occupied conveyances should permit adequate time for facilitating moving arrangements by ill or injured occupants.

C. Regulatory Presumption Concerning the Marketability of Occupied Two- to Four-Family Properties in Current § 203.671

Several tenant organizations criticized HUD's proposed deletion of current § 203.671(c)—the presumption that, with respect to two- to four-unit properties, the marketability of those properties would be improved by retaining occupancy of one or more units. These organizations stated that occupancy by tenants in two- to four-unit properties acquired by HUD after foreclosure by the mortgagee often will improve the marketability of those properties.

HUD has determined that in certain local housing situations, the current occupancy of multi-unit properties could improve their marketability. The Department has decided to retain the regulatory presumption in current § 203.671(c).

D. Habitability Criteria (Current § 203.673)

Several tenant organizations commented that HUD should continue the habitability criteria in current § 203.673. In particular, these organizations suggested that certain features of the current regulations should be maintained, *i.e.*, that the maximum repair cost to meet the habitability criteria should be set at 15 percent of the value of the property after rehabilitation and that maximum repair limits should exclude costs related to the abatement of lead-based paint hazards. According to these comments, the inclusion of the cost of abating any lead-based paint hazards under the habitability standard would be contrary to HUD's obligations under the Lead-Based Paint Poisoning Prevention Act as interpreted in *Ashton* v. *Pierce*, 716 F.2d 56 (D.C. Cir. 1983). However, these organizations agreed with the proposed revision of current § 203.673(b) to eliminate the standard that the habitability of residential structures depends on the long-term soundness of their mechanical systems.

In addition, these comments stated that the cost limitations for rehabilitation efforts under the proposed rule (prohibiting the occupied conveyance of properties that require repair in excess of $500 for each residential unit and $500 for the external or common areas to bring units up to acceptable habitability standards) would result in HUD's rejection of requests for occupied conveyance in most situations.

HUD has determined that proposed § 203.671(a) should be revised to exclude costs for the abatement of lead-based paint hazards from the cost limitations otherwise imposed on unit repairs. In addition, HUD has determined that the proposed limitations on repair costs should be modified to minimize rejections of requests for continued occupancy. The repair cost limitation in this rule is five percent of the fair market value of the property. (This repair cost limitation reflects HUD's experience with typical repair costs under its Single Family Property Disposition Program).

HUD has published revised rules under the Lead-Based Paint Poisoning Prevention Act to set standards for the elimination of lead-based paint hazards in certain HUD housing assistance programs. For a background on this rulemaking and HUD's obligations under *Ashton* v. *Pierce*, see the **Federal Register** of January 15, 1987 (52 FR 1876). Requirements affecting HUD's single family property disposition program are contained in § 200.815 of that rule (see 52 FR 1891).

E. Eligibility for Continued Occupancy (Current §203.674)

1. *Eligibility criteria based on net effective income.* Tenant organizations commented that certain eligibility criteria in the proposed rule would discriminate against low income tenants of HUD-acquired properties. (Proposed § 203.672(b)(5) restricted the maximum percentage of an occupant's income used for rent to 35 percent of the occupant's "net effective income" (gross income, less city, State and Federal income taxes and Social Security taxes).) These organizations cited national statistics indicating that the standard of 35 percent of "net effective income" in the proposed rule would result in a rejection of requests for occupied coveyance in most instances. For example, in 1985, median rent in the United States as a percentage of median occupant income was 37.6 percent, and in certain states (Arizona, California, Florida, New Hampshire, and Vermont), the median rent for tenants was 40 percent or more. In addition, these organizations cited statistics showing that in 1984, one-third of all New York City tenants were paying more than 40 percent of their income for rent.

A consultant for the mortgage banking industry commented that the eligibility criterion under proposed § 203.672(a)(3) should be revised to a standard of 38 percent of "net effective income". According to this comment, a 38 percent standard would be consistent with current HUD mortgage credit practice. In addition, this commenter stated that to be in accord with current FHA mortgage credit practice, "net effective income" should be defined as gross income less Federal income taxes (but *not* less city and State income taxes and Federal Social Security taxes).

HUD has determined that the eligibility standard of 35 percent of "net effective income" is too strict and should be revised to accord with current HUD mortgage credit practice. Accordingly, paragraphs (a)(3) and (b)(3) of § 203.672 of this rule set an eligibility standard of 38 percent of "net effective income" and include a definition of "net effective income" as gross income less Federal income taxes. In addition, to provide some flexibility for HUD Field Offices, § 203.672(b)(5) of this rule maintains a consideration for "compensating factors" to allow occupants to qualify under the eligibility criteria despite paying more than 38 percent of their "net effective income" to meet their total housing cost (rent plus utility costs to be paid by the occupant). The category of utility costs has been added to provide a more accurate test of an occupant's ability to reasonably afford future rental payments.

2. *Notice requirements for the inspection of HUD-acquired properties.* Concerning paragraphs (a)(4) and (b)(4) of proposed § 203.672, tenant organizations commented that notice requirements for the inspection of HUD-acquired properties should not be changed to an advance notice of only two days by telephone communication with the occupant or any member of the occupant's family, or by a letter addressed to the occupant. These organizations suggested that the notice requirements in the current regulations (15 days) be maintained and that the method of notice should be through both certified and regular mail.

HUD disagrees with this comment. The notice provisions in paragraphs (a)(4) and (b)(4) of revised § 203.674

provide for an appropriate time and manner of notice for inspections. Given the management constraints of HUD Field Offices in conducting necessary repairs under § 203.673, the Field Offices of their agents (Area Management Brokers) often do not have the capacity to schedule inspections sufficiently in advance to meet the current 15-day notice requirement. Since the purpose of these inspections is to ensure that necessary repairs to units are expeditiously determined and accomplished in accordance with the habitability standards under § 203.673, a two-day notice requirement is important to the successful operation of the Property Disposition Program.

3. *Eligibility requirement for continued occupancy.* The Mortgage Bankers Association commented that proposed § 203.672(b)(3) should be revised to state that the occupant must have been in occupancy for at least 90 days (instead of 60 days, as under proposed) § 203.672(b)(3)) before the date that the mortgagee acquires title to the property. According to this comment, problems have occurred where the notice to the occupant arrives *between* 60 to 90 days before the expected date of acquisition of title, but the occupancy changes *after* the arrival of the notice and *before* the end of the 90-day period. (Under proposed § 203.673(a), the mortgagee would be required to provide the occupant with notice of pending acquisition at least 60 days, but not more than 90 days, before the date on which the mortgagee reasonably expects to acquire title.) For example, if the mortgagee provides notice to an occupant 70 days before acquisition of title and the occupancy changes at 60 days before acquisition, the new occupant could be denied notice.

HUD agrees that proposed § 203.673(a) should be revised to set a 90-day eligibility requirement for continued occupancy. Section 203.674(b)(3) of this rule responds to the concerns of the Mortgage Bankers Association. This slight increase in the eligibility criteria for continued occupancy in acquired properties will resolve the above-mentioned notice problems cited by the Mortgage Bankers Association. These notice problems concern typical occupancy situations covered under this rule (involving tenancies of more than 90 days). HUD is attempting to minimize the possibility that occupants will not receive proper notification of the occupied conveyance procedures.

F. Notice to Occupants of Pending Acquisition (Current § 203.675)

Tenant organizations commented that the proposed rule would shift from HUD to the mortgagee the duty to provide notice to occupants of acquired properties, and would decrease the probability that occupants actually would receive appropriate notice. These organizations stated that without the notice requirements of current § 203.676 (requiring that HUD notify the occupant that acquisition is pending and describing the procedure for requests for continued occupancy), tenants in acquired properties might not receive adequate (if any) notice from mortgagees.

In addition, these organizations commented that the shift of responsibility from HUD to mortgagees could create notification problems where a foreclosed HUD-insured property is purchased at the foreclosure sale by a party other than the mortgagee. These commenters stated that without the requirements in current § 203.676 (including the Department's obligation to notify the tenants that HUD soon will be acquiring the property and that the occupants may request permission from HUD to remain in occupancy), mortgagees may decide to bypass HUD's occupied conveyance procedures and to notify occupants that they must vacate the property without sending a copy of the notification to HUD.

These tenant organizations recommended that:

(1) Both HUD and the mortgagee be required to notify occupants of their rights by certified and regular mail, and that the mortgagee also be required to file an affidavit with HUD certifying its compliance with the notification requirements; and

(2) Copies of the notification to tenants transmitted by the mortgagee to HUD should certify that adequate notification has been served on all the named occupants and that all the occupants of the property have been included in the notification.

The Mortgage Bankers Association commented that proposed § 203.673 should be revised as follows:

(1) Mortgagees should be required to fulfill the notification requirement through regular mail service—not by certified or registered mail; and

(2) Proposed § 203.673(a) should be clarified to specify the mortgagee's responsibility for notification to occupants in situations where acquisition by HUD is delayed by bankruptcy filings, litigation, or for any other reason.

A consultant for the mortgage banking industry also criticized proposed § 203.673(a), because it would shift the burden of occupant notification to the mortgagee instead of HUD.

HUD disagrees with the commenters that the shifting of notification burdens from HUD to mortgagees will increase the likelihood that mortgagors and current tenants will not receive adequate notice. HUD doubts that such problems will occur, since HUD will receive a copy of the notification and will be in a position to monitor whether a mortgagee has complied with § 203.675(a) of this rule. Similarly, HUD disagrees with the tenant organizations' request that the notification requirements in proposed § 203.673 be revised to include strict requirements for the use of certified mail service and related mortgagee certification. HUD believes that regular mail service will be effective in providing adequate notification to mortgagors and occupants of the potential acquisition of the property by HUD.

HUD also believes that the Mortgage Bankers Association (MBA)'s proposed revisions to this rule are inappropriate. MBA requested that HUD revise the current regulations to address specifically mortgagees' notification responsibilities where the acquistion of a one- to four-family property by HUD is delayed by bankruptcy filings, litigation, or for any other reason. MBA's request for clarification of the notification requirements in the event of these types of intervening events involves HUD Field Offices' interpretation of the phrase "[a]t least 60 days, but not more than 90 days, before the date on which the mortgagee *reasonably expects* to acquire title to the property" (emphasis added) in § 203.675(a). HUD Headquarters will monitor HUD Field Offices' interpretation of this phrase, to require renotification by mortgagees, where appropriate, in situations involving intervening events. Where appropriate, guidance will be provided by HUD Headquarters concerning Field Offices' response to situations involving intervening events.

G. Decision to Approve or Deny A Request (Current § 203.677)

Several tenant organizations commented that proposed § 203.675(a) should be revised to reflect the following concerns: (1) An appeal of HUD's decision not to grant continued occupancy should be set at 20 days after the receipt of the notice of HUD's decision, not 20 days after the issuance date of HUD's notice; (2) the deadline for a request for an informal conference

should be the same as the deadline for an administrative appeal of HUD's decision—20 days after the date of HUD's notice, not 10 days after that date; (3) the rule should be revised to acknowledge that if an occupant does not respond to the initial notice of acquisition, lack of proper notice or any other "good cause" should be considered as an appropriate reason for an appeal of HUD's decision to require vacant delivery of foreclosed property; and (4) the rule should be revised to provide for an "impartial fact-finder" to decide an appeal of HUD's decision not to grant a request for continued occupancy.

HUD has determined that the specific deadlines for an appeal or an informal conference under § 203.677(a) provide a reasonable accommodation of the various interests involved in occupants' appeals of an initial HUD decision not to grant a request for continued occupancy. HUD believes that the appeal procedures afford adequate procedural due process protections. Under these procedures, such factors as a lack of proper notice or any other "good cause" could be considered, among other reasons, in HUD's decision on an occupant's appeal. However, HUD agrees with the tenant organizations that there should be a formal designation of two tiers of HUD decision making. Section § 203.677(a) of this rule designates the Chief, Property Disposition as the decision maker at the first tier, with the Field Office Manager or a designated representative (other than the Chief, Property Disposition) as the decision maker on appeal.

Tenant organizations also urged that proposed § 203.675(b) be revised to allow for the availability, at any time, of all material in HUD's possession concerning an occupied conveyance situation under review. HUD has decided to maintain § 203.675(b), as proposed, as part of this final rule. HUD has determined that without reasonable limitations on tenants' searching through administrative records, Field Offices would continue to be exposed to an administrative burden concerning searches of departmental files by tenants who might not request an appeal or conference. HUD believes that limiting tenants' access to Field Office files to situations involving their preparation for a future informal conference with HUD or for an appeal of the Department's decision will preserve limited staff resources, without sacrificing any essential procedural rights of current occupants in preparing for a furture informal conference or an appeal of an adverse decision by the Chief, Property Disposition.

H. Conveyance of Vacant Property (Current § 203.678)

A consultant for the mortgage banking industry criticized the removal of current § 203.679(b) and the substitution of proposed § 203.676(b). According to this commenter, these revisions have resulted in an excessive shift of responsibility to mortgagees. (Under current § 203.679(b), HUD must accept occupied conveyance where 90 days have elapsed since the mortgagee notified HUD of pending acquisition without any notification from HUD of a request for continued occupany. However, under § 203.678(b) of this rule, if the mortgagee has *not* been notified by HUD, within 45 days of the date of the notification of pending acquisition, that a request for continued occupancy from a tenant has been received by HUD, the mortgagee must convey the property vacant, unless otherwise directed by HUD).

The Mortgage Bankers Association raised similar concerns. According to the Association's comment, proposed § 203.676(b) could create situations where the mortgagee would move to evict current tenants despite HUD's receipt of the occupant's request for continued occupany. (This scenario assumes that HUD fails to notify the mortgagee on a timely basis of the Department's receipt of the occupant's request.) In addition, the Association emphasized the importance of current § 203.679(b) as a mechanism for forcing the expeditious conveyance of a FHA-insured property to HUD after a default. Several tenant organizations also criticized the proposed removal of current § 203.679(b).

HUD agrees that current § 203.679(b) should be included in this final rule to provide a deadline for the Department's consideration of a request for continued occupancy. A new paragraph (c) is being added to § 203.670 as part of this final rule to recognize HUD's acceptance of occupied conveyance where (1) 90 days have elapsed since the mortgagee notified HUD of pending acquisition, (2) the Department notified the mortgagee that it was considering a request for continued occupancy and (3) no subsequent communication from HUD has been received by the mortgagee. HUD believes that this provision will clarify mortgagee decision making in situations where a Field Office has not notified the mortgagee in a timely manner of the Field Office's decision on a request for continued occupancy. (Similarly, § 203.678(b) clarifies situations where the mortgagee has *not* been given timely notice by HUD that a request for continued occupancy is under consideration.)

IV. Miscellaneous

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

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

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned has determined that this rule would not have a significant economic impact on a substantial number of small entities. This rule establishes a revised structure for the Department's decisions on occupied conveyances and will not have a significant impact on small mortgagees or other affected small entities.

The information collection requirements contained in this rule have

been submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2502–0268.

This rule was listed as item number 978 in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358, 40379) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers affected by this rule are 14.108, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.130, 14.132, 14.133, 14.140, 14.154, 14.159, 14.161, 14.163, 14.165, 14.166, 14.172, and 14.175.

List of Subjects in 24 CFR Part 203

Home improvement, Loan programs: housing and community development, Mortgage insurance, Solar energy.

Accordingly, 24 CFR Part 203 is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 continues to read as follows:

Authority: Sections 203 and 211, National Housing Act (12 U.S.C. 1709 and 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The Table of Contents for Part 203, Subpart C is amended by revising §§ 203.670 through 203.681 and by removing §§ 203.682 and 203.683, to read as follows:

Subpart C—Servicing Responsibilities

* * * * *

Occupied Conveyance

Sec.
203.670 Conveyance of occupied property.
203.671 Criteria for determining the Secretary's interest.
203.672 Residential areas.
203.673 Habitability.
203.674 Eligibility for continued occupancy.
203.675 Notice to mortgagors and tenant occupants of pending acquisition.
203.676 Request for continued occupancy.
203.677 Decision to approve or deny a request.
203.678 Conveyance of vacant property.
203.679 Continued occupancy after conveyance.
203.680 Approval of occupancy after conveyance.
203.681 Authority of HUD Field Office Managers.

Subpart C—Servicing Responsibilities

* * * * *

Occupied Conveyance

3. Section 203.670 is revised to read as follows:

§ 203.670 Conveyance of occupied property.

(a) It is HUD's policy to reduce the inventory of acquired properties in a manner that will ensure the maximum return to the mortgage insurance funds, consistent with the need to preserve and maintain urban residential areas and communities.

(b) The Secretary will accept conveyance of an occupied property containing one to four residential units if the Secretary finds that:

(1) An individual residing in the property suffers from a temporary illness or injury that would be aggravated by the process of moving from the property, and that the individual meets the eligibility criteria in § 203.674(a); or

(2) It is in the Secretary's interest to accept conveyance of the property occupied under § 203.671, the property is habitable as defined in § 203.673, and each occupant who intends to remain in the property after the conveyance meets the eligibility criteria in § 203.674(b).

(c) HUD consents to accept good marketable title to occupied property where 90 days have elapsed since the mortgagee notified HUD of pending acquisition, the Department has notified the mortgagee that it was considering a request for continued occupancy, and no subsequent notification from HUD has been received by the mortgagee.

4. Sections 203.673 through 203.681 are revised to read as follows:

§ 203.673 Habitability.

(a) For purposes of § 203.670, a property is "habitable" if it meets the requirements of this section in its present condition, or will meet these requirements with the expenditure of not more five percent of the fair market value of the property. The cost of abating any lead-based paint hazards in the property, as required by HUD regulations promulgated under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), is excluded from these repair cost limitations.

(b)(1) Each residential unit must contain:

(i) Heating facilities adequate for healthful and comfortable living conditions, taking into consideration the local climate;

(ii) Adequate electrical supply for lighting and for equipment used in the residential unit;

(iii) Adequate cooking facilities;

(iv) A continuing supply of hot and cold water; and

(v) Adequate sanitary facilities and a safe method of sewage disposal.

(2) The property shall be structurally sound, reasonably durable, and free from hazards that may adversely affect the health and safety of the occupants or may impair the customary use and enjoyment by the occupants. Unacceptable hazards include, but are not limited to, subsidence, erosion, flood, exposure to the elements, exposed or unsafe electrical wiring, or an accumulation of minor hazards, such as broken stairs.

(c) If repairs, including lead-based paint abatement, are to be made while the property is occupied, the occupant must hold the Secretary harmless against any personal injury or property damage that may occur during the process of making repairs. If temporary relocation of the occupant is necessary during repairs, no reimbursement for relocation expenses will be provided to the occupant.

§ 203.674 Eligibility for continued occupancy.

(a) Temporary occupancy because of illness or injury of an individual residing in the property will be limited to three months (unless extended by the Secretary), and will be permitted only if all the conditions in this paragraph (a) are met:

(1) A timely request is made in accordance with § 203.676, including the submittal of documents required in § 203.675(b)(4).

(2) The occupant agrees to execute a month-to-month lease, at the time of acquisition of the property by the Secretary and on a form prescribed by HUD, and to pay a fair market rent as determined by the Secretary. The rental rate shall be established on the basis of rents charged for other properties in comparable condition after completion of repairs (if any).

(3) The occupant's total housing cost (rent plus utility costs to be paid by the occupant) will not exceed 38 percent of the occupant's net effective income (gross income less Federal income taxes). However, a higher percentage may be permitted if the occupant has been paying at least the required rental amount for the dwelling, or if there are other compensating factors (e.g., where the occupant is able to rely on cash savings or on contributions from family members to cover total housing costs).

(4) The occupant agrees to allow access to the property (during normal business hours and upon a minimum of two days advance notice) by HUD Field Office staff or by a HUD representative, so that the property may be inspected

and any necessary repairs accomplished, or by a sales broker.

(b) An occupant who does not meet the temporary illness or injury criteria is eligible for continued occupancy only if all the conditions in this paragraph (b) are met:

(1) A timely request is made in accordance with § 203.676.

(2) The occupant agrees to execute a month-to-month lease, at the time of acquisition of the property by the Secretary and on a form prescribed by HUD, to pay fair market rent as determined by the Secretary, and to pay the rent for the first month in advance at the time the lease is executed. The rental rate shall be established on the basis of rents charged for other properties in comparable condition after completion of repairs (if any).

(3) The occupant will have been in occupancy at least 90 days before the date the mortgagee acquires title to the property.

(4) The occupant's total housing cost (rent plus utility costs to be paid by the occupant) will not exceed 38 percent of the occupant's net effective income (gross income less Federal income taxes). However, a higher percentage may be permitted if the occupant has been paying at least the required rental amount for the dwelling, or if there are other compensating factors (e.g., where the occupant is able to rely on cash savings or on contributions from family members to cover total housing costs).

(5) The occupant agrees to allow access to the property (during normal business hours and upon a minimum of two days advance notice) by HUD Field Office staff or by a HUD representative, so that the property may be inspected and any necessary repairs accomplished, or by a sales broker.

§ 203.675 Notice to occupants of pending acquisition.

(a) At least 60 days, but not more than 90 days, before the date on which the mortgagee reasonably expects to acquire title to the property, the mortgagee shall notify the mortgagor and each head of household who is actually occupying a unit of the property of its potential acquisition by HUD. The mortgagee shall send a copy of this notification to the appropriate HUD Field Office.

(b) The notice shall provide a brief summary of the conditions under which continued occupancy is permissible and advise them that:

(1) Potential acquisition of the property by the Secretary is pending;

(2) The Secretary requires that properties be vacant at the time of conveyance to the Secretary, unless the mortgagor or other occupant can meet the conditions for continued occupany in § 203.670, the habitability criteria in § 203.673, and the eligibility criteria in § 203.674;

(3) An occupant may request permission to remain in occupancy in the event of acquisition of the property by the Secretary by notifying the HUD Field Office in writing, with any required documentation, within 20 days of the date of the mortgagee's notice to the occupant;

(4) If an occupant seeks to qualify for continued occupancy under the temporary illness or injury provisions of § 203.674(a), the occupant shall provide to the HUD Field Office, at the time of the occupant's request for permission to remain in occupancy, documentation to support this claim. Documentation shall include an estimate of the time when the patient could be moved without severely aggravating the illness or injury, and a statement by a State-certified physician establishing the validity of the occupant's claim. HUD may require more than one medical opinion or may arrange an examination by a physician approved by HUD; and

(5) If an occupant fails to make a timely request, the property must be vacated before the scheduled time of acquisition.

(Approved by the Office of Management and Budget under OMB control number 2502-0268)

§ 203.676 Request for continued occupancy.

An occupant may request permission to continue to occupy the property following conveyance to the Secretary by notifying the HUD Field Office in writing, within 20 days after the date of the mortgagee's notice of pending acquisition. Verification of temporary illness or injury as described in § 203.675(b)(4) shall be submitted within this time period if an occupant seeks to qualify for continued occupancy under the provisions of § 203.674(a). The HUD Field Office will notify the mortgagee in writing that an occupied conveyance has been requested.

(Approved by the Office of Management and Budget under OMB control number 2502-0268)

§ 203.677 Decision to approve or deny a request.

(a) The HUD Field Office will provide written notification of its decision to an occupant who makes a timely request to continue to occupy the property. The decision of the HUD Field Office on this matter will be made by the Chief, Property Disposition. If the decision is to deny the request, the notice to the occupant will include a statement of the reason or reasons for the decision and of the occupant's right to appeal. The occupant may appeal HUD's decision within 20 days after the date of HUD's notice. The appeal must be addressed to the Field Office Manager and be in writing, and the occupant may provide documentation intended to refute the reasons given for HUD's decision. The occupant may also request an informal conference with a representative of the HUD Field Office Manager. A request for an informal conference must be made in writing within 10 days after the date of HUD's notice. The occupant may be represented at the conference by counsel or by other persons with pertinent expert knowledge or experience.

(b) After notification that HUD has denied a request for continued occupancy, the occupant, on his or her request, shall be permitted to review all relevant material in HUD's possession (including a copy of the inspection report if the request is denied because the property is not habitable as defined in § 203.673). Only material in HUD's possession that directly pertains to conditions for continued occupancy under §§ 203.670, 203.673, and 203.674 may be considered material relevant for an occupant's review under this paragraph. This review shall be limited to a review of material for purposes of the informal conference or the appeal of the Department's decision. The information will only be provided after request for an informal conference or appeal has been submitted to HUD.

(c) After consideration of an appeal, the HUD Field Office will notify the applicant in writing of HUD's final decision. This final decision will be made by the HUD Field Office Manager or a representative of the Field Office Manager (other than the Chief, Property Disposition). If the decision is to deny the occupant's request, the notice to the occupant will reflect consideration of the issues raised by the occupant.

(d) If, after consideration of an appeal, the Field Office Manager denies the request for new or additional reasons, the occupant will be afforded an opportunity to request that the Field Office Manager reconsider its decision under the provisions of paragraph (c) of this section.

§ 203.678 Conveyance of vacant property.

(a) HUD will require that the property be conveyed vacant if the occupant fails to request permission to continue to occupy within the time period specified in § 203.676, or fails to request a conference or to appeal a decision to

deny occupied conveyance within the time period specified in § 203.677(a).

(b) If the mortgagee has not been notified by HUD, within 45 days of the date of the mortgagee's notification of pending acquisition, that a request for continued occupancy is under consideration, the mortgagee shall convey the property vacant, unless otherwise directed by HUD.

§ 203.679 Continued occupancy after conveyance.

(a) Occupancy of HUD-acquired property is temporary in all cases and is subject to termination when necessary to facilitate preparing the property for sale and completing the sale.

(b) HUD will notify the occupant to vacate the property and, if necessary, will take appropriate eviction action in any of the following situations:

(1) Failure of the occupant to execute the lease required by §§ 203.674 (a)(2) and (b)(2), or failure to pay the rental amount required, including the initial payment at the time of execution of the lease, or to comply with the terms of the lease;

(2) Failure of the occupant to allow access to the property upon request in accordance with §§ 203.674 (a)(4) and (b)(5);

(3) Necessity to prepare the property for sale; or

(4) Assignment of the property by the Secretary to a different use of program.

§ 203.680 Approval of occupancy after conveyance.

When an occupied property is conveyed to HUD before HUD has had an opportunity to consider continued occupancy (e.g., where HUD has taken more than 90 days to make a final decision on continued occupancy in accordance with § 203.670(c)), a determination regarding continued occupancy will be made in accordance with the conditions for the initial approval of occupied conveyance. Any such determination shall be in accordance with HUD's obligations under the terms of any month-to-month lease that has been executed.

§ 203.681 Authority of HUD Field Office Managers.

Field Office Managers shall act for the Secretary in all matters relating to assignment and occupied conveyance determinations. The decision of the Field Office Manager under § 203.677 will be final and not be subject to further administrative review.

§§ 203.682 and 203.683 [Removed]

5. Sections 203.682 and 203.683 are removed.

Date: December 30, 1987.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner

[FR Doc. 88-567 Filed 1-13-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 887

Military Personnel; Issuing of Certificates in Lieu of Lost or Destroyed Certificates of Separation

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by revising Part 887, Issuing of Certificates in Lieu of Lost or Destroyed Certificates of Separation. This regulation tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation and where and how to apply. This revision provides additional information and makes minor changes to update and to clarify the part.

EFFECTIVE DATE: February 16, 1988.

ADDRESS: HQ AFMPC/DPMDOP, Randolph AFB, Texas 78150-6001.

FOR FURTHER INFORMATION CONTACT: Mr. Sal Garcia, telephone (512) 652-2089.

SUPPLEMENTARY INFORMATION: On September 24, 1987, the Department of the Air Force published a proposed rule in the **Federal Register** on issuing of certificates in lieu of lost or destroyed certificates of separation (52 FR 35927). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 887

Archives and records, Military personnel.

Therefore, 32 CFR Part 887 is revised to read as follows:

PART 887—ISSUING OF CERTIFICATES IN LIEU OF LOST OR DESTROYED CERTIFICATES OF SEPARATION

Sec.
887.0 Purpose.
887.1 Explanation of terms.
887.2 Safeguarding certificates.
887.3 Persons authorized CILs.
887.4 Requesting CILs.
887.5 Issuing CILs.
887.6 Who must sign CILs.
887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.
887.8 Where to apply for certificates.
887.9 Furnishing photocopies of documents.

Authority: 10 U.S.C. 1041.

§ 887.0 Purpose.

This part tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation. It explains where and how to apply. It implements 10 U.S.C. 1041 and DOD Instruction 1332.13, December 23, 1968. This publication applies to ANG and USAFR members. It authorizes collection of information protected by the Privacy Act of 1974. The authority to collect the information is Title 10, U.S.C. 8912 and Executive Order 9397. Each form used to collect personal information has an associated Privacy Act Statement that will be given to the individual before information is collected. System of records notice F035 AF MP C, Military Personnel Records System, applies.

§ 887.1 Explanation of terms.

(a) *Certificate in lieu (CIL).* A certificate issued in lieu of a lost or destroyed certificate of service, discharge, or retirement.

(b) *Service person.* One who:

(1) Is currently serving as a member of the Air Force; or

(2) Formerly served in the active military service as a member of the Air Force and all military affiliation was terminated after September 25, 1947.

(c) *Surviving spouse.* A survivor who was legally married to a member of the service at the time of the member's death.

(d) *Guardian.* A person or group of persons legally placed in charge of the affairs of a service member adjudicated mentally incompetent.

§ 887.2 Safeguarding certificates.

Certificates of separation are important personal documents. Processing applications for CILs is costly to the Air Force. To keep requests for CILs at a minimum:

(a) Personnel officers will tell members of the importance of safeguarding the original certificates.

(b) Persons who issue CILs will type or stamp across the lower margin "THIS IS AN IMPORTANT RECORD—SAFEGUARD IT" (if it is not printed on the certificate).

Note.—Do not show this legend on DD Form 363AF, Certificate of Retirement.

§ 887.3 Persons authorized CILs.

CILs may be issued only to:

(a) A service member whose character of service was honorable or under honorable conditions.

(b) A surviving spouse.

(c) A guardian, when a duly certified or otherwise authenticated copy of the court order of appointment is sent with the application.

§ 887.4 Requesting CILs.

(a) Standard Form 180 (SF 180), Request Pertaining to Military Records, should be used by persons who had service as shown in § 887.3(a). However, a letter request, with sufficient identifying data and proof that the original certificate of separation was lost or destroyed, may be used. Members on active duty will forward their applications through their unit commander.

(b) SF 180, or any similar form used by agencies outside the Department of Defense, will be used by persons shown in § 887.3(b), (c), and § 887.7.

Note.—Persons authorized CILs may be assisted in their request by the Customer Service Unit (DPMAC) in the consolidated base personnel office.

§ 887.5 Issuing CILs.

The issuing authority makes sure that the proper CIL form is issued, particularly if the service member has had service in both the Army and Air Force. The assignment status as of September 26, 1947 determines if the person was in the Army or Air Force at the time of discharge or release from active duty. Separations that took place on or before September 25, 1947 are considered Army separations. Those that took place on or after September 26, 1947 are considered Air Force separations, unless the records clearly show the person actually served as a member of the Army during the period of service for which the CIL is requested. Individuals indicated in § 887.3 may be issued CILs prepared on one of the following forms:

(a) DD Form 303AF, Certificate in Lieu of Lost or Destroyed Discharge, is used to replace any lost or destroyed certificate of discharge from the Air Force.

(b) DD Form 363AF, Certificate of Retirement, is used to replace any lost or destroyed certificate of retirement from the Air Force (issued only to service members).

(c) AF Form 386, Certificate in Lieu of Lost or Destroyed Discharge (AUS), is used to replace any lost or destroyed certificate of discharge from the Army.

(d) AF Form 681, Certificate in Lieu of Lost or Destroyed Certificate of Service (AUS), is used to replace any lost or destroyed certificate of service, or like form, issued on release from extended active duty (EAD) in the Army.

(e) AF Form 682, Certificate in Lieu of Lost or Destroyed Certificate of Service (USAF), is used to replace any lost or destroyed certificate of service, or like form, issued on release from EAD in the Air Force.

§ 887.6 Who must sign CILs.

(a) DD Form 363AF must be signed by a general officer or colonel.

(b) All other CILs must be signed by a commissioned officer, NCO in grade of master sergeant or above, or a civilian in grade GS-7 or above.

§ 887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.

Those persons whose character of service was under other than honorable conditions or dishonorable are not eligible for CILs. However, an official photocopy of the report of separation or certificate of discharge (DD Form 214, Certificate of Release or Discharge From Active Duty, or equivalent form), if available, may be sent on written request of the member.

(a) On the DD Forms 214 issued before October 1, 1979, the following items will be masked out before a photocopy is sent out:

(1) Specific authority for separation.

(2) Narrative reason for separation.

(3) Reenlistment eligibility code.

(4) SPD or separation designation number (SDN).

(b) For DD Forms 214 issued after October 1, 1979, send one copy with the Special Additional Information Section, and one copy without it.

(c) If a report of separation is not available, furnish a brief official statement of military service. Use the letterhead stationery of the issuing records custodian. File copy of the statement in the master personnel record (MPerR).

(d) If (obsolete form) DD Form 258AF, Undesirable Discharge Certificate, has been issued, it may be replaced with DD Form 794AF, Discharge Under Other Than Honorable Conditions.

(e) A $4.25 fee may be charged for issuing a document under this section, with the exception of (d) above.

§ 887.8 Where to apply for certificates.

(a) For DD Form 363AF: Headquarters, Air Force Military Personnel Center, Officer Actions Branch (HQ AFMPC/DPMD00), Randolph AFB TX 78150-6001, for officers; and Headquarters, Air Force Military Personnel Center, Analysis and Certification Section (HQ AFMPC/DPMD0A2), Randolph AFB TX 78150-6001, for enlisted members. Applicants must attach a copy of the retirement order to SF 180 or letter.

(b) All other certificates:

(1) HQ AFMPC/DPMD00 for officers, and HQ AFMPC/DPMD0A2, for enlisted members, Randolph AFB TX 78150-6001 for:

(i) Members on EAD or on the temporary disability retired list (TDRL).

(ii) General officers in retired pay status.

(2) National Personnel Records Center, Military Personnel Records—Air Force (NPRC/MPR-AF), 9700 Page Boulevard, St. Louis MO 63132, for officers and enlisted members:

(i) Completely separated from the Air Force or Air National Guard.

(ii) In a retired pay status, except general officers.

(iii) In the retired Reserve who cannot become eligible for retired pay.

(3) Headquarters, Air Reserve Personnel Center, Reference Services Branch (HQ ARPC/DSMR), Denver CO 80280-5000, for Air National Guard and Air Force Reserve officers and enlisted members not on EAD, including retired Reserve who will be eligible for retired pay at age 60.

§ 887.9 Furnishing photocopies of documents.

This part does not prohibit authorities (see § 887.8) from supplying photocopies of certificates of service, reports of separation, or similar documents. Agencies that provide copies of DD Form 214 (or their equivalent) will conspicuously affix an "official" seal or stamp on them to indicate that these documents are copies made from official United States Air Force military personnel records.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-597 Filed 1-13-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11-87-07]

Anchorage Ground Regulations; Anaheim Bay Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The U.S. Naval Weapons Station, Seal Beach, California requested the Coast Guard amend 33 CFR 110.215. This change revises the Explosive Anchorage Regulations for the waters of Anaheim Bay Harbor, California by adding the area between the Entrance Channel and the West Jetty to the existing anchorage. This action is necessary to conform the regulation to the present usage of the anchorage. Reference to Commandant, Eleventh Naval District, a position which no longer exists, is deleted.

EFFECTIVE DATE: February 16, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade M.J. Lodge, Aids to Navigation Branch, Eleventh Coast Guard District, Suite 702, 400 Oceangate, Long Beach, CA (213) 499-5410.

SUPPLEMENTARY INFORMATION: On September 15, 1987, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (52 FR 34815). Interested persons were requested to submit comments and none were received.

Drafting Information

The drafters of these regulations are Lieutenant Commander F.L. McClain, project officer, Marine Safety Division, Eleventh Coast Guard District, Lieutenant Junior Grade M.J. Lodge, project officer, Aids to Navigation Branch, Eleventh Coast Guard District and Lieutenant Commander Arthur E. Brooks, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Economic Asssessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Only a small number of vessels will be involved and the U.S. Navy will cooperate with public use of the area to the extent allowed by explosive loading requirements. Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

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

PART 110—[AMENDED]

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

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46(e) and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.215 is revised to read as follows:

§ 110.215 Anaheim Bay Harbor, California; U.S. Naval Weapons Station, Seal Beach, California; Naval Explosives Anchorage.

(a) *The anchorage ground.* The waters of Anaheim Bay Harbor between the east side of the Entrance Channel and the East Jetty, and the west side of the Entrance Channel and the West Jetty as outlined in the following two sections:

Latitude	Longitude
(1) *East Side:*	
33°44'03.0" N	118°05'35.0" W
33°43'53.0" N	118°05'15.0" W
33°43'49.0" N	118°05'18.0" W
33°43'36.5" N	118°05'56.0" W
33°43'37.0" N	118°05'57.0" W
33°44'03.0" N	118°05'35.0" W

Latitude	Longitude
(2) *West Side:*	
33°44'05.0" N	118°05'40.0" W
33°44'06.0" N	118°05'56.5" W
33°44'01.0" N	118°06'01.0" W
33°43'40.5" N	118°06'03.0" W
33°43'39.5" N	118°06'02.0" W
33°44'05.0" N	118°05'40.0" W

(b) *The regulations.* (1) This area is reserved for use of naval vessels carrying or transferring ammunition or explosives under standard military restrictions as established by the Safety Manual, Armed Service Explosives Board.

(2) No pleasure or commercial craft shall navigate or anchor within this area at any time without first obtaining permission from the Commanding Officer, Naval Weapons Station, Seal Beach, California. This officer will extend full cooperation relating to public use of the area and will fully consider every reasonable request for the passage of small craft in light of requirements for national security and safety of persons and property.

(3) Nothing in this section shall be construed as relieving the owner or operator of any vessel from the regulations contained in Part 204.195 of Title 33, covering navigation in Anaheim Bay Harbor.

(4) The regulations in this section shall be administered by the Commanding Officer U.S. Naval Weapons Station, Seal Beach, California and by such agencies as he may designate, and enforced by the Captain of the Port, Los Angeles-Long Beach, California.

Dated: January 11, 1988.

Terry Lucas,

Acting Rear Admiral (Lower Half), U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 88-704 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP HONOLULU Regulation 88-01]

Security Zone Regulations; Outer Apra Harbor, Guam, Marianas Islands

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone around the U.S. Navy vessel USS PROTEUS which will be moored at mooring buoy no. 951 located at 13°26'51"N, 144°38'13.8"E in Outer Apra Harbor, Guam, Marianas Islands. The security zone will extend for a distance of 200 yards in all directions from USS PROTEUS. The zone is needed to safeguard USS PROTEUS against destruction from sabotage or other subversive acts, accidents, or other causes of similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on February 4, 1988. It terminates on February 9, 1988 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT R.E. Tinker (671) 477-3340, at USCG Marianas Section Office, Guam.

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

Drafting Information

The drafters of this regulation are CDR M.W. Mastenbrook, project officer for the Captain of the Port, and LCDR R.W. Bogue, project attorney, Fourteenth Coast Guard District Legal Office.

Discussion of Regulation

The Navy has requested that a security zone be established. The incident requiring this regulation will begin on February 4, 1988 when the USS PROTEUS will moor at mooring buoy no. 951 in Outer Apra Harbor, Guam. Since mooring buoy no. 951 is a Navy maintained mooring buoy, and is located in excess of 500 yards from the main shipping channel, there should be no adverse impact on harbor use due to this security zone. USS PROTEUS will moor at the buoy to undertake routine maintenance work, and the security zone will be terminated when the USS PROTEUS leaves the moorage upon completion of this work. The purpose of this regulation is to protect the USS PROTEUS from injury or destruction from sabotage, accidents or other subversive acts. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1401 is added to read as follows:

§ 165.T1403 Security Zone: Outer Apra Harbor, Guam

(a) *Location.* The following area is a security zone: In outer Apra Harbor, Guam, when the USS PROTEUS is moored to mooring buoy no. 951 located at 13°26'51" N, 144°38'13.8" E, a security zone will extend in all directions from the vessel for a distance of 200 yards.

(b) *Effective date.* This regulation becomes effective on February 4, 1988 at 12:01 AM local Guam time. It terminates on February 9, 1988 at 11:59 PM local Guam time unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.33 of this part, entry into the zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: January 4, 1988.

C.W. Gray,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu, Hawaii.

[FR Doc. 88-705 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

Election of Benefits Under the Vocational Rehabilitation Program

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments.

SUMMARY: The purpose of these amendments is to bring the rules affecting election of benefits under the vocational rehabilitation program into conformity with provisions of law. The Veterans' Compensation and Program Improvement Amendments of 1984 allowed concurrent receipt of benefits under the vocational rehabilitation program and another program of education administered by the Veterans Administration (VA) under certain limited conditions. The Omnibus Veterans' Benefits Improvement and Health Care Authorization Act 1986 bars concurrent receipt of benefits under the vocational rehabilitation program and another program of education administered by the VA under any conditions. These final regulatory amendments bring existing rules into conformity with these statutory changes.

DATES: These amendments are effective October 28, 1986, except for § 21.21(a)(2), which is effective March 2, 1984.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2886.

SUPPLEMENTARY INFORMATION: At pages 31416 and 31418 of the **Federal Register** of August 20, 1987, the VA published proposed regulatory amendments which implement the statutory provisions concerning concurrent payment of benefits under chapter 31 and other programs of education administered by the VA. Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendments. No comments, suggestions, or objections were received. Since no comments, suggestions, or objections were received, these amendments are adopted as final.

These final amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. These amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These regulations are retroactively effective. The amendment allowing receipt of benefits under the vocational rehabilitation program and another program of education administered by the VA under certain conditions is retroactively effective March 2, 1984. The rule barring concurrent receipt of benefits under any conditions is retroactively effective October 28, 1986. In each case, the effective date is the date the statutory provision becomes effective. These are interpretive rules which implement statutory changes. Moreover, the VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactively effective to the respective dates of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

The Administrator certifies that these final amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612.

Pursuant to 5 U.S.C. 605(b), these final regulatory amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the final regulatory amendments implement and interpret statutory provisions. These amendments only concern the eligibility and participation of individual veterans under this program.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 16, 1987.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended by revising § 21.21 to read as follows:

§ 21.21 Election of benefits under education programs administered by the Veterans Administration.

(a) *Election of benefits.* A veteran must make an election of benefits in all cases. The veteran may reelect at any time. The veteran's election of benefits is subject to the following conditions:

(1) A veteran who has basic entitlement to rehabilitation under chapter 31 and is also eligible for assistance under one of the other programs listed in § 21.4020 of this part may not receive benefits concurrently under more than one program except as indicated in paragraph (a)(2) of this section;

(2) An eligible veteran may receive benefits concurrently for pursuit of different programs of education or training under chapter 31 and another program of education listed in § 21.4020 of this part during the period from March 2, 1984, to October 27, 1986.

(Authority: 38 U.S.C. 1781(b); sec. 317, Pub. L. 99-576)

(b) *Use of prior training in formulating a rehabilitation program.* If a veteran has pursued an educational or training program under an education program listed in § 21.4020 of this part, the earlier program of education or special restorative training shall be utilized to the extent practicable.

(Authority: 38 U.S.C. 1795)

[FR Doc. 88-589 Filed 1-13-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 31

[Docket No. 45164]

Program Fraud Civil Remedies

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule implements the Program Fraud Civil Remedies Act of 1986 (Act), which authorizes the Department of Transportation (and certain other Federal agencies) to impose through administrative adjudication civil penalties and assessments against certain persons making false claims or statements.

EFFECTIVE DATE: This rule is effective on January 14, 1988.

FOR FURTHER INFORMATION CONTACT: James R. Dann, Deputy Assistant General Counsel for Environmental, Civil Rights and General Law (C-10), Department of Transportation, 400 7th Street SW., Room 10102, Washington, DC 20590 at (202) 366-9154 (FTS 366-9154).

SUPPLEMENTARY INFORMATION: On October 2, 1987, the Department published a notice of proposed rulemaking to implement the Act (52 FR 36968). The Department received no comments on its proposed rule. The Department is now issuing its regulation in final form. Notwithstanding the lack of public comment, there are a few minor changes from the proposed rule. These are generally due to alterations in the model regulation for implementing the Act prepared by an interagency task force formed by the Department of Health and Human Services at the request of the President's Council on Integrity and Efficiency (PCIE).

As mentioned in the preamble to the proposed rule, the PCIE's request was in keeping with the statement of the Senate Governmental Affairs Committee in its report on the Act that the committee "expects that [agency] regulations would be substantively uniform throughout the government, except as necessary to meet the specific needs of a particular agency or program." S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). The Department is following the model regulation except in a small number of minor respects.

While the Department received no comments, other Federal agencies have published substantially identical proposed regulations and received a small number of comments. Representatives of the Department of Transportation and other agencies, through the interagency task force, participated in assessing two of these comments (a set of comments from the Section of Public Contract Law of the American Bar Association and a comment from 13 States), and making a few changes to the model regulation as a result of these comments.

The more noteworthy changes from the proposed rule, both ones due to changes in the model regulation and one other made by the Department, are discussed below. The changes to sections discussed below are due to changes to the model regulation resulting from the Section of Public Contract Law's comments to other agencies. The addition to the definition of "representative" in § 31.2, which clarifies the intent of the definition, was made on the Department's own initiative based on a Section of Public Contract Law comment. For a fuller discussion on the comments from the Section of Public Contract Law, see, for example, the preamble of the final regulation of the General Services Administration (52 FR 45183, Nov. 25, 1987).

The comment from the 13 States objected to including States in the regulatory definition of "person." In response, the model regulation was changed to reiterate the statutory definition. The definition of "person" in the Department's proposed regulation (§ 31.2) followed this revised definition and remains unchanged.

In § 31.2, the Department clarified the definition of "benefit" to restrict the definition to application in the context of "statement." In the same section, the Department also added language to the definition of "representative" to indicate that the requirement that a "representative" be a member of the bar is not intended to prevent an individual from appearing for himself or herself, or a corporation or other entity from appearing pro se by an owner, officer, or employee of the corporation or entity.

In § 31.5(b)(6), the regulation continues to require that the reviewing official's notice to the Department of Justice of intention to issue a complaint include a statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. However, the Department deleted the final sentence of the proposed regulation, which provided details, as unnecessary and covering a

matter best left for the Department and the Department of Justice to resolve.

In § 31.8, the Department clarified the regulation to indicate that service of a *complaint* is complete upon receipt, either through the mail as evidenced by an acknowledged return receipt card or by delivery as attested to by the person who made delivery or who received the complaint. Service of an *answer* (§ 31.9) is complete upon proper mailing or delivery.

In § 31.9, the Department added a new paragraph (c) that provides that a defendant may file within 30 days of receipt of the complaint a request for an extension for up to an additional 30 days to file a complete answer. For good cause shown, the ALJ may grant the request. The purpose of this change is to give the defendant who is unable to file a complete answer on time and who can show good cause for needing more time a mechanism for obtaining an extension.

In § 31.39, the Department changed paragraph (b) to provide that a defendant may file a notice of appeal at any time within 30 days after the ALJ issues a decision, but that if another party files a request for reconsideration in accordance with § 31.38, action on the appeal will be stayed automatically pending disposition of the motion for reconsideration. This change gives the defendant a full 30 days to file a notice of appeal.

Except as modified above, the rationale for the Department's rule as discussed in the preamble to the proposed rule continues to apply.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined that these regulations do not meet the criteria for a major rule as defined by section 1(b) of Exectutive Order 12291. In general, the rule will establish procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit false claims or statements. As such, this rule will have no direct effect on the economy or on Federal or State expenditures. Consequently, the Department has concluded that a regulatory impact analysis is not required.

Department of Transportation Regulatory Policies and Procedures

Because this rule will affect all Departmental administrations and provide important new tools for combating fraud in Departmental programs, it is a significant rule under the Department's regulatory policies and procedures. Hower, because the rule's economic impacts will be minimal, it has been determined that a regulatory evaluation is not needed.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 604(a)), the Department prepares and publishes a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, these regulations will not have a significant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, the Department does not anticipate that a substantial number of these small entities would be significantly affected by this rule. Therefore, the Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 (Pub. L. 96–511), all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. The Department has determined that this rule does not contain any information collection requirements and would not increase the Federal paperwork burden on the public and private sector.

Effective Date

The Act, which became law on October 21, 1986, requires the promulgation of final implementing regulations within 180 days of enactment. The Department finds good cause to make the final rule effective immediately based on this statutory deadline, the public interest in not further delaying the rule's remedies for fraud against the Government, the fact that this is not a major rule under Executive Order 12291, and the absence of any comments on the proposed rule.

List of Subjects in 49 CFR Part 31

Administrative practice and procedure, Fraud, Investigations, Organizations and functions (Government agencies), Penalties.

Issued in Washington, DC, on January 11, 1988.

Jim Burnley,

Secretary of Transportation.

In consideration of the foregoing, the Department of Transportation adds a Part 31 to Title 49, Subtile A, of the Code of Federal Regulations, to read as follows:

PART 31—PROGRAM FRAUD CIVIL REMEDIES

Sec.

31.1 Basis and purpose.
31.2 Definitions.
31.3 Basis for civil penalties and assessments.
31.4 Investigation.
31.5 Review by the reviewing official.
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31.11 Referral of complaint and answer to the ALJ.
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31.20 Disclosure of documents.
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31.23 Subpoenas for attendance at hearing.
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31.25 Fees.
31.26 Filing, form, and service of papers.
31.27 Computation of time.
31.28 Motions.
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31.30 The hearing and burden of proof.
31.31 Determining the amount of penalties and assessments.
31.32 Location of hearing.
31.33 Witnesses.
31.34 Evidence.
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31.38 Reconsideration of initial decision.
31.39 Appeal to authority head.
31.40 Stays ordered by the Department of Justice.
31.41 Stay pending appeal.
31.42 Judicial review.
31.43 Collection of civil penalties and assessments.
31.44 Right to administrative offset.
31.45 Deposit in Treasury of United States.
31.46 Compromise or settlement.
31.47 Limitations.

Authority: 31 U.S.C. 3801–3812.

§ 31.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99–509, §§ 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to the authority or to certain others, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 31.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of Transportation.

Authority head means the Assistant Secretary or Deputy Assistant Secretary for Budget and Programs, Department of Transportation.

Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 31.7.

Defendant means any person alleged in a complaint under § 31.7 to be liable for a civil penalty or assessment under § 31.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §§ 31.10 or 31.37 and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Transportation or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico. This definition is not intended to foreclose pro se appearances. An individual may appear for himself or herself, and a corporation or other entity may appear by an owner, officer, or employee of the corporation or entity.

Reviewing official means the Deputy General Counsel of the Department of Transportation, or other officer or employee of the Department who is designated by the Deputy General Counsel and eligible under 31 U.S.C. 3801(a)(8).

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 31.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim

(3) A claim shall be considered made to the authority, recipient, or party when

such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 31.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 31.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 31.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 31.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 31.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 31.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 31.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 31.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 31.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 31.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person's claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 31.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 31.8

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the

reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 31.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 31.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service of a complaint is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 31.9 Answer.

(a) The defendant may request a hearing by serving an answer on the reviewing official within 30 days of service of the complaint. Service of an answer shall be made by delivering a copy to the reviewing official or by placing a copy in the United States mail, postage prepaid and addressed to the reviewing official. Service of an answer is complete upon such delivery or mailing. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, serve on the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to serve an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly the complaint, the general answer denying liability, and the request for an extension of time as provided in § 31.11. For good cause shown, the ALJ may grant the defendant up to 30 additional days from the original due date within which to serve an answer meeting the requirements of paragraph (b) of this section.

§ 31.10 Default upon failure to answer.

(a) If the defendant does not answer within the time prescribed in § 31.9(a), the reviewing official may refer the complaint to an ALJ by filing the complaint and a statement that defendant has failed to answer on time.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 31.8, a notice that an initial decision will be issued under this section.

(c) In addition, the ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 31.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to answer on time, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from answering, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to answer on time, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 31.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal in accordance with § 31.26 within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal, the Docket Clerk shall forward two copies of the notice of appeal to the authority head, and shall forward or make available the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to answer on time based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to answer on time, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to answer on time is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 31.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall refer the matter to an ALJ by filing the complaint and answer in accordance with § 31.26.

§ 31.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 31.8. At the time, the ALJ shall send a copy of such notice to the representative for the Government and shall file a copy with the Docket Clerk.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 31.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 31.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 31.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provisions does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 31.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 31.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 31.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 31.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 31.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 31.4(b) are based, unless such documents are subject to a privilege

under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 31.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed following the serving of an answer pursuant to § 31.9.

§ 31.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 31.22 and 31.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion. Such a motion shall be accompanied by a copy of the request for production of documents, request for admissions, or interrogatories, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 31.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 31.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 31.8.

(3) The deponent may file a motion to quash the subpoena or a motion for a protective order within ten days of service. If the ALJ has not acted on such a motion by the return date, such date shall be suspended pending the ALJ's final action on the motion.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 31.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 31.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list of any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 31.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall be accompanied by a proposed subpoena, which shall specify and documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 31.8. A subpoena on a party or upon an individual under the control of party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service. If the ALJ has not acted on such a motion by the return date, such date shall be suspended pending the ALJ's final action on the motion.

§ 31.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ 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 the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously submit to the ALJ specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 31.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 31.26 Filing, form, and service of papers.

(a) *Filing and form.* (1) A party filing any document under this part shall submit (i) the original and two copies to the Docket Clerk, Documentary Services Division (C-55), Room 4107, Department of Transportation, 400 7th Street SW., Washington, DC 20590; and (ii) two copies simultaneously to the ALJ or, if on appeal, to the authority head. The requirements of this paragraph apply to all filings under this part, regardless of whether there is a cross-reference to § 31.26.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the Docket Clerk, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone nunber of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 31.8 shall be made by delivering a copy, or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 31.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the United States mail, an additional five days will be added to the the time permitted for any responses.

§ 31.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing response thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

(f) Except as provided by §§ 31.21(e)(3) and 31.23(f), which concern subpoenas, the filing or pendency of a motion shall not automatically alter or extend a deadline or return date.

§ 31.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Sanctions include but are not limited to those specifically set forth in paragraph (c), (d), and (e) of this section. Any such sanction shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposition penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 31.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 31.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendent's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 31.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false fictitious, of fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 31.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present written and oral argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 31.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 31.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party (i) appearing for the entity pro se or (ii) designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 31.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 31.24.

§ 31.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected at the offices of the Docket Clerk (see § 31.26(a)(1) for address) and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 31.24.

§ 31.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 31.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 31.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 31.31.

(c) The ALJ shall promptly serve the intitial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the intitial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 31.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 31.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 31.39.

§ 31.39 Appeal to authority head.

(a) Any defendant who has served a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal in accordance with this section and § 31.26.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 31.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal and the time for filing motions for reconsideration under § 31.38 has expired, the Docket Clerk shall forward two copies of the notice of appeal to the authority head, and shall forward or make available the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and with a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 31.3 is final and is not subject to judicial review.

§ 31.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 31.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 31.42 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 31.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 31.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 31.42 or § 31.43, or any amount agreed upon in a compromise or settlement under § 31.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 31.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 31.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 31.42 or during the pendency of any action to collect penalties and assessments under § 31.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 31.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 31.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 31.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to serve a timely answer, service of a notice under § 31.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

[FR Doc. 88-716 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 71146-8001]

Foreign Fishing; Groundfish of the Gulf of Alaska

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

ACTION: Final notice of 1988 initial specifications of groundfish; prohibited species catch limits for certain groundfish species and for Pacific halibut; reapportionments of reserves; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces 1988 (1) total allowable catches (TACs) for each category of groundfish in the Gulf of Alaska and apportionments thereof, including reserves; (2) assignments of the sablefish TAC to authorized fishing gear users; (3) prohibited species catch (PSC) limits for certain groundfish species and Pacific halibut that will be imposed on joint venture processing (JVP) fisheries; and (4) PSC limits of Pacific halibut on domestic annual processing (DAP) fisheries. These actions are intended to specify the allowable harvest and PSC levels of groundfish for the 1988 fishing year. This action is necessary to provide the public with the Secretary's determination of the groundfish harvest quotas and apportionments.

DATES: Effective January 1, 1988. Comments are invited on the reapportionments of reserves to JVP and DAP until January 26, 1988.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 021668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

This notice establishes three quotas related to groundfish management in the Gulf of Alaska for the 1988 fishing year. They are: (1) TACs, (2) PSC limits for fully utilized groundfish species, and (3) PSC limits for Pacific halibut. The Secretary has adopted, for the interim, the use of the acronym TAC in this notice, which is contained in Amendment 16 to the FMP, in lieu of target quota (TQ). The Secretary is currently reviewing Amendment 16 under section 304 of the Magnuson Fishery Conservation and Management Act (Magnuson Act). He has also included in this notice, for the interim, Atka mackerel and squid in the "other species" category, which are included in the Amendment 16 management regime. He is taking these interim actions to avoid confusion in the fishing industry, which is aware of these proposed changes.

(1) Total Allowable Catches.

TACs for groundfish species in the Gulf of Alaska are established by the Fishery Management Plan for

Groundfish of the Gulf of Alaska (FMP). This FMP was developed under the Magnuson Act and is implemented by regulations appearing at 50 CFR 611.92 and Part 672. The sum of the TACs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000–800,000 metric tons (mt).

TACs are apportioned initially among DAP, JVP, reserves, and total allowable level of foreign fishing (TALFF) for each species under §§ 611.92 and 672.20(a)(2). DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen typically deliver their catches to foreign processors at sea. TALFF amounts are intended for harvest by foreign fishermen. The reserves for the Gulf of Alaska are 20 percent of the TAC for each species category. These reserve amounts are set aside for possible reapportionment to DAP and/or to JVP if the initial apportionments prove inadequate. Reserves which are not reapportioned to DAP or JVP may be reapportioned to TALFF.

Under §§ 611.92 and 672.20(a)(2), the Secretary, after consultation with the North Pacific Fishery Management Council, specifies the TAC for each calendar year for each target species and the "other species" category, and apportions the TACs among DAP, JVP, reserves, and TALFF. The sum of the TACs must be within the OY range.

Under § 672.20(c)(1), the preliminary specifications of DAP and JVP amounts were published in the **Federal Register** (52 FR 44154, November 18, 1987) and comments were requested to be submitted to the Regional Director until December 18, 1987. Two letters of comments were received, which are summarized and responded to below.

The Council met December 8–11, 1987, to review the best available information on the status of groundfish stocks. This information was contained in the Resource Assessment Document (RAD), which was prepared and presented by the Gulf of Alaska Groundfish Plan Team to the Council and to the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP). Information contained in the RAD was from the 1987 triennial survey of groundfish conducted by the Northwest and Alaska Fisheries Center, NMFS and from results of hydroacoustic surveys of pollock stocks conducted in 1986. The Council's SSC reviewed the available information and recommended to the Council the acceptable biological catches (ABCs) discussed below and shown in Table 1 of § 672.20. The AP also considered information contained in the RAD and recommended TACs for each species.

The plan Team's RAD, with the SSC's and AP's recommendations and the Council's actions at its December 8–11 meeting, is summarized as follows:

Pollock—The Plan Team considers the condition of the pollock biomass, which is based on three-year-old and older fish, to be fair, but increasing in size. The 1986 biomass of 496,300 mt was projected to reach 687,000 mt in 1987 and 866,600 to 1,033,000 mt in 1988, depending on the various recruitment and catch levels. The predicted increases in biomass are primarily due to the strong 1984 year class. The Plan Team has identified an ABC range of 90,000 to 120,000 mt for the combined Western and Central (Western/Central) Regulatory Areas for 1988. Harvests in this range would allow the biomass to increase into 1989 for three of the four recruitment scenarios, and would promote a stable biomass for even the most pessimistic recruitment scenario. A preliminary ABC of 3,375 mt was estimated by the Plan Team for the Eastern Regulatory Area. For the Western/Central Regulatory Area, the SSC recommended an ABC of 90,000 mt and the AP recommended a TAC of 90,000 mt. For the Eastern Regulatory Area, the SSC recommended an ABC of 3,000 mt and the AP recommended that the TAC equal the SSC's ABC. The Council adopted TACs of 90,000 mt and 3,000 mt for the Western/Central and Eastern Regulatory Areas, respectively.

Pacific cod—The Plan Team considers the condition of the Pacific cod biomass, which is based on fish of all age groups, to be good and stable in size. The current estimate of biomass is 481,700 mt. The Plan Team recommended that the ABC be a range of 99,000 mt to 185,000 mt, apportioned according to the distribution of the 1987 trawl survey. The SSC recommended an ABC of 99,000 mt and the AP recommended a TAC of 70,000 mt. The Council adopted a TAC of 80,000 mt with apportionments among the regulatory areas as follows: Western—19,000 mt; Central—60,800 mt; and Eastern—200 mt.

Flounders—The Plan Team considers the condition of the flounder biomass, which is based on fish of all age groups, to be good and stable in size. The current estimate of biomass is 2,110,800 mt. The Plan Team recommended the ABC should be set at 767,700 mt. The SSC adopted the Plan Team's recommendation. The AP recommended a TAC of 32,000 mt, which reflects the conservation objectives of the Council to protect Pacific halibut in a flounder trawl fishery. The Council adopted a TAC of 23,000 mt, after considering the mix of various fisheries be gear type and the continued recommendation of the International Pacific Halibut Commission to establish a mortality lievel for Pacific halibut in the Gulf of Alaska at no more than 2,000 mt.

Rockfish in the genus *Sebastes*—In 1987, harvest quotas for rockfish in the genus *Sebastes* were specified for the following management categories: (a) "Other rockfish" throughout the Gulf of Alaska, (b) the separately defined Pacific ocean perch complex in each of the three regulatory areas, and (c) demersal shelf rockfish in the Southeast Outside District of the Eastern Regulatory Area. For 1988, TACs for this genus are specified for the following management categories: (a) "other rockfish", including the Pacific ocean perch complex in each of the three regulatory areas, (b) pelagic shelf rockfish in each of the three regulatory areas, and (c) demersal shelf rockfish in the Southeast Outside District of the Eastern Regulatory Area.

"Other rockfish"—The Plan Team considers the condition of this assemblage to be fair and the biomass, which is based on all age groups, to be increasing in size. The current biomass is estimated to be 798,400 mt. The Plan Team recommended the ABC should be set at 16,800 mt. The SSC adopted the Plan Team's recommendation. The AP recommended a TAC of 16,800 mt and the Council adopted the AP's recommendation with apportionments among the regulatory areas as follows: Western—4,850 mt; Central—7,100 mt; and Eastern—4,850 mt.

Pelagic shelf rockfish—The Plan Team considers the condition of this assemblage to be fair and the biomass, which is on all age groups, to be increasing in size. The current biomass is estimated to be 165,000 mt. The Plan Team recommended the ABC should be set at 3,300 mt. The SSC adopted the Plan Team's recommendation. The AP recommended a TAC of 3,300 mt and the Council adopted the AP's recommendation with apportionments among the regulatory areas as follows: Western—550 mt; Central—2,350 mt; and Eastern—400 mt.

Shelf demersal rockfish—No information is available to estimate biomass or yield for shelf demersal rockfish. This rockfish assemblage is the target of a longline fishery in the Southeast Outside District. Information from the Alaska Department of Fish and Game on this rockfish assemblage suggests that the population is declining. The AP and Plan Team recommended the TAC for shelf demersal rockfish in the Southeast Outside District be set at

660 mt, in accordance with recommendations from the Alaska Department of Fish and Game made on the basis of performance of the fishery in 1987. Should inseason catch information indicate that stocks may not be sufficiently abundant to produce a harvest equal to TAC, closures may be necessary to prevent overfishing.

Thornyhead rockfish—The Plan Team considers the condition of this assemblage to be fair, but the biomass, which is based on all age groups, to be declining in size. The current biomass is estimated to be 99,000 mt. The Plan Team recommended the ABC should be set at 7,750 mt. The SSC adopted the Plan Team's recommendation. The AP recommended a TAC of 3,750 mt and the Council adopted the AP's recommendation for a Gulf of Alaska-wide TAC.

Sablefish—The Plan Team considers the condition of sablefish to be good and the biomass in water depths between 200 meters and 1,000 meters to be stable at 520,000 mt and above a level which will produce maximum sustainable yield. The Plan Team recommended the ABC should be set at 35,000 mt. The SSC adopted the Plan Team's recommendation. The AP recommended a TAC of 28,000 mt and the Council adopted the AP's recommendation with apportionments among the regulatory areas and districts as follows: Western—4,060 mt; Central—12,540 mt; West Yakutat District—4,900 mt; and Southeast Outside/East Yakutat District—6,500 mt.

"*Other species*"—No recommendations were made by the Plan Team for this group. FMP procedures define the quota for this category be set at 5 percent of the sum of the TACs established for the other groundfish categories, or 12,426 mt.

The sum of the above TACs adopted by the Council is 260,936 mt, which falls within the OY range specified by the FMP. The Council, after adopting the TACs, then deliberated on the apportionment of the TACs for each species among DAP, JVP, reserve, and TALFF. The Council reviewed the results of the NMFS-conducted U.S. processor survey and the stated requests by joint venture companies for JVP. Prior to the Council's meeting, NMFS surveyed the U.S. processing industry about its processing capacity and the extent to which that capacity will be used for groundfish species in 1988. This survey did not include sablefish and all of the rockfish species, which are known to be fully utilized as a result of prior years' harvests. The survey did include pollock, Pacific cod, and flounder. When the Regional Director reviewed the survey results, he considered the probability that those amounts would actually be processed, considering the amount of processing machinery that was available or which was planned for, but not yet in place, both on shore and on catcher/processor and mothership processor vessels.

In doing so, the Regional Director discounted some of the survey results as overly optimistic. He presented his analysis (see table of NMFS projections of DAP for pollock, Pacific cod, and flounder, below) to the Council, which in turn used it to recommend to the Secretary initial DAP specifications. TALFF is set at zero, because all species are expected to be fully utilized by U.S. fishermen, either in DAP or JVP fisheries.

DAP requests (mt) that were submitted to NMFS, and NMFS' initial projections of DAP (mt) for pollock, Pacific cod, and flounder for 1988 following its survey of U.S. processors.

	DAP requests	NMFS initial projections
Pollock	145,425	111,299
Pacific Cod	79,492	62,567
Flounder	24,465	16,128

The Secretary has reviewed the Council's recommendation for TAC specifications and apportionments and hereby implements these specifications under § 672.20(c)(1). The FMP stipulates that 20 percent of each TAC be set aside in a reserve for possible reapportionment at a later date. At this time, the Secretary is reapportioning reserves for each species category to either DAP or JVP, which, added together, equal domestic annual harvest (DAH).

By doing so, the Secretary is anticipating that U.S. fishermen will need all of the DAH amounts so specified. Only those amounts that the Secretary has determined will not be needed by DAP are proposed to be apportioned to JVP at this time.

This information is summarized in Table 1.

TABLE 1.—INITIAL ABCS, TACS, DAPS, JVPS, RESERVES, AND TALFFS OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS AND GULF-WIDE (GW) OF THE GULF OF ALASKA

Species	Area [1]	ABC	TAC	Reserve	DAP	JVP	TALFF
Pollock	W/C	90,000	90,000	0	90,000	0	0
	E	3,000	3,000	0	3,000	0	0
Total		93,000	93,000	0	93,000	0	0
Pacific cod	W	19,000	19,000	0	13,000	6,000	0
	C	73,000	60,800	0	55,750	5,050	0
	E	7,000	200	0	200	0	0
Total		99,000	80,000	0	68,950	11,050	0
Flounders	W	142,650	1,600	0	1,550	50	0
	C	538,280	21,300	0	14,300	7,000	0
	E	86,770	100	0	100	0	0
Total		767,700	23,000	0	15,950	7,050	0
Sablefish	W	5,075	4,060	0	4,060	0	0
	C	15,680	12,540	0	12,540	0	0
	WYK	6,125	4,900	0	4,900	0	0
	SEO/EYK	8,120	6,500	0	6,500	0	0
Total		35,000	28,000	0	28,000	0	0

TABLE 1.—INITIAL ABCS, TACS, DAPS, JVPS, RESERVES, AND TALFFS OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS AND GULF-WIDE (GW) OF THE GULF OF ALASKA—Continued

Species	Area [1]	ABC	TAC	Reserve	DAP	JVP	TALFF
Other rockfish [2]	W	4,850	4,850	0	4,850	0	0
	C	7,100	7,100	0	7,100	0	0
	E	4,850	4,850	0	4,850	0	0
Total		16,800	16,800	0	16,800	0	0
Pelagic shelf rockfish [3]	W	550	550	0	550	0	0
	C	2,350	2,350	0	2,350	0	0
	E	400	400	0	400	0	0
Total		3,300	3,300	0	3,300	0	0
Demersal shelf rockfish [4]	SEO	N/A	660	0	660	0	0
Thornyhead rockfish	GW	3,750	3,750	0	3,750	50	0
Other species [5]	GW	N/A	12,426	0	10,926	1,500	0
Total			260,936	0	241,286	19,650	0

[1] See Figure 1 of § 672.20 for description of regulatory areas/districts.
[2] The category "other rockfish" in the Western and Central Regulatory Areas and in the West Yukatat District includes all fish of the genus *Sebastes* except pelagic shelf rockfish. The category "other rockfish" in the Southeast Outside District includes all fish of the genus *Sebastes* except pelagic shelf rockfish and demersal shelf rockfish.
[3] The category pelagic shelf rockfish includes *Sebastes melanops* (black rockfish), *S. mystinus* (blue rockfish), *S. ciliatus* (dusky rockfish), *S. entomelas* (widow rockfish), and *S. flavidus* (yellowtail rockfish).
[4] Demersal shelf rockfish includes *Sebastes paucispinus* (bocaccio), *S. nebulosus* (China rockfish), *S. caurinus* (copper rockfish), *S. malliger* (quillback rockfish), *S. proriger* (redstripe rockfish), *S. helvomaculatus* (rosethorn rockfish), *S. brevispinis* (silvergray rockfish), *S. nigrocinctus* (tiger rockfish), *S. ruberrimus* (yelloweye rockfish), and *S. pinniger* (canary rockfish).
[5] The category "other species" includes sculpins, sharks, skates, eulachon, smelts, octopus, Atka mackerel, and squid. The TAC is equal to 5 percent of the TACs of the target species.

(2) Fully Utilized Species

Section 672.20(b)(1) specifies that if the Secretary determines after consultation with the Council that the TAC for any species or species group will be fully utilized in the DAP fishery, he may specify for 1988 the PSC limit applicable to the JVP fisheries for that species or species group. Any specified PSC limit must be for bycatch only and cannot be retained. JVP fisheries have been established in the Western and Central Regulatory Areas for Pacific cod and in the Central Regulatory Area for flounder. Therefore, the issue of fully utilized species is relevant to these JVP fisheries. The Secretary, on the basis of the NMFS-conducted U.S. processor surveys has determined that three species or species groups will be fully utilized in 1988 where JVP fisheries will be prosecuted. These are pollock, sablefish, and "other rockfish".

The Council reviewed information on bycatch amounts of these fully utilized species that JVP fisheries might catch while fishing for their joint venture specifications. The Council adopted the following PSC limits for the fully utilized species: lock—100 mt, sablefish—188 mt, and "other rockfish"—432 mt. Pelagic shelf rockfish are also fully utilized, but are not expected to be caught in the JVP fisheries, which will be using only bottom trawl gear. Under § 672.20(c)(iv), if the Regional Director determines that a PSC limit applicable to a directed JVP fishery has been or will be reached, the Secretary will publish a notice of closure in the **Federal Register** prohibiting all further JVP fishing in all or part of the regulatory area concerned.

(3) Halibut Prohibited Species Catch Limits

Section 672.20(f)(2)(i) specifies a framework procedure for setting PSC limits for Pacific halibut. This procedure requires the Secretary, after consultation with the Council, to publish a notice in the **Federal Register** establishing PSC limits for Pacific halibut.

The Secretary has consulted with the Council and announces the halibut PSC limits for 1988: For DAP, the PSC limit is 4,240 mt and for JVP, it is 240 mt. The sum of these PSC limits is 4,480 mt, which would result in a fishing mortality of 2,047 mt, given the expected survival and mortality rates for Pacific halibut with the mix of gear types and fishing operations in the fisheries. The PSC limits are derived from bycatch rates (see table below) experienced by vessels in previous years' fisheries while targeting on groundfish with bottom trawls and midwater trawls and by vessels targeting on Pacific cod and Sablefish with hook-and-line gear.

Historical bycatch rates (percent) by weight in the Western (W) and Central (C) Regulatory Areas used to calculate the PSC limits for Pacific halibut in the DAP and JVP 1988 groundfish fisheries. Rates are from fisheries for groundfish with bottom trawls and midwater trawls and from fisheries for Pacific cod and sablefish with hook-and-line (HL) gear.

	Bottom trawl		Mid-water trawl		Cod HL		Sablefish HL	
	W	C	W	C	W	C	W	C
DAP	2.53	2.53	0.06	0.06	5.23	9.15	1.2	1.2
JVP	2.53	2.53	0.06	0.06	5.23	9.15		

If the Regional Director determines that the catch of Pacific halibut by U.S. vessels fishing in DAP or JVP operations will reach a PSC limit, the Secretary will publish a notice in the **Federal Register** prohibiting fishing with trawl gear other

than pelagic trawl gear for the rest of the year by the vessels and in the area to which the PSC limit applies. He may, allow some of those vessels to continue to fish for groundfish using bottom trawl gear under specified conditions.

Public Comments on 1988 Preliminary Initial Specifications

Two letters of comment were received by the Regional Director which are summarized together and responded to as follows:

Comment: NMFS should take a conservative approach in estimating any projected increases in DAP. NMFS should carefully monitor the progress of DAH fisheries during the course of the year so surpluses can quickly be identified and reapportioned.

Response: NMFS estimates of DAP projected catches, which were accepted by the Council at its December 1987 meeting, were based on an analysis of the results of the most detailed and comprehensive survey of the domestic industry that NMFS has performed. Survey information for each operation was compared to actual performance information for 1987, and in the case of new operations, to operations of similar size and configuration. This was a conservative approach; overall, NMFS' estimate of total DAP groundfish for 1988 was 76 percent of amounts requested for the Gulf of Alaska and the Bering Sea combined.

Using only the previous year's performance by industry to make projections for 1988 is misleading, in view of the dynamic and rapidly expanding nature of the groundfish industry. In the case of DAP, catch rates and deliveries for certain species, including Pacific cod, increased dramatically late in the third quarter and during the fourth quarter of 1987, as several operations came on line and many others came up to full production. NMFS made the reasonable assumption that these companies will be continuing at or close to full production levels from the beginning of 1988. Moreover, as many as twenty-one new floating processors will be entering the fishery in 1988.

In its presentation to the Council, NMFS indicated that the category of new operations was most difficult to assess due to two unknowns: performance capability and actual start-up date. Therefore, NMFS will be monitoring the progress of these vessels and will be prepared to make revisions as information becomes available during the season. Also NMFS will assess the performance of all current operations, including JVP operations, in order to identify and reapportion surpluses.

Other Regulatory Actions

Under § 672.20(d)(l)(ii), the Secretary may reapportion to DAH any amounts of the reserves that he determines to be needed to supplement DAH as soon as practicable on April 1, June 1, and August 1, and on such other dates as he determines necessary. The Secretary is reapportioning all reserves to either DAP or JVP effective January 1, 1988, on the basis of NMFS' initial estimates of DAP and JVP needs. Under § 672.20(d)(5)(iv), when the Secretary determines that apportionment is required on dates other than those specified and he finds it necessary to apportion additional amounts without affording a prior opportunity for public comment, he will invite such comments for a period of 15 days after the effective date of the apportionment. Therefore, the Secretary is inviting comments on the reapportioning of reserves until January 26, 1988.

The Secretary publishes for the information of the public Table 2, showing the assignments of sablefish TACs among the gear types as provided for by § 672.24.

TABLE 2.—SABLEFISH TOTAL ALLOWABLE CATCH (TAC) AND AMOUNTS OF TAC, IN PERCENT AND METRIC TONS, ALLOCATED TO AUTHORIZED GEAR IN THE REGULATORY AREAS AND DISTRICTS OF THE GULF OF ALASKA

Area/district	TAC	Gear	Percent	Share
Western	4,060	Hook-and-line	55	2,230
		Trawl	20	810
		Pot	25	1,020
Central	12,540	Hook-and-line	80	10,030
		Trawl	20	2,510
West Yakutat.	4,900	Hook-and-line	95	4,660
		Trawl	5	240
Southeast Outside/ East Yakutat.	6,500	Hook-and-line	95	6,180
		Trawl	5	320

Other Matters

This action is taken under §§ 611.92 and 672.20 and complies with Executive Order 12291. The Secretary finds it necessary to apportion the reserves of pollock, Pacific cod, and flounders without affording a prior opportunity for public comment or delayed effectiveness to prevent the premature closure of a target DAP or JVP fishery for these species, which might otherwise occur due to the large amount of fishing effort expected.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Parts 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: January 11, 1988.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 88-697 Filed 1-11-88; 5:05 pm]

BILLING CODE 3510-22-M

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50 CFR Parts 611 and 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Final notice of initial specifications of groundfish for 1988; reapportionment of reserves; request for comments.

SUMMARY: NOAA announces final specifications of total allowable catches (TACs) and initial domestic annual harvest (DAH) and reserve amounts for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area for the 1988 fishing year. This action also reapportions some of the reserve to U.S. fishing vessels working in joint ventures with foreign processing vessels (JVP) and solicits comments on this reapportionment. The initial specification of the total allowable level of foreign fishing (TALFF) is zero.

This action is necessary to establish harvest limits for groundfish in the 1988 fishing year. This action is based on public comments, the best available information on the biological condition of groundfish stocks, the socioeconomic condition of the fishing industry, and consultation with the North Pacific Fishery Management Council (Council) at its meeting of December 8-11, 1987. The intended effect of this action is the conservation and management of groundfish resources in the BSAI area.

DATES: Effective at 0901 Greenwich Mean Time (GMT) or 0001 Alaska Standard Time (AST) January 1, 1988, through 0900 G.m.t. January 1, 1989, or 2400 AST, December 31, 1988, or until changed by subsequent notice in the **Federal Register.**

Comments on the reapportionment part of this notice are invited until January 26, 1988.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI area are governed by Federal regulations at 50 CFR 611.93 and Part 675 which implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the Council and approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and its implementing regulations at § 675.20(a) require the Secretary, after consultation with the Council, to annually specify the TAC, initial DAH, and initial TALFF for each target species and the "other species" category as soon as practicable after December 15. The sum of the species' TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt). Table 1 satisfies this requirement.

A notice specifying preliminary initial TAC, reserve, DAH, and TALFF amounts for the 1988 fishing year was published (52 FR 44157, November 18, 1987) and comments were invited until December 18, 1987. Four written comments were received which are summarized and responded to below. In addition, oral comments were heard and public consultation with the Council occurred during the Council's December 8-11, 1987 meeting in Anchorage, Alaska. Council recommendations made at this meeting account for differences between the preliminary specifications and those published in this notice.

The specified TACs for each species are based on the most recent biological and socioeconomic information. The Council, its Advisory Panel (AP), and Scientific and Statistical Committee (SSC), at their September and December 1987 meetings, reviewed current biological information about the condition of groundfish stocks in the BSAI area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the 1987 resource assessment document (RAD). The Plan Team annually produces such a document as the first step in the process of specifying TACs. The RAD contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of preliminary ABCs for each species for 1988 and other biological data from the 1987 draft RAD were provided in the notice of preliminary 1988 specifications (52 FR 44157, November 18, 1987). The Plan Team's revised ABCs were reviewed by the SSC, AP, and Council at its December 1987 meeting. Minor revisions were made based on the SSC's review to produce the Council's final ABC estimates. The Council then developed its TAC recommendations to the Secretary based on the final ABCs as adjusted for other biological and socioeconomic considerations. For each species category, the recommended TAC for 1988 is equal to or less than that species' final ABC. Therefore, the Secretary finds that the recommended TACs are consistent with the biological condition of groundfish stocks.

A principal consideration for the Council in developing its 1988 TAC recommendations was assuring that the sum of the species TACs did not exceed the maximum OY for all species of 2.0 million mt. The Secretary finds also that the recommended TACs, to the extent possible under the maximum OY limit, are consistent with socioeconomic aspects of the FMP goals and objectives.

TAC Apportionment

The amount of groundfish in each TAC initially is reduced by 15 percent. The sum of these 15 percent amounts is designated as the reserve. The reserve is not designated by species or species group and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

The remaining 85 percent of TAC is the initial TAC (ITAC). This amount is apportioned between DAH and TALFF such that TALFF, for each target species and the "other species" category at the beginning of the year, equals ITAC minus DAH. For 1988, initial TALFF is zero for all species because DAH equals ITAC.

Each DAH amount is further apportioned between its two components, JVP and the expected domestic annual processing (DAP). The final specifications provide large increases in DAP, reflecting the rapidly expanding nature of the U.S. groundfish fishery. Under the intent of the domestic processor preference amendments to the Magnuson Act (Pub. L. 95-354), JVP equals ITAC minus DAP. The final TACs, ITACs, reserve, and initial apportionments of groundfish between DAP and JVP in the BSAI area for 1988 are given in Table 1 of this notice.

JVP Split Apportionment

Amendment 11 to the FMP established a procedure for splitting the initial JVP apportionment of pollock for each subarea into two parts (52 FR 45966, December 3, 1987). Part One will be available for harvest by the JVP fishery on January 15 while Part Two will be withheld until April 16. Under § 675.20(b)(3), for each subarea, Part One will be 40 percent of the sum of the initial pollock JVP plus 15 percent of the TAC for pollock. Part Two will be any unharvested portion of Part One plus the pollock JVP remaining after the first period and as adjusted by any reapportionments from reserve and DAP. Accordingly, the Part One JVP pollock apportionments in the Bering Sea (BS) and Aleutian Islands (AI) subareas respectively, rounded to the nearest metric ton, are calculated as follows:

BS Part One = 0.40 (490,838 + 195,000) = 274,335;

AI Part One = 0.40 (34,090 + 6,750) = 16,336.

Incidental catches of pollock in JVP fisheries for other groundfish occurring between January 1 and January 15 may be retained and will be counted against part One. However, such incidental catches must be less than 20 percent of the catch pursuant to the definition of "directed fishing" in § 675.2, because JVP directed fishing for pollock during this 15-day period is not permitted.

Reapportionment

This action makes an initial reapportionment from reserve to JVP under authority of § 675.20(b)(1)(i). This reapportionment subtracts a total of 804 mt from the reserve and adds it to the JVP of several species categories as indicated in Table 2. Species categories receiving reapportioned amounts from the reserve are species which are likely to be harvested incidentally in JVP fisheries for other species. The purpose of this reapportionment is to provide JVP fishermen with a retainable bycatch of these incidentally harvested species. Alternatively, the JVP fisheries would be required to treat these bycatch species in the same manner as prohibited species which would result in wastage of the resource.

Comments and Responses

Four letters of comment were received on the preliminary 1988 specifications published November 18, 1987 (52 FR 44157). Two letters of comment concerned the upper limit of the OY

range and are responded to under Comment 1. Three letters had basically the same comment regarding the estimated DAH harvest in 1988 and are responded to under Comment 2. Comments in the fourth letter are responded to under Comment 3.

Comment 1: The OY limit of 2.0 million mt arbitrarily and artificially restricts Bering Sea groundfish harvests and is inconsistent with the National Standards set by the Magnuson Act.

Response: The FMP and its implementing regulations at § 675.20(a)(2), require the Secretary to specify the TAC for each species category such that the sum of the specified TACs is within the OY range of 1.4 million to 2.0 million mt. The Council process is the appropriate forum to adjust the OY range as an FMP amendment is required. NOAA notes that modification of this range is on the Council's 1988 FMP amendment agenda.

Comment 2: Apportionments of groundfish to DAP are too large based on past DAP performance. DAP and JVP catch projections of Pacific cod for 1988 are too high based on actual DAP and JVP catches in recent years. NMFS should carefully monitor the progress of DAH fisheries during the course of the year so that surpluses can be identified quickly and reapportioned.

Responses: The NMFS projection of DAP catches in 1988 was based on a critical analysis of the most detailed and comprehensive survey performed by NMFS to date of the ability and intent of the domestic industry to process BSAI area groundfish. Survey information for each operation was compared to actual performance information for 1987 and, in the case of new operations, to those of similar size and configuration. For the BSAI area, NMFS' estimate to total DAP catch in 1988 is 82 percent of groundfish amounts requested and the estimated DAP catch of Pacific cod is 79 percent of the amount requested.

DAP catch rates of certain species, including Pacific cod, increased dramatically late in the third quarter and during the fourth quarter of 1987, as several operations came on line and many others came up to full production. An assumption that these companies will continue at or close to full production levels from the beginning of 1988 is reasonable. Past performance alone, however, is misleading in making DAP and JVP catch projections for 1988. For instance, the dynamic and rapidly expanding nature of the JVP operation planned for 1988 accounted for 30,000 mt or nearly 20 percent of the total Pacific cod requested by JVP. Moreover, up to twenty-one new floating processors will be entering the DAP fishery in 1988. Of these, two trawlers, six longliners, and one mothership intend to target on Pacific cod. New fishing and processing operations are the most difficult to assess due to their unknown performance capability and actual start-up date. It is difficult for NMFS accurately to assess production estimates of new operations. However, NMFS will monitor the progress of these and other DAP and JVP operations on a continuing basis and will reapportion surpluses as information becomes available during the season.

Comment 3: The U.S. fishing industry has the capability to harvest the entire TAC of Pacific cod in 1988. Elimination of TALFF for Pacific cod would raise its market price for U.S. fishermen.

Response: Based on the latest NMFS industry survey (see response to Comment 2), NOAA agrees that the domestic capacity and intent to harvest Pacific cod in the BSAI area in 1988 has increased. The initial TALFF for Pacific cod is set at zero (Table 1). However, this amount may change during the season if the DAH fisheries do not appear likely to harvest the entire Pacific cod TAC. It is not clear that U.S. fishermen would realize a significant increase in the exvessel price of Pacific cod solely from elimination of foreign directed fishing for this species.

Classification

This action is authorized under 50 CFR Part 675 and complies with Executive Order 12291. The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on the reapportionment part of this notice. As immediate effectiveness of this action is necessary to benefit fishermen who would otherwise forego harvestable amounts of groundfish, the 30 day delayed effectiveness.

TABLE 1.—FINAL 1988 TOTAL ALLOWABLE CATCH (TAC) AND INITIAL APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

Species	TAC	Initial TAC [2]	Initial DAP [3]	Initial JVP [4]	Initial DAH [5]	Initial TALFF [6]
Pollock:						
BS	1,300,000	1,105,000	614,162	490,838	1,105,000	0
AI	45,000	38,250	4,160	34,090	38,250	0
Pacific Ocean Perch:						
BS	5,000	4,250	4,250	0	4,250	0
AI	6,000	5,100	5,100	0	5,100	0
Other Rockfishes:						
BS	400	340	340	0	340	0
AI	1,100	935	935	0	935	0
Sablefish:						
BS	3,400	2,890	2,890	0	2,890	0
AI	5,000	4,250	4,250	0	4,250	0
Atka Mackerel: BSAI	21,000	17,850	80	17,770	17,850	0
Pacific Cod: BSAI	200,000	170,000	87,416	82,584	170,000	0
Yellowfin Sole: BSAI	254,000	215,900	26,356	189,544	215,900	0
Greenland Turbot: BSAI	11,200	9,520	9,520	0	9,520	0
Arrowtooth Flounder: BSAI	5,531	4,701	3,808	893	4,701	0
Other Flatfishes: BSAI	131,369	111,664	26,403	85,261	111,664	0
Squid: BSAI	1,000	850	850	0	850	0
Other Species: BSAI	10,000	8,500	2,000	6,500	8,500	0
Total	2,000,000	1,700,000	792,520	907,480	1,700,000	0

[1] Amounts are in metric tons.

[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC − ITAC = 300,000.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.

TABLE 2.—REAPPORTIONMENT OF RESERVE: REVISED 1988 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

Species	TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Pollock:						
BS	1,300,000	1,105,000	614,162	490,838	1,105,000	0
AI	45,000	38,250	4,160	34,090	38,250	0
Pacific Ocean Perch:						
BS	5,000	4,250	4,250	0	4,250	0
Change				+28		
Revised	5,000	4,250	4,250	28	4,278	0
AI	6,000	5,100	5,100	0	5,100	0
Change				+441		
Revised	6,000	5,100	5,100	441	5,541	0
Other Rockfishes:						
BS	400	340	340	0	340	0
Change				+30		
Revised	400	340	340	30	370	0
AI	1,100	935	935	0	935	0
Change				+165		
Revised	1,100	935	935	165	1,100	0
Sablefish:						
BS	3,400	2,890	2,890	0	2,890	0
Change				+37		
Revised	3,400	2,890	2,890	37	2,927	0
AI	5,000	4,250	4,250	0	4,250	0
Change				+47		
Revised	5,000	4,250	4,250	47	4,297	0
Atka Mackeral: BSAI	21,000	17,850	80	17,770	17,850	0
Pacific Cod: BSAI	200,000	170,000	87,416	82,584	170,000	0
Yellowfish Sole. BSAI	254,000	215,900	26,356	189,544	215,900	0
Greenland Turbot: BSAI	11,200	9,520	9,520	0	9,520	0
Change				+31		
Revised	11,200	9,520	9,520	31	9,551	0
Arrowtooth Flounder: BSAI	5,531	4,701	3,808	893	4,701	0
Other Flatfishes: BSAI	131,369	111,664	26,403	85,261	111,664	0
Squid:						
BSAI	1,000	850	850	0	850	0
Change				+25		
Revise	1,000	850	850	25	875	0
Other Species: BSAI	10,000	8,500	2,000	6,500	8,500	0
Total	2,000,000	1,700,000	792,520	907,480	1,700,000	0
Change [7]				+804		
Revised	2,000,000	1,700,000	792,520	908,284	1,700,804	0

[1] Amounts are in metric tons.
[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC − ITAC = 300,000.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.
[7] This increase in JVP and DAH was subtracted from the reserve. Hence, the remaining reserve = 300,000 − 804 = 299,196.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

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

Dated: January 11, 1988.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 88-698 Filed 1-11-88; 5:05 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 9
Thursday, January 14, 1988

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program; Medically Underserved Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its Federal Employees Health Benefits (FEHB) Program regulation to specify (1) how it determines which states qualify as Medically Underserved Areas, and (2) how and when it will announce its determination. This action is necessary to expedite notice of Medically Underserved Areas to the public.

DATE: Comments must be received on or before March 14, 1988.

ADDRESSES: Written comments may be sent to Reginald M. Jones Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Myers (202) 632-4634.

SUPPLEMENTARY INFORMATION: FEHB law (5 U.S.C. 8902(m)(2)) mandates special consideration for enrolles of certain FEHB plans who receive covered health services in states with critical shortages of primary care physicians. Such states are designated as Medically Underserved Areas for purposes of the FEHB Program and the law requires payment to all qualified providers in these states.

Each year, before the FEHB open season begins, OPM determines which states qualify as Medically Underserved Areas for the next calendar year. OPM makes its determination by comparing the latest Department of Health and Human Services state-by-state population counts on primary medical care manpower shortage areas with U.S. Census figures on state resident population. This is a purely mechanical calculation and could not be changed under current law. Any change in the status of a state reflects a change in the data provided to OPM. Thus, we see no reason to issue proposed regulations and invite comments every year. Instead, OPM proposes to announce the results of its annual determination in a public notice in the **Federal Register.** OPM's proposed change in its way of providing this information would begin with its determination for calendar year 1989 (which will be made before the November 1988 FEHP open season).

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 they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.701, the following three sentences are inserted between the current first and second sentences:

§ 890.701 Definitions.

* * * * *

"Medically underserved area" * * * OPM makes its annual determination by comparing the latest Department of Health and Human Services state-by-state population counts on primary medical care manpower shortage areas with U.S. Census figures on state resident population. The determination will be made prior to the annual FEHB open season and will be for the next calendar year. OPM will announce this determination before each open season in a public notice in the **Federal Register.** * * *

[FR Doc. 88-694 Filed 1-13-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. A0-85-A9]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Hearing on Proposed Amendments of Marketing Agreement and Order No. 905

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending the Marketing Agreement and Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

The purpose of the hearing is to receive evidence on proposals to amend provisions of the marketing agreement and order concerning: (1) Classifying Canada and Mexico as export markets rather than domestic markets as they are now; (2) making by definition the Interior District synonymous with Regulation Area I, and the Indian River District synonymous with Regulation Area II; (3) changing the eligibility requirements for grower members to serve on the committee; (4) permitting the committee to borrow money to fund committee operations in emergency situations; and (5) providing for the conduct of periodic referenda on continuance of the order every six years. These proposals were submitted by the Citrus Administrative Committee to improve the administration, operations, and functioning of the marketing order.

DATE: The hearing will begin at 9:30 a.m., February 17, 1988.

ADDRESS: The hearing will be held at the auditorium of the Florida Citrus Mutual Building, 302 South Massachusetts Avenue, Lakeland, Florida 33802.

FOR FURTHER INFORMATION CONTACT: Copies of this notice of hearing may be obtained from Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: 202-475-3918, or John R. Toth, Officer-In-Charge, Southeast Marketing Field Office, Florida Citrus Building, 500 3rd Street, NW., P.O. Box 2276, Winter Haven, Florida, 33883-2276, telephone: 813-299-4770.

SUPPLEMENTARY INFORMATION:

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

The hearing is called pursuant to the provisions of the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900).

Proposals have been submitted by the Citrus Administrative Committee, and the Fruit and Vegetable Division, U.S. Department of Agriculture. These proposals have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the marketing agreement and order; (ii) determining whether there is a need for the proposed amendments to the marketing agreement and order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material in evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, oranges, grapefruit, tangerines, tangelos.

1. The authority citation for 7 CFR Part 905 continues to read as follows:

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

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Proposals submitted by the Citrus Administrative Committee:

Proposal No. 1:

Amend § 905.9, and paragraphs (a)(3), (a)(4), (a)(5), and (d) of § 905.52 to read as follows:

§ 905.9 Handle or ship.

"Handle or ship" means (a) to sell, consign, deliver, or transport fruit, or in any other way, to place fruit in the current of commerce between the production area and any point outside thereof in the continental United States; and (b) to export fruit from any continental United States port to any designation.

§ 905.52 Issuance of regulations.

(a) * * *

(1) * * *

(2) * * *

(3) Limit the shipment of the total quantity of any variety by prohibiting the shipment thereof: *Provided,* That no such prohibition shall apply to exports or be effective during any fiscal period with respect to any variety other than for one period not exceeding five days during the week in which Thanksgiving Day occurs, and for not more than two periods not exceeding a total of 14 days during the period December 20 to January 20, both dates inclusive.

(4) Provide that exports of any variety shall be limited to grades and sizes different from the grade and size limitations applicable to shipments of such variety in the United States, and specify condition requirements for such variety; and

(5) Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be used in the shipment of fruit for export: *Provided,* That such regulation shall not authorize the use of any container which is prohibited for use for fruit under the provisions of Chapter 601 of the Florida Statutes and regulations effective thereunder.

(b) * * *

(c) * * *

(d) Whenever any variety is regulated pursuant to paragraph (a)(3) of this section, no such regulation shall be deemed to limit the right of any person to sell, contract to sell, or export such variety, but no handler shall otherwise ship any fruit of such variety which was prepared for market during the effective period of such regulation.

Proposal No. 2:

Amend §§ 905.15, and the first sentence in § 905.16 to read as follows:

§ 905.15 Regulation Area I.

"Regulation Area I" is defined as the "Interior District", and shall include all that part of the production area not included in Regulation Area II.

§ 905.16 Regulation Area II.

"Regulation Area II" is defined as the "Indian River District", and shall include that part of the State of Florida particularly described as follows:

* * * * *

Proposal No. 3:

Amend § 905.19 by revising paragraph (a) to read as follows:

§ 905.19 Establishment and membership.

(a) There is hereby established a Citrus Administrative Committee consisting of at least 8 but not more than 9 grower members, and 8 shipper members. Grower members shall be persons who are growers or employees of growers. Shipper members shall be shippers or employees of shippers. The committee may be increased by one non-industry member nominated by the committee and selected by the Secretary. The committee, with approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the non-industry member.

* * * * *

Proposal No. 4:

Amend § 905.41 by adding a new paragraph (c) to read as follows:

§ 905.41 Assessments.

* * * * *

(c) In order to provide funds for the administration of these provisions in cases of extreme emergency, the committee may borrow money on a short term basis not to exceed one full

year. The authority to borrow money may only be used to meet financial obligations as they occur and to allow the committee a season to adjust its reserve funds to meet any additional obligations.

Proposal No. 5:

Amend § 905.83 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 905.83 Termination.

* * * * *

(c) The Secretary shall conduct a referendum six years after the effective date of this part and every sixth year thereafter to ascertain whether continuance of this part is favored by producers. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by producers who during a representative period, determined by the Secretary, have been engaged in the production for market of the fruit in the production area; except, that termination of this part shall be effective only if announced on or before July 31 of the then current fiscal period.

* * * * *

The proposal submitted by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture is to make such changes as may be necessary to make the marketing agreement and order conform with any amendments thereto that may result from the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an exparte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: January 7, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-683 Filed 1-13-88; 8:45 am]

BILLING CODE 3410-22-M

7 CFR Part 982

Filberts/Hazelnuts Grown in Oregon and Washington; Proposed Establishment of Final Free and Restricted Percentages for the 1987-88 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes the establishment of final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1987-88 marketing year. The proposed percentages would specify the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers.

DATES: Comments must be received by February 16, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085, South Building, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 982 (7 CFR Part 982), as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 22 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order, and approximately 1,400 producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $100,000, ans small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Filbert/Hazelnut Marketing Board (Board) is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes the formulas for computing the inshell trade demand, as well as preliminary, interim, and final percentages which establish the amount of inshell filberts/hazelnuts the market can support throughout the season. The preliminary percentages release 80 percent of the inshell trade demand in order to protect against underestimates of the crop. On or before November 15, the Board must recommend to the Secretary final percentages which release 115 percent of the inshell trade demand. The 15 percent over 100 percent of the inshell trade demand is released to ensure an adequate carryover into the following season. The Board's recommendation and this proposed rule are based on requirements specified in the order.

This proposed rule would restrict the amount of domestic inshell filberts/hazelnuts that can be marketed in domestic markets. However, the domestic outlets for this commodity are characterized by limited demand, and the establishment of free and restricted percentages would benefit the industry by promoting stronger marketing

conditions and stabilizing prices and supplies, thus improving grower returns.

As provided in § 982.40 of the order, the Board meets prior to September 20 of each marketing year for the purpose of formulating its marketing policy for that year and submitting its recommendations for regulation. If the Board recommends volume regulation, it must compute and announce an inshell trade demand for that year prior to September 20. The inshell trade demand equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by not more than 25 percent, if market conditions warrant such an increase.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or disposed of in noncompetitive inshell outlets (restricted) early in the 1987–88 season. The preliminary free percentage is 80 percent of the established inshell trade demand, expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates. The Board computed and announced preliminary free and restricted percentages of 19 and 81 percent, respectively, to release 80 percent of the inshell trade demand. The reason only 80 percent of the inshell trade demand is releasable under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100 percent minus the free percentage.

The Board is required to meet prior to November 15 to formally review and approve its marketing policy and recommend to the Secretary for approval, the establishment of interim and final free and restricted percentages. The Board uses current crop estimates to calculate the interim and final percentages. The interim percentages are calculated the same as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. The final percentages release an additional 15 percent of the inshell trade demand which is used to ensure an adequate carryover into the following season. The final percentages must be effective at least 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

On September 3, 1987, the Board discussed its marketing policy and recommended the use of volume control regulations for the 1987–88 season. The Board computed and announced an estimated inshell trade demand and preliminary percentages which were calculated to release 80 percent of the inshell trade demand to the domestic inshell market.

The Board met on November 12, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that immediate release of the additional free tonnage will not adversely affect the 1987–88 domestic inshell market. Accordingly, no interim free and restricted percentages were recommended. The proposed marketing percentages are based on the industry's final production estimates and would release 4,723 tons to the domestic inshell market.

In addition to complying with the provisions of the marketing order, the Board also considers the Department's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts available for sale in domestic markets. The Guidelines require this primary market to have available a quantity equal to 110 percent of recent years' sales in those outlets before secondary market allocations are approved. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. In order to meet expected needs of the trade and to comply with the Guidelines, an increase of 10 percent (420 tons) has been included in the calculations used in determining the inshell trade demand. The proposed final percentages, which would release 115 percent of the inshell trade demand would also release 125 percent of prior years' sales, thus exceeding the Guideline's requirement.

The marketing percentages are based on the industry's initial production estimates and the following supply and demand information for the 1987–88 marketing year:

Inshell supply	Tons
(1) Total production (USDA official forecast of orchard-run production, 1987 crop)	20,000
(2) Less substandard farm use (disappearance)	1 568
(3) Merchantable production (the Board's adjusted crop estimate)	18,432
(4) Plus undeclared carryin as of July 1 1987, subject to regulation	0
(5) Supply subject to regulation (Item 3 plus Item 4)	18 432
(6) Average trade acquisition based on three prior years' domestic sales	4 198
(7) Increase to encourage increased sales (10 percent)	420
(8) Less declared carryin as of July 1, 1987 not subject to regulation	525
(9) Inshell Trade Demand	4,093
(10) 15 percent of the average trade acquisitions based on three years' domestic sales	630
(11) Inshell Trade Demand plus 15 percent (Item 9 plus Item 10)	4,723

Percentages	Free	Restricted
(12) Final percentages (Item 11 divided by Item 5) x 100	26	74

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 982

Agricultural Marketing Service, Marketing agreements and orders, filberts/hazelnuts, Oregon, Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is proposed to be amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1–19, 49 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 982.237 is added to Subpart—Grade and Size Regulation to read as follows:

Note.—The following section will not be published in the Code of Federal Regulations.

§ 982.237 Final free and restricted percentages—1987–88 marketing year.

(a) The final free and restricted percentages for merchantable filberts/hazlenuts for the 1987–88 marketing year shall be 26 and 74 percent, respectively.

Dated: January 7, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service

[FR Doc. 88–684 Filed 1–13–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 1033 and 1046

[Docket Nos. AO-166-A57 and AO-123-A58]

Milk in the Ohio Valley, and Louisville-Lexington-Evansville Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the pooling provisions of the Ohio Valley and Louisville-Lexington-Evansville milk orders based on industry proposals considered at a public hearing held June 30-July 1, 1987. As recommended, a pool distributing plant physically located in the Louisville-Lexington-Evansville marketing area would be regulated under that order irrespective of the market in which the plant has most of its fluid milk products distribution.

The decision also recommends another change in the Louisville-Lexington-Evansville order. This change slightly modifies the method for accounting for excess diversions to nonpool plants. These changes are needed to reflect current marketing conditions and to insure orderly marekting.

DATE: Comments are due on or before January 29, 1988.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7311.

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

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

This action changes the current regulatory status of a pool distributing plant that is located in the Louisville-Lexington-Evansville marketing area but is regulated by the Ohio Valley order because a greater portion of its fluid milk products distribution is in the latter order's marketing area. It would regulate such plant under the Louisville-Lexington-Evansville order. Such action is expected to equate the cost of raw milk supplies to the pool plant so situated with its principal competition. The economic impact of such action will be to increase returns to dairy farmers whose milk will be pooled under the Louisville-Lexington-Evansville order while slightly reducing returns to dairy farmers whose milk will continue to be pooled under the Ohio Valley order. The overall economic impact of the action is expected to be minimal.

Prior document in this proceeding:

Notice of Hearing: Issued June 15, 1987; published June 19, 1987 (52 FR 23306).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Ohio Valley, and Louisville-Lexington-Evansville marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 15th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Louisville, Kentucky, on June 30-July 1, 1987, pursuant to a notice of hearing issued June 15, 1987 (52 FR 23306).

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

1. Regulation of a distributing plant physically located in the Louisville-Lexington-Evansville marketing area but currently regulated by the Ohio Valley milk order.

2. Diversion of producer milk under the Louisville order.

3. Pool plant qualification requirements for a balancing plant operated by a cooperative association and regulated by the Ohio Valley order.

Findings and Conclusions

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

1. *Regulation of a distributing plant physically located in the Louisville-Lexington-Evansville marketing area but currently regulated by the Ohio Valley milk order*

The Louisville-Lexington-Evansville order (Louisville order) should be amended to provide that a distributing plant which meets the pooling standards of the Louisville order and one or more other Federal orders and which is located in the Louisville order's marketing area shall be a pool plant under the Louisville order irrespective of the quantity of fluid milk products distributed in any other Federal order market. However, such pool plant status shall be accorded only as long as the Louisville order's Class I price at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition.

Presently, when a distributing plant qualifies for pooling under the Louisville order and another order, it is regulated in the market in which it has the greater route sales.

"Lock-in" provision adopted herein for the Louisville order cannot achieve its intended purpose without a corollary change in the pooling standards of the Ohio Valley order. Thus, the Ohio Valley order should provide that any plant with route sales in the Ohio Valley marketing area shall be exempt from full regulation under that order, even though it has more sales in the Ohio Valley market than in the other market, if the plant is subject to full regulation under the other order.

Both Dairymen, Inc. (DI), and Milk Marketing, Inc. (MMI), proposed (proposals 1 and 2 as listed in the Notice of Hearing) that a distributing plant that is physically located in the Louisville order's marketing area (Order 46) should be regulated by that order irrespective of the quantity of such plant's route disposition in any other Federal order marketing area. Proposal No. 1 would amend Order 46 by locking in such a plant under the order and proposal No. 2

is intended to amend the Ohio Valley order (Order 33) by releasing from regulation such a plant even though such plant may have more fluid milk sales in the Order 33 area than in the Order 46 area.

A witness for DI stated that this action is necessary in order to minimize disruptive market conditions in the Kentucky supply area. The witness indicated that the proposal would only affect the Kroger Company's (Kroger) distributing plant located in Clark County, Kentucky (Order 46 marketing area), but currently regulated by Order 33. He said that the milk procurement and sales patterns of the Kroger plant establish a primary association of the plant with the Order 46 market.

The DI witness testified that the traditional method of pooling a distributing plant has always been on the basis of the market in which the plant has the most sales. The justification for this method, he said, was to ensure that all handlers having the major portion of their sales in the same order area were subject to the same minimum order prices and other regulatory provisions. He said that this principle rested on an assumption that such competing plants would be located in the same geographic area.

Also, the witness for DI said that the traditional method of pooling fluid milk plants has become outdated because of large processing plants, such as chain store plants, that have sales over wide geographical areas. The proposal, he said, better serves the principle of trying to assure that all handlers competing for milk procurement and sales in an order area are subject to the same price as their competition. He indicated the proposal would regulate a distributing plant under the order for the marketing area where it is physically located even though its route distribution was greater in another Federal order's marketing area.

The spokesman for DI said that producers supplying the Kroger plant are located within the same geographic area as producers who supply Order 46 plants and to some extent producers who supply plants regulated under the Tennessee Valley, Nashville, and Alabama-West Florida orders. He said that this proposal would minimize any blend price inequities which may occur between producers located within this same geographic supply area because a distributing plant would be regulated within the same area from which it procures its milk supply. Producers, he says, who supply other Federal order plants located in the same general area are receiving significantly different blend prices.

A witness for MMI also testified in support of proposals 1 and 2. He said that MMI cannot service the Kroger plant at competitive prices and that this problem is caused by the difference between the Order 33 blend price and blend prices in markets to the south. He stated that in order for MMI to make their members' pay prices competitive, MMI has found it necessary to charge the Kroger plant at Winchester a surcharge of 15 cents on all the milk that Kroger purchases. The MMI witness stated that the 15-cent surcharge to Kroger has helped MMI maintain a competitive position in the procurement area and that they have used that surcharge to pay for such things as subsidies to milk haulers, over-order premiums to MMI's members, and to pay extra premiums in certain competitive areas.

The spokesman for NMI said that a higher blend price is needed at the Winchester plant because the Order 33 blend price and the normal over-order charge is not sufficient to assure an adequate supply of milk at that location. He said that Federal order prices should be the prime determinant in the assurance of adequate supplies and it should not be the responsibility of suppliers to selectively determine that certain plants should pay higher over-order charges than other plants with the same Federal order Class I price. The blend price must be increased, he said, by either having a higher Class I price at that location or having the plant regulated by another market with a higher percentage of Class I utilization.

A witness for the Kroger Company (Kroger) testified in support of these proposals. The Kroger witness said that for the first 5 months of 1987, the Winchester plant's Class I sales in the Order 46 marketing area averaged more than 33 percent of its total fluid milk sales and that its fluid milk sales in the Order 33 marketing area averaged less than 50 percent of its total fluid milk sales. He said that of the total in-area packaged Class I sales for Order 46, its sales represent about 16 percent of the total market and that of the total in-area packaged Class I sales for Order 33, its sales represent about 8 percent of the total. In addition, he said, that when comparing its Class I sales in each of the two order areas of the first 5 months of 1987 with the same period of 1986, sales in the Order 33 area have declined and sales in the Order 46 area have increased.

The spokesman for Kroger said that because of the recent increases in the Class I differentials in the southern markets, Winchester has not been as attractive a market outlet as before. This, he said, has contributed to the need for Kroger to pay, beginning in September 1986, an additional 15-cent per hundredweight surcharge over the regular premium price and that this surcharge amounted to approximately $439,000 for the first five months of 1987.

The Kroger witness said that these proposals would make the Winchester plant more competitive with other plants in the procurement of milk. In addition, he said that the lock-in proposals would equalize producer's pay prices under the order in the Winchester plant's procurement area and should eliminate the need for the 15-cent surcharge.

A representative for Huntington Interstate Milk Producers Association (Huntington) also testified in support of the lock-in proposals. He said that Huntington supplies Order 33 milk plants including the Winchester plant. In recent weeks, he said, Huntington had lost a few members because a supply plant at Maysville, Kentucky, was offering these producers the Order 46 weighted average price, which is higher than the Order 33 blend price.

A representative for the National Farmers Organization (NFO), which has member producers on both the Order 33 and Order 46 markets, testified in opposition to the lock-in proposals. Exhibits that were introduced by NFO showed that if the Kroger plant were to be pooled under Order 46, that order's blend price would have increased at least 11 cents and as much as 18 cents for the first 5 months of 1987. In addition, the exhibits showed that the blend price in Order 33 for this same period would have been decreased between 6 and 9 cents.

The witness for NFO said that the proposals would have the effect of penalizing producers whose milk is pooled on Order 33 in order to save some milk for the Kroger plant at Winchester. The NFO witness said that the difference in blend prices for the two markets could be as much as 49 cents. He said that such a disparity in blend prices between these two close-together regulated markets will create inequities among producers within the same milk shed. Furthermore, he said, the base-excess plan of Order 46 will create additional friction with the Order 33 producers.

While acknowledging the uniqueness of the Kroger problem, the representative of NFO held that a plant should be regulated under the Federal order for the area in which it has the most sales. It was his position that producers in the market in which the plant has the greater proportion of its

sales have a right to share in the Class I sales associated with that plant.

A brief was filed by the Louis Trauth Dairy, Inc. (Trauth) in opposition to proposals 1 and 2. In his Order 33 handler's view, the proposals represent a radical departure from the policies established for regulating plants under marketing orders. Its brief asserts that the proponents have not met their burden of proof and that the record shows that milk is regularly diverted away from the Winchester plant, thereby indicating that plant does not have a supply problem.

The testimony presented at the hearing indicates that under current marketing conditions the lock-in provisions for the Louisville order as proposed by DI and MMI would apply only to Kroger's distributing plant at Winchester, Kentucky.

The adoption of the proposal is warranted because of special circumstances surrounding the operation of the Winchester plant. The plant is located in the marketing area of the Louisville order. It began operating in November 1982 and during this month the plant was a pool distributing plant under the Ohio Valley order. From December 1982 through March 1983, it was a pool city plant (pool distributing plant) under the Louisville order. Since then, the plant has continued to be pooled under the Ohio Valley order.[1]

The Winchester plant distributes fluid milk products in five Federal order markets and in unregulated areas of West Virginia and Kentucky. Most of its sales, however, are concentrated in two markets: the Ohio Valley market and the Louisville market. Data introduced into the record show that during the January-May 1987 period the Kroger plant had nearly 50 percent of its Class I distribution in the Ohio Valley market, about 34 percent in the Louisville market and about 16 percent in all other areas, including the Eastern Ohio-Western Pennsylvania, Tennessee Valley and Indiana Federal order markets.

The entire raw milk supply for the Kroger plant is obtained from DI and MMI (which includes milk of Huntington Interstate Milk Producers) and comes from producers principally located in Kentucky. The plant receives milk directly from the farms of producers and incidental or supplemental supplies from supply plants operated by MMI. Most of the plant's milk supply is obtained from producers located in the same geographical area as producers supplying handlers regulated by the Louisville order and other orders south and east of the plant's location. The record indicates that in at least 18 Kentucky counties there are producers who supply the Kroger plant as well as other producers in the same counties that supply plants regulated under the following other orders: Alabama-West Florida, Georgia, Louisville, Nashville, and Tennessee Valley (southern markets).

While the Class I prices under the Louisville and Ohio Valley orders at the Kroger plant's location are identical, the uniform weighted average price of producers under the Louisville order usually have been higher than the comparable Ohio Valley prices. For example, during the 53-month period from Janaury 1983 through May 1987, the uniform weighted average prices to producers under the Louisville order exceeded the comparable Ohio Valley order's prices during 49 months. The amount of these differences ranged from a low of one cent to a high of 35 cents per hundredweight and averaged 14 cents for the 49 months. A similar situation exists for the Winchester plant in competing for milk supplies with handlers regulated in other southeastern order markets where both Class I prices and uniform prices to producers are substantially higher than such prices under the Ohio Valley order.

As indicated by the record evidence, the higher pay prices available to producers under the Louisville and other southeastern order in the Kentucky supply area have created difficulties for the Kroger plant at Winchester in procuring adequate supplies. The principal difficulty cited in this regard was the impact of the present 15-cent per hundredweight additional charge by both DI and MMI on all milk purchases by Kroger. It is evident from the record evidence that this 15-cent charge, which has been in effect since September 1986, was designed to overcome the difficulties of maintaining an adequate supply of milk for the Kroger Winchester plant as a result of producer pay price differences between the two markets in question. Although the record clearly establishes that a higher price is required at this location to attract adequate supplies, the present extra 15-cent charge used for this purpose places the Kroger Company at a competitive disadvantange with other handlers that it competes with for sales.

As noted previously, usually a distributing plant that qualifies for pooling under more than one order during the same month is regulated under the order for the area in which such plant's route distribution is the greatest. This tends to insure that all handlers having their principal sales in a market are subject to the same prices and other regulatory requirements. This conditions of pooling a distributing plant is the basis for regulating the Kroger plant under the Ohio Valley order, because a greater quantity of its sales is distributed in such order's marketing area than in any other order marketing area.

The pricing problems affecting the procurement of adequate milk supplies for the Winchester plant, however, are severe enough to override the traditional basis for pooling a distributing plant that qualifies as a pool plant under more than one order during the same month. Under such circumstances, consideration must be given to regulating the Winchester plant in the market in which there is reasonable assurance that it will have available an adequate supply of producer milk. It is concluded that the Kroger Winchester plant or any other distributing plant located in the Louisville marketing area can be reasonably assured of and adequate supply if it is regulated under the Louisville order.

It should be noted that under the type of lock-in provision adopted herein, the Kroger plant or another distributing plant so situated would continue to be pooled indefinitely under the Louisville order so long as the plant meets such order's performance requirements for a pool distributing plant. This condition of pooling is intended to assure that the Winchester plant is primarily engaged in the processing and distribution of fluid milk products to an extent that such plant's route distribution in the marketing area is a major competitive factor.

As noted earlier, under the lock-in provision adopted herein, such pool plant status is accorded a distributing plant so long as the Louisville order's Class I price applicable at such plant's location is not less than the Class I price applicable at the same plant's location under another order for a market where it has its greatest route distribution. This additional condition of pooling is intended to prevent any competitive price advantage accruing to a plant that otherwise would be locked-in under the adopted provision.

Under the lock-in provision adopted herein, the Louisville order would regulate the Winchester plant even though it had a greater proportion of its route distribution in the marketing area of the Ohio Valley order. However, the intent of this pooling arrangement is in

[1] Offical notice is taken on the lists of pool handlers under Federal Orders 33 and 46 as published by the respective market administrators for the months of November 1982 through September 1987.

conflict with the present pooling requirements of the Ohio Valley order since it does not have a complementary provision which will permit the plant to be locked-in under the Louisville order. As proposed by the lock-in proponents, the Ohio Valley order should be amended to provide for such a complementary provision.

In opposing the proposed lock-in provision at the hearing and in post-hearing briefs, opponents maintained that no departure should be made from the long established policy concerning regulation of a distributing plant that qualifies for pooling under two or more orders. It was the position of opponents that the record evidence did not warrant any departure from such established policy regarding the Winchester operation. Contrary to opponents' position, the pricing problems of Kroger are severe enough to warrant overriding the customary pooling provisions as related to the Kroger operation and support the adoption of the proposed lock-in provision.

NFO contended that the proposed lock-in proposal, if adopted, will widen the difference in producer pay prices between the Louisville and Ohio Valley orders to the extent that it will create inequities among producers within the same supply area. The record evidence, however, does not support this claim. Rather, adoption of the proposals will tend to provide uniformity of prices to producers within the procurement area of the Winchester plant.

2. *Diversion of producer milk under the Louisville order.* Rule concerning the diversion of producer milk from pool plants to nonpool plants should be modified to provide a procedure for accounting for over-divisions to nonpool plants. On the basis of this record, however, other division proposals should not be adopted. Such proposals would (1) relax the delivery requirement of an individual producer to establish division eligibility for the months of March through August; and (2) modify the basis of determining the quantity of producer milk that may be diverted to nonpool plants during the September-February period.

Presently, the order provides that during the months of March through August at least two days' production (one delivery for a producer on every-other-day pickup) of a producer must be physically received at a pool plant each month in order for the milk of such producer to be eligible for diversion to a nonpool plant as producer milk. During the September-February period, monthly diversions of a producer's milk to a nonpool plant cannot exceed 22 days' production (11 every-other-day pickup).

NFO proposed that diversion eligibility for a producer be reduced to one day's production received at a pool plant and that diversions to nonpool plants during each of the months of September through February not exceed 60 percent of the producer milk received at a pool plant. At the hearing, however, NFO revised its diversion limitation proposal to increase the 60 percent factor to 70 percent and to permit diversion limits to be based either on 70 percent of total producer deliveries to pool plants or on the number of days of production of an individual producer that is actually delivered to a pool plant. Also, it proposed that under either option, diversion limitations should apply uniformly to both a cooperative association and a proprietary handler.

In support of its proposal to reduce the delivery requirement for an individual producer during the March-August period, a spokesman for NFO testified that the present two-day delivery requirement has occasionally caused problems when one day's production of a large producer has been picked up by two different bulk tank trucks on succeeding days without both trucks delivering to a pool plant. According to the witness, this method of handling can result in some producer milk being depooled. The spokesman indicated that this is because the diverting handler, having assumed that all producers whose milk was on each truck met the two-day delivery requirement, would not discover the error until after the end of the month, when it was too late to correct the problem. To minimize or avoid the problem, the witness stated, it is necessary for the diverting handler to have the milk on an every-other-day truck route delivered to a pool plant at least twice a month solely to make certain that the two-day delivery requirement is met. He stated that this causes excessive hauling and handling because the additional milk delivered to the pool plant is not needed. Reducing the delivery requirement to one day, according to the witness, would eliminate this unnecessary expense and simplify monitoring producer shipments.

Also, NFO proposed that the limits on the quantity of milk that may be diverted to nonpool plants during the September-February period be based either on a percentage of a handler's total producer milk receipts at pool plants or, as presently provided, on the number of days of production of an individual producer that may be diverted to a nonpool plant. The purpose of the proposal, as stated by NFO's witness, is to provide the diverting handler with a choice in achieving efficient diversion of reserve milk supplies to nonpool plants. Proponent's spokesman testified that basing diversion limitations only on the number of delivery days of an individual producer causes a handler unnecessary handling, pumping and hauling milk solely to maintain producer status for some of its dairy farmers. In NFO's view, the proposal would not encourage the pooling of greater quantities of producer milk under the order than is permitted now. Rather, NFO claimed that is would provide for increased efficiency in marketing reserve milk.

A spokesman and DI testified in opposition to NFO's proposals concerning diversions to nonpool plants. This witness argued that the present diversion provisions are adequate because there is every indication that the amount of milk being diverted by handlers in the market was well within the existing limits. He stated that liberalization of the diversion provisions would make less milk available to the fluid market at a time when market conditions call for greater shipments. To this end, DI offered two counter proposals which would (1) require that eight day's production of a producer be received at a pool plant during each of the months of September through February and (2) that the amount of milk that a handler may divert to nonpool plants not exceed a volume to one-third of the handler's producer milk physically received at or diverted from pool plants during such months.

At the hearing and in post-hearing briefs, both MMI and Kroger supported DI's position regarding diversions to nonpool plants.

Neither the delivery requirement for an individual producer or the limits on diversions to nonpool plants during September through February should be modified on the basis of this record.

The testimony presented by NFO in support of its proposal to change to a one-day delivery requirements, to a large extent, was general in nature and lacked "specificity." Its witness, for example, did not provide any evidence regarding the probelm that NFO has had in meeting the order's present delivery requirement. Although the NFO witness testified that the two-day delivery requirement occasionally caused qualification problems when one day's production of a large producer was picked up in the same bulk tank truck that was also picking up 2 days' production of other producers, there was no evidence presented which indicated the number of times that this problem occurred or the quantity of milk of its member producers that was depooled.

The record evidence does not demonstrate that the two-day delivery requirement is excessive or that it is not needed to demonstrate that a producer is genuinely associated with the fluid market. Accordingly, the proposal is denied.

The basic issue developed on the record with respect to NFO's other diversion proposal concerns whether to provide an alternative option of basing diversion limitations on a percentage of a handler's total producer milk supply and what constitutes reasonable diversion limits in light of the market's present supply-demand conditions so that fluid milk plants are assured of adequate milk supplies.

The record evidence indicates that Class I utilization for Order 46 averaged 59.9 percent for 1986 and ranged from a low of 50.4 percent in June to a high of 72.4 percent in September. For the first five months of 1987, Class I utilization averaged 63.0 percent compared to an average of 56.0 percent for the same period in 1986. This supply-demand situation indicates that allowing a diverting handler to divert to a nonpool plant as much as 70 percent of its total producer receipts, as proposed by NFO, would not be appropriate.

Also, the record evidence suggests that all handlers on the marekt are able to operate within the diversion limits as now contained in the present order. For instance, data contained in the record shows that for 1986 diverted milk, as a percentage of producer receipts, ranged from a low of 16.5 percent for September to a high of 31.5 percent in May. Also, for the first five months of 1987, diversions to nonpool plants averaged 22.1 percent compared to 26.2 percent for 1986.

Conversely, on the basis of this record there is no apparent need to limit diversions to nonpool plants to the extent proposed by DI. There was no demonstration by DI that the current limit on the amount of milk that may be diverted is causing in any way disruptive marketing conditions.

In view of these considerations, the diversion limits, as now provided in the order, are appropriate for this market, considering current supply-demand conditions. The record evidence does not provide a compelling basis for changing the present diversion limits. Accordingly, all proposals to change diversion limits are denied.

As indicated previously, the order should be revised to specify the procedure for accounting for over-diverted milk. As proposed by both NFO and DI and as herein adopted, the order is revised to provide that milk diverted in excess of the diversion limits as prescribed by the order shall not be producer milk and that the diverting handler shall designate the dairy farmers' deliveries that shall not be producer milk. Also, if the diverting handler fails to make such designation, none of the diverted milk of such handler shall be producer milk. This modification is desirable and appropriate.

Subsequent to the hearing, NFO filed a petition to have the hearing reopened in the event that the Secretary determines that DI's counter proposals that were offered in response to NFO's proposals concerning diversions to nonpool plants would be "worthy of consideration." Since DI's proposals were not adopted, the issue raised in NFO's petition is moot.

DI proposed at the hearing to amend the performance standards for a pool distributing plant. As proposed, diverted milk would be included along with milk physically received at the distributing plant as the base in calculating a plant's Class I utilization percentage. A specified minimum Class I utilization percentage is used as one of the condition's that must be met in determining the pooling status of a distributing plant under the order.

Counsel for NFO objected to the proposal on the basis that it was not included in the hearing notice and thus was outside the scope of the hearing. The Administrative Law Judge (ALJ) presiding at the hearing ruled that the proposal was not properly noticed and thus sustained the objection of NFO's counsel.

DI, in its brief, renewed the request to allow for testimony to be taken on the proposal since it was its position that the proposal was within the scope of the hearing. After a careful review of the matter, it is concluded that the ALJ's ruling in this regard was proper. Therefore, the motion reverse the ruling of the ALJ is denied.

3. *Pooling provisions for a plant operated by a cooperative association and regulated under the Ohio Valley order.* As noted in the hearing notice, a proposal of NFO would have reduced from 50 percent to 40 percent the quantity of members' milk that must be delivered to pool distributing plants in order to qualify a plant operated by a cooperative association as a pool plant. At the hearing, NFO did not present any testimony in support of the proposal and in its brief NFO stated that it wanted to withdraw the Proposal. Witnesses for both MMI and the Kroger Company testified in opposition to the proposal. Accordingly, no further consideration is given to the proposal in this proceeding.

Rulings on Proposed Findings and Conclusions

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

General Findings

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

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

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

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

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements for the Ohio Valley and

Louisville-Lexington-Evansville marketing areas are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended regulating the handling of milk in such marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1033 and 1046

Milk marketing orders, Milk, Dairy products.

1. The authority citation for CFR Parts 1033 and 1046 continues to read as follows:

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

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

2. Section 1033.56 is amended by revising the first sentence of paragraph (a) through the first comma and adding a new paragraph (c) to read as follows:

§ 1033.56 Plants subject to other Federal orders.

(a) Except as specified in § 1033.31 and in paragraphs (b) and (c) of this section, * * *

* * * * *

(c) A plant qualified pursuant to § 1033.12(a) which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

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

3. Section 1046.7 is amended by revising paragraph (e) to read as follows:

§ 1046.7 Pool plant.

* * * * *

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Unless determined otherwise by the Secretary, a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of other order issued pursuant to the Act, except:

(i) A plant that qualifies as a pool plant pursuant to paragraph (a), (b), (c) or (d) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets than in the marketing area regulated pursuant to such other order during the current month; and

(ii) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the pooling requirements of another Federal order on the basis of route disposition if the plant is located in the Louisville-Lexington-Evansville marketing area and this order's Class I price applicable at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition; and

(3) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

4. Section 1046.13 is amended by adding a new paragraph (c)(4) to read as follows:

§ 1046.13 Producer milk.

* * * * *

(c) * * *

(4) Any milk diverted in excess of the limits prescribed in paragraph (c)(3) of this section shall not be producer milk. The diverting handler shall designate the farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk.

* * * * *

Signed at Washington, DC, on January 7, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–682 Filed 1–13–88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–AWP–35]

Proposed Revision to the Kingman, AZ, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Kingman, AZ transition area. This proposal enlarges the 700 foot transition area to provide additional controlled airspace for aircraft on the Very High Frequency Omni-directional Range/Distance Measuring Equipment (VOR/DME) runway 21 instrument approach procedure to the Kingman Municipal Airport. This proposal also enlarges the 1,200 foot transition area west of the Kingman Municipal Airport to provide additional controlled airspace for instrument flight rules (IFR) departures.

DATES: Comments must be received on or before February 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP–530, Docket No. 87–AWP–53, Docket No. 87–AWP–35, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–1648.

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 that 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 the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-35." 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 Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Kingman, AZ transition area. This revision will provide additional controlled airspace for aircraft on the VOR/DME RWY21 instrument approach procedure to the Kingman Municipal Airport and for IFR departures from the Kingman Municipal Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

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

PART 71—[AMENDED]

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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kingman, AZ [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Kingman Municipal Airport (lat. 35°15'34"N., long. 113°56'14"W.); and that airspace within 5 miles each side of the Kingman VOR 025° radial extending from the 5-mile radius area to 19 miles northeast of the VOR; that airspace extending upward from 1,200 feet above the surface within 5 miles southeast and 9 miles northwest of the Kingman VOR 025° and 205° radials, extending from 13 miles southwest to 38 miles northeast of the VOR; and that airspace bounded by a line beginning at lat. 35°24'46"N., long. 114°01'31"W.; to lat. 35°08'44"N., long. 114°10'28"W.; to lat. 35°21'15"N., long. 114°13'25"W.; to the point of beginning.

Issued in Los Angeles, California, on December 22, 1987.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-368 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWP-34]

Proposed Revision to the Parker, AZ, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Parker, AZ transition area. This revision will provide controlled airspace for aircraft executing the Very High Frequency Omni-Directional Range/Distance Measuring Equipment (VOR/DME-A) instrument approach procedure to the Avi Suquilla Airport, Parker, Arizona.

DATES: Comments must be received on or before February 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 87-AWP-34, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Toikal, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1648.

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 the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-34." 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 Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Parker, AZ. transition area. This will provide controlled airspace for aircraft executing the VOR/DME-A instrument approach procedure to the Avi Suquilla Airport, Parker, Arizona. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

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

PART 71—[AMENDED]

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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Parker, AZ [Revised]

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of Avi Suquilla airport (lat. 34°09'03"N., long. 114°16'14"W.); and that airspace extending upward from 1200 feet above the surface within 10 miles northwest and 7 miles southeast of the Parker VORTAC 071° and 251° radials extending from 9 miles southwest to 29 miles northeast of the VORTAC.

Issued in Los Angeles, California, on December 17, 1987.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-369 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWP-4]

Establishment of Brawley, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Brawley, CA. This transition area will provide controlled airspace for aircraft executing a new instrument approach procedure to the Brawley Airport.

DATE: Comments must be received on or before February 20, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 87-AWP-4, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1648.

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 comment on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-4." 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 proposed contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report

summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Brawley, CA. and provide controlled airspace for aircraft executing a new instrument approach procedure to the Brawley Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

PART 71—[AMENDED]

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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Brawley, CA—[New]

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Brawley Airport (lat. 32°59'23"N. long. 115°30'58"W.); within 3 miles either side of the Imperial VORTAC 358° radial extending from the 6-mile radius area to 9.5 miles south of the airport; and that airspace extending upward from 1200 feet above the surface within an 8-mile radius of the Brawley Airport.

Issued in Los Angeles, California, on December 16, 1987.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-370 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWP-31]

Proposed Revision to Camp Pendleton, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Camp Pendleton, CA, transition area and expand the 700 foot transition area to the southwest and southeast of the Camp Pendleton tactical air navigation aid (TACAN). This expanded transition area will provide additional controlled airspace for aircraft operating under instrument flight rules (IFR) in the vicinity of Camp Pendleton Marine Corps Air Station (MCAS).

DATES: Comments must be received on or before February 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 87-AWP-31, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1648.

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 the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-31." 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 Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of

advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Camp Pendleton, CA, transition area. This will provide additional controlled airspace southwest and southeast of the Camp Pendleton TACAN for IFR flights at Camp Pendleton MCAS. Section 71.181 of Part 71 of the Federal Aviation Regulations republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

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

PART 71—[AMENDED]

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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Camp Pendleton, CA [Revised]

That airspace extending upward from 700 feet above the surface within 4.5 miles southeast and 3 miles northwest of the Camp Pendleton TACAN (lat. 33°18'04"N., long. 117°21'06"W.) 041° and 221° radials, extending from 1 mile southwest to 18 miles northeast of the TACAN; and that airspace bounded by a line beginning at lat. 33°18'00"N., long. 117°15'00"W; to lat. 33°15'00"N., long. 117°15'00"W; to lat. 33°15'00"N., long. 117°18'18"W.; to the point of beginning.

Issued in Los Angeles, California, on December 16, 1987.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-371 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795, 796, and 799

[OPTS-42088C; FRL-3215-4]

Office of Solid Waste Chemicals; Proposed Test Rule; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period on its proposed rule under section 4 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2603, to require testing on 73 chemicals which are constituents of hazardous waste streams (52 FR 20336; May 29, 1987). These chemicals are referred to as the Office of Solid Waste chemicals. This additional period will permit comment on updated information incorporated into the exposure analysis and the economic analysis.

DATE: This document reopens the comment period until February 16, 1988.

ADDRESS: Address written comments in triplicate identified by the document control number (OPTS-42088C) to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M Street SW., Washington, DC 20460.

The public record supporting these actions is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances; Room E-543, 401 M Street SW., Washington, DC 20460 (202) 544-1404.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 29, 1987 (52 FR 20336), EPA issued a proposed rule for 73 Office of Solid Waste chemicals which included testing for chemical fate and human health effects. EPA previously extended the comment period in a document published in the **Federal Register** of August 7, 1987 (52 FR 29395). EPA is reopening the comment period to permit comment on: (1) Data documenting potential for exposure to certain chemicals; (2) toxicity data on one chemical; and (3) an updated economic assessment for chemicals for which there previously was insufficient or no available economic information. The non-confidential exposure, economic, and toxicity information is now available for review in the public docket.

I. Background

The proposed rule required testing for human health effects (90-day subchronic toxicity) and/or chemical fate (anaerobic biodegradation, hydrolysis, and soil sorption), depending on identified data gaps for each chemical. EPA's Office of Solid Waste needs these data to support its effort under section 3001 of the Resource Conservation and Recovery Act (RCRA) to identify those wastes which may pose a substantial hazard to human health and the environment if improperly managed.

The proposed human health effects and chemical fate testing is based on the authority of section 4(a) (1) (A) of TSCA. EPA finds that the disposal of these chemicals may present an unreasonble risk of injury to health or the environment; that there are insufficient data and experience to determine or predict the effects of disposal on health or the environment; and that testing is necessary to develop these data.

Comments were received from Chemical Manufacturers Association (CMA), Synthetic Organic Chemical Manufacturers Association, Inc. (SOCMA), Vulcan Chemicals, Regulatory Network, Inc. (Maleic Anhydride Consortium), Monsanto Co., Methyl Chloride Industry Association, Morton Thiokol, Inc., Calorie Control Council, and the Natural Resources Defense Council (NRDC), on the basis for the section 4(a)(1)(A) findings of "may present an unreasonable risk of injury to health or the environment" for the chemicals listed in the proposed rule.

All of the chemicals in the proposed rule are listed in Appendix VIII of 40 CFR Part 261. NRDC believes that the threshold requirement for being listed in Appendix VIII is more than adequate to satisfy the "may present an unreasonable risk to health or the environment" finding required by TSCA, nothing that:

Substances will be listed in Appendix VIII only if they have been shown in scientific studies to have toxic, carcinogenic,

mutagenic or teratogenic effects on humans or other life forms. 40 CFR 261.11(a).

NRDC believes that, since EPA is basing its decision for a test rule on the "unreasonable risk" finding rather than the "substantial exposure" finding, there is no requirement for a showing of substantial human exposure.

CMA and other industry commenters, however, believe that the general assertion, contained in the proposed rule, that the subject chemicals are known to be constituents of wastes to which humans might be exposed does not support a conclusion under TSCA that each of the chemicals may present a hazard or risk.

II. Exposure Data

While EPA believes that the record contains sufficient information to support its findings, since relevant data are easily available and obtainable within the timeframe allowed for this rulemaking, the Agency is now inserting into the record for this rule data that document the presence of certain chemicals in waste streams and/or ground water, demonstrating potential for human exposure. The data show that tens of thousands of pounds of these chemicals are being released annually via disposal. Also, the type of disposal described in the data bases for the subject chemicals, such as deep well injection, discharge to landfill, or discharge to a POTW (publicly-owned treatment works), indicate potential for leaching and exposure to these chemicals. Indeed, data exist for many of the chemicals which document incidents in which the chemicals have migrated from their place of treatment, storage, or ultimate disposal. It is likely that these data represent only a portion of actual contamination occurrences throughout the country.

The data have been obtained by searching three data bases used by the Office of Solid Waste: The Industry Studies Data Base (ISDB), the Hazardous Waste Damage Incident Data Base (DIDB), and the Hazardous Waste Disposal Site (HWDS) Data Base. Many of the chemicals are listed in more than one data base. Much of the data contained in the ISDB is RCRA confidential business information (CBI), and is contained in a separate RCRA CBI docket. The non-CBI information is available for review in the OPTS docket No. 42088C.

The ISDB is a computerized repository of chemical manufacturing and waste management information, established by the Waste Characterization Branch of the Office of Solid Waste in conjunction with the Hazardous Waste Listing Program. The information was provided directly from chemical manufacturers under the authority of RCRA section 3007 through questionnaire surveys, sampling and analysis site visits, and from other sources. As mentioned above, the vast majority of the data relate to proprietary product processes and are classified as CBI.

The DIDB presents a nationwide retrospective view of incidents in which hazardous wastes or products have migrated from their place of treatment, storage, or ultimate disposal. The DIDB was developed to allow the rapid identification of large numbers of incidents illustrating specific types of contamination scenarios. Presently, the data base contains summaries of nearly 1,000 mismanagement incidents.

The HWDS Data Base, developed by EPA's Environmental Monitoring Systems Laboratory, Las Vegas, NV, contains hazardous waste disposal site groundwater monitoring data obtained from the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) and the RCRA programs of EPA. Each of the 10 EPA regional offices was visited between April 1983 and September 1983, resulting in the acquisition of site investigation data for 183 Superfund sites. Groundwater data were also obtained for 175 interim-status phase RCRA sites from the State of Texas (115 sites), the State of Louisiana (40 sites), and EPA's Office of Solid Waste (20 sites).

In addition to groundwater monitoring results for each chemical contaminant, pertinent site data such as classification of site (RCRA, CERCLA), type of operation (landfill, lagoon, etc.), type of well (private, public water supply, monitoring), well location (up/downgradient, on-/off-site), sampling date, and geographic location (regions, state) were also entered into the data base.

III. Toxicity Data

Toxicity data on one chemical, methanethiol, were inadvertently omitted from the docket in support of the proposed test rule. This information, along with exposure data from the ISDB, support the TSCA section 4(a)(1)(A) "may present an unreasonable risk" finding for this chemical, and are now available in the docket for public review.

IV. Literature Review

CMA asserted in its comments that "EPA has not conducted a satisfactory review of existing data and experience for each chemical, and, therefore, the Agency is unable to reach conclusions about the adequacy of such data for supporting the proposed section 4 rules." In response to this comment, EPA reviewed the literature search document for each endpoint for each chemical. As a result, EPA is now supplementing the public docket with results of the literature search for three chemicals, all for the anaerobic biodegradation rate end-point: Acetamide, 2-fluoro (insufficient data); 2,3-dichloropropanol (no data); and 2,6-dinitrotoluene (insufficient data). This information supports the TSCA section 4(a)(1)(A)(ii) finding that there are insufficient data and experience upon which the effects of commercial activity with the subject chemicals on health or the environment can reasonably be determined or predicted.

V. Economic Analysis

The economic analysis prepared in support of the proposed rule assessed the potential for significant adverse economic impact of 49 chemicals. The analysis has now been revised to incorporate additional information concerning certain of the 49 chemicals and to assess six additional chemicals. The original economic analysis indicated that the potential for significant adverse economic impact may be high for 10 of the 49 chemicals based upon the expected testing costs for those chemicals. This number has been revised to nine, with four chemicals removed from this category and three other chemicals added.

For four of those chemicals, 1,3-dichlorobenzene, 1,3-dichloro-2-propanol, 2,3-dichloro-1-propanol, and dihydrosafrole, additional market information has led EPA to revise its assessment of the potential for significant adverse economic impact. It now appears that the potential for significant adverse economic impact may be low for these four chemicals. For one chemical previously classified as having a low likelihood of significant adverse economic impact, nicotine, an increase in the estimated testing costs indicates that the chemical should now be classified as having a high likelihood of significant impact.

The original economic analysis also indicated that the potential for significant adverse impact was uncertain for five chemicals. For two of these chemicals, 1,2,4,5-tetrachlorobenzene and phenacetin, EPA now believes that the potential for significant adverse economic impact is high.

For one chemical previously classified as having a low likelihood of significant adverse economic impact, methyl

chlorocarbonate, an increase in the estimated testing costs indicates that the likelihood is now uncertain.

The likelihood of significant adverse economic impact was not addressed in the original economic analysis for 24 chemicals which were believed to be manufactured solely as pesticides or not currently manufactured or imported. For 3 of these 24 chemicals, pentabromoethane, pentabromobenzene, and maleic hydrazide, the probability of significant adverse economic impact is believed to be low. For 4-bromobenzylcyanide and endrin, there is a high likelihood of significant adverse economic impact. For 2-chloroethyl vinyl ether, the likelihood of significant adverse economic impact is uncertain.

Please refer to the revised economic analysis contained in the docket for a more detailed discussion of the economic assessment for these chemicals.

VI. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42088C). This record includes all information considered in the development of the proposed rule and appropriate **Federal Register** notices. The Agency will continue to supplement the record with additional information as it is received.

The record includes all information referenced in support of the May 29 proposal plus the following information:

(1) Notice of Proposed Rulemaking, Solid Waste Chemicals (52 FR 20336; May 29, 1987).

(2) Exposure data from three sources: The Industry Studies Data Base, the Hazardous Waste Damage Incident Data Base, and the Hazardous Waste Disposal Site Data Base.

(3) Revised economic analysis for the proposed rule.

(4) Toxicity data on methanethiol.

(5) Literature search information for: acetamide, 2-fluoro; 2,3-dichloropropanol; and 2,6-dinitrotoluene.

VII. Other Regulatory Requirements

The Agency discussed Executive Order 12291, The Regulatory Flexibility Act, and the Paperwork Reduction Act in detail in the May 29, 1987 proposal, and no changes are indicated for this notice.

Dated: December 30, 1987.

Susan F. Vogt,

Acting Director, Office of Toxic Substances.

[FR Doc. 88-632 Filed 1-13-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42008D; FRL-3215-7]

Unsubstituted Phenylenediamines; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and reopening of comment period.

SUMMARY: In response to comments received by the Agency in response to the proposed rule for the unsubstituted phenylenediamines (pdas), EPA is reopening the comment period to permit public comment on modifications and additions EPA is proposing in the testing program for neurotoxic, mutagenic, oncogenic, and aquatic toxicity effects.

DATES: This document reopens the period of comment on the proposed rule, which appeared in the **Federal Register** of January 6, 1986 (51 FR 472), until February 29, 1988.

ADDRESS: Address written comments in triplicate identified by the document control number (OPTS-42008D) to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M Street SW., Washington, DC 20460.

The public record supporting these actions is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M Street, SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 1986 (51 FR 472), EPA issued a proposed rule for unsubstituted phenylenediamines (pdas) which included testing for chemical fate and aquatic toxicity for *ortho*-phenylenediamine (*o*-pda) (CAS #94-54-5) and *para*-phenylenediamine (*p*-pda) (CAS #106-50-3) and chemical fate, aquatic toxicity, mutagenicity, and oncogenicity (if triggered by mutagenicity testing and if an oncogenicity test conducted in Japan was inadequate) for *meta*-phenylenediamie (*m*-pda) (CAS #108-45-2). EPA previously extended the comment period in a document published in the **Federal Register** of March 5, 1986 (51 FR 7593). In response to public comments, EPA is restructuring the proposed aquatic toxicity testing for all three isomers and the proposed mutagenicity and oncogenicity testing for *m*-pda, and is now proposing that neurotoxicity testing be conducted on all three isomers. As regards specific modifications to proposed 40 CFR 799.3300 *Unsubstituted phenylenediamines*, the addition of which was proposed in the **Federal Register** of January 6, 1986 (51 FR 472), EPA is proposing to modify paragraphs (c) and (e) and add new paragraph (f) concerning the effective date, 44 days after publication of the final rule. EPA will merge the two proposals in the final rule.

I. Background

In the **Federal Register** of January 6, 1986 (51 FR 492), *m*-pda was proposed for testing in the *Drosophila* sex-linked recessive lethal test (SLRL), in indirect photolysis, and for acute toxicity to *Daphnia*, rainbow trout, and algae. The same environmental fate testing and aquatic toxicity testing were proposed for *o*-pda and *p*-pda as for *m*-pda. For all three isomers, it was proposed that additional aquatic toxicity testing be triggered from the results of the required acute testing. No neurotoxicity testing was proposed. The rationale for requiring testing was explained in the proposal.

Comments were received from Dow Chemical Corp. (Dow), E.I. duPont de Nemours and Company (duPont), Joseph A. Lowenstein Sons, Inc., The American Psychological Association (APA), First Chemical Company, and the Naylor Dana Institute for Disease Prevention Laboratory. The public comments presented both newly developed data and data not previously reviewed by EPA for all three isomers which, after careful review, have prompted the Agency to modify the proposed mutagenicity testing for *m*-pda and the acquatic toxicity testing for all three isomers, and to propose neurotoxicity testing for all three isomers. No modifications are being proposed in this document to the proposed environmental fate testing described in the January 1986 proposal.

II. Modifications to the Proposed Testing Program for PDAS

A. Summary of Mutagenicity and Oncogenicity Issues

1. *Mutagenicity testing.* The January 1986 proposal stated that the Agency believes that exposure to *m*-pda may present an unreasonable risk of injury to human health for mutagenic effects and that data are insufficient to assess this risk. Consequently, testing of *m*-pda in the SLRL assay was proposed; if this test was positive, the mouse specific locus assay (MSL) and oncogenicity

testing would be triggered. DuPont's comments (Ref. 2 in Unit IV. B. below) were the only ones which addressed mutagenicity testing.

DuPont supported its arguments (Ref. 2) for not testing *m*-pda with references by Lee et al. (Ref. 3), Vogel et al. (Ref. 4), studies done for the National Toxicology Program (NTP) (Ref. 2), Seiler (Ref. 6), Tanaka and Katoh (Ref. 7), Picciano, *et al.* (Ref. 8), and Ashby (Ref. 9) and with references in the C9 aromatic hydrocarbon fraction rule (see the 50 FR 20662; May 18, 1985). DuPont recognizes that *m*-pda causes mutations *in vitro* in the Ames test and the Chinese hamster ovary chromosomal aberration test (CHO) (Ref. 24) and that it inhibits mouse testicular cell DNA synthesis *in vitro* (Ref. 6), but duPont argues that because *m*-pda is negative in the dominant lethal assay in male rats (Refs. 25 and 26), no significant new information would be generated by requiring additional chromosomal aberration or somatic cell gene mutation studies on this substance. DuPont also suggested alternative testing which involves dermal exposure of rat testis to labeled *m*-pda and measuring DNA binding in the testicular cells as the only justifiable testing.

The Agency has thoroughly reviewed the comments and data submitted by DuPont. These data were insufficient to change the Agency's findings that the mutagenic potential of *m*-pda is inadequately characterized. The Agency still believes that testing of *m*-pda for gene mutation in mice (Figure 1 below) is needed to adequately characterize the mutagenic potential of this isomer. However, EPA is modifying its testing proposal for *m*-pda in response to duPont's comment questioning whether pdas reach germ cell tissue and cause chromosomal aberrations by adding chromosomal aberration testing in mice to the proposed testing. The mouse is proposed as a test species for the *in vivo* tests because *m*-pda has been shown to accumulate in mouse testicular tissue (Refs. 6 and 7). These data, combined with the negative dominant lethal data in the rat, support using the mouse as the species of choice for further chromosomal aberration testing (Refs. 25 and 26). The Agency is modifying its testing proposal for *m*-pda to include testing in the *in vivo* mammalian bone marrow cytogenetics test—chromosomal analysis (MBMC), in the mouse, according to 40 CFR 798.5385. If this test is positive, a mouse dominant lethal assay would be triggered, to be conducted according to 40 CFR 798.5450 (Figure 1 below). A positive dominant lethal assay would trigger a heritable translocation assay (subject to a public program review), to be conducted according to 40 CFR 798.5460. No further chromosomal aberration testing would be required if the MBMC is negative. As in EPA's original proposal, *m*-pda would also be tested in the SLRL assay, 40 CFR 798.5275, which if positive would, subject to a public program review, trigger MSL testing, in accordance with 40 CFR 798.5200.

The Agency continues to believe that the proposed triggers and upper-tier testing provide the most reliable description of the mutagenic potential of a chemical substance. EPA's rationale was discussed in its proposed TSCA section 4 rule for C-9's (50 FR 20662; May 17, 1985). Results from the SLRL and chromosomal testing would be included in the decision logic at the public program review stage of the weight-of-evidence determination of the need for the higher-tiered mutagenicity testing.

As to duPont's proposed testicular binding testing in rats (Ref. 2), the Agency would consider any additional DNA binding data submitted prior to the public program review stage of the process (Figure 1 below) as part of the total evaluation of the mutagenicity potential for *m*-pda. However, since this DNA binding test does not provide evidence for the potential heritability of any effects which may be demonstrated, the Agency does not believe this test should be part of the required test program for *m*-pda. DuPont also proposed that *m*-pda be tested in the rat, a species already shown to be negative with respect to the dominant lethal effect (Refs. 25 and 26). Therefore, the Agency is suggesting that the mouse be the species of choice for DNA binding studies, if industry elects to include results from this test for Agency consideration.

2. *Oncogenicity testing.* The proposal stated that oncogenicity testing of *m*-pda would be initiated if the SLRL were positive and the results from oncogenicity testing in progress in Japan were inadequate for Agency purposes.

In response to the public comments received, the Agency is proposing the additions to the mutagenicity testing program described above. EPA's standard chromosomal aberration testing scheme, as described in EPA's C9 rule (50 FR 20662; May 17, 1985) includes provisions for triggering oncogenicity testing from a positive *in vitro* cytogenetics test such as the Chinese hamster ovary (CHO) assay. Because a positive CHO is available (Ref. 25), EPA is proposing that the oncogenicity bioassay on *m*-pda be conducted without further triggering. However, the Agency is also proposing that review of all the available scientific evidence (including the results of the proposed mutagenicity testing program described in Figure 1 below and the oncogenicity study in progress in Japan) be concluded before the chronic assay is initiated. If, in EPA's judgment, the evidence indicates that *m*-pda oncogenicity potential is adequately characterized, the Agency proposes to solicit public comment on whether it should rescind the requirement for the oncogenicity test. If in EPA's judgment the evidence indicates a need for oncogenicity testing, the Agency will notify the test sponsors to initiate the chronic study by a certified letter or by notice in the **Federal Register**.

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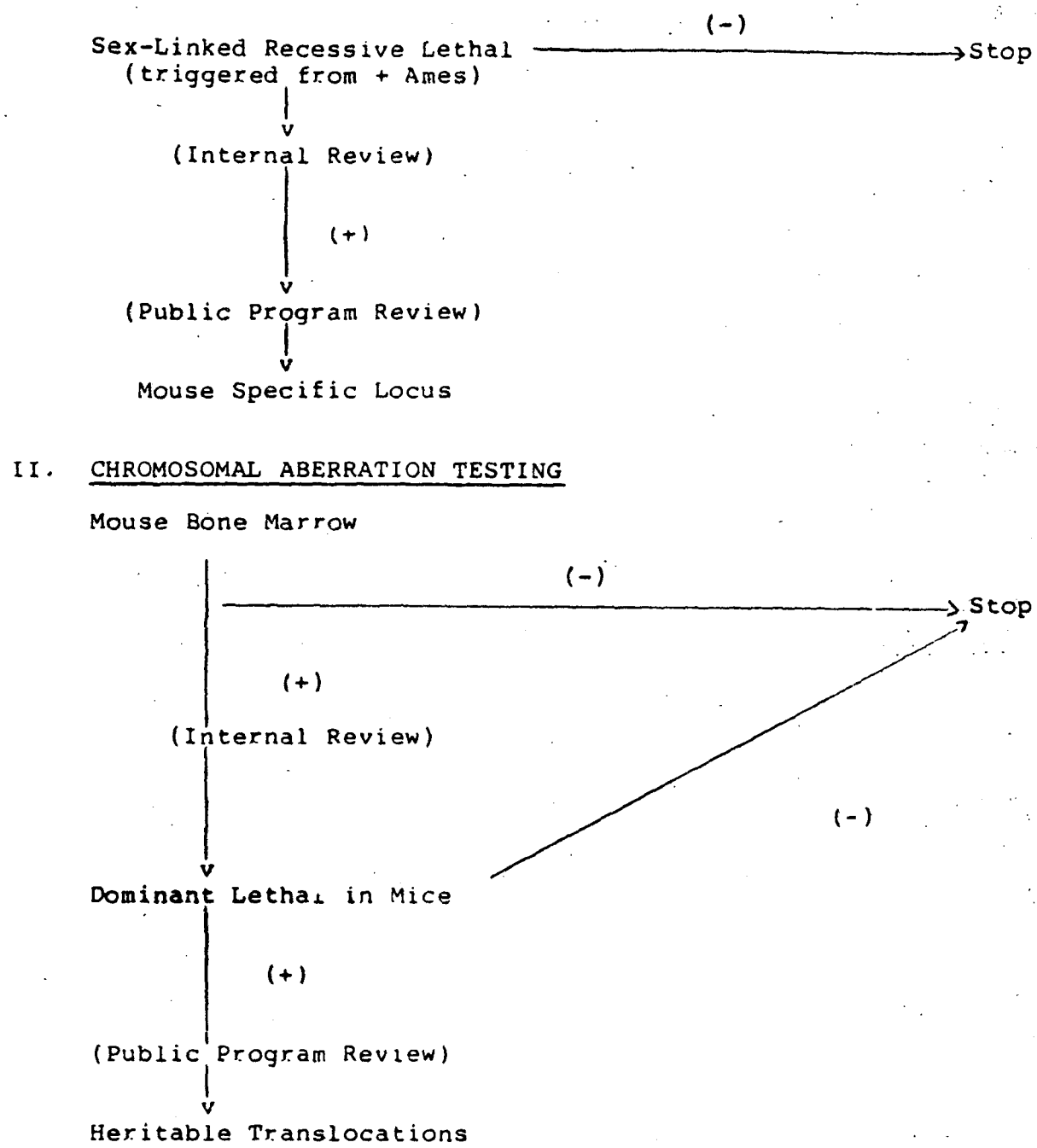
Figure 1: PROPOSED MUTAGENICITY TESTING PROGRAM



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B. Summary of Neurotoxicity Issues

The January 1986 proposal stated that neurotoxicity testing was not being proposed for the pdas. The neurotoxicity concerns identified by the Interagency Testing Committee (ITC) were based upon the potential formation of methemoglobin in people exposed to pdas. Secondary effects from the methemoglobin development could include neurotoxic effects. Pda manufacturers supplied information showing that methemoglobinemia could not be documented in people working in the manufacture of these substances. Consequently the Agency did not propose neurotoxicity testing for pdas. Comments were received from the Neurobehavioral Toxicity Test Standard Committee (NTTSC), Psychopharmacology Division of the American Psychology Association (Ref. 14). The NTTSC argued that the pdas produce adverse effects on the central nervous system and that additional testing is necessary to characterize this damage.

NTTSC argued that the pdas could metabolize into chemicals which are highly reactive with tissue nucleophiles. This reactivity could lead to biological effects on the central nervous system. These potential effects could result in behavioral modifications at levels substantially below those that may cause methemoglobinemia. According to NTTSC, convulsive activity in humans resulting from chemical toxicity is already known to occur with some non-pdas at levels substantially below those which may cause methemoglobin formation. NTTSC states that 3 to 6 people per 1,000 are epileptic and that these people would be especially susceptible to potential convulsive agents. Both *m*-pda and *p*-pda have been reported to induce seizures in experimental animals.

NTTSC (Ref. 14) argued that there are enough people exposed and enough unsubstituted phenylenediamines production to warrant testing. NTTSC further argues that sufficient information exists to suggest the pdas may pose a risk of neurotoxic effects and therefore these tests should be included in the required testing program. NTTSC also suggested a strategy to evaluate neurotoxic potential which was discussed in detail in their comments. To support their arguments, NTTSC provided the following documentation.

Effects in humans caused by the pdas according to NTTSC include: sleepiness, headache, paresthesia, gastrointestinal irritation, changes in reflex excitability, increased respiration, body temperature, and pulse rate (Close, Ref. 18 and Berger, Ref. 19), and visual disturbances (Berger, Ref. 19).

Toxicity of *p*-pda in rabbits was studied by Erdmann and Vahlen (Ref. 15), Pollak (Ref. 16), and Puppe (Ref. 17). Oral administration, subcutaneous injection, or topical application resulted in both clonic and tonic spasms just prior to death. In dogs, both oral administration and subcutaneous injections resulted in lethargy followed by clonic and tonic spasms prior to death (Refs. 15 and 17). The dogs also demonstrated edema of the eyes, reddening of the conjunctiva (Ref. 15), exophthalmus and increased intraocular pressure (Ref. 17).

A major review article in the Journal of the American College of Toxicology provided additional information which indicates that *p*-pda interferes with the normal metabolism of isolated guinea pig brain tissue (Ref. 19). In mice, *p*-pda accumulated in the brain within 24 hours after application to shaved areas of the animals. The *p*-pda was not detected in brain tissue 48 hours after the treatment. In both humans and monkeys, *p*-pda in hair dyes accumulated in the hair shaft and was excreted in the urine of both species up to seven days after the application of the dye.

EPA has evaluated the NTTSC arguments and reviewed their submissions. Even though some of these data are over 50 years old, the Agency finds that (1) the manufacturing, processing, and use of the pdas may present an unreasonable risk of neurotoxic effects because as many as 1,000 workers involved in the manufacture, processing, and use of the three pda isomers are potentially exposed to all three isomers, and the data presented by NTTSC suggest that the pdas may cause acute and subchronic neurotoxic effects; (2) the data are insufficient to characterize the neurotoxic potential of the pdas; and (3) testing for neurotoxic effects is necessary to answer these questions.

Therefore, EPA is now proposing that all three pda isomers be tested for neurotoxic effects in rats in the neurotoxicity functional observational battery (FOB), according to 40 CFR 798.6050 and the motor activity test (MAT), according to 40 CFR 798.6200. These tests are designed to be conducted either independently or as an additional parameter of another acute or subchronic health effects test. Because no subchronic testing is being proposed, EPA is combining the FOB and the MAT to provide the neurotoxicity testing program specifically for the pdas. EPA is proposing that the pdas be initially tested for acute neurotoxic effects and that they be administered by oral exposure. Clinical observations would be made, at a minimum, before dosing and at 1, 4, 24, and 48 hours and at 7 days. Both positive and negative controls would be used and the dose range would be as required by the FOB, according to 40 CFR 798.6050. Motor activity would be measured at time of peak effects as determined using FOB. The two acute studies would be structured as described in 40 CFR 798.6200 and conducted so that the requirements of the two tests are not violated.

If positive neurotoxic effects are observed at 24 hours or later, a 90-day subchronic FOB, MAT, and neuropathology test would be conducted according to 40 CFR 798.6050, 798.6200, and 798.6400, respectively. At the end of the subchronic testing, animals would be sacrificed and the nervous tissue preserved for histopathological examination as described in 40 CFR 798.6400.

At the completion of the histopathological examination, data would be submitted to the Agency. The final report for the acute toxicity shall be received by EPA within 6 months, and those for subchronic neurotoxicity testing and neuropathological examination shall be received by EPA within 15 months of the effective date of the final test rule.

C. Summary of Chemical Fate Issues

The Agency states its findings in the January 1986 proposal that pdas may enter the aquatic environment in sufficient quantities and persist long enough that exposure to the pdas may present an unreasonable risk of injury to aquatic organisms. However, persistence data are lacking, and testing is therefore necessary to estimate pda persistence in ambient waters. The proposal presented a new test guideline, the indirect photolysis test, to predict removal of chemicals in ambient waters and proposed it as a test standard for pdas. The indirect photolysis test requires that humic acids be added to the test waters because humic acids may play a key role in indirect photolysis of pdas in the environment. Comments on the chemical fate testing were received from DuPont (Ref. 2).

DuPont argued (Ref. 2) that the aquatic oxidation rate study which it submitted on the three pda isomers closely parallels the conditions under which the aquatic toxicity studies (see Unit II.D below) were conducted and adequately simulate the removal of pdas from ambient waters by oxidation.

DuPont also believes humic acid is present in its well water. However, no documentation quantifying the humic acid was included in the oxidation rate studies. DuPont further argues that the oxidation rate studies in its submission included rate-constant determinations under both light and dark laboratory conditions and that the rate constants for each isomer were similar under both light and dark testing conditions. Also, duPont argued EPA did not provide reference to situations where oxidation occurs in the absence of light, to justify testing these chemicals in the dark. DuPont argues that under the conditions of its study, *p*-pda is so reactive in aqueous solutions that no additional significant information would be gained from the required testing.

EPA analyzed the oxidation rate studies and disagrees with duPont that the oxidation rate studies submitted in the public comments (Ref. 2) and EPA's proposed indirect photolysis study are comparable and that additional testing is not necessary.

The proposed indirect photolysis test measures oxidative rates: (1) In sunlight; (2) under controlled conditions to minimize, or eliminate, biodegradation, volatilization, sorption, etc.; and (3) in the presence of dissolved humic acids, a critical ingredient in indirect photolysis (oxidation). DuPont measured loss of pdas under conditions with fluorescent light, no dark controls, and no dissolved humic acids. Fluorescent light does not resemble sunlight in wavelength distribution and light intensity. Dissolved humic acids play a key role in indirect, oxidative photolysis of the pdas in the environment and were not included in duPont's studies in measured quantities.

The duPont data from the experiments on *o*-, *m*-, and *p*-pda in Haskell well water were fitted to a first-order loss of diamine at the initial diamine concentration of 2.5 and 25 mg/L. For all three isomers, the half-life increased at the higher concentration. In a first-order rate process, the half-life is independent of the concentration of the substrate. Biodegradation probably did not play a role in the results for *p*-pda, since microbial counts were relatively low and the duration of the experiment was 8 hours. However, for *m*- and *o*-pda biodegradation may have had significant influence on the results since the microbial counts were relatively high and the experimental duration of 21 days was quite long. In all experiments, the loss of diamine was all that was demonstrated. In no case was it shown that decomposition products were formed. Consequently, EPA is unsure that oxidation of the diamine was being measured in these experiments.

In the experiments measuring loss of *p*-pda in Delaware River water, diamine loss was measured with and without aeration and the half-lives were very similar (aerated half-life was approximately 4.0 hours and the non-aerated half-life was approximately 4.7 hours). If oxidation had occurred, the aerated sample of *p*-pda should have decomposed considerably faster than the non-aerated sample.

Consequently, the Agency has not received any information in the public comments which causes it to modify the indirect photolysis testing proposed and thus continutes to propose that it be conducted.

D. Summary of Aquatic Toxicity Issues

EPA proposed aquatic toxicity testing for all three isomers, according to a specific environmental effects testing scheme. Positive results would trigger additional acute or chronic testing. Comments were received from duPont (Ref. 2) and Dow (Ref. 21) addressing the aquatic toxicity program for pdas.

DuPont argued that the aquatic toxicity data submitted in October 1985 (Ref. 22) are sufficient to characterize the aquatic toxicity of all three isomers. Moreover, duPont argued the use of fathead minnow and static test systems provided useful data, as indicated by the broad range of sensitivity exhibited by the fathead minnow to these three isomers and the extreme sensitivity of the minnow to *p*-pda. In claiming that testing in more than one fish species was unnecessary, duPont calculated predicted environmental concentrations (PEC) of 3.5 ppd and 6.5 ppb for *o*- and *m*-pda from the data submitted in October 1985 (Ref. 23). Application of 100X and 1,000X PEC as prescribed in the proposed rule led DuPont to conclude that no additional fish toxicity testing would be triggered. DuPont also argued in response to issues raised in the proposal, that if fish testing was necessary, precedent for using freshwater fish toxicity studies to predict chemical toxicity to brackish and saltwater fish has been adequately established in the open literature. Therefore, duPont contended no testing in saltwater fish could be justified.

EPA agrees that for pdas, testing of brackish or saltwater organisms is not necessary since pdas are not expected to enter saltwater and is therefore now proposing that any testing of pdas in fish be conducted only in freshwater species. However, EPA disagrees that testing only in fathead minnows adequately characterizes the toxicity of pdas in aquatic vertebrates.

The Agency has evaluated the acute aquatic toxicity data submitted by duPont for *o*-, *m*-, and *p*-pda in fish, invertebrates, and algae in the following Table 1, and believes that additional aquatic toxicity testing in necessary for all three isomers.

TABLE 1.—Acute Toxicity of PDAS to Aquatic Organisms (ppm)

Substance	Aquatic organisms		
	Fathead minnow (FM)	Daphnia magna (DM)	Selenastrum capricornutum
o-pda	44	0.88	0.16
m-pda	1614	5.9	2.4
p-pda	0.057	0.28	0.28

(Ref. 22)

The inconsistencies in the toxicity data between chemicals and among organisms also leads EPA to propose refined decision criteria for aquatic testing in the following (Figure 2).

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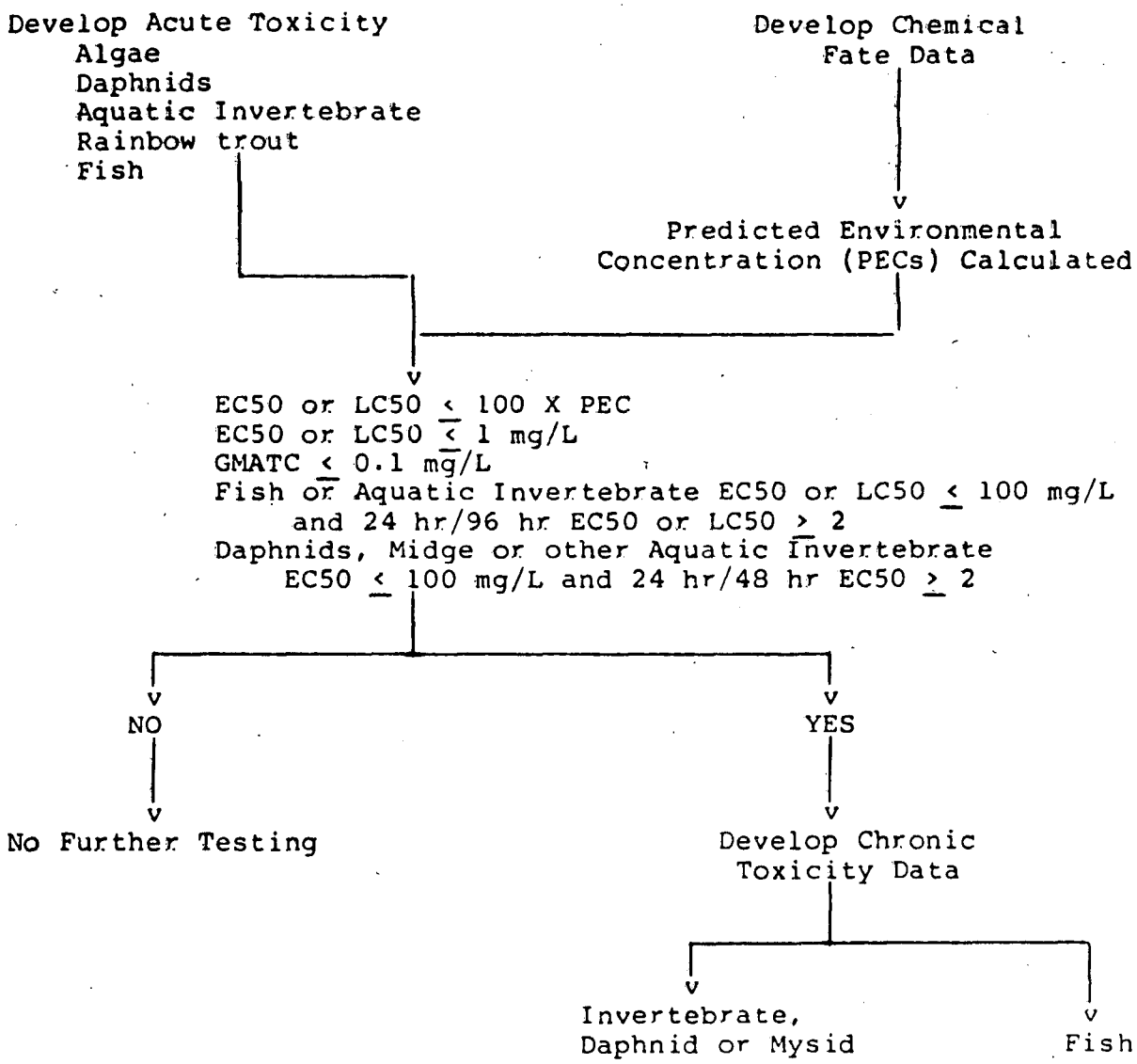
Figure 2 -- PROPOSED PDA DECISION LOGIC FOR DEVELOPING DATA FOR AQUATIC ORGANISMS



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These data demonstrate that for unsubstituted pdas there are large differences in LC50 values in the different species tested. Because of these large differences, the decision criteria in Figure 2, and the requirements outlined in the NPRM, the Agency believes that additional data should be developed for pdas.

Both DuPont (Ref. 2) and Dow (Ref. 21) argued that *Gammarus* is an inappropriate test species for two reasons: *Daphnia* tend to be a more sensitive species than *Gammarus;* and the gammarid test has not been subjected to the same intense peer review as the daphnid test. They therefore contend that any data generated by the required testing would provide little useful information for hazard assessment at this time.

EPA has used toxicity data developed for *Gammarus* as part of its evaluation of chemical impact on aquatic systems; examples are included as references 31, 32, and 33, and more recent examples of *Gammarus* being tested for toxic effected are included as references 27, 28, 29, and 30. Industry did not provide data which showed *Gammarus* to be an inadequate test organism. EPA finds no evidence to cause it to modify its proposed use of *Gammarus* as a test species.

DuPont further argued that the chronic *Daphnia* test submitted by duPont (Ref. 22) is adequate to judge the chronic toxicity of *m*-pda to the animals, and therefore no additional testing is needed.

EPA believes that the toxicity of *m*-pda to aquatic invertebrates is still inadequately characterized and that the proposed testing (below) in both *Daphnia* and *Gammarus* is necessary to adequately characterize differences in species sensitivity to *m*-pda.

DuPont (Ref. 2) also argued that the flow-through system required by EPA's proposed test standards would not provide different information from the static data which they submitted since these chemicals, especially *m*-pda, are very volatile and under flow-through systems these substances would rapidly assume the same levels as those found in the static test systems. DuPont further argues that the flow-through system would create logistical problems with *Daphnia* testing, namely, loss of animals resulting from flushing the test chambers with fresh test water.

EPA disagrees that static systems would be better for testing the pdas in aquatic systems. Flow-through systems are designed to maintain constant exposure levels to unstable chemicals and are therefore being proposed for the testing described below. However, the Agency recognizes that several of the static acute toxicity tests indicate that *o*- and *p*-pdas are highly toxic to selected organisms, and to repeat the acute toxicity testing of *o*- and *p*-pdas using the same organisms and flow-through conditions would not be a cost-effective use of resources. Therefore, EPA is proposing certain additional tests as described below.

In response to EPA's request for comment on the appropriateness of using one isomer as a surrogate for testing toxicity of the pdas, duPont contends that sufficient acute toxicity data are available for all three isomers and that the chronic data for *m*-pda are adequate for making a prediction of chronic toxicity for this category of chemicals. The data submitted by duPont indicate that the toxicity of the three isomers may vary widely among the species tested and that *o*- and *p*-pda may be more toxic than *m*-pda. Consequently, the Agency disagrees that the chronic toxicity of *m*-pda to either fish or invertebrates would provide an adequate prediction of the chronic toxicity of the other isomers to these organisms, and is therefore proposing chronic toxicity testing for any of the isomers which meet the decision criteria for triggering chronic testing.

The Agency is proposing that *p*-pda be tested for acute toxicity with rainbow trout and *Gammarus* in accordance with 40 CFR 979.1400 and 795.120, respectively. On the basis of LC50 values, early lifestage testing would be conducted with the more sensitive fish (fathead minnow or rainbow trout) in accordance with § 797.1600. The concentration of pda would be measured before, during, and at the end of testing. The results from the acute studies on *p*-pda would be incorporated into the pda test scheme to determine whether all chronic toxicity testing is triggered and the appropriate organism(s) in which to conduct the chronic testing.

The Agency is proposing that *o*-pda be tested for acute toxicity with the rainbow trout and *Gammarus*, in accordance with 40 CFR 797.1400 and 795.120, respectively. Using the fathead minnow LC50 value, and the 24/96 hr LC50 ratio to be calculated from the testing data, early life stage testing would be conducted with the more sensitive fish (fathead minnow or rainbow trout) in accordance with 40 CFR 797.1600. The concentration of *o*-pda would be measured during and at the beginning and end of the study. The results from the acute studies on *o*-pda would be incorporated into the pda test scheme to determine whether chronic toxicity testing is triggered and the appropriate organism(s) in which to conduct the chronic testing.

The Agency is proposing that *m*-pda be tested for acute toxicity with the rainbow trout and the *Gammarus* in accordance with 40 CFR 797.1400 and § 797.120 respectively. *m*-Pda is moderately toxic to *Daphnia*. During the acute toxicity study, the concentration of *m*-pda was 63 percent of the nominal concentration at 48 hours. The Agency requires these tests to be repeated when the measured concentration is substantically less than the nominal concentration, unless a decision criterion is satisfied that requires a subsequent test to be conducted. Since the *Daphnia* EC50 $<100 \times$ PEC, the Agency is proposing to require a *Daphnia* chronic test to be conducted in accordance with 40 CFR 797.1330. Although duPont submitted chronic data for *Daphnia*, they are inadequate for regulatory purposes because an acceptable MATC was not determined.

Testing of all three isomers would be conducted in flow-through systems. Reporting requirements would remain as in the January 6 proposal.

E. Issues for Comment

The Agency solicits comments on issues related to the proposed environmental effects testing scheme and for the proposed neurotoxicity and mutagenicity testing.

1. Dow (Ref. 21) argued that more scientific rationale is needed for justification of the decision criteria (i.e., 100 X) proposed for triggering additional testing in Figure 2 above.

The Agency recognizes that decision criteria have certain weaknesses and that toxic effects for different classes of chemicals in different species of organisms may vary widely. Toxic effects may also vary widely within specific categories of chemicals, as is the case for pdas. However, the Agency believes that the decision criteria in the testing scheme presented in Figure 2 are adequate for purposes of this rule. If data exist which support use of different decision criteria for more efficient assessment of chemical toxicity to the environment, the Agency encourages submission of these data during this extension of comment for the pdas proposed test rule.

2. EPA is considering expanding the analytical portion of the *p*-pda aquatic toxicity testing by requiring a quantitative analysis of the breakdown products present in the test solution at the onset and termination of the acute test. The acute toxicity data submitted by DuPont for *p*-pda indicated continued toxic effects throughout the 96-hour test

period at levels below the detection limit for this substance. The Agency is concerned that either *p*-pda is extremely toxic to aquatic organisms of that it is oxidized very rapidly into toxic compounds which are causing the observed toxicity. The Agency believes that the mode of toxicity for *p*-pda should be identified. Consequently, the Agency is soliciting comment on the degree of sensitivity of current analytical techniques and whether they could be modified to provide more sensitive detection of *p*-pda. The Agency is also requesting comments on the analytical methodology for the *p*-pda oxidation products, their level of sensitivity, and the materials balance necessary to account adequately for the *p*-pda added to the test chamber.

3. Neurotoxicity testing has been proposed for *o*-, *p*- and *m*-pda. The Agency solicits comments on the testing program presented above.

4. The mutagenicity testing program for *m*-pda has been modified to include chromosomal aberration testing in the mouse. Comments are sought on the addition of the chromosomal aberration testing and the selection of the mouse as the test species.

F. Reporting Requirement

The January 6, proposed rule for pdas contains language about the submission of study plans, for some tests, that applies only to two-phase rules. In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors for pdas would be required to submit individual study plans at least 45 days before the initiation of each study.

III. Economic Analysis of Proposed Rule

EPA has analyzed the potential economic impact of the total testing program proposed for all three isomers. The estimated costs for testing *p*-, *m*-, and *o*-pda, assuming maximum testing, are $182,000, $1,330,000, and $182,000, respectively, or an estimated total cost for all three isomers of $1.69 million. The total estimated annualized cost (7 percent interest for 15 years) is $186,000. Based upon 1984 production figures of 35 million pounds, the total unit cost of testing is estimated to be 0.0053 $/lb. The worst-case estimated costs of testing as percentages of current market price for *p*-, *m*-, and *o*-pda are 0.13, 0.26, and 0.16 percent, respectively. This is not considered to be a significant economic impact.

IV. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42008D). This record includes all information considered in the development of the proposed rules and appropriate **Federal Register** notices. The Agency will continue to supplement the record with additional information as it is received.

The record includes all information referenced in support of the January 6 proposal plus the following information:

(1) Notice of Proposed Rulemaking, unsubstituted phenylenediamines (51 FR 472).

(2) DuPont. "Comments of E.I. DuPont de Nemours & Co., Inc., Wilmington, Delaware 19898. 40 CFR Parts 796, 797, & 799, Unsubstituted Phenylenediamines—Proposed Test Rule. Document Control No. OPTS-42008B." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. 1986.

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(4) Vogel, E.W., H. Frei, M.K. Fujikawa, et al. "Summary report on the performance of *Drosophila* assays." In *Progress in Mutation Research*. Vol. 5. Elsevier, Amsterdam. J. Ashby and F.J. deSerres. pp. 47–57. 1985.

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(6) Seiler, J.P. "Inhibition of testicular DNA synthesis by chemical mutagens and carcinogens. Preliminary results in the validation of a novel short term test." *Mutation Research*. 46: 305–310. 1977.

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(8) Picciano, J.C., W.E. Morris, S. Kwan, and B.A. Wolf. "Evaluation of teratogenic and mutagenic potential of the oxidative dyes, 4-chlororesorcinol, *m*-phenylenediamine, and pyrogallol." *Journal of the American College of Toxicology*. 2(4): 325–333. 1983.

(9) Ashby, J. "Gonadal genotoxicity assays as practical surrogates for germ-cell mutagenicity assays." *Environmental Mutagenesis*. 7: 263–266. 1985.

(10) First Chemical Corporation. "Response to proposed test rule on unsubstituted phenylenediamines by Sorell L. Schwartz, Ph.D., Georgetown University." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. 1986.

(11) Holland, J.M., D.G. Gosslee and N.J. Williams. "Epidermal carcinogenicity of bis(2,3-epoxycyclopentyl) ether, 2,2-bis(*p*-glycidyloxyphenyl)propane, and *m*-phenylenediamine in male and female C3H and C57BL/6 mice." *Cancer Research*. 39: 1718–1725. 1979.

(12) Burnette, C., B. Lanman, R. Giovacchini, el al. "Long-term toxicity studies on oxidation hair dyes. *Food and Cosmetic Toxicology* 13:353–357. 1975.

(13) Weisburger, E.K., A.B. Russfield, F. Hamburger, et. al. "Testing of twenty-one environmental aromatic amines and derivatives for long-term toxicity or carcinogenicity." *Journal of Environmental Pathology and Toxicity*. 2: 325–356. 1978.

(14) Comment on the proposed test rule for the unsubstituted phenylenediamines (51 FR 472; January 6, 1986). Cover Memo: Psychopharmacology Division of the American Psychological Association. Ronald W. Wood, Chairman. Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. 1985.

(15) Erdmann, E. and E. Vahlen. "On the effects of *p*-phenylenediamine and quinonediamine." *NS Archive fur Experimentelle Pathologie und Pharmakologie* 401–418. 1905. (German with English translation)

(16) Pollak, E. "A Case of Paraphenylene Diamine Poisoning." *Wiener Klinishe Wochenschrift*, 31: 712–715. 1900. (German with English Translation)

(17) Puppe, E. "On Paraphenylene Intoxication." *New York Academy of Medicine*. 116–127. 1896. (German with English translation)

(18) Close, W.J. "A case of poisoning from hair dye (paraphenylenediamine)." *Medical Journal of Australia*. January 9: 53–54. 1932.

(19) Berger, E. "Visual disturbance due to the use of hair dye containing anilin." *Archives of Ophthalmology*. 38: 397–400. 1909 (July).

(20) Final Report on the Safety Assessment of *p*-Phenylenediamine. *Journal of the American College Toxicology*. 4(3): 203–266. 1985.

(21) Dow Chemical Co. Letter from Carlos M. Bowman, Ph.D. "Response to Notice of Proposed Rule Making." Washington, DC: U.S. Environmental Protection Agency, Office of Toxic Substances. March 12, 1986.

(22) DuPont. Voluntary submission by E.I. DuPont de Nemours & Co., Inc., of aquatic toxicity testing. Washington, DC: U.S. Environmental Protection Agency, Office of Toxic Substances. 1985.

(23) Naylor Dana Institute for Disease Prevention, American Health Foundation, comments from John H. Weisburger. March 20, 1986.

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(26) Sheu, C.W. and S. Green. "Dominant lethal assay of some hair-dye components in random-bred male rats." *Mutation Research*. 68: 85–98. 1979.

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(28) Sanders, H.O., J.B. Hunn, E. Robinson-Wilson, and F.L. Mayer. "Toxicity of seven potential polychlorinated biphenol substitutes to algae and aquatic

invertebrates." *Environmental Toxicology and Chemistry.* 4(2):149–154. 1985.

(29) Nebeker, A.V., M.A. Cairns, J.H. Gaskstatter, et al. "Biological methods for determining toxicity of contaminated freshwater and sediments to invertebrates." *Environmental Toxicology and Chemistry.* 3(4):617–630. 1984.

(30) Ewell, W.S., J.W. Gorsuch, R.D. Kringle, et al. "Simultaneous evaluation of the acute effects of chemicals on seven aquatic species." *Environmental Toxicology and Chemistry.* 5(9):831–840. 1986.

(31) U.S.E.P.A. "Ambient water quality criteria for aldrin/dieldrin." U.S. Environmental Protection Agency. EPA 440/5–80–019. 1980.

(32) U.S.E.P.A. "Ambient water quality criteria for toxaphene." U.S. Environmental Protection Agency. EPA 440/5–80–076. 1980.

(33) U.S.E.P.A. "Ambient water quality criteria for polychlorinated biphenyls." U.S. Environmental Protection Agency. EPA440/5–80–068. 1980.

(34) Brooke, L.T., D.J. Call, D.L. Geiger, and C.E. Northcott (eds). "Acute toxicities of organic chemicals to fathead minnows. Volume I." Center for Lake Superior Environmental Studies, University of Wisconsin-Superior, Superior, Wisconsin. 54880 (Available for purchase from Center for Lake Superior Environmental Studies 715/394–8426). 1984.

(35) Geiger, D.L., C.E. Northcott, D.J. Call, and L.T. Brooke (eds). "Acute toxicities of organic chemicals to fathead minnows. Volume II." Center for Lake Superior Environmental Studies, University of Wisconsin-Superior, Superior, Wisconsin. 54880 (Available for purchase from Center for Lake Superior Environmental Studies 715/394–8426). 1985.

(36) Geiger, D.L., S.H. Poirier, and D.J. Call (eds). "Acute toxicities of organic chemicals to fathead minnows. Volume III." Center for Lake Superior Environmental Studies, University of Wisconsin-Superior, Superior, Wisconsin. 54880 (Available for purchase from Center for Lake Superior Environmental Studies 715/394–8426). 1986.

(37) Significant new uses of chemical substances; General Provisions for New Chemical follow-up (52 FR 15594; April 29, 1987).

(38) U.S.E.P.A. "Testing costs for unsubstituted Pdas." Computer printout, U.S. Environmental Protection Agency. November 13, 1986.

V. Other Regulatory Requirements

The Agency discussed Executive Order 12291, The Regulatory Flexibility Act, and the Paperwork Reduction Act in detail in the Janaury 1986 proposal, and no changes are indicated for this notice.

List of Subjects in 40 CFR Part 799

Chemicals, environmental protection, hazardous substances, reporting and recordkeeping requirements.

Dated: December 30, 1987.

Susan F. Vogt,

Acting Director, Office of Toxic Substances.

Therefore, it is proposed that 40 CFR Part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. In proposed § 799.3300 by adding new paragraphs (c)(1)(i) (C), (D), and (E) and (c)(3) and (f) and by revising the following paragraphs: (c)(1)(ii) and (2); (e)(1)(i) (A), (B), and (C); (e)(1)(ii)(C); (e)(2)(i) (A) and (B); and (e)(2)(ii)(C), to read as follows:

§ 799.3300 Unsubstituted phenylenediamines.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) The *in vivo* mammalian bone marrow cytogenetics test: chromosomal analysis (MBMC) shall be conducted in the mouse on *m*-pda in accordance with § 798.5395 of this chapter.

(D) If the MBMC conducted pursuant to paragraph (c)(1)(i)(C) of this section is positive, the dominant lethal assay (DL) in mice shall be conducted on *m*-pda in accordance with § 798.5450 of this chapter.

(E) If the DL conducted pursuant to paragraph (c)(1)(i)(D) of this section is positive, heritable translocation (HT) testing in the mouse on *m*-pda shall be conducted in accordance with § 798.5460 of this chapter, if after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that testing shall be initiated.

(ii) *Reporting requirements.* (A) The final results and final report for the SLRL assay and the MBMC assays shall be submitted to EPA no later than 12 months after the effective date of this section.

(B) The final results and final report of the DL and the mouse specific-locus tests shall be received by EPA no later than 48 months after the effective date of this section.

(C) The final results and the final report of the HT shall be received by EPA no later than 36 months after the effective date on which EPA notifies the test sponsor under paragraph (c)(1)(i)(E) of this section to begin testing.

(D) Interim reports for the SLRL assay, MBMC, DL, HT, and mouse specific-locus studies are required at 6-month intervals beginning 6 months after the effective date of this section or the date of notification by EPA that testing shall be initiated and ending when the final report is submitted.

(2) *Oncogenicity*—(i) *Required testing.* A 2-year dermal oncogenicity bioassay shall be conducted with *m*-pda in both rats and mice in accordance with § 798.3320 of this chapter if *m*-pda yields positive test results in: the SLRL test conducted pursuant to paragraph (c)(1)(i)(A) of this section, or the MBMC and DL tests conducted pursuant to paragraphs (c)(1)(i)(C) and (c)(1)(i)(D) of this section if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(ii) *Reporting requirements.* (A) The final results and final report for the oncogenicity bioassay shall be submitted to EPA no later than 53 months after the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice under paragraph (e)(2)(i) of this section that testing shall be initiated.

(B) Interim progress reports for the oncogenicity bioassay shall be submitted every 6 months after notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated and ending when the final report is submitted.

(3) *Neurotoxicity*—(i) *Required testing.* (A) Acute neurotoxicity testing in the neurotoxicity functional observational battery (FOB) in accordance with § 798.6050 of this chapter, and the motor activity test (MAT) in accordance with § 798.6200 of this chapter, shall be conducted simultaneously in the same animals. Each isomer, *o*-, *m*-, and *p*-pda, shall be tested in the FOB and MAT. The test substances shall be administered as a single oral dose in mice. Clinical observations shall be made at a minimum of 1, 4, 24, and 48 hours and at 7 days after dosing.

(B) If neurotoxic effects are observed at 24 hours, or longer, during the testing conducted pursuant to paragraph (c)(3)(i)(A) of this section, then 90-day subchronic neurotoxic FOB, MAT, and neuropathology shall be conducted in accordance with §§ 798.6050, 798.6200, and 798.6400 of this chapter, respectively, for each pda isomer showing such effects. At the end of the subchronic tests, the animals shall be sacrificed and the nervous tissue preserved and examined as described in § 798.6400 of this chapter.

(ii) *Reporting requirements.* (A) The final data and final report for the acute neurotoxicity testing shall be submitted to the EPA no later than 6 months after

the effective date of this section. If triggered, the final report for the subchronic neurotoxicity testing and neuropathological examination shall be submitted to the EPA no later than 15 months after the effective date of this section

(B) [Reserved]

* * * * *

(e) * * *

(1) * * *

(i) * * *

(A) Flowthrough fish acute toxicity tests (LC50) in the rainbow trout (*Salmo gairdneri*) shall be conducted with *o*-, *m*-, and *p*-pda in accordance with § 797.1400 of this chapter.

(B) Acute flow-through studies on the fresh water invertebrate *Gammarus* shall be conducted with *o*-, *m*-, and *p*-pda in accordance with § 795.120 of this chapter.

(C) If the concentration affecting 50 percent of the population (EC50) for any study conducted pursuant to paragraphs (e)(1)(i)(A) and (B) of this section is less than or equal to 100 X Predicted Environmental Concentration (PEC), less than or equal to 1 milligram/liter (mg/L), or less than or equal to 100 mg/L and shows indications of chronicity, chronic toxicity testing shall be conducted pursuant to paragraph (e)(2) of this section. Indications of chronicity shall be the following: for fish or aquatic invertebrates, the ratio of 24 hr/96 hr LC50 is greater than or equal to 2; for daphnids or gammarids, the ratio of 24 hr/48 hr LC50 is greater than or equal to 2.

* * * * *

(ii) * * *

(A) * * *

(B) * * *

(C) An interim report for each acute toxicity test is required 6 months after the effective date of this section.

(2) * * *

(i) * * *

(A) A fish early life cycle flow-through test shall be conducted in the most sensitive fish species, either *Pimephales promelas* or *Salmo gairdneri*, with each isomer, *o*-, *m*-, and *p*-pda, demonstrating an LC50, determined by testing of fish pursuant to paragraph (e)(1)(i)(A) of this section, equal to or less than 100 X PEC: less than 1 mg/L: or less than 100 mg/L with indications of chronicity. Chronicity indicators are defined in paragraph (e)(1)(i)(C) of this section. Testing shall be conducted in accordance with § 797.1600 of this chapter.

(B) An invertebrate life cycle flow-through toxicity test shall be conducted in *Daphnia magna* for each of the *o*-, *m*-, or *p*-pda isomers demonstrating an EC50, determined by testing of invertebrates pursuant to paragraph (e)(1)(i)(B) of this section, equal to or less than 100 X PEC, or less than 1 mg/L, or less than 100 mg/L with indications of chronicity. Chronicity indicators are defined in paragraph (e)(1)(i)(D) of this section. Testing shall be conducted in accordance with § 797.1330 of this chapter.

(ii) * * *

(C) Progress reports shall be submitted at 6-month intervals beginning 6 months after the submission of acute toxicity testing which triggers the chronic toxicity test requirement and ending when the final report is submitted.

* * * * *

(f) *Effective date.* The effective date of this section shall be [44 days after the date of publication of the final rule in the **Federal Register**].

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 2070-0033)

[FR Doc. 88-633 Filed 1-13-88; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 7

Nondiscrimination on the Basis of Age in Program or Activities on the Basis of Age in Financial Assistance from FEMA

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: These proposed regulations implement provisions of the Age Discrimination Act of 1975, and the general government wide regulation, codified at 45 CFR Part 90.

The Age Discrimination Act of 1975 (hereinafter "the Act") prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age. The Act applies to persons of all ages.

These regulations are designed to guide the actions of recipients of financial assistance from FEMA. The regulations incorporate the basic standards for determining age discrimination, which are set forth in the general regulations, 45 CFR Part 90. They discuss the responsibilities of FEMA recipients and the investigations, conciliation and enforcement procedures FEMA will use to ensure compliance with the Act.

DATE: Comments are due March 14, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Curran, Director of Personnel and Equal Opportunity, Room 8110, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3962 (Voice), (202) 646-4117 (TTD).

ADDRESS: Send comments to: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The preamble containing supplementary information is divided into the following four sections:

I. Background—provides a brief history of the development of the Act and these regulations.

II. Regulatory procedures—explains compliance with various regulatory requirements.

III. Overview of the Regulations—summarizes the contents of the regulations.

IV. Important questions about the Regulations—answers various questions raised during the development of these regulations.

I. Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101, *et seq.*) as part of the amendments to the Older Americans Act (Pub. L. 94-135). The Act prohibits discriminating on the basis of age in all programs and activities receiving federal financial assistance.

The Act prohibits recipients of federal financial assistance from taking actions that result in denying or limiting services or otherwise discrimination on basis of age. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age.

Like other civil rights statutes, the Act applies only to programs or activities in which there is an intermediary (recipient) standing between the federal financial assistance and the ultimate beneficiary of that assistance. The Act does not apply to programs of direct assistance (such as the Social Security program in which federal funds flow directly and unconditionally from the federal government to the individual beneficiary of those funds.)

Prior to the development of any regulations, the Act required the Commission on Civil Rights to conduct a study of age discrimination in federally-funded programs and activities. The Commission transmitted its study to the President and the Congress on January 10, 1978. The Commission published a second part of its study in January 1979. The Act also required each affected federal agency to respond to the Commission's findings and recommendations, and provided time for the Congress to consider amendments to the Act.

After receipt of the report from the Commission on Civil Rights and the federal agency responses to that report, the Congress considered amendments to the age Discrimination Act. In October 1978, Congress amended the Act (Pub. L. 95-478). The amendments: (1) Added a private right of action to the Age Discrimination Act; (2) provided a mechanism for the disbursal to alternate recipients of funds that have been withheld under the Age Discrimination Act; (3) added a requirement that the Department of Health, Education and Welfare (HEW) (now the Department of Health and Human Services, HHS) approve the final regulations of other federal agencies; (4) made the effective date of regulations implementing the Act no earlier than July 1, 1979; (5) required annual reports to the Congress on progress to implementing the Act; and (6) removed the word "unreasonable" from the Act's statement of purpose. The 1978 amendments left intact the exceptions to the general prohibition against age discrimination contained in the 1975 Act. The amended Act continues to apply to persons of all ages.

The Act requires HHS to issue proposed and subsequent final general regulations setting standards to be followed by all federal departments and agencies in implementing the Act. HEW issued proposed general regulations on December 1, 1978 and final general regulations on June 12, 1979. Those general regulations and the prohibition against age discrimination became effective on July 1, 1979.

The Act requires each department or agency which operates programs of federal financial assistance to issue proposed and final regulations consistent with the general regulations. The Secretary of HHS must approve all agency and department regulations.

II. Regulatory Procedures

Impact Analysis-Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules. A major rule is defined in the Order as any rule that has an annual effect on the national economy of $100 million or more—or certain other specified effects. FEMA concludes that the regulations implementing the Age Discrimination Act are not a major rule within the meaning of the Executive Order because they do not have an effect on the economy of $100 million or more, or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of these small entities," an analysis must be prepared describing the rule's impact on these small entities. "Small entities" are defined by the Act to include small businesses, small nonprofit organizations, and small governmental entities. Based on the cost analysis of the age regulations, FEMA finds that the effect of the age regulations on small entities is minimal. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act and Recordkeeping and Reporting Requirements

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 3067-0177.

III. Overview of the Regulations

The following paragraphs summarize the text of the proposed FEMA age discrimination regulations and explain any changes that have been made as a result of the public participation process. The final regulations are divided into 4 subparts:

Subpart A—General

Subpart B—Standards for Determining Age Discrimination

Subpart C—Duties of FEMA Recipients

Subpart D—Investigation, Conciliation and Enforcement Procedures

Subpart A—General

Subpart A explains the purpose of the FEMA age discrimination regulations, which is to set out the Agency's policies and procedures under the Act and the general regulations. (§ 7.910) These regulations apply to each FEMA recipient and to all programs or activities receiving financial assistance from FEMA. (§ 7.911)

Although the Act generally covers all programs and activities that receive federal financial assistance, it does not apply to any age distinction "established under authority of "any law" which provides benefits or establishes criteria for participation on the basis of age or in age related terms. Thus, age distinctions that are "established under authority of any law" continue in use. These regulations adopt without change the definition of "any law" established in the general regulations. Therefore, these regulations do not apply to age distinctions contained in federal statutes, state statutes or local statutes or ordinances adopted by elected, general purpose legislative bodies. (§ 7.911)

The Act also excludes from its coverage most employment practices. However, the Age Discrimination in Employment Act (ADEA), administered by the Equal Employment Opportunity Commission (EEOC), continues to be the federal statute that prohibits employment discrimination against most persons of the age of 40 or older. Subpart A also defines terms used in these regulations. (§ 7.912)

Subpart B—Standards for Determining Age Discrimination

Subpart B of these regulations incorporates the basic standards for determining what constitutes age discrimination that are set out in the general regulations.

The regulations state that no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subject to discrimination under, any program or activity receiving federal financial assistance. (§ 7.920)

The specific prohibited actions are patterned after the regulations issued under Title VI of the Civil Rights Act of 1964 (44 CFR Part 7). As a general rule, separate or different treatment which denies or limits service from, or participation in, a program receiving federal funds is prohibited by these regulations.

The Act does include some exceptions to the general rule against age discrimination. The regulations provide definitions for two terms that are essential to an understanding of these exceptions: "normal operation" and "statutory objective.'" (§ 7.921)

The regulations adopt the four-part test established in the general regulations to determine when an explicit age distinction is necessary to the normal operation of a program or to

the achievement of a statutory objective of a program. The test (sec § 87.922 of the regulations) requires that: The age distinction be used as a measure of another characteristic(s); the other characteristic(s) must be measured in order for the program to continue to operate normally or to meet a statutory objective; the other characteristic(s) can reasonably be measured by age; and the other characteristic(s) is impractical to measure directly on an individual basis.

All parts of the test must be met for an explicit age distinction to satisfy one of these exceptions and to continue in use in a federally-assisted program. This four-part test will be used to scrutinize age distinctions that are imposed by recipients in the administration of federally-assisted programs, when the recipient alleges the distinction is necessary to the normal operation or the achievement of a statutory objective of a program and when the age distinction is not specifically authorized by a federal, state or local statute.

Recipients of federal funds are also permitted to take an action otherwise prohibited by the Act, if the action is based on *"reasonable factors other than age."* In that event, the action may be taken even though it has a disproportionate effect on persons of different ages. The regulations require, however, that the factor bear a direct and substantial relationship to the program's normal operation or statutory objective. (§ 7.923)

These regulations place on the recipient of FEMA funds the burden of proving that an age distinction or other action falls within the exceptions discussed above. (§ 7.924)

There are three other instances in which FEMA recipient may use age distinctions that would otherwise be prohibited by the Act and these regulations: (1) A recipient may take voluntary affirmative action to overcome the effects of conditions that have resulted in limited participation in the recipient's program on the basis of age (§ 7.926); (2) a recipient may give special benefits to the elderly or to children (§ 7.926); and (3) a recipient may comply with distinctions contained in FEMA regulations. (§ 7.927)

Subpart C—Duties of FEMA Recipients

Subpart C explains the duties of FEMA recipients which are established by the general regulations.

FEMA recipients have primary responsibility to ensure that their programs and activities are in compliance with the Act, the general regulations and these regulations.

Where a FEMA recipient passes on financial assistance to sub-recipients, the recipient must notify sub-recipients of their obligations under the Act and its regulations. FEMA recipients must also inform beneficiaries about the protection provided by the Act and its regulations. (§ 7.931)

Each recipient of federal financial assistance must sign an assurance that it will comply with the Act and its regulations. (§ 7.932)

FEMA may require recipients employing the equivalent of 15 or more full-time employees to examine their use of age distinctions under the Act as part of a compliance review or a complaint investigation conducted by the Agency. (§ 7.932)

Each FEMA recipient must keep records and make available to FEMA upon request information that FEMA determines is necessary to establish whether the recipient is in compliance with the Act and its regulations. Recipients must also allow FEMA reasonable access to books and records to the extent FEMA finds necessary to determine compliance with the Act and its regulations. (§ 7.933)

Subpart D—Investigation, Conciliation, and Enforcement Procedures

Subpart D of these regulations establishes the procedures FEMA will use in its investigation, conciliation and enforcement activities. These procedures are closely tied to requirements in the general regulations, primarily in Subpart D. Additional information on the filing of complaints and on mediation is provided in section IV of this preamble.

FEMA may conduct compliance or pre-award reviews or use other similar procedures to ensure compliance with the Act and its regulations. These procedures may be used even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation has occurred. (§ 7.940)

Complaints of age discrimination may be filed with FEMA by an individual or a class or by a third party. The complaint must allege discrimination occurring on or after July 1, 1979. The complaint must be filed within 180 days from the date the complainant first knew of the alleged act of discrimination, although FEMA may extend this time limit for good cause. The filing date for a complaint will be the date upon which the complaint is sufficient to be processed. A complaint is deemed "sufficient" when it contains particulars (e.g., names, addresses, and telephone numbers of parties involved; date(s) of alleged discrimination; kind(s) of alleged discrimination) upon which to begin an investigation. A complaint must identify the parties involved and the date the complainant first had knowledge of the alleged violation, describe generally the practice complained of, and be signed by the complainant. FEMA will notify the recipient and the complainant of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the process. FEMA will permit a complainant to add information to a complaint when necessary to meet the requirements of sufficient complaint. FEMA will return to the complainant any complaint that does not fall within the jurisdiction of the Act and will explain the reason(s) why the complaint is outside the jurisdiction of the Act. (§ 7.941)

FEMA will refer to mediation all sufficient complaints that fall within the coverage of the Act. On June 12, 1979, the Secretary of HEW designated the Federal Mediation and Conciliation Service (FMCS) to manage the mediation process which was established by the general regulations for all ADA complaints. Complainants and recipients are required to participate in the effort to reach a mutually satisfactorily mediated settlement of the complaint, although they need not meet with the mediator at the same time. Generally, mediation may last no more than 60 days from the date a complaint is filed with FEMA. The mediator will have the authority to terminate the mediation at any time before the end of the 60 day period if the process appears to have broken down. The mediator also has the authority to extend the 60 day mediation period where settlement is likely. A settlement based on terms satisfactory to both parties will be put in writing and sent to FEMA. FEMA will take no further action on a complaint that has been successfully mediated. The mediator will protect the confidentiality of all information obtained in the course of mediation. (§ 7.942)

FEMA will investigate complaints that are unresolved after mediation or are re-opened because the mediation agreement is violated. FEMA will first attempt to resolve the complaint through informal fact-finding. An agreement reached during information investigation will be signed by both parties and by a FEMA official. The agreement will not affect any other enforcement by FEMA. The settlement is not a finding of discrimination against a recipient. If these informal efforts do not succeed, FEMA will develop formal findings

through further investigation of the complaint. (§ 7.943)

A recipient may not intimidate or retaliate against any person who attempts to exercise a right protected by the Act or who participates in any aspect of the proceedings used to resolve allegations of age discrimination. (§ 7.944)

The procedures for securing compliance with the Act and these regulations are taken from the general regulations. The procedures include termination of federal funds after an opportunity for a hearing on the record, referral to the Department of Justice, or the use of the services of any federal, state or local government agency to correct a violation. These regulations include a provision for the deferral of new federal financial assistance from FEMA when termination proceeding are initiated. (§ 7.945)

FEMA will use the procedural provisions contained in the regulations implementing Title VI of the Civil Rights Act of 1964 to enforce the FEMA age discrimination regulations. These provisions are at 40 CFR 7.151 *et seq.* (§ 7.946)

When FEMA withholds funds from a recipient (according to the provisions of § 7.945), the Director may disburse those funds to an alternate recipient, except in the case of funds allocated pursuant to a Presidential declaration of disaster or emergency. The alternate recipient must demonstrate the ability to comply with these regulations and to achieve the goals of the federal statute which authorized the financial assistance. (§ 7.948)

Complainants may file civil actions as provided by law when administrative remedies are exhausted. Administrative remedies are exhausted if either 180 days have elapsed since the complainant filed the complaint and FEMA has made no finding, or if FEMA issues a finding in favor of the recipient. The complainant may then file a suit in a U.S. District Court where the recipient is located or transacts business. The complainant must indicate at the time the suit is filed if the attorney's fees will be demanded in the event that the complainant is successful. No action can be brought if the same alleged violation by the same recipients is the subject of a pending action in any U.S. court. Complainants who wish to file an action must provide 30 days notice to the Attorney General, the Director, and the recipient. (§ 7.949)

IV. Important Questions About the Regulations

This section of the preamble answers various important questions about these regulations.

1. What Age Does the Act Cover?

Section 303 of the Act prohibits discrimination on the basis of age in federally-assisted programs or activities. Although the legislative history indicates Congressional concern for the problems of the elderly in particular, the Congress made it clear in its conference committee report that the Act is intended to apply to persons of all ages. Nowhere in the amendment process was there any discussion of limiting or changing the coverage of the Act. It continues to extend protection to persons of all ages.

Various advocacy groups for older persons originally suggested that HHS construe the general regulations to protect only the elderly or to provide greater protection for older persons than for other age groups. This construction is not legally supportable in view of the legislative history and the plain language of the Act. Thus, all regulations issued to implement the Act provide protection to persons of all ages.

2. When is the Prohibition Against Age Discrimination Effective?

The Act provides that its prohibition of age discrimination becomes effective upon the issuance of regulations. Section 304 provides for the issuance of age disrimination regulations in two phases:

(a) HHS publishes general, government-wide regulations to implement the prohibition against age discrimination in federally-assisted programs; and

(b) Each federal agency then publishes regulations specific to its programs and consistent with the general regulations.

The Act's prohibition of age discrimination became effective when the first set of regulations, the general regulations, became effect on July 1, 1979. The general regulations established standards for determining age discrimination and procedures for enforcing the Act. All federal agencies must adopt those standards in their agency—specific regulations.

3. Where Can Complaints of Age Discrimination Be Filed with FEMA?

Complaints involving FEMA recipients and beneficiaries should be sent to: Federal Emergency Management Agency, Office of Personnel and Equal Opportunity, 500 C Street SW., Washington, DC 20472.

Any complaint must allege age discrimination occurring after the date of final adoption of this rule. The complaint should: (a) Identify the parties involved; (b) give the date of the alleged violation or when the complainant first knew of the alleged violation; (c) generally describe what happend; and (d) be signed by the complainant.

FEMA screens all complaints and refers those that describe actions covered by the Act and contain the necessary information to the FMCS for mediation.

The Act states that a complainant may file a civil action 180 days from the date the complaint was filed with the federal agency if the agency has taken no action, or upon the date the agency makes a determination in favor of the recipient, whichever comes first. For purposes of exhaustion of administrative remedies within FEMA, the 180 day period will run from the date the complaint is filed with FEMA. In cases where FEMA has not taken final action on a complaint and 180 days elapse, the complainant retains the option of filing a civil action, or having FEMA continue to pursue the complaint through the administrative process. FEMA retains the option of continuing its enforcement activities even after a suit is filed.

4. What are the Rules Against Age Discrimination?

These regulations adopt without change the provisions against age discrimination from the general regulations. The general regulations provide that, except as provided in the Act and its regulations, "* * * No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance." It means that unless permitted by one of the exceptions, recipients of FEMA assistance may not, either directly or indirectly, do anything to exclude persons from their programs or activities on the basis of age. Nor may recipients do anything that is not permitted by one of the exceptions to deny or limit persons on the basis of their age in their efforts to participate in FEMA-assisted programs or activities.

The prohibition against age discrimination does not include an absolute prohibition against separate treatment on the basis of age. As a general rule, separate or different treatment which denies or limits services from, or participation in, a program receiving financial assistance

from FEMA would be prohibited by these regulations. Separate or different treatment which does no deny or limit services is permitted. Separate or different treatment may be necessary to normal operation or to the achievement of a statutory objective by the recipient and may qualify as an exception under these regulations.

5. What is the Meaning of the Exception of Age Distinction "Established Under Authority of Any Law?

The Age Discrimination Act applies to all programs and activities that receive federal financial assistance. However, the Act does not apply to age distinctions "established under authority of any law" that provide benefits or establish criteria for participation on the basis of age or in age related terms. Age distinctions that qualify under this exception do not require further scrutiny under these regulations.

The regulations define the term "any law" to mean a federal, state or local statute or ordinance adopted by an elected, general purpose legislative body. This provision does *not* provide an automatic exemption for age distinctions that are contained in regulations or in ordinances enacted by bodies which are not elected or are special-purpose even though elected, such as state or local school boards.

The exemption for age distinctions "established under authority of any law" applies to both explicit uses of age (e.g., a statute that defines an adult to be a person over age 18) and the use of age-related terms (e.g., statutes that refer only to "adults" or "children" or "youths" without defining those terms explicitly). When a statute (federal, state or local) uses, but does not define, an age-related term, FEMA will accept reasonable definitions of those terms in regulations without further scrutiny. Thus, for example, FEMA would not ordinarily question a definition of "child" as a person up to age 18, but would seek further justification of the regulations which define "child" as a person up to age 30.

6. When is an Age Distinction Necessary to the Normal Operation or to the Achievement of a Statutory Objective of a Program or Activity?

These regulations incorporated from the general regulations the four-part test for determining when an explicit age distinction is necessary to the normal operation of a program or activity, or to the achievement of a statutory objection. FEMA will use this four-part test to scrutinize age distinctions imposed in the administration of federally-assisted programs, but which are not explicitly authorized by a federal, state or local statute or ordinance adopted by an elected, general-purpose legislative body. If the age distinction in question fails any part of the four-part test, the recipient of FEMA funds may not continue to use that age distinction.

The four-part test is designed to require careful scrutiny of age distinctions in programs receiving federal financial assistance and to weed out age distinctions that are neither directly related to an essential characteristic or a program not based on explicitly stated objectives of a law. It is not intended to serve as a basis for permitting continued use of age distinctions for the sake of administrative convenience, if this results in denial or limitation of services on the basis of age.

FEMA encourages its recipients to apply to every age distinction flexibility; that is, to permit a person who demonstrates eligibility to participate in the activity or program even though he or she would otherwise be barred by age distinction. Other things being equal, a distinction under review is more likely to qualify under any of the exceptions if it does not automatically bar all those who do not meet the age requirements.

7. When is the Use of a Factor Other than Age Exempted from the Coverage of These Regulations?

The Age Discrimination Act permits a recipient of federal funds to examine its use of factors other than age which have a disproportionate effect on the basis of age in light of the individual facts and circumstances surrounding their use. This examination will determine whether use of a factor other than age is sufficiently related to achieving a legitimate program purpose and, therefore, justifies limiting or denying services or participation to persons disproportionately excluded because of age.

8. What are "Special Benefits" for the Elderly or Children?

These regulations incorporate the provision of the general regualtions permitting a recipient of a program to provide special benefits to children or the elderly.

The special benefits provision resulted from FEMA's encouragement of providing special benefits to children or the elderly. These special benefits often take the form of special discounts or reduced fees for the elderly in a federally-funded program.

In reviewing such special benefits in specific cases to insure that they are in fact consistent with the Act and Congressional intent, FEMA will consider the rationale for the special benefit, the effect on other individuals, and all other relevant factors.

The regulations leave to the reasonable discretion of the recipient the definition as to who qualifies as "children" or "the elderly" for purposes of receiving a special benefit.

9. What is the Effect of Age Distinctions Contained in FEMA Regulations?

Section 7.927 makes explicit what is implicit in § 90.32 of the government-wide regulation. Section 90.32 of the government-wide regulation established the mechanism for determining that age distinctions imposed by government agencies are consistent with the Age Discrimination Act and implementing regulations. Under this section, agencies must within 12 months review age distinctions imposed on recipients by regulations, policies and administrative practices. Each agency must then publish, for public comment, in the **Federal Register** a comprehensive accounting of all such age distinctions, listing those to be continued, the justifications for their continuance, those to be adopted by regulations, and those to be eliminated. After this 12-month period, agencies may not continue any age distinction that has not already been adopted by regulation or is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553. In addition, beginning with the effective date of an agency's final regulation, an agency may not impose a new age distinction unless it is adopted by regulation under the Administrative Procedure Act using these notice and comment procedures.

This comprehensive mechanism for carefully scrutinizing age distinctions imposed by federal agencies on recipients to insure their consistency with the Age Discrimination Act and implementing regulations is based upon public participation and the rule making process of the Administrative Procedure Act, through which the appropriateness and validity of any age distinction can be thoroughly evaluated. Implicit in this far-reaching mechanism is that age distinction contained in regulations adopted under the Administrative Procedure Act are entitled to a very strong presumption of permissibility. Section 7.927 makes this explicit by providing that any age distinctions contained in a rule or regulation issued by FEMA will be presumed to be within the statutory exemption applicable to actions necessary to the achievement of

a statutory objective of the program to which the rule or regulation applies. This does not mean that such age distinctions are immune from additional scrutiny to insure their consistency with the Age Discrimination Act and implementing regulations, but that such further scrutiny will be under the general standards of the Act, rather than under the process established for previously unreviewed age distinctions, in which the recipient has the burden of proving tht the detailed standards contained in § 7.922 of the regulation have been met. Since the review process of rule making proceeding subjected the age distinctions to scrutiny on all possible bases, it is appropriate that any subsequent review be limited to determining violation of fundamental statutory requirements. This provision thus reaffirms that recipient upon whom age distinctions are imposed by FEMA regulations adopted pursuant to statutory authority and under the Administrative Procedure Act, as well as the public, can be assured that such age distinctions have been carefully considered and are believed by FEMA to be possible under the Age Discrimination Act and implementing regulations.

10. Do the Regulations Require Proportional Allocation of Services and Funds by Age?

Some believe that certain age groups, especially the elderly, do not get their "fair share" of funds or program slots in certain federally-funded programs. These persons argue that the serious under-representation of certain age groups in the allocation of program funds or services *is* age discrimination and should be prohibited by these regulations.

These regulations do *not* require proportional program participation by age or the proportional allocation of funds by age. However, disproportionate allocation of funds or program participation may be one element that triggers an examination of whether age discrimination exists in the federally-funded program or activity. If further inquiry is necessary, the recipient may show that the disparity in rate of participation, fund allocation, or services has nondiscriminatory causes.

11. How do these Regulations Require Mediation of Complaints?

FEMA supports mediation as an important innovation in the resolution of age discrimination complaints. The mediation process represents an effort to provide faster and more creative resolution of complaints through informal methods of dispute resolution. While mediation does represent a new step in the complaint resolution process, the experience in resolving complaints under other civil rights statutes indicates that the 60 days allowed for mediation will not significantly delay the enforcement process.

Mediation is being used with increasing success to resolve disputes between parties outside the traditional area of labor management negotiations. The most important feature of the mediation process is that it will be under the supervision of an impartial third party, a mediator assigned by the Federal Mediation and Conciliation Service (FMCS). FMCS was designated by the Secretary of HEW to mediate age discrimination complaints for all federal departments and agencies which distribute federal financial assistance. The mediator is in no way connected with HHS or the funding agency in the age discrimination dispute. Instead, mediators have been recruited and selected by the FMCS. Each mediator is assigned to the dispute by the FMCS without consultation with the FEMA.

The mediators have been specially trained in procedures for resolving disputes and in the requirements of the Age Discrimination Act and its implementing regulations. The mediator will contact the two parties and explain the procedures to both the complainant and the recipient. Mediation does not necessarily mean that the two parties to the dispute must meet face-to-face; each may meet separately or otherwise discuss the matter with the mediator. Since the mediated settlement must be satisfactory to both parties, neither the complainant nor the recipient is compelled to settle the complaint. A complainant who believes that he or she is not receiving full satisfaction in the mediation process need not agree to a settlement of the dispute. A complainant will have to wait no more than 60 days for the complaint to be returned to FEMA for its investigation to begin.

This 60 day period will count as part of the 180 days which FEMA has to resolve the complaint before a court action can be filed by the complainant. The 60 day period may be extended by the mediator, with the concurrence of FEMA, for not more than 30 days if the mediator determines that agreement will likely be reached during the extended period.

The mediation process has been designed to minimize expenses to the parties. The mediator can travel to the location of the parties and the services of the mediator will be paid for by the federal government. The mediation itself is conducted in an informal atmosphere in which both sides attempt to resolve the dispute in a mutually satisfactory manner. This should encourage the parties to discuss their dispute without resoring to efforts to build a formal legal case.

FEMA believes that the Age Discrimination Act offers a unique opportunity to try this innovative approach to the resolution of disputes. The mediation process is being monitored very closely as it is used to resolve age discrimination complaints received by all recipients of federal financial assistance. The results of this evaluation will be reported by HHS as part of the required review of the effectivess of the general age discrimination regulations.

List of Subjects in 44 CFR Part 7

Aged, Civil rights.

The Federal Emergency Management Agency (FEMA) proposes to revise Part 7 of Title 44 of the Code of Federal Regulations as set forth below:

PART 7—NONDISCRIMINATION ON THE BASIS OF AGE IN FEMA PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.

7.910 What is the purpose of the Age Discrimination Act of 1975?
7.911 What is the purpose of FEMA age discrimination regulations?
7.912 To what programs do these regulations apply?
7.913 Definition of terms used in these regulations.

Subpart B—Standards for Determining Age Discrimination

7.920 Rules against age discrimination.
7.921 Definitions of "normal operation" and "statutory objective."
7.922 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.
7.923 Exceptions to the rules against age discrimination: Reasonable factors other than age.
7.924 Burden of proof.
7.925 Affirmative action by recipient.
7.926 Special benefits for children and the elderly.
7.929 Age distinction contained in FEMA regulations.

Subpart C—Duties of FEMA Recipients

7.930 General responsibilities.
7.931 Notice to subrecipients and beneficiaries.
7.932 Assurance of compliance and recipient assessment of age distinctions.
7.933 Information requirement.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

7.940 Compliance reviews.
7.941 Complaints.
7.942 Mediation.
7.943 Investigation.
7.944 Prohibition against intimidation or retaliation.
7.945 Compliance procedure.
7.946 Hearings, decisions, post-termination proceedings.
7.947 Remedial action by recipient.
7.948 Alternate funds disbursal procedure.
7.949 Exhaustion of administrative remedies.

Authority: 42 U.S.C. 6101, *et seq*; 45 CFR Part 90.

Subpart A—General

§ 7.910 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance. The Act also permits federally-assisted programs and activities, and recipients of federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 7.911 What is the purpose of FEMA age discrimination regulations?

The purpose of these regulations is to set out FEMA policies and procedures under the Age Discrimination Act of 1975 and the general government-wide regulations, 45 CFR Part 90. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance. The Act and the general regulations permit federally assisted programs, activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 7.912 To what programs do these regulations apply?

(a) The Act and these regulations apply to each FEMA recipient and to each program or activity operated by the recipient which receives or benefits from federal financial assistance provided by FEMA.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a federal, state or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving federal financial assistance for public service employment under the Job Training Partnership Act, (29 U.S.C. 150, *et seq.)*

§ 7.913 Definition of terms used in these regulations.

As used in these regulations, the term "Act" means the Age Discrimination Act of 1975 as amended, (Title III of Pub. L. 94–135).

"Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard or method of administration.

"Age" means how old a person is, or the number of years from the date of a person's birth.

"Age distinction" means any action using age or an age-related term.

"Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children", "adult", "older persons", but not "student").

"Agency" means the Federal Emergency Management Agency.

"Director" means the Director of the Federal Emergency Management Agency.

"Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) Funds; or

(b) Services or federal personnel: or

(c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the federal share of its fair market value is not returned to the federal government.

"Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, institution, organization, or other entity, or any person to which federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

"Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on federal financial assistance. A subrecipient is generally regarded as a recipient of federal financial assistance and has all the duties of a recipient in these regulations.

"United States" includes the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and all other territories and possessions of the United States. The term "state" also includes any one of the foregoing.

Subpart B—Standards for Determining Age Discrimination

§ 7.920 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in §§ 7.922 and 7.923 of these regulations.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving federal financial assistance, directly or through contractual licensing or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to the discrimination under, a program or activity receiving federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving federal financial assistance.

(3) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 7.921 Definitions of "normal operation" and "statutory objective."

For purposes of §§ 7.922 and 7.923, the terms "normal operation" and "statutory objective" shall have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objective.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in any federal statute, state statute or local statute or

ordinance adopted by an elected, general purpose legislative body.

§ 7.922 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by § 7.920, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 7.923 Exceptions to the rules against age discrimination: Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 7.920 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 7.924 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 7.922 and 7.923 is on the recipient of federal financial assistance.

§ 7.925 Affirmative action by recipient.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in the limited participation in the recipient's program or activity on the basis of age.

§ 7.926 Special benefits for children and the elderly.

If a recipient operating a program provided special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 7.922.

§ 7.929 Age distinctions contained in FEMA regulations.

Any age distinctions contained in a rule or regulation issued by FEMA shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies, notwithstanding the provisions of § 7.922.

Subpart C—Duties of FEMA Recipients

§ 7.930 General responsibilities.

Each FEMA receipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford FEMA access to its records to the extent FEMA finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

§ 7.931 Notice to subrecipients and beneficiaries.

(a) Where a recipient passes on federal financial assistance from FEMA to sub-recipients, the recipient shall provide the sub-recipients written notice of their obligations under the Act and these regulations.

(b) Each receipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them about the protection against discrimiantion provided by the Act and these regulations.

§ 7.932 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of federal financial assistance from FEMA shall sign a written assurance as specified by FEMA that it will comply with the Act and these regulations.

(b) Recipient assessment of age distinctions.

(1) As part of the compliance review under § 7.940 or complaint investigation under § 7.943, FEMA may require a recipient employing the equivalent of one or more employees to complete a written evaluation, in a manner specified by the responsible Agency official, of any distinction imposed in its program or activity receiving federal financial assistance from FEMA to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the FEMA regulations, the recipient shall take corrective action.

§ 7.933 Information requirement.

Each recipient shall:

(a) Keep records in a form acceptable to FEMA and containing information which FEMA determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to FEMA, upon request, information and reports which FEMA determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit FEMA reasonable access to the books, records, accounts, and other recipient facilities and sources of information to the extent FEMA determines is necessary to ascertain whether the recipient is complying with the Act and these regulations.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 7.940 Compliance reviews.

(a) FEMA may conduct compliance reviews and pre-award reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. FEMA may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, FEMA will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, FEMA will arrange for enforcement as described in § 7.945.

§ 7.941 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with FEMA, alleging discrimination prohibited by the Act occurring after the date of final adoption of this rule. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause showing, FEMA may extend this time limit.

(b) FEMA will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(c) FEMA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures: A complaint is deemed "sufficient"

when it contains particulars (e.g., names, addresses, and telephone numbers of parties involved; date(s) of alleged discrimination; kind(s) of alleged discrimiantion) upon which to begin an investigation.

(1) Accepting as a sufficient complaint any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact FEMA for information and assistance regarding the complaint resolution process.

(d) FEMA will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 7.942 Mediation.

(a) FEMA will promptly refer to a mediation agency designated by the Director all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and these regulations, unless the age distinction complained of is clearly within an exception; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to FEMA. FEMA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with FEMA. Mediation ends if:

(1) Sixty days elapse from the time the compaint is filed; *or*

(2) Prior to the end of that 60 day period, an agreement is reached; *or*

(3) Prior to the end of that 60 day period, the mediator determines that an agreement cannot be reached.

This 60 day period may be extended by the mediator, with the concurrence of FEMA, for not more than 30 days if the mediator determines agreement will likely be reached during such extended period.

(f) The mediator shall return unresolved complaints to FEMA.

§ 7.943 Investigation.

(a) *Informal investigation.* (1) FEMA will investigate complaints that are unresolved after mediation or are re-opened because of a violation of a mediation agreement.

(2) As part of the initial investigation, FEMA will use informal fact finding methods, including joint or separate discussion with the complainant and recipient, to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. FEMA may seek the assistance of any involved state program agency.

(3) FEMA will put any agreement in writing and have it signed by the parties and an authorized official at FEMA.

(4) The settlement shall not affect the operation of any other enforcement effort of FEMA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If FEMA cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, FEMA will attempt to obtain voluntary compliance. If FEMA cannot obtain voluntary compliance, it will begin enforcement as described in Sec. 7.945.

§ 7.944 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of FEMA's investigation, conciliation and enforcement process.

§ 7.945 Compliance procedure.

(a) FEMA may enforce the Act and these regulations through:

(1) Termination of a recipient's federal financial assistance from FEMA under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any federal, state or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) FEMA will limit any termination under § 7.945(a)(1) to the particular recipient and particular program or activity or part of such program and activity FEMA finds in violation of these regulations. FEMA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive federal financial assistance from FEMA.

(c) FEMA will take no action under paragraph (a) of this section until:

(1) The Director has advised the recipient of its failure to comply with the Act and for these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Director has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the federal program or activity involved. The Director will file a report whenever any action is taken under paragraph (a) of this section.

(d) FEMA also may defer granting new federal financial assistance from FEMA to a recipient when a hearing under § 7.945(a)(1) is initiated.

(1) New federal financial assistance from FEMA includes all assistance for which FEMA requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New federal financial assistance from FEMA does not include increases in funding as a result of changed computation of formula awards or assistance approved

prior to the beginning of a hearing under § 7.945 (a)(1).

(2) FEMA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 7.945 (a)(1). FEMA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) FEMA will limit any deferral to the particular recipient and particular program or activity or part of such program or activity FEMA finds in violation of these regulations. FEMA will not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not and would not, in connection with new funds, receive federal financial assistance from FEMA.

§ 7.946 Hearings, decision, post—termination proceedings.

Certain FEMA procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to FEMA enforcement of these regulations. They are found at 44 CFR 7.10 through 7.16.

§ 7.947 Remedial action by recipient.

Where FEMA finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that FEMA may require to ovecome the effects of the discrimination. If another recipient exercises control over the recipient that had discriminated, FEMA may require both recipients to take remedial action.

§ 7.948 Alternative funds disbursal procedure.

(a) When FEMA withholds funds from a recipient under these regulations, the Director may, if allowable under the statute governing the assistance, disburse the withheld funds directly to an alternate recipient: Any public or non-profit private organization or agency, or state or political subdivision of the state.

(b) The Director will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the federal statute authorizing the program or activity.

§ 7.949 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act.

Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and FEMA had made no finding with regard to the complaint; or

(20 FEMA issues any finding in favor of the recipient.

(b) If FEMA fails to make a finding within 180 days or issues a finding in favor of the recipient, FEMA shall:

(1) Promptly advise the complainant in writing of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint at the time it is filed;

(iii) That before commencing the action, the complainant shall give 30 days' notice by registered mail to the Director, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court (federal or state) of the United States.

Date: January 6, 1988.

Julius W. Becton, Jr.,

Director, Federal Emergency Managment Agency.

[FR Doc. 88-617 Filed 1-13-88; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense Federal Acquisition Regulation Supplement; Milestone Billing Arrangements

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The proposed rule reinstates milestone billing arrangements as a form of contract financing on certain long-term defense contracts.

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before March 14, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 87-124 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: LTCOL Robert Gustin, USAF, DASD-P(CPF), Chairman, Contract Finance Committee, telephone (202) 697-6710.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council is considering a proposed revision to the DoD FAR Supplement Part 232. The proposed rule prescribes the policies and procedures for incorporating milestone billing arrangements into certain long-term defense contracts. This contract financing method was previously authorized in the Defense Acquisition Regulation under Appendix E. When the Defense Acquisition Regulation was superseded in March 1984, however, the provision for milestone billings was not included in the Federal Acquisition Regulation because it was regarded as DoD-unique. It was not included in the DoD Federal Acquisition Regulation Supplement because, at that time, the customary progress payment rate was relatively high (i.e., 90%) and DoD had implemented a flexible progress payment method.

Action to reinstate milestone billing arrangements is being taken in conjunction with other reforms to DoD's profit and contract financing policies. A recent DoD study, called the "Defense Financial and Investment Review" (DFAIR), recommended use of milestone billing arrangements on long-term contracts that had few delivery payments. DFAIR found that such contracts had an abnormally higher inventory carrying cost because they presented minimum opportunity for contractors to receive payment for costs not covered by progress payments. Furthermore, since interest expenses are not allowable on defense contracts and must be absorbed in the profit margin, the profitability of these long-term contracts was substantially diminished. With the reduction in the customary

progress payment rate of 80% in 1985 and to 75% in 1986, the need for this type of supplemental contract financing is apparent.

B. Regulatory Flexibility Act Information

The proposed rule will not impact small business concerns. Milestone billing arrangements will be restricted to large, long-term contracts with few contract deliveries. Small business concerns already receive special consideration in the progress payments policies (i.e., higher customary progress payment rate, less restrictive application criteria, incurred cost basis).

C. Paperwork Reduction Act Information

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed rule does not impose any new information collection requirements.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 232 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 232 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 232—CONTRACT FINANCING

2. A new Subpart 232.70, consisting of sections 232.7000 through 232.7007, is added to read as follows:

Subpart 232.70—Milestone Billing Arrangements

Sec.

232.7000 Milestone billing arrangements.
232.7001 Criteria for use.
232.7002 Milestone events.
232.7003 Milestone values.
232.7004 Contract administration.
232.7005 Consideration.
232.7006 Approval procedures.
232.7007 Contract clause.

Subpart 232.70—Milestone Billing Arrangements

232.7000 Milestone billing arrangements.

(a) A milestone billing arrangement is a supplementary contract financing provision for making interim payment to a contractor for work accomplished which does not involve physical delivery to the Government. The arrangement consists of milestone events, milestone values, and a contract administration plan.

(b) Milestone billings are contract financing payments which supplement payments made under the Progress Payments clause. They are not invoice payments for supplies delivered or services performed by the contractor.

(c) Milestone arrangements are subject to the administrative provisions of the Progress Payments clause. They are liquidated against invoice payments for contract line items upon which milestone billings were made. They are also recoverable in a manner similar to progress payments in the event of default.

232.7001 Criteria for use.

(a) A milestone billing arrangement may be granted, under the approval procedures prescribed in 232.7006, on contracts which meet all of the following criteria:

(1) Contract includes the Progress Payments clause;

(2) Contract price exceeds $50 million;

(3) Period of contract performance exceeds four years;

(4) Contractor deliveries to the Government do not commence until 24 months after the start of the period of performance;

(5) Actual costs incurred for each milestone event can be completely segregated; and

(6) Adequate consideration is received from the contractor (see 232.7005).

(b) A milestone billing arrangement may not be granted if the contract provides for flexible progress payments (see 232.501(S-711)) or if the contract provides for advance payments or unusual progress payments.

232.7002 Milestone events.

(a) Milestone events shall be based on significant work to be accomplished in fulfilling contract requirements. Each event shall be severable as a contract line item or subline item and completely verifiable. Examples of milestone events might include the following:

(1) Completion of a significant engineering task;

(2) Manufacture of special tooling or equipment;

(3) Site preparation; and

(4) Completion of a subassembly.

(b) Milestone events may not be based on insignificant task, administrative functions, percentage of completion estimates, or passage of time. Examples of unacceptable milestone events include the following:

(1) Attendance at meetings;

(2) Submission of program status or financial reports;

(3) Placement of orders to vendors or subcontractors; and

(4) Capital expenditures.

(c) Milestone events may not be established to occur for the first 12 months of a contract's period of performance and may not occur more frequently than every three months.

(d) Milestone events should not be established to take place after commencement of contract deliveries.

232.7003 Milestone values.

(a) A milestone value shall be established for each milestone event. The value shall be the estimated cost for the work accomplished.

(b) Cost estimates shall comply with the applicable cost accounting standards and contract cost principles prescribed by regulation.

(c) A milestone value shall not include profit.

232.7004 Contract administration.

(a) A milestone billing arrangement must include a contract administration plan. This plan must clearly describe the work to be accomplished under the milestone events, their corresponding values, and the documentation and procedures for making payment. Each milestone event and value shall be related to deliverable end items in the contract. This relationship will be identified in the contract administration plan through a matrix similar to the example shown below. The matrix is necessary to ensure that milestone payments are properly liquidated against subsequent invoice payments. A milestone event may not relate to more than one contract line item. However, a contract line item may have more than one relatable milestone event, as shown in the example.

EXAMPLE: MILESTONE BILLING MATRIX

[Dollar amounts in millions]

Milestone	Milestone value by contract line item			
	1	2	3	Total
1	$5	—	—	$5
2	—	$6	—	6
3	—	4	—	4
4	—	—	$15	15
Total values	5	10	15	30
Line item prices	10	20	40	70

(b) Milestone billing requests shall be submitted by the contractor to the contracting officer in accordance with the contract administration plan. The contracting officer should obtain an audit of the milestone billing request from the contract auditor. Prior to making payment to the contractor, the contracting officer will verify that work

performed under the milestone event has been satisfactorily accomplished. This verification does not constitute Government acceptance of the work performed.

(c) The milestone billing amount shall be lesser of (1): The milestone value or (2) the actual allowable costs incurred for completing the milestone event. The contractor's payment is to be reduced by progress payments made to the contractor for the milestone event. This adjustment does not represent a liquidation of progress payments; it only determines the amount of supplementary contract financing. Milestone payment based on cumulative milestone values or cumulative actual costs incurred is prohibited (i.e., a favorable cost variance on one milestone event may not be used to offset an unfavorable cost variance on another). Examples of computing milestone payments are shown below:

EXAMPLE: MILESTONE PAYMENT COMPUTATION

[Dollar amounts in millions]

	Example 1	Example 2
Milestone value	$20	$20
Actual cost incurred	24	16
Milestone billing	20	16
Progress payments[1]	18	12
Milestone payment	2	4

[1] At 75% of actual costs incurred.

(d) Milestone payments shall be liquidated against contractor invoices for relatable line items delivered. The invoice payment shall be first reduced by the liquidation of progress payments in the manner required under the Progress Payments clause. The remaining amount is then reduced by the milestone payments. This sequence is necessary to liquidate these contract financing payments properly. The matrix included in the contract administration plan will guide such liquidation actions.

Example: Milestone Payment Liquidation

	Millions
Price of item delivered	$40
Progress payments liquidated	30
Delivery payment before adjustment	10
Milestone payments on item delivered	5
Delivery payment	5

(e) Milestone values may not be revised under the "Adjustment of Payments" provisions of an Incentive Price Revision clause in fixed-price incentive contracts. Further, milestone values may not be adjusted pursuant to any Economic Price Adjustment clause.

232.7005 Consideration.

Milestone billing arrangements supplement progress payments; therefore, separate consideration is required. The value of the consideration must be adequate in view of the Government's costs in providing the supplemental financing.

Where the Weighted Guidelines Method is used, milestone billing events shall be equated to contract deliveries in determining the working capital adjustment (215.970-1(b)(4)).

232.7006 Approval procedures.

(a) Milestone billing arrangements shall be approved by the Service/Agency official responsible for the comptroller function. This authority may be delegated to a senior level official within the comptroller function.

(b) A contractor's request for a milestone billing arrangement will be forwarded to the designated approval authority in the manner established by each Service/Agency. As a minimum, the request for approval should contain the following:

(1) Contractor's request for the milestone billing arrangement and supporting rationale;

(2) Proposed contract administration plan;

(3) Cost analysis of the milestone value of each milestone event;

(4) Recommendation of the contracting officer.

(c) The contracting officer shall not include a milestone billing arrangement in a contract award, even conditionally, unless requisite approval has been obtained.

(d) The contracting officer shall not include a provision for milestone billing arrangements in any solicitation.

232.7007 Contract clause.

(a) Individual milestone events shall be incorporated into a contract as separate contract line items or subline items.

(b) The contracting officer shall insert the Milestone Billing Arrangement clause at 252.232-7008 when milestone billing arrangements have been approved for use under 232.7006.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.232-7008 is added to read as follows:

252.232-7008 Milestone Billing Arrangements.

As prescribed at 232.7007(b), insert the following clause:

Milestone Billing Arrangement (Jan 1988)

(a) This contract provides for milestone billings as supplemental contract financing to payments made under and subject to the terms of the Progress Payments clause. The description of milestone events, milestone values, and billing procedures are specified in the contract Administration Plan, dated (insert date), which is hereby incorporated as part of this contract. Payments under this milestone billing arrangement are contract financing payments and not invoice payments for supplies delivered or services performed by the contractor.

(b) Milestone billings shall be based upon work satisfactorily accomplished in accordance with this contract.

(c) The milestone billing amount shall be the lesser of: (1) The milestone value or (2) the actual allowable costs incurred for completing the milestone event as determined by applicable cost accounting standards and contract cost principles. The milestone payment is to be reduced by the amount of progress payments previously made to the contractor for the milestone event. This adjustment does not represent a liquidation of progress payments.

(d) Milestone payments shall be liquidated against contractor invoices for relatable line items delivered. The invoice payment shall be first reduced by the liquidation of progress payments in the manner required under the Progress Payments clause. The remaining amount is then reduced by the milestone payments.

(e) Milestone billing payments are fully recoverable in the event of default in the same manner as progress payments made under the Progress Payments clause. The contractor is required to pay the Government on demand for the full amount of contract financing provided under the milestone billing arrangement.

(End of clause)

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-03, Notice 1]

Federal Motor Vehicle Safety Standards Hydraulic Brake Systems; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standards No. 105, *Hydraulic Brake Systems*, and No. 121, *Air Brake Systems*, specify procedures for the burnishing or "breaking-in" of a vehicle's brakes. Under the two standards' test procedures, a vehicle's brakes are burnished prior to conducting some of the performance tests for vehicle braking. This notice proposes to amend the standards to specify, for all types of vehicles, that automatic brake adjusters remain operational during the burnish procedures and subsequent brake tests. Since automatic brake adjusters are operational during normal use, specifying that they be operational during brake testing would help approximate real-world conditions and better test real-world performance.

DATES: Comments must be received on or before March 14, 1988. This proposal would become effective one year after publication of a final rule in the **Federal Register**. Optional compliance would be permitted effective 30 days after publication.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The docket is open on weekdays from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC (202-366-5274).

SUPPLEMENTARY INFORMATION: Standards No. 105, *Hydraulic Brake Systems*, and No. 121, *Air Brake Systems*, specify procedures for the burnishing or "breaking-in" of a vehicle's brakes. Under the two standards' test procedures, a vehicle's brakes are burnished prior to conducting some of the performance tests for vehicle braking.

On July 27, 1983, NHTSA published in the **Federal Register** (48 FR 29560) a notice of proposed rulemaking (NPRM) to amend the burnish procedures of Standards No. 105 and No. 121, as they apply to heavy vehicles. One of the proposed changes concerned automatic adjusters. The agency noted that Standard No. 105 specifies for hydraulic-braked vehicles that automatic adjusters can be disconnected prior to the burnish procedure, but if disconnected, they must remain disconnected throughout the brake tests. If the devices are not disconnected, a brake adjustment is permitted at the end of the burnish and all remaining tests are performed with the adjusters connected. On the other hand, NHTSA has interpreted Standard No. 121 to require for air-braked vehicles that automatic adjusters not be disconnected. The June 1983 NPRM proposed to specify in both standards, for heavy vehicles, that automatic adjusters remain operational during brake tests. Under that proposal, vehicles with gross vehicle weight ratings (GVWR's) of 10,000 pounds or less would continue to have been permitted to be tested with automatic adjusters deactivated.

Some of the commenters on the June 1983 NPRM argued that there is no reason to treat vehicles with a GVWR in excess of 10,000 pounds differently from vehicles with a GVWR of 10,000 pounds or less. These commenters stated that if deactivation of automatic adjusters is permitted for light vehicles, heavier vehicles should be offered the same option.

On May 23, 1985, NHTSA published in the **Federal Register** (50 FR 21313) a supplemental NPRM (SNPRM) concerning a number of the issues raised by commenters in response to the June 1983 notice. With respect to automatic adjusters, the agency stated that it agreed with the implicit point that the reasons for and against permitting the deactivation of automatic adjusters apply equally to all vehicles with those adjusters, regardless of size. NHTSA announced in that notice that rather than address the question of the deactivation of automatic brake adjusters in a piecemeal fashion, it would instead issue a notice addressing that issue for all vehicles.

This notice supersedes the June 1983 notice, on the issue of whether automatic adjusters must remain operational during brake tests. NHTSA is now proposing to specify, for all types of vehicles, that automatic brake adjusters, remain operational during the burnish procedures and brake tests of Standards No. 105 and No. 121.

One of the purposes behind the various test conditions and procedures specified in Standards No. 105 and No 121 is to test vehicles as they will perform when used on the road. Since automatic brake adjusters are operational during normal use, specifying that they be operational during brake testing helps approximate real-world conditions and better tests real-world performance.

The May 1985 SNPRM noted above proposed for heavy vehicles that the brakes be adjusted in accordance with the manufacturer's recommendations at specified intervals during the burnish procedure, as well as at the end of the procedure. NHTSA notes that, under that proposal, automatic adjusters would be permitted to be manually adjusted at the same times as proposed for other types of brake adjustments during burnish. As discussed by that notice, the most important reason for specifying adjustments at designated intervals is to ensure the most repeatable test results by standardizing the procedures to be followed by all parties. See 50 FR 21316. That proposal is not being changed by this notice.

As indicated above, the May 1985 SNPRM did not cover vehicles with a GVWR of 10,000 pounds or less. Under this proposal, manual adjustment for those vehicles would be permitted only at the end of the burnish procedure. This is consistent with Standard No. 105's current requirements for vehicles whose automatic adjusters are not deactivated. It is also consistent with the agency's proposal for an internationally harmonized passenger car brake standard. See 52 FR 1474, January 14 1987.

In the past, problems were sometimes experienced with automatic brake adjusters during burnish procedures. For some vehicles, the swelling of linings made it difficult to complete the burnish procedures, due to high temperatures. This explains the provision in Standard No. 105 that currently permits automatic adjusters to be disconnected. However, newer designs for linings and automatic adjusters have essentially eliminated these problems, particularly for lighter vehicles. NHTSA is aware of only one manufacturer, Ford, which currently specifies that the automatic adjusters on any of its vehicles with a GVWR of 10,000 pounds or less be deactivated for purposes of brake testing.

Automatic adjusters for heavy vehicles are not as fully developed as those for vehicles with a GVWR of 10,000 pounds or less. However, by permitting manual adjustment at specified intervals during the burnish procedures, and problems that occur can be resolved by means of simple adjustments.

Another reason to permit manual adjustment of automatic adjusters for heavy vehicles during the burnish

procedures is to treat vehicles with and without automatic adjusters the same for purposes of testing, i.e., adjusted to peak performance. This helps to ensure that the standards do not unwittingly discourage manufacturers from offering automatic adjusters.

NHTSA notes that while those parts of the May 1985 SNPRM concerning brake adjustments during burnish are related to this proposal, this notice does not repeat the changes in the regulatory text proposed by that notice.

The proposed amendments would become effective one year after publication of a final rule in the **Federal Register**. Optional compliance would be permitted effective 30 days after publication. NHTSA believes that few, if any, changes to current vehicles would be required as a result of the proposed amendments. The one year period would enable manufacturers to conduct compliance testing, as well as make any minor changes to their vehicles that might be necessary in order to ensure compliance. If any manufacturer commenters believe that a leadtime longer than one year should be provided, the agency requests that the issue be addressed separately for (1) hydraulic braked vehicles with a GVWR of 10,000 pounds or less, (2) hydraulic braked vehicles with a GVWR greater than 10,000 pounds, and (3) air-braked vehicles.

The agency has considered the costs and other impacts of this proposal and determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory procedures. This proposal would have little effect on the cost or design of the vehicles to which it might become applicable. Instead, the proposal would make only minor changes in the test procedures for the braking standards. Since the effects of the proposal, if adopted as a final rule, would be minimal, a full regulatory evaluation has not been prepared.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. The effect of this proposal, if adopted, on any small manufacturers of vehicles or brake systems would be minimal, since the proposal would make only minor changes in the test procedures for the braking standards. Few, if any, design or manufacturing changes would be required of these manufacturers. Small organizations and governmental units would not be significantly affected, since any price impacts associated with this proposed action would be so minimal as not to affect the purchasing of new motor vehicles by these entities.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

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 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. S7 would be revised to read as follows:

* * * * *

S7. *Test procedures and sequence.* Each vehicle shall be capable of meeting all the applicable requirements of S5, when tested according to the procedures and in the sequence set forth below, without replacing any brake system part or making any adjustments to the brake system other than as permitted in burnish and reburnish procedures and in S7.9 and S7.10. (For vehicles only having to meet the requirements of S5.1.2 and S5.1.3 in section S5.1, the applicable test procedures and sequence are S7.1, S7.2, S7.4, S7.9, S7.10 and S7.18. However, at the option of the manufacturer, the following test procedures and sequence may be conducted: S7.1, S7.2, S7.3, S7.4, S7.5, S7.6, S7.7, S7.8, S7.9, S7.10 and S7.18. The choice of this option shall not be construed as adding to the requirements specified in S5.1.2 and S5.1.3.) For vehicles manufactured before [effective date of final rule], automatic adjusters may be locked out, at the option of the manufacturer, when the vehicle is prepared for testing. If this option is selected, adjusters must remain locked out for the entire sequence of tests. For vehicles manufactured on or after [effective date of final rule], automatic adjusters must remain activated at all times, including during burnish and testing. A vehicle shall be deemed to comply with the stopping distance requirements of S5.1 if at least one of the stops at each speed and load specified in each of S7.3, S7.5, S7.8, S7.9, S7.10, S7.15, or S7.17 (check stops) is made within a stopping distance that does not exceed the corresponding distance specified in Table II. When the transmission selector control is required to be in neutral for a decelereation, a stop or snub shall be obtained by the following procedures: (1) Exceed the test speed by 4 to 8 mph; (2) close the throttle and coast in gear to approximately 2 mph above the test speed; (3) shift to neutral; and (4) when

the test speed is reached, apply the service brakes.

* * * * *

3 S7.4.1.2 would be revised to read as follows:

* * * * *

S7.4.1.2 *Brake adjustment—post burnish.* After burnishing, adjust the brakes in accordance with the manfuacturer's published recommendations, as furnished to the purchaser. If no recommendations are furnished to the purchaser, no adjustments are made.

* * * * *

4. S7.4.2.2 would be revised to read as follows:

* * * * *

S7.4.2.2 *Brake adjustment—post burnish.* After burnishing, adjust the brakes in accordance with the manufacturer's published recommendations as furnished to the purchaser. If no recommendations are furnished to the purchaser, no adjustments are made.

§ 571.121 [Amended]

5. S6 would be revised to read as follows:

* * * * *

S6. *Conditions.* The requirements of S5 shall be met by a vehicle when it is tested according to the conditions set forth below, without replacing any brake system part or making any adjustments to the brake system except as specified. Except as otherwise specified, where a range of conditions is specified, the vehicle shall be capable of meeting the requirements at all points within the range. On vehicles equipped with automatic brake adjusters, the automatic brake adjusters must remain activated at all times, including during burnish and testing.

* * * * *

Issued on January 11, 1988

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-708 Filed 1-12-88; 9:52 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket 88-04, Notice 1]

Federal Motor Vehicle Safety Standards New Pneumatic Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 109, *New Pneumatic Tires,* requires that the maximum permissible inflation pressure for each tire must be either 32, 36, 40 or 60 psi, or 240, 280 or 300 kPa. The European Tyre and Rim Technical Organisation (E.T.R.T.O.) submitted a petition for rulemaking requesting the inclusion of an additional maximum inflation pressure, 340 kPa, in the standard. This notice grants E.T.R.T.O.'s petition and proposes to include the 340 kPa pressure in Standard No. 109. Conforming amendments would be made through the standard so that test criteria suitable for this new inflation pressure would be established for the various required performance tests.

DATES: Comments must be submitted by February 29, 1988. The proposed effective date is 30 days after publication of a final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Dockets hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-4803).

SUPPLEMENTARY INFORMATION: Standard No. 109, *New Pneumatic Tires,* requires that the maximum permissible inflation pressure for each tire must be either 32, 36, 40 or 60 psi, or 240, 280, or 300 kPa. The standard specifies differing test criteria depending upon the maximum permissible inflation pressure.

The European Tyre and Rim Technical Organization (E.T.R.T.O.) submitted a petition for rulemaking requesting the inclusion of an additional inflation pressure, 340 kPa, in Standard No. 109. The petitioner stated that its members are receiving requests with increasing frequency from vehicle manufacturers for reinforced tires at an inflation pressure higher than 300 kPa, for purposes of safety and optimum vehicle handling. The requests for these tires are primarily for station wagons. E.T.R.T.O. requested that a pressure of 340 kPa be added, so that the standard inflation pressure for reinforced tires (280 kPa) can be increased for special performance requirements with no increase in tire load capacity

NHTSA addressed petitions raising almost identical issues in 1978. As discussed below, the 300 kPa maximum pressure for non-reinforced tires was added to the standard in response to those petitions. The relationship of the 300 kPa non-reinforced tire to the standard inflation pressure (240 kPa) non-reinforced tire is analagous to that of the 340 kPa reinforced tire to the 280 kPa reinforced tire. Thus, NHTSA believes that the 340 kPa pressure should be added to Standard No. 109 for the same reasons the 300 kPa pressure was added.

In 1978, Goodyear Tire & Rubber Company and the Rubber Manufacturers Association (RMA) requested amendments to permit the production of new P-type tires using a higher maximum permissible inflation pressure than then allowed in Standard No. 109. As indicated above, the standard inflation pressure for these tires is 240 kPa, and the petitioners requested inclusion of a 300 kPa pressure.

In response to these petitions, NHTSA published a notice of proposed rulemaking (NPRM) on March 2, 1978 (43 FR 8570), to add the 300 kPa pressure to Standard No. 109. The agency noted that higher inflation tires have less rolling resistance on the road and may therefore result in increased fuel economy. NHTSA stated that experiments conducted on these tires by the manufacturers indicate that such increased fuel economy can be achieved without any sacrifice of vehicle ride quality or safety.

The March 1978 NPRM also addressed the issue of the appropriate load levels during testing for the higher inflation tires. The notice stated:

> The NHTSA would require tire performance tests to be made at the same load levels as prescribed for the 240 kPa tire, because the agency tentatively concludes that these are the most severe test conditions for higher inflation pressure tires. The new high inflation tires are not extra load tires and, therefore, are not designed to carry greater tire loads. In fact, they are designed to carry identical loads as the 240 kPa tire. The agency had determined that to increase the performance test inflation to 300 kPa, for example, would actually result in easier test conditions for the endurance and high speed performance tests. The increased tire inflation pressure would result in less sidewall flex for high inflation tires than they would sustain if only inflated to 240 kPa. Removing sidewall flex increases the sidewall stiffness. Stiffer sidewalls decreases heat generation. Therefore, the NHTSA tentatively concludes that the tire should be tested at the lower inflation pressure, since this condition is more severe and better assures the safety of the tire. 43 FR 8570-1.

The agency's March 1978 proposal was adopted as a final rule in a notice published on June 5, 1978 (43 FR 24310).

Since NHTSA believes E.T.R.T.O.'s petition raises virtually identical issues to those resulting in the addition of the 300 kPa pressure, it is granting the organization's petition for rulemaking and proposing to include an additional

maximum inflation pressure of 340 kPa in Standard No. 109. Conforming amendments would be made throughout the standard establishing test criteria for the various required performance tests for this new inflation pressure. These new test criteria would be identical to those currently specified for 280 kPa tires.

The proposed amendments would become effective 30 days after publication of a final rule in the **Federal Register**. NHTSA believes that there is a good cause for an effective date within that time period since the amendments would relieve a restriction and permit the sale of tires which can provide better performance without any negative impact on safety.

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments would not impose new requirements for current tires but instead permit a new category of tire. Since the new tires that would be permitted by the proposal could provide better performance, the amendments could result in consumer benefits.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. The agency believes that few of the tire manufacturers would qualify as small businesses. Any tire manufacturers that do qualify as small businesses might benefit to a small extent by being permitted to produce these new tires. Small businesses, small organizations, and small governmental units would be affected by the proposed amendments only to the extent that they purchase motor vehicles. These small entities could benefit to small extent if they purchase vehicles with these new tires.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not have any significant impact on the human environment.

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 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.109 [Amended]

2. S4.2.1(b) would be revised to read as follows:

* * * * *

(b) Its maximum permissible inflation pressure shall be either 32, 36, 40, or 60 psi, or 240, 280, 300, or 340 kPa.

* * * * *

3. S4.2.2.2 would be revised to read as follows:

* * * * *

S4.2.2.2 *Physical dimensions.* The actual section width and overall width for each tire measured in accordance with S5.1, shall not exceed the section width specified in a submission made by an individual manufacturer, pursuant to S4.4.1(a) or in one of the publications described in S4.4.1(b) for its size designation and type by more than:

(1) (For tires with a maximum permissible inflation pressure of 32, 36, or 40 psi) 7 percent, or

(2) (For tires with a maximum permissible inflation pressure of 60 psi or 240, 280, 300, or 340 kPa) 7 percent or 0.4 inch, whichever is larger.

* * * * *

4. S4.3.4 would be revised to read as follows:

* * * * *

S4.3.4 If the maximum inflation pressure of a tire is 240, 280, 300, or 340 kPa, then:

(a) Each marking of that inflation pressure pursuant to S4.3(b) shall be followed in parenthesis by the equivalent inflation pressure in psi, rounded to the next higher whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S4.3(c) in kilograms shall be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

* * * * *

5. Tables I–A, I–B and I–C of Appendix A would be revised to read as follows:

TABLE I-A.—FOR BIAS PLY TIRES WITH DESIGNATED SECTION WIDTH OF 6 INCHES AND ABOVE

Cord material	Maximum permissible inflation						
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Rayon (in-lbs)	1,650	2,574	3,300	1,650	3,300	1,650	3,300
Nylon or polyester (in-lbs)	2,600	3,900	5,200	2,600	5,200	2,600	5,200

TABLE I-B.—FOR BIAS PLY TIRES WITH DESIGNATED SECTION WIDTH BELOW 6 IN.

Cord material	Maximum permissible inflation						
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Rayon (in-lbs)	1,000	1,875	2,500	1,000	2,500	1,000	2,500
Nylon or polyester (in-lbs)	1,950	2,925	3,900	1,950	3,900	1,950	3,900

TABLE I-C.—FOR RADIAL PLY TIRES

Size Designation	Maximum permissible inflation						
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Below 160 mm (in-lbs)	1,950	2,925	3,900	1,950	3,900	1,950	3,900
160 mm or above (in-lbs)	2,600	3,900	5,200	2,600	5,200	2,600	5,200

6. Table II Of Appendix A would be revised to read as follows:

TABLE II.—TEST INFLATION PRESSURES

Maximum permissible inflation pressure	32 lb/in²	36 lb/in²	40 lb/in²	60 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Pressure to be used in tests for physical dimensions, bead unseating, tire strength, and tire endurance	24	28	32	52	180	220	180	220
Pressure to be used in test for high-speed performance	30	34	36	58	220	260	220	260

Issued on January 11, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-707 Filed 1-12-88; 9:52 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 53, No. 9
Thursday, January 14, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Advisory Council on Rural Development; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of the Secretary schedules the third meeting of the National Advisory Council on Rural Development:

Name: National Advisory Council on Rural Development.

Date: January 27-28, 1988.

Time and Place: January 27-28, 1988; Sheraton Park Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia. January 27, 8:30 a.m.-5:00 p.m.; January 28, 8:30 a.m.-2:00 p.m.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To advise the Secretary on the rural development needs, goals, objectives, plans, and recommendations of multistate, State, substate and local organizations and jurisdictions. The Council will provide the Secretary with assistance in identifying rural problems and supporting efforts and initiatives in rural development.

Contact Person: Jeanne Kling, Acting Assistant, Office of the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, Room 219-A, Administration Building, Washington, DC 20250, telephone (202) 447-5371.

Done at Washington, DC, this 11th day of January, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88-681 Filed 1-13-88; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

ASARCO's Rock Creek Project, Silver/Copper Mine, Kootenai National Forest, Sanders County, MT; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, in conjunction with Montana Department of State Lands, will prepare an environmental impact statement for a proposal to permit the development of ASARCO's Rock Creek silver/copper mine project approximately 13 miles from Noxon, Montana.

ASARCO's proposed plan of operation was submitted pursuant to Forest Service locatable mineral regulations 36 CFR Part 228 Subpart A, and State of Montana Metal Mine Reclamation Act Title 82, Chapter 4, Part 3, MCA.

Government agencies and the public who may be interested in or affected by the proposal are invited to participate in the scoping process. The Forest Service, in conjunction with Montana Department of State Lands, will hold a public scoping meeting on Wednesday, January 27, 1988, at the Noxon School at 7:00 p.m. A scoping document is available for public review.

The EIS will consider a range of alternatives based on the issues and concerns associated with the project. The two alternatives that can be specified at present are the No Action alternative and the alternative to approve the project as proposed. Other alternatives may consist of modifications or changes in the various elements comprising the proposal.

Upon determination that ASARCO's Plan of Operation inclusive of environmental baseline reports is complete, the analysis process is expected to take about 12 months. The draft environmental impact statement should be available approximately 7 months from completeness determination. A public meeting will be held in conjunction with the issuance of the draft Environmental Impact Statement.

The final Environmental Impact Statement should be available approximately 12 months from completeness determination.

James F. Rathbun, Forest Supervisor, Kootenai National Forest, Libby, Montana, is the responsible official.

Written comments concerning the analysis should be sent to the Forest Supervisor, Kootenai National Forest, Supervisor's Office, 506 U.S. Hwy. 2 West, Libby, Montana 59923 by February 17, 1988.

Questions about the proposed action and environmental impact statement should be directed to Ron Erickson, Project Coordinator, Kootenai National Forest, telephone (406) 293-6211.

Date: January 5, 1988.

James F. Rathbun,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 88-591 Filed 1-13-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Louisiana Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m., on January 21, 1988, at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana. The purpose of the meeting is to hold orientation for the newly rechartered Advisory Committee and conduct program planning for the balance of fiscal year 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael R. Fontham, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 4, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-592 Filed 1-13-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on January 25, 1988. Committee meetings will also be held on this date. Public comment is welcome.

TIME AND PLACE: Presidential Board of Advisors on Private Sector Initiatives: Monday, January 25, 1988, 1:30 p.m., at the New York Stock Exchange, 11 Wall Street, New York, New York. Room to be posted.

Committee Meetings: Monday, January 25, 1988, 10:30 a.m., at the New York Stock Exchange, 11 Wall Street, New York, New York. Rooms to be posted.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377-4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377-3942), Main Commerce Building, Washington, DC 20230.

Dated: January 11, 1988

Robert H. Brumley,

Deputy General Counsel.

[FR Doc. 88-795 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-BP-M

Bureau of the Census

Annual Surveys in Manufacturing Area; Determination

In conformity with Title 13, United States Code (sections 131, 182, 224, and 225), I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys. These surveys are listed under major headings based on the *Standard Industrial Classification Manual* (1987 edition) promulgated by the Office of Management and Budget for use of Federal Government statistical agencies.

Annual Current Industrial Reports

Major Group 20—Food and Kindred Products

Confectionery

Major Group 22—Textile Mill Products

Broadwoven fabrics finished
Narrow fabrics
Yarn production
Knit fabric production
Carpets and rugs

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Men's and boys' apparel
Women's apparel
Underwear and nightwear
Children's apparel
Gloves and mittens

Major Group 24—Lumber and Wood Products, Except Furniture

Hardwood plywood
Softwood plywood
Lumber production and mill stocks

Major Group 26—Paper and Allied Products

Pulp, paper, and board

Major Group 28—Chemicals and Allied Products

Industrial gases
Inorganic chemicals
Pharmaceutical preparations, except biologicals
Inorganic fertilizer materials and related products
Paint and allied products

Major Group 30—Rubber and Miscellaneous Plastics Products

Rubber
Plastics bottles

Major Group 31—Leather and Leather Products

Footwear

Major Group 32—Stone, Clay, and Glass

Consumer, scientific, technical, and industrial glassware Fibrous glass

Major Group 33—Primary Metal Industries

Steel mill products
Insulated wire and cable
Nonferrous castings
Ferrous castings

Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment

Selected heating equipment

Major Group 35—Machinery, Except Electrical

Internal combustion engines
Farm machinery and lawn and garden equipment
Mining machinery and mineral processing equipment
Air-conditioning and refrigeration equipment
Computers and office and accounting machines
Pumps and compressors
Selected industrial air pollution control equipment
Construction machinery
Anti-friction bearings
Fluid power products
Robots

Major Group 36—Electrical Machinery, Equipment, and Supplies

Radios, televisions, and phonographs
Motors and generators
Wiring devices and supplies
Switchgear, switchboard apparatus, relays, and industrial controls
Communication equipment
Semiconductors and printed circuit boards
Electromedical equipment
Electric housewares and fans
Electric lighting fixtures
Major household appliances

Major Group 37—Transportation Equipment

Aerospace orders

Major Group 38—Professional, Scientific, and Controlling Instruments; Photographic and Optical Goods; Watches and Clocks

Selected instruments and related products

In addition, the following surveys are conducted on a mandatory basis only in the years for which the economic censuses are conducted. In the intervening years, surveys are conducted on a voluntary basis.

Major Group 25—Office Furniture, Supplies, and Related Products

Office furniture

Major Group 30—Rubber and Plastics Products

Rubber and plastic hose and beltings
Mechanical rubber goods

Major Group 35—Industrial Equipment and Consumer Goods

Vending machines (coin-operated)

The following survey represents an annual supplement of a monthly survey and will cover the same establishments canvassed monthly. There will be no duplication of reporting, however, since the type of data collected on the annual supplement will be different from that collected monthly.

Major Group 32—Stone, Clay, and Glass

Glass containers

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

Major Group 20—Food and Kindred Products

Flour milling products

Major Group 22—Textile Mill Products

Broadwoven fabrics (gray)
Consumption on the woolen system and worsted combing

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Sheets, pillowcases, and towels

Major Group 32—Stone, Clay, and Glass

Glass containers
Refractories
Clay construction products
Flat glass

Major Group 33—Primary Metal Industries

Inventories of steel producing mills

Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment

Plumbing fixtures
Steel shipping drums and pails
Closures for containers

Major Group 35—Machinery, Except Electrical

Construction machinery

Major Group 36—Electrical Machinery, Equipment, and Supplies

Fluorescent lamp ballasts
Electric lamps

Major Group 37—Transportation Equipment

New complete aircraft and aircraft engines, except military
Truck trailers

Annual Survey of Manufactures

The annual survey of manufactures (ASM) is a simple survey conducted in each of the 4 years between the censuses of manufactures. For 1987, which is a census year, the ASM report form (MA-1000) replaces the first page of the regular census form for those establishments included in the ASM sample panel. In addition to information on employment, payroll, and other items normally requested on the regulator census form, establishments included in the ASM sample are requested to supply information on assets, capital expenditures, retirements, depreciations, rental payments, supplemental labor costs, and costs of purchased services for 1987.

Annual Survey of Research and Development

A survey of research and development (R&D) activities is conducted. The major data obtained in this survey include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D and, for comparative purposes, the total net sales and receipts and the total employment of the company.

Annual Survey of Shipments to Federal Government Agencies

A survey of shipments to the Federal Government is conducted to provide information on the effect of Federal procurement on 84 selected industries. Plans are to expand the survey for 1987 to collect information on foreign vulnerability and manufacturers' ability to increase military production.

Annual Survey of Pollution Abatement Costs and Expenditures

The annual survey of pollution abatement costs and expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. This survey also will obtain the costs recovered from abatement activities.

Annual Survey of Plant Capacity

The annual survey of plant capacity obtains information such as the amount of time a plant is in operation; operating rates as related to preferred levels and practical capacity; the value of production and other statistics for actual, preferred, and practical capacity operating levels; and the reasons for operating at less than capacity.

The report forms will be furnished to firms included in these surveys. Copies of survey forms are available on request to the Director, Bureau of the Census, Washington, DC 20233.

I have, therefore, directed that these annual surveys be conducted for the purpose of collecting the data as described.

Date: January 7, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88-627 Filed 1-13-88; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

U.S. and Foreign Commercial Service Advisory Council; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR Subpart 101-6-10 (1987), Federal Advisory Committee Management Rule, and after consultation with the General Services Administration, the Secretary of Commerce has determined that the establishment of the U.S. and Foreign Commercial Service Advisory Council is in the public interest in connection with the performance of duties imposed on the Department by law.

The Council will advise the Secretary through the Director General of the U.S. and Foreign Commercial Service on operations of the US&FCS, and its programs and services for export promotion.

The Council consists of approximately 30 members, most of whom will be from the private sector. The Council will have well balanced representation from small and large businesses, state and local development agencies, industry associations and Chambers of Commerce from both the United States and overseas.

The Council will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act. The Council's charter will be filed under the Act, 15 days from the date of this notice.

Interested persons are invited to submit comments regarding the establishment of the U.S. and Foreign Commercial Service Advisory Council. Comments and inquiries may be addressed to Genevieve McSweeney Ryan, Speical Assistant to the Director General for the U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230, phone (202) 377-3641.

Date: January 9, 1987.

Alexander H. Good,

Director General U.S. and Foreign Commercial Service.

[FR Doc. 88-692 Filed 1-13-88; 8:45 am]

BILLING CODE 3510-FP-M

[C-557-701]

Postponement of Preliminary Countervailing Duty Determination; Carbon Steel Wire Rod From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, Armco, Inc., Georgetown Steel Corp., and Raritan River Steel Co., the Department of Commerce is postponing its preliminary determination in the countervailing duty investigation of carbon steel wire rod from Malaysia. The preliminary determination will be made on or before February 1, 1988.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377-0189 (Morrison) or 202/377-0161 (Taverman).

SUPPLEMENTARY INFORMATION: On November 2, 1987, petitioners filed a timely request for an extension of the preliminary determination pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act).

On November 13, 1988, we published the notice of postponement of the countervailing duty investigation of carbon steel wire rod from Malaysia (52 FR 43633). The notice stated that we would issue our preliminary determination on or before January 15, 1988.

On January 4, 1988, the petitioners requested that the Department further postpone its preliminary determination for an additional 16 days. Accordingly, the period for the preliminary determination in this investigation is hereby extended. We intend to issue a preliminary determination on or before February 1, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 11, 1988.

[FR Doc. 88-687 Filed 1-13-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-701]

Postponement of Preliminary Countervailing Duty Determination; Carbon Steel Wire Rod From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, Armco, Inc., Atlantic Steel Co., Georgetown Steel Corp., and Raritan River Steel Co., the Department of Commerce is postponing its preliminary determination in the countervailing duty investigation of carbon steel wire rod from Singapore. The preliminary determination will be made on or before February 16, 1988.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377-0189 (Morrison) or 202/377-0161 (Taverman).

SUPPLEMENTARY INFORMATION: On December 17, 1987, petitioners filed a timely request for an extension of the preliminary determination pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act).

On January 4, 1988, we published the notice of postponement of the countervailing duty investigation of carbon steel wire rod from Singapore (53 FR 47). The notice stated that we would issue our preliminary determination on or before February 1, 1988.

On January 4, 1988, the petitioners requested that the Department further postpone its preliminary determination for an additional 14 days. Accordingly, the period for the preliminary determination in this investigation is hereby extended. We intend to issue a preliminary determination on or before February 16, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 11, 1988.

[FR Doc. 88-688 Filed 1-13-88; 8:45 am]

BILLING CODE 3510-DS-M

President's Export Council Executive Committee; Meeting

A meeting of the President's Export Council Executive Committee will be held February 2, 1988, 12:30-4:00 p.m., Room 4832, Department of Commerce, 14th and Constitution NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: Discussion of matters properly classified under Executive Order 12356, dealing with trade negotiations, trade and economic relations with other countries, trade barriers, budget and trade deficits, and other trade related matters.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on Octiber 27, 1987, in accordance with the Federal Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6622, U.S. Department of Commerce, (202) 377-3271.

For further information or copies of the minutes contact Laureen Daly (202) 377-1125, Room 3214, U.S. Department of Commerce, Washington, DC 20230.

Date: January 11, 1988.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 88-686 Filed 1-13-88; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Minority Business Development Center Program; Solicitation of Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of

performance for the first 12 months is estimated at $318,118 for the project performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Riverside Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $270,400 in Federal funds and a minimum of $47,718 in non-Federal funds (which can be a combination of cash, in-kind contributions and fees for services).

The I.D. Number for this project will be 09-10-88010-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC, program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94150.

January 27, 1988 at 10:00 a.m.

Proposals are to be Mailed to the Following Address:

Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California, 94150, 415/974-9597.

Closing date: The closing date for applications is February 22, 1988. Applications must be postmarked by midnight February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Xavier Mena,

Regional Director, San Francisco Regional Office.

January 7, 1988.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

[FR Doc. 88-622 Filed 1-13-88; 8:45 am]

BILLING CODE 3510-21-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-364,920 (4,702,870)
Method and Apparatus for Forming Three Dimensional Structural Components From Wood Fiber

SN 7-075,168
Control of Parasitic Nematode Ova with *Bacillus Sphaericus*

SN 7-101,918
Monoclonal Antibodies to Soybean Kunitz Trypsin Inhibitor and Immunoassay Methods

Department of Commerce

SN 6-802,091 (4,705,949)
Method and Apparatus Relating To Specimen Cells for Scanning Electron Microscopes

SN 6-868,485 (4,707,013)
Split Rail Parallel Gripper

Department of Health and Human Services

SN 6-332,341 (4,704,384)
Aziridinyl Quinone Antitumor Agents

SN 6-781,461 (4,704,357)
Immortalized T-Lymphocyte Cell Line For Testing HTLV-III Inactivation

SN 6-865,055 (4,694,007)
Use of Trimetrexate As Antiparasitic Agent

SN 7-082,464
Alteration of Biological Properties of Vaccinia Virus by Insertion of Lymphokine Genes

SN 7-085,707
Method for Treating Malignancy and Autoimmune Disorders in Humans

SN 7-098,977
Improved Vaccine Against Rotavirus Diseases and Method of Preparing Same

SN 7-100,412
Sensitive Bioassay for Detecting Viruses and Screening Antiviral Agents

SN 7-100,909
Reagents and Probes For Distinguishing and Isolating Different GTP-Binding Proteins

SN 7-107,098
A Kit For Diagnosing Cancer Metastatic Potential

Department of the Air Force

SN 6-149,792 (4,686,826)
Mixed Flow Augmentor Incorporating A Fuel/Air Tube

SN 6-298,687 (4,687,337)
Atmospheric Aerosol Extinctiometer

SN 6-463,191 (4,687,338)
Method of Measurement of Haze In Transparencies

SN 6-493,593 (4,694,195)
Ratio Analyzer

SN 6-576,498 (4,686,534)
Retro Directive Radar and Target Simulator Beacon Apparatus and Method

SN 6-616,347 (4,682,126)
Electromagnet For Programmable Microwave Circulator

SN 6-624,567 (4,680,797)
Secure Digital Speech Communication

SN 6-656,844 (4,680,589)
Adaptive Fast Fourier Transform Weighting Technique To Increase Small Target Sensitivity

SN 6-675,174 (4,678,999)
Charge Depletion Meter

SN 6-689,700 (4,689,758)
Microcomputer Controlled Image Processor

SN 6-705,827 (4,683,474)
Survivable Ground Base Sensor

SN 6-721,968 (4,696,569)
Method of Measuring Spherical Aberration and Apparatus Therefor

SN 6-726,568 (4,679,917)

Device For Measuring Intraocular Light Scatter
SN 6-727,507 (4,685,772)
Tunable Acousto-Optic Filter With Improved Spectral Resolution and Increased Aperture
SN 6-733,957 (4,687,884)
Low Drug Conductor
SN 6-736,898 (4,687,281)
Synthetic Aperture Laser Radar
SN 6-758,927 (4,678,142)
Precision Guided Antiaircraft Munition
SN 6-763,575 (4,679,934)
Fiber Optic Pyrometry With Large Dynamic Range
SN 6-772,814 (4,691,305)
Automatic Attenuator For Sonobuoys
SN 6-782,629 (4,681,261)
Heat Resistant Short Nozzle
SN 6-789,863 (4,685,194)
Direct Moat Self-Aligned Field Oxide Technique
SN 6-790,292 (4,695,973)
Real-Time Programmable Optical Correlator
SN 6-804,194 (4,683,387)
Quadrature Switch Apparatus for Multi Mode Phase Shift Drivers
SN 6-812,206 (4,679,939)
In Situ Small Particle Diagnostics
SN 6-816,596 (4,684,904)
Low Phase Noise Two Port Voltage Controlled Oscillator
SN 6-819,334 (4,683,309)
Phenylquinoxaline Resin Monomers
SN 6-822,579 (4,683,443)
Monolithic Low Noise Amplifier With Limiting
SN 6-831,894 (4,679,086)
Motion Sensitive Frame Integration
SN 6-831,902 (4,693,546)
Guided-Wave Optical Power Divider
SN 6-831,910 (4,693,547)
Optically Controlled Integrated Optical Switch
SN 6-836,876 (4,680,500)
Integral Grid/Cathode For Vacuum Tubes
SN 6-838,970 (4,682,176)
Active Matching Transmit/Receive Module
SN 6-866,807 (4,683,613)
Separable Hinge With Self Retaining Hinge Pin
SN 6-867,642
Whole Word, Phrase or Number Reading
SN 6-867,727 (4,687,652)
Low Temperature Formation Of Mullite Using Silicon Alkoxide and Aluminum Alkoxide
SN 6-888,608 (4,681,014)
Missile Azimuth Alignment System
SN 6-891,822 (4,686,448)
Slewing Power Supply for Programmable Phase Shifter Drive
SN 6-896,035 (4,680,063)
Method for Refining Microstructures of Titanium Ingot Metallurgy Articles
SN 6-903,361 (4,686,397)
Brush and Commutator Segment Torquer Motor
SN 6-916,964 (4,683,340)
Bis(Benzilyloxy) Compounds
SN 6-930,163 (4,686,997)
Skeletal Bone Remodeling Studies Using Guided Trephine Sample
SN 7-011,656
An Apparatus and Method For Soldering and Contouring Foil E-Beam Windows
SN 7-048,110
Fabrication of Cooled Faceplate Segmented Aperture Mirrors (SAM) by Electroforming
SN 7-060,882
A Fault Tolerant Test Apparatus For Large Rams
SN 7-066,290
Digital Detection Circuit
SN 7-066,291
Digital Clock Synchronizer Apparatus
SN 7-069,999
Electromagnetic Pulse Rotary Seal
SN 7-084,342
Uniform Excitation Apparatus By a Single Power Supply of Two Dimensional Arrays of Waveguide Gas Lazers
SN 7-084,784
Benzazole Substituted Teraphthalic Acid Monomers
SN 7-085,094
Pendant Benzazole Rigid-Rod Aromatic Heterocyclic Polymers
SN 7-087,857
In-Situ Beta Alumina Stress Simulator
SN 7-090,461
Subject Operated Pupilometer
SN 7-100,385
Quick Disconnect Duct Coupler

Department of the Army

SN 7-068,389
Electromagnetic Launcher With Cryogenic Cooled Superconducting Rails
SN 7-089,100
Periodic Permanent Magnet Structure With Increased Useful Field
SN 7-091,686
Method of Manufacturing Dislocation and Etch Channel Free Quartz Resonator Blanks
SN 7-109,144
Potable Water Corrosion Test Loop and Specimen Holder Therefor
SN 7-112,192
Permanent Magnet Structure For A Nuclear Magnetic Resonance Imager For Medical Diagnostics
SN 7-113,293
Permanent Manget Structures For the Production Of Transverse Helical Fields

Tennessee Valley Authority

SN 6-899,567 (4,670,038)
Cyclotriphosphazatriene-Derivatives as Soil Urease Activity Inhibitors

[FR Doc. 88-701 Filed 1-13-88; 8:45 am]
BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 29 January 1988.

Times of Meeting: 0915-1130 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet to provide a classified briefing to the Defense Science Board (DSB). The briefing will cover the ongoing findings of the ASB Subgroup on Competitive Strategies, and provide information to the DSB in their study effort. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-600 Filed 1-13-88; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

DEPARTMENT OF TRANSPORTATION

Coast Guard

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Widening of the New Jersey Turnpike

AGENCIES: Army Corps of Engineers, DOD. Coast Guard, DOT.

ACTION: Notice of intent to prepare a draft environmental impact statement for a regulatory permit action.

1. Description of Proposed Action

SUMMARY: The New Jersey Turnpike Authority proposes to widen the New Jersey Turnpike from a point just north of Interchange 11 in Woodbridge, Middlesex County to U.S. Route 46 near the Turnpike's northern terminus in Ridgefield Park, Bergen County. The total length of the project is approximately 26 miles along the existing portion of the Turnpike alignment that currently crosses five counties and twelve municipalities in northeastern New Jersey. The work would create a roadway 12 to 14 lanes wide along the length of the project, a new interchange, and include the widening or reconstructing of most other interchanges. Approximately 181 acres of wetlands would be filled and 24 waterbodies would be crossed. The U.S. Army Corps of Engineers and the U.S. Coast Guard are joint lead agencies for

the project under Section 404 of the Clean Water Act and the General Bridge Act of 1946 and will jointly prepare the EIS.

2. Reasonable Alternatives

a. No action (no build).

b. Improve mass transit facilities.

c. Construct roadway to span all waters of the United States.

(d) Construct new roadway along an upland alignment.

e. Redesign other roadways in area to accommodate Turnpike's future traffic load.

f. Widen the eastern spur of the Turnpike.

g. Reverse direction of certain lanes during peak travel times.

h. Reduce number of proposed lanes.

i. Use of high occupancy vehicle lanes.

3. Scoping Process

a. Public Involvement. Scoping meetings will be held as appropriate during the EIS development process to obtain public and agency input to the DEIS, and all parties are encouraged to submit comments at any time during the development of the DEIS. The draft and final EIS will be distributed for comment to all known interested parties and appropriate agencies.

b. Significant Issues Requiring In-depth Analysis. Need for the work; practicable alternatives to the proposal; impacts to fish and wildlife habitat and resources; water quality; socio-economics; cultural resources; land use and zoning; air quality; noise; contaminated sediments; landfills; groundwater; relocation of the 16W Interchange; and mitigation for projection impacts.

c. Assignments. The U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service have agreed to be cooperating agencies in the preparation of this EIS.

d. Environmental review and consultation. Review will be as outlined in Council on Environmental Quality regulations dated November 29, 1983 (40 CFR Parts 1500–1508), Corps regulations ER 200–2–2 dated August 25, 1980 (revised March 2, 1981) and Coast Guard Commandant Instruction M16475.1B. Appropriate concerned agencies and individuals will be consulted throughout the preparation of the EIS.

4. Scoping Meeting Will Be Held

January 26, 1988, 10:00 AM—Hackensack Development Commission Offices 1, DeKorte Park Plaza, Lyndhurst, New Jersey 07003

5. Estimated Date of Statement Availability

March 1989.

ADDRESSES: Questions about the proposed action and DEIS can be answered by:

U.S. Coast Guard: Commander (OBR), First Coast Guard District, Governors Island, Building 135A, New York, New York 10004–5098 ATTN: Gary Kassof.

U.S. Army Corps of Engineers: U.S. Army Engineer District, New York, 26 Federal Plaza, New York, New York 10278–0090 Project Manager: James Haggerty, ATTN: CENAN–OP–R. Tel. No. (212) 264–0184.

EIS Coordinator: Michele Farmer. ATTN: CENAN–PL–E. Tel. No. (212) 264–4662.

Date: January 1988.

Simeon M. Hook,

Acting Chief, Planning Division U.S. Army Engineer District, New York.

December 30, 1987.

Gary Kassof,

Acting Bridge Administrator First Coast Guard District.

[FR Doc. 88–596 Filed 1–13–88; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87–19–NG]

Mobil Gas Company Inc.; Order Approving Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order approving authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Mobil Gas Company Inc. (MOGASCO) to import Canadian natural gas on a short-term basis. The order issued in ERA Docket No. 87–19–NG authorizes MOGASCO to import up to 100 Bcf of Canadian natural gas during a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., January 7, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–714 Filed 1–3–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board, Education Panel; Notice of Open Meeting

Notice is hereby given of the following meeting:

Name: Education Panel of the Energy Research Advisory Board (ERAB).

Date & Time: January 27, 1988, 8:30 a.m.–5:00 p.m.

Place: Battelle Memorial Institute, 2030 M Street, NW., Suite 800, Washington, DC 20036.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5767.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The purpose of the Panel is to review DOE's activities with the education community to ensure that the Department is playing its proper role with other Federal agencies and the private sector in the support of scientific and technical education and training.

Tentative Agenda

January 27, 1988

8:30 a.m. Discuss Panel's Draft Report
12:00 Noon Lunch
1:00 p.m. Continue Morning Discussion
4:50 p.m. Public Comment (10 Minute Rule)
5:00 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 7, 1988.

J. Ronald Young,

Director, Office of Management, Office of Energy Research.

[FR Doc. 88-715 Filed 1-13-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP87-4-000 and CP87-28-000]

PennEast Gas Service Co. and Texas Eastern Transmission Corp.; Intent To Prepare an Environmental Assessment and Request for Comments on Environmental Issues on The PennEast Phase I Looping Project

January 11, 1988.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) will prepare an environmental assessment on the facilities proposed in the above-referenced dockets. The *PennEast Phase I Looping Project* would consist of 28.01 miles of 36-inch-diameter pipeline on Texas Eastern Transmission Corporation's (Texas Eastern) Penn-Jersey Transmission System in central Pennsylvania; an additional 17,200 horsepower at two existing compressor stations; and a new 3,500 horsepower compressor station in Centre Hall, Pennsylvania. The staff is requesting comments on:

(1) The scope of the environmental assessment;

(2) Significant environmental issues;

(3) Alternatives to the proposal; and

(4) Measures to mitigate environmental impacts.

Written comments, submitted in accordance with the instructions in this notice, should be filed no later than February 12, 1988.

Project Background

On October 2, 1986, PennEast Gas Service Company (PennEast) filed an application with the FERC in Docket No. CP87-4-000 to construct 59.26 miles of 24- and 36-inch-diameter pipeline, and 24,100 horsepower of compression in Pennsylvania and New Jersey. Facilities would have been constructed in two phases and serve to increase capacity along Texas Eastern's Penn Jersey Transmission Line through central Pennsylvania. Phases I and II would have provided an additional 245,000 dekatherms per day (Dtd) for five local distribution companies.

The Phase I facilities proposed by PennEast are related to loop segments and compression proposed by Texas Eastern in Docket No. CP87-28-000 on October 16, 1986 where it proposed to construct another 8.00 miles of 36-inch-diameter pipeline loops and 17,200 horsepower of compression in Pennsylvania. Texas Eastern would have used 3,200 horsepower and the remaining 14,000 horsepower would have been allocated to PennEast Phase I. The facilities would have provided 23,115 Dtd for the purpose of firming up an interruptible transportation and delivery service for Consolidated Edison Company of New York, Inc., pursuant to Texas Eastern's SS-II storage service.

Subsequently in a related but separate action, Texas Eastern and PennEast filed a joint application on November 24, 1986 in Docket No. CP87-92-000 to construct 315.7 miles of pipeline and 69,000 horsepower of compression in Ohio, West Virginia, Pennsylvania, New Jersey, and New York. This project—the *Capacity Restoration and Expansion Program*—would have restored capacity by replacing the facilities on Texas Eastern's Line No. 1 and Line No. 2 across southern Pennsylvania, as well as provide incremental capacity for several other projects. A portion of the proposed incremental capacity on Line No. 1 and Line No. 2 would have been dedicated to the services proposed in Docket Nos. CP87-4-000 and CP87-28-000; thereby rendering unnecessary the majority of the loops and compression which had been proposed for the Penn Jersey Transmission Line. Therefore environmental review work on the Penn Jersey loop projects in Docket Nos. CP87-4-000 and CP87-28-000 was halted.

On February 24, 1987, the FERC issued a "Notice of Intent to Prepare an Environmental Assessment for the *Capacity Restoration and Expansion Program* and Request for Comments on Environmental Issues." At approximately the same time, issues surfaced concerning potential polychlorinated biphenyls (PCBs) contamination of those facilities proposed for abandonment or removal. The overall project schedule has been delayed pending resolution of these issues.

On November 2, 1987, PennEast filed a Notice of Partial Withdrawal by which Phase II would be withdrawn from Docket No. CP87-4-000. As a result, PennEast would now construct only the Phase I facilities previously identified which consist of 20.01 miles of 36-inch-diameter pipeline loops on Texas Eastern's Penn-Jersey Transmission System, and 3,500 horsepower of compression at Centre Hall Pennsylvania. The Phase I facilities would provide a total of up to 100,000 Dtd firm sales of gas to the following five local distribution companies in New York and New Jersey: Brooklyn Union Gas Company, Long Island Lighting Company, Elizabethtown Gas Company, New Jersey Natural Gas Company, and Public Service Electric and Gas Company.

Therefore the environmental assessment in the current project, the *PennEast Phase I Looping Project*, will analyze the Phase I facilities proposed by PennEast in Docket No. CP87-4-000. The document will also analyze the 8.00 miles of 36-inch-diameter pipeline loops and 17,200 horsepower of compression proposed by Texas Eastern in Docket No. CP87-28-000, since the two projects would share compressor additions and form continuous loop segments in several locations.

Proposed Facilities

The general locations of the proposed pipeline loop segments and compressor facilities are identified in Figure 1.[1] Texas Eastern and PennEast would construct a total of 28.01 miles of 36-inch-diameter pipeline at the four loop segments identified in table 1. The loop segments would require an additional 25-foot-wide permanent right-of-way, with a 75-foot-wide temporary right-of-way during construction.

TABLE 1.—PROPOSED PIPELINE LOOPS

Segment	Length (miles)	County
Lilly Loop	3.75	Cambria, Blair.
Shermans Dale Loop	5.00	Dauphin.
Bernville Loop	5.76	Berks.
Bechtelsville Loop	13.50	Berks, Montgomery, Lehigh, Bucks.

Texas Eastern and PennEast would also construct a total of 20,700 horsepower of compression at two existing sites and at one new location identified in table 2.

[1] Figure 1 is not printed in the **Federal Register**, but is available from the FERC's Division of Program Management; Public Reference Section telephone (202) 357-8118.

TABLE 2.—PROPOSED COMPRESSOR FACILITIES

Location	Horsepower	Site (acres)	County
Centre Hall.	3,500-new	33	Centre.
Shermans Dale.	8,600-upgrade	existing	Perry.
Bernville	8,600-upgrade	existing	Berks.

Construction Techniques

The pipeline facilities are proposed for construction between June and November 1988. Construction would begin with the clearing and grading of a temporary right-of-way approximately 75-feet-wide to prepare a relatively level strip to accommodate construction equipment. Rotary wheel ditching machines, backhoes, or rippers would then excavate a trench sufficiently deep to provide the minimum depth of cover, normally 36 inches, required by the U.S. Department of Transportation. Blasting would be required when areas of consolidated rock are encountered. Topsoil would be removed and conserved in all cropland areas.

After trenching, pipe segments would be strung along the right-of-way, bent to conform to the contours of the trench welded together, coated, and lowered into the trench. Backfilling of the trench would use previously excavated materials. Topsoil that was conserved would be replaced at its original horizon. The right-of-way would be restored to its original contour as much as practicable, and reseeded, limed, fertilized, and mulched in accordance with Texas Eastern's erosion and sedimentation control plans filed with appropriate state agencies and reviewed by the staff.

Comment Procedure

The FERC staff has identified several issues which will be specifically addressed in its *PennEast Phase I Looping Project* Environmental Assessment and requests comments on the following issues:

(1) Alternatives to the proposed Centre Hall Compressor Station including alternative sites in Potter and Spring Townships.

(2) Conformance of pipeline loop construction with on-going site contamination cleanup activities at the Lilly and Bechtelsville Compressor Stations.

Comments are also solicited on any additional topics of environmental concern to residents and others in the project area.

A copy of this notice and request for comments on environmental issues have been sent, as appropriate, to Federal, State, and local environmental agencies, parties in this proceeding, and the public. All county planning commissions in the project area have been provided copies of detailed maps which identify the location of the proposed project in their respective areas. Comments on the scope of the environmental assessment should be filed as soon as possible but no later than February 12, 1988. All written comments must reference Docket No. *CP87-4-000* and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The environmental assessment will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The environmental assessment will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal, and State agencies, and to interested members of the public. The environmental assessment may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Chris Zerby, Project Manager, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-9068.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-675 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-45-000]

Arkla Energy Resources a Division of Arkla, Inc.; Proposed Changes in FERC Gas Tariff

January 11, 1988

Take notice that Arkla Energy Resources ("AER"), a division of Arkla, Inc., on December 31, 1987 tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volumes 1-A and 2. AER states that the proposed tariff sheets reflect an annual overall jurisdictional rate increase of approximately $79.6 million proposed to be effective February 1, 1988. AER states that the principal reasons for the proposed rate increases are the shifts in the extent and manner in which its system is now used and an increase in recoupable gas prepayments.

AER states that for the purposes of its filing, AER has, classified and allocated costs and designed its rates based on the modified fixed variable methodology. AER also proposes to reclassify its Gathering plant as Transmission to reflect the primary function of such facilities.

Copies of the filing were served upon AER's jurisdictional customers and interested state public service commissions.

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, 385.214). All such motions or protests should be filed on or before January 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-678 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-16-000]

National Fuel Gas Supply Corp.; Proposed Tariff Changes

January 11, 1988.

Take notice that on December 31, 1987, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 4 to become effective February 1, 1988.

National states the purpose of Twelfth Revised Sheet No. 4 is to reflect a net increase of 2.34 cents per Dth. This change consists of an increase in current purchased gas cost of 13.42 cents per Dth, and a further decrease in the purchased gas cost surcharge adjustment of 11.08 cents per Dth.

National states that copies of this filing were served upon the company's jurisdictional customers and the regulatory commissions of the states of New York, Ohio, Pennsylvania, Delaware, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Sercretary.

[FR Doc. 88-679 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-4-59-000]

Nothern Natural Gas Co.; Division of Enron Corps.; Purchase Gas Cost; Adjustment Rate Change

January 11, 1988.

Take notice that on December 31, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets:

Third Revised Volume No. 1

Fifty-Second Revised Sheet No. 4b
Twentieth Revised Sheet No. 4b.1

Original Volume No. 2

Fifty-Ninth Revised Sheet No. 1c

Northern states that it established a PGA rate of $2.2480 per MMBtu which reflects an increase of $.2876 per MMBtu from the PGA rate of $1.9604 per MMBtu established in Northern's 1988 general PGA filing.

Northern states that since the projection of 1988 gas purchased costs may not reflect the level of gas purchased costs it actually will experience on February 1, 1988, it may not bill the commodity rates established in its filing on February 1, 1988. Instead, Northern states that it will utilize its flexible PGA tariff mechanism, if necessary, to reflect in the commodity rates on February 1, 1988, the estimated actual cost of purchased gas being experienced at that time.

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, 385.214). All such motions protests should be filed on or before January 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-680 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

Oil Pipeline Tentative Valuation

January 11, 1988.

Notice

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative valuation is under consideration for the common carrier by pipeline listed below:

1982 Basic Report

Valuation Docket No. PV-1483-000
Interstate Storage & Pipe Line Corporation, 889 Elm Street, P.O. Box 1032, Manchester, New Hampshire 03105

On or before February 17, 1988, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to Rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designed in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Leon J. Slavin,

Chairman, Oil Pipeline Board.

[FR Doc. 88-676 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-192-000]

Terra Resources, Inc.; Application

January 11, 1988.

Take notice that on December 23, 1987, Terra Resources, Inc. (Applicant), of P.O. Box 2329, Tulsa, Oklahoma 74101, filed an application, pursuant to the provisions of section 7 of the Natural Gas Act, as amended, and Subpart B of 18 CFR Part 157, §§ 157.23-157.28, 157.41 of the Federal Energy Regulatory Commission's Regulations, to continue certain sales of natural gas in interstate commerce to Arkla Energy Resources, a division of Arkla Inc. (Arkla), from Latimer, Leflore, and Pittsburg Counties, Oklahoma, previously made by James C. Meade, under his small producer certificate in Docket No. CS76-897, all as more fully shown in the application which is on file with the Commission and open to public inspection.

By assignments effective December 31, 1986, Terra Resources, Inc. acquired certain acreage from James C. Meade.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 26, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-674 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

Existing Licensee's Intent To File an Application for New License; Flambeau Paper Corp.

December 9, 1987

Take notice that on October 26, 1987, Flambeau Paper Corporation, licensee for the Lower Hydroelectric Project No. 2421, filed a statement of its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Lower Hydroelectric Project No. 2421 will expire on December 31, 1993. The project is located on the North Fork of the Flambeau River in Price County, Wisconsin, and has a total capacity of 1,500 kVA.

The principal project works currently licensed for Project No. 2421 are: (1) A concrete dam 186 feet long and 32 feet high, with earth-filled abutments; (2) a powerhouse enclosing three turbine-generators; (3) a substation; and (4) appurtenant facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost, at the licensee's offices as described in the Interim Rule.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-650 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3215-8]

Science Advisory Board, Radiation Advisory Committee, Radon Measurement Proficiency Program Subcommittee; Open Meeting—January 26-27, 1988

Under Pub. L. 92-463, notice is hereby given that a meeting of the Radon Measurement Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held in the Training Room of Building 40 at the U.S. Environmental Protection Agency's Eastern Environmental Radiation Facility, 1890 Federal Drive, Montgomery, Alabama 36109. The meeting will begin at 9:00 a.m. Tuesday and adjourn no later than 5:00 p.m. Wednesday.

The Subcommittee will review the *Radon Measurement Proficiency Program* for the Office of Radiation Programs. Copies of the documents being reviewed may be obtained by calling or writing Michael Mardis at (202) 475-9605 at the Office of Radiation Programs, ANR-464, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The meeting is open to the public; however, seating is limited. Any member wishing to attend, obtain further information, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Radiation Advisory Committee, Science Advisory Board, by the close of business on January 20, 1988. The telephone number is (202) 382-2552.

Terry F. Yosie,

Director, Science Advisory Board.

Date: December 29, 1987.

[FR Doc. 88-634 Filed 1-13-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-81014; FRL-3215-6]

Intent To Remove Forty-Nine Incorrectly Reported Chemical Substances From the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In reviewing the chemical substances included on the Toxic Substances Control Act Chemical Substance Inventory, EPA has concluded that certain chemical substances were incorrectly reported and listed. EPA intends to remove 49 chemical substances from the Inventory and solicits public comment on the appropriateness of that removal.

DATES: Comments must be received by EPA on or before February 29, 1988.

ADDRESSES: Three copies of the written comments should be addressed to: OTS Document Control Officer (TS-790), Environmental Protection Agency, Office of Toxic Substances, 401 M St., SW., Washington, DC 20460.

Comments should bear the identifying notation OPTS-81014. The administrative record supporting this action is available for public inspection in the OPTS Reading Rm. NE Mall G004, at the above address, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 8(b) of the Toxic Substances Control Act (TSCA, 15 U.S.C. 2607(b)) requires the Administrator of the EPA to identify, compile, and keep current a list of chemical substances which are manufactured, imported, or processed for commercial purposes in the United States. To meet this requirement, EPA promulgated the Inventory Reporting Regulations (40 CFR Part 710), which appeared in the **Federal Register** of December 23, 1977 (42 FR 64572). These regulations provided the basis for the initial compilation of the TSCA Chemical Substance Inventory, which identifies the chemical substances in U.S. commerce.

The Inventory is a compilation of chemical substances that have been manufactured, imported, or processed in the United States for commercial purposes since January 1, 1975. The Inventory's primary purpose is regulatory. It defines a new chemical substance for purposes of section 5(a)(1)(A) of TSCA. If a chemical substance is not included in the Inventory, it is considered a new substance (section 3(9) of TSCA), and a premanufacture notice (PMN) is required at least 90 days before the manufacture or import of such a substance can begin.

For the Inventory to perform its regulatory function, it must be continuously and accurately updated as new information becomes available. Updated information includes such items as the identities of new chemical substances which are being introduced

into U.S. commerce and corrections for previously reported information. Recognizing industry's need for making corrections to incorrectly submitted Inventory reports, EPA announced, in the **Federal Register** of July 29, 1980 (45 FR 50544), that it would accept certain types of corrections related to substances previously reported for the Inventory. The types of corrections specified in the July 29 **Federal Register** notice pertain to chemical identity.

Since the publication of the Inventory and the July 29, 1980, **Federal Register** notice, the Agency has received numerous requests to correct certain previously submitted Inventory reports. The Agency reviewed these correction requests and the corresponding reports originally submitted for the Inventory, and concluded that a number of the chemical substances currently listed on the Inventory were erroneously reported. Furthermore, in reviewing the total body of the Inventory submissions, the Agency discovered that each of the incorrectly listed substances was reported only by the one submitter who subsequently requested that EPA correct the chemical identity originally reported, or who subsequently notified the Agency that the substance in question was solely manufactured for a non-TSCA use.

There are various reasons why chemical substances were incorrectly reported for the Inventory. First, the mistakes could have been typographical or transcriptional and were not known to the submitter when the original report was submitted. Second, improved analytical equipment and methods may have allowed for a more accurate description of a previously reported substance. Third, EPA may have identified reporting errors and requested corrections. Regardless of the source of error, the result is the same: A chemical substance not eligible for inclusion on the Inventory was reported and is included on the Inventory. If these mistakes are not corrected, the integrity of the Inventory will be impaired, and its reliability as an accurate compilation of commercial substances for TSCA purposes will diminish. In addition, substances which probably should be subject to PMN review before they are manufactured or imported could avoid that review if they remain on the Inventory.

In this notice, the Agency proposes to remove 49 chemical substances. The Agency has found that these chemical substances were incorrectly reported and listed. The substances proposed for removal from the TSCA Inventory are listed below in ascending Chemical Abstracts Service (CAS) Registry Number sequence. Each of the 49 chemical substances is further identified by its corresponding Chemical Abstracts Preferred Name.

Of the 49 chemical substances proposed for removal, 48 were reported for inclusion on the Inventory. Subsequently, persons who had reported the chemical substances in question informed EPA of errors in their submissions. In the majority of these cases, the errors were due to mistaken chemical identities. The corrected identities for these chemical substances have been added to the Agency's Master Inventory File. In other cases, substances which were not eligible for reporting under TSCA because they had not been manufactured, imported, or processed for a TSCA purpose in the U.S. since January 1, 1975, were included on the Inventory. The remaining chemical substance was never reported for the Inventory but was included due to a transcriptional error. This error was subsequently discovered by EPA during a routine revision of the Inventory submissions. EPA has checked each of these 49 chemical substances as originally reported, to determine whether any other person had also reported the same chemical substance for the Inventory. No others were found.

In accordance with EPA policy (OTS Order 7730.7), an erroneously or incorrectly reported chemical substance should be removed from the TSCA Inventory. Accordingly, these 49 chemical substances do not appear to be eligible for continued inclusion on the Inventory.

Publication of this notice does not mean that EPA will actually and automatically delete from the Inventory any of the 49 chemical substances listed below. Rather, the Agency solicits public comments on its intent to remove from the TSCA Inventory the listed chemical substances. EPA is specifically interested in knowing whether any of the chemical substances listed below have been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulations (40 CFR 710.2(p)), by anyone during the period January 1, 1975, through the publication date of this notice. The Agency is also interested to know whether any person can show that any of the chemical substances could have been properly reported for the Inventory. EPA also solicits comments from anyone who believes that any of the chemical substances listed below should not be removed from the TSCA Inventory for any reason. With the publication of this notice, any on-going manufacture, import, or processing of any of the 49 chemical substances listed below which was begun prior to the publication date of this notice may continue until publication of the final notice of disposition. All such comments must be submitted to EPA within the 45-day comment period.

EPA will review all comments received and will make a determination regarding the eventual status of each of the chemical substances listed below. The Agency will announce its decision in a final notice of disposition in the **Federal Register**. EPA will not consider any request to retain any of the listed chemical substances on the Inventory based solely on the manufacture, import, or processing of that substance which begins after the publication date of this notice. If the Agency determines that any of the chemical substances listed below should not be removed from the Inventory, manufacturers, importers, or processors of these chemical substances would be invited to submit Inventory reports to establish the need to retain the chemical substances on the Inventory. The substances would then remain on the Inventory. On the other hand, if the Agency concludes that a chemical substance is not eligible for inclusion on the Inventory, effective with the publication of the final notice of disposition, the chemical substance will be considered removed from the Inventory—the presence of its name in any previously published version of the Inventory notwithstanding. In that event, the premanufacture notification requirements of section 5(a) of TSCA would apply to any manufacture or import of the chemical substance from the date of removal.

Chemical Substances Proposed for Removal From TSCA Inventory

136-83-4	Phenol, 2-nonyl-.
5462-71-5	Benzeneacetic acid, 4-cyano-.
12237-62-6	C.I. Pigment Violet 27.
17736-40-2	1,3-Benzenediol, compd. with 1,3,5,7-tetraazatricyclo[3.3.1.1.^{3,7}] decane.
18342-69-3	2,4,11,13-Tetraazatetradecane diimidamide, *N,N'*-dihexyl-3, 12-diimino-, dihydrochloride.
22573-93-9	2,4,11,13-Tetraazatetradecane diimidamine, *N,N'*-bis(2-ethylhexyl)-3,12-diimino.
24925-59-5	Benzenamine, 4-nonyl-*N*-(4-nonyl phenyl)-.
24969-07-1	Oxirane, ethyl-, homopolymer.
25035-84-1	Propanoic acid, ethenyl ester, homopolymer.
31440-49-0	2-Butenedioic acid (*E*)-, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate.

35428-64-9..... 2-Propenoic acid, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate.
36089-06-2..... Butanedioic acid, methylene-, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate.
36089-48-2..... 2-Propenoic acid, 2-methyl-, polymer with *N*-(butoxymethyl)-2-propenamide, butyl 2-propenoate, ethenylbenzene and methyl 2-methyl-2-propenoate.
37569-89-4..... Poly(oxy-1,2-ethanediyl), .alpha.-(3-chloro-2-hydroxypropyl)-.omega.-(3-chloro-2-hydroxypropoxy)-.
38974-68-4..... L-Glutamic acid, *N*-(4-iodobenzoyl)-.
40195-82-2..... 1-Propene, 3,3,3-trifluoro-2-(trifluoromethyl)-, polymer with ethene.
51233-77-3..... Propanoic acid, 3-methylphenyl ester.
51728-14-4..... Phenol, 2-[bis(4-hydroxyphenyl)methyl]-.
55157-26-1..... 1,3-Isobenzofurandione, 5,5,'-carbonylbis-, polymer with 3-ethynyl benzenamine and 3,3'-[1,3-phenylene bis(oxy)]bis]benzenamine].
55782-90-6..... Benzenamine, 4-isononyl-*N*-(4-isononylphenyl)-.
57444-70-9..... L-Glutamic acid, *N*-(4-chlorobenzoyl)-.
63833-88-5..... 2(3*H*)-Furanone, dihydro-, polymer with *N*-(2-aminoethyl)-*N'*-[2-[(2-aminoethyl)amino]ethyl]-1,2-ethane diamine and *N*-(2-aminotheyl)-1,2-ethanediamine.
66794-58-9..... Sorbitan, monoisooctadecanoate, poly(oxy-1,2-ethanediyl) derivs.
67785-90-4..... Butanedioic acid, methylene-, polymer with 1,3-butadiene and 1,1-dichloroethene.
67786-03-2..... Oxirane, 2,2'-[[[2-(oxyranylmethoxy)phenyl] methylene]bis(4,1-phenylene oxymethylene)]bis-.
67859-91-0..... 1,3-Benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2,2,4-trimethyl-1,3-pentanediol.
67893-13-4..... Poly(oxy-1,2-ethanediyl),.alpha.-[[(cyclohexylamino)methyl]-4-isononylphenyl]-.omega.-hydroxy-.
67905-97-9..... 2-Propenamide, polymer with *N,N*-di-2-propenylcyclohexanamine.
67969-72-6..... Oxirane,2,2'-[[[2-(oxiranylmethoxy)phenyl] methylene]bis(4,1-phenylene oxymethylene)]bis-, polymer with 1,3-diisocyanatomethylbenzene.
68003-36-1..... Benzenesulfonamide, 2-amino-*N*-ethyl-5-methyl-*N*-phenyl-.
68071-12-5..... Nonanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, benzoate.
68214-14-2..... 1,3-Benzenedicarboxylic acid, bis (2-hydroxyethyl) ester, polymer with tetrahydro-2,5-dioxio-3-furansulfonic acid.
68298-56-6..... Hexanedioic acid, polymer with 2-ethylhexyl 2-propenoate, 2,5-furan dione and 1,2-propanediol.
68389-96-8 [1].... Soybean oil, polymer with allyl alc., glycerol, isophthalic acid, Me methacrylate, styrene and terphthalic acid.
68458-46-8 [1].... Paraffin waxes and Hydrocarbon waxes, polymers with melamine and methylolated octadecylurea.
68515-66-2 [1].... Cellulose, 2-hydroxypropyl ether, reaction products with ethylenimine.
68611-64-3 [1].... Urea, reaction products with formaldehyde.
70210-02-5..... 2-Naphthalenesulfonic acid, 7-amino-5-[[4-[(2-bromo-1-oxo-2-propenyl)amino]-2-[(4-methyl-3-sulfophenyl)sulfonyl]phenyl] azo]-, disodium salt.
70644-50-7..... 2-Propen-1-aminium, *N,N*-dimethyl-*N*-2-propenyl-, chloride, polymer with methyl-2-propenoate and 2-propenamide.
70644-52-9..... Methanaminimum, *N,N,N*-trimethyl-1-[(1-oxo-2-propenyl)amino]-, chloride, polymer with ethenyl benzene and 2-propenamide.
70644-54-1..... Methanaminium, *N,N,N*-trimethyl-1-[(1-oxo-2-propenyl)amino]-, bromide, polymer with ethenylbenzene and 2-propenamide.
70644-55-2..... 2-Propen-1-aminium, *N,N*-dimethyl-*N*-2-propenyl-, chloride, polymer with ethenylbenzene and 2-propenamide.
72845-92-2..... Formaldehyde, polymer with 3-methylphenol and nonylphenol.
72854-40-1..... Cuprate(3-), [3-hydroxy-4-[(2-hydroxy-5-[[2-(sulfooxy)ethyl]sulfonyl] phenyl]azo]-2,7-naphthalene disulfonato(5-)]-, trisodium.
73297-36-6..... Cuprate(1-), [4-[(dihydroxy[(2-hydroxy-3,5-dinitrophenyl)azo]phenyl] azo]benzenesulfonato(3-)]-, hydrogen.
73309-48-5..... 8,16-Pyranthrenedione, 2, 10-dichloro.
73758-66-4..... 2-Butenedioic acid (*E*)-, polymer with 1,3-butadiene, 1,1-dichloro ethene and 2-propenoic acid.
76822-91-8 [1].... Butanamide,2,2'-[(3,3'-dichloro [1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[3-oxo-,*N,N'*-bis(*o*-anisyl and phenyl) derivs.
83137-17-1..... 3-Piperidinemethanesulfonic acid, 5-[[5-[[4-chloro-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-1-ethyl-2-hydroxy-4-methyl-6-oxo-, trisodium salt.

[1] CAS Registry Numbers followed by an asterisk represent chemical substances of unknown or variable composition, complex reaction products, or biological materials. These substances have nonspecific registrations and lack accepted molecular formula representations.

Dated: December 31, 1987.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 88-636 Filed 1-13-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44503; FRL-3215-3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the submission of test data pursuant to final test rules for three chemicals under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to issue a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days of its receipt.

I. Test Data Submissions

This notice announces test data submissions received by EPA pursuant to test rules under section 4 of TSCA.

A. Propylene Oxide

ARCO Chemical Company submitted data to EPA for propylene oxide (CAS No. 75-56-9) on December 22, 1987. The submission describes an inhalation development toxicity study using mated CDF (Fischer 344) rats. Inhalation developmental toxicity testing in rats is required by a test rule, which is codified at 40 CFR 799.3450. Propylene oxide's major use is as a chemical intermediate. It is also used as a stabilizer in dichloromethane.

B. 2-Ethylhexanoic Acid

The Chemical Manufacturers Association (CMA) submitted data to EPA for 2-ethylhexanoic acid (CAS No. 149-57-5) on December 17, 1987. The submission describes pharmacokinetics studies in the female Fischer 344 rat.

Pharmacokinetics testing is required by a test rule, which is codified at 40 CFR 799.1650. This chemical is used as a chemical intermediate or reactant in the production of 2-ethylhexanoate metal soaps, peroxy esters, or other derivatives.

C. 1,2,4,5-Tetrachlorobenzene

The Chemical Manufacturers Association (CMA) submitted data to EPA for 1,2,4,5-Tetrachlorobenzene (CAS No. 95-94-3) on December 22, 1987. The submission describes a developmental toxicity study (by gavage) in Fischer 344 rats, and a developmental toxicity study (by gavage) in New Zealand white rabbits. Developmental toxicity testing is required by a test rule, which is codified at 40 CFR 799.1054. The chemical is found in a liquid solution that is being used as a temporary dielectric retrofilling fluid in PCB-containing electrical transformers.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44503). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OPTS Reading Room, NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: January 6, 1988.

J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-635 Filed 1-13-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-807-DR]

Major Disaster Declaration; Arkansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA-807-DR), dated December 31, 1987, and related determinations.

DATED: January 6, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Arkansas, dated December 31, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 31, 1987:

The Counties of Mississippi, Monroe, Ouachita, and Pulaski for Individual Assistance.

The Counties of Arkansas, Cross, Lee, Lonoke, Poinsett, and Woodruff as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 88-615 Filed 1-13-88; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-805-DR]

Major-Disaster Declaration; Puerto Rico

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA-805-DR), dated December 17, 1987, and related determinations.

DATED: January 6, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the Commonwealth of Puerto Rico, dated December 17, 1987, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 17, 1987:

The Municipality of Santa Isabel for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 88-616 Filed 1-13-88; 8:45 am]

BILLING CODE 6718-02-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, DC 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, DC 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: 224-200057-001.

Title: Tampa Terminal Agreement.

Parties:

Tampa Port Authority (TPA)

Garrison Stevedoring, Inc.

Synopsis: The proposed agreement is to clarify certain language appearing in the original agreement including: in Addendum I, Section B-2, the last sentence which provides that all credits shall be non-assignable by Tenant has been eliminated; in Addendum I, section B-3, the last sentence, concerning payments to TPA in connection with Tenant's stevedoring and terminalling business, has been changed to provide that excess payments shall be paid as a cash rebate; and in Addendum I, Section B-4, a new last paragraph has been added regarding dockage and wharfage payments. This paragraph provides that Tenant will be refunded payments received that were generated by Tenant's business in excess of its minimum annual guarantee.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 11, 1988.

[FR Doc. 88-673 Filed 1-13-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Landmark Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the

Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 3, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Landmark Financial Corporation*, Hartford, Connecticut; to acquire 24.9 percent of the voting shares of SBT Corp., Old Saybrook, Connecticut, and thereby indirectly acquire Old Saybrook Bank and Trust Company, Old Saybrook, Connecticut.

B. **Federal Reserve Bank of Chicago.** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Capital Directions, Inc.*, Mason, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Mason State Bank, Mason, Michigan. Comments of this application must be received by January 29, 1988.

2. *Lake City Bancorporation*, Lake City, Iowa; to become a bank holding company by acquiring 100 percent of the voting share of Lake City State Bank, Lake City, Iowa.

Board of Governors of the Federal Reserve System, January 7, 1988.

Jame McAfee,

Associate Secretary of the Board.

[FR Doc. 88-585 Filed 1-13-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Change in Method of Award for Procurement of Copiers

Notice is hereby given that the General Services Administration, Federal Supply Service has established January 28, 1988 as the deadline for public comment concerning the proposed contracting change in the method of award for copiers having copy speeds ranging from 30 copies per minute to 55 copies per minute. Agency and industry comments are to be directed to Nicholas Economou, General Services Administration, Federal Supply Service, Office Equipment Division (FCGE), Washington, DC 20406 by close of business, January 28, 1988.

The machines presently under the purchase category of Multiple Award Schedule FSC Group 36, Part IV (purchase only) will be included in Single Award Schedule FSC Group 36, Part IV, Section A (purchase and maintenance). The contract period for this schedule is 7-1-88 through 6-30-89. Type of contract will be a fixed price, requirements, indefinite delivery type. The estimated value of Government business to be granted on these "mid-range" machines is $5 million.

Method of Award will be through competitive negotiations utilizing a Life Cycle Cost evaluation technique. The Life Cycle Cost evaluation will be similar to that which has been used successfully in Single Award Schedule 36-IV-A since 1984. Similar terms and conditions as has been applicable to Single Award Schedule 36-IV-A since 1984 will also apply. Bid samples for Government testing will be required. Successful offerors will be required to provide a satisfactory subcontracting plan in accordance with Pub. L. 95-507. Anticipated issue date of the solicitation is 2-1-88 with a closing date of 3-1-88.

Copies of the proposed commercial items descriptions A-A-2571 and A-A-2572, setting forth the requirements and test procedures for the copiers in the 30-55 cpm speed range, may be obtained by calling William Daugherty at (703) 557-5135.

Dated: December 21, 1987.

Nicholas M. Economou,

Office Equipment Division.

[FR Doc. 88-595 Filed 1-13-88; 8:45 am]

BILLING CODE 6826-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Meetings

ACTION: Notice of Meetings.

The following duplicate meetings will be convened by the Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Public Health Service:

Date:		
February 9, 1988.	February 18, 1988.	February 23, 1988.
Time:		
9:30 am-4:30 pm..	9:30 am-4:30 pm..	9:30 am-4:30 pm.
Place:		
Sheraton Inn, Newark Airport, 901 Spring Street, Elizabeth, New Jersey 07201.	Hilton Inn Airport, (Detroit), 31500 Wick Road, Romulus, Michigan 48174.	Los Angeles Midtown Hilton, 400 N. Vermont Avenue, Los Angeles, California 90004.

Status: Open to the public for observation and participation, limited only by the space available.

Purpose: To review, discuss, and further develop the Procedures Document for implementation of the ATSDR "National Registry Proposal" for creating registries of individuals exposed to hazardous substances. Viewpoints and suggestions from industry, organized labor, environmental groups, academia, State and Federal governmental agencies, and the public are invited.

A draft Procedures Document has been developed which includes criteria and procedures for site (or chemical) selection, identification of prospective participants, data items to be collected, file creation dissemination. Each meeting will be conducted as a workshop and will focus solely on this document and not on any specific site.

Copies of the draft Procedures Document will be made available in advance upon request or at the site of the meeting. Interested persons may submit written statements, relevant material, or comments directly to ATSDR until March 15, 1988.

Contact Person for More Information: To obtain advance registration forms and/or a draft Procedures Document or additional information concerning the workshops contact: JeAnne Burg, Ph.D., Chief, Exposure and Disease Registry Branch, ATSDR, 1600 Clifton Road, NE., MS-F-38, Atlanta, Georgia 30333, telephones: FTS: 236-4810; Commercial: 404/488-4810.

Dated: January 11, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 88-726 Filed 1-13-88; 8:45 am]

BILLING CODE 4160-70-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-020-08-5100-09-XEAF]

Montana; Notice of Public Scoping Meetings

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of public scoping meetings for an environmental analysis of an application by U.S. Sprint Fiber Optic Cable Network for Right-of-Way in North Dakota, Montana, Idaho and Washington.

SUMMARY: Federal subsurface land in the Burlington Northern Railroad right-of-way is proposed for a fiber optic cable right-of-way for U.S. Sprint Fiber Optic Cable Network. U.S. Sprint has

filed an application for a subsurface right-of-way under the authority of the Federal Land Policy and Management Act of 1976 (90 Stat. 273) and 43 CFR Part 2800. The proposed subsurface right-of-way is located under the Burlington Northern Railroad right-of-way from Fargo, North Dakota, to Spokane, Washington.

Public scoping meetings for interested individuals and agencies are scheduled as follows:

January 18, 1988, at 7 p.m. PST, Conference Room, Sand Point Ranger District Office, Idaho Panhandle National Forest, 1500 Highway 2, Sand Point, Idaho

January 19, 1988, at 7 p.m. MST, Department of Natural Resources and Conservation Building, 1520 East Sixth Avenue, Helena, Montana

January 20, 1988, at 7 p.m. MST, Rimrock Room, Northern Hotel—Best Western, Broadway & First Avenue North, Billings, Montana

January 21, 1988, at 7 p.m. MST, Cardinal Room, Interstate Inn, 71 West Twelfth, Dickinson, North Dakota.

The scoping meetings will be held to receive comments on the project from the public and private sectors of the community.

Current scheduling calls for a contracted environmental assessment to be completed by Dames & Moore, Inc. of Phoenix, Arizona, by May 1, 1988. Construction would follow with a target operational date of January 1, 1989.

FOR FURTHER INFORMATION CONTACT: The BLM Project Coordinator, Loren Glade, Miles City District Office, P.O. Box 940, Garryowen Road, Miles City, Montana 59301 or call (406) 232-4331.

Submittal date: December 31, 1987.

David D. Swogger,

Acting District Manager.

[FR Doc. 88-702 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-DN-M

[ID-943-08-4520-12]

Filing Plats of Survey; Idaho

The plats of survey of the following lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho on the dates hereinafter stated:

Boise Meridian

T. 13 S., R. 38 E., accepted June 30, 1987, officially filed September 16, 1987.

T. 28 N., R. 9 E., accepted August 23, 1987, officially filed September 23, 1987.

T. 45 N., R. 5 W., accepted September 24, 1987, officially filed December 11, 1987.

T. 62 N., R. 4 W., accepted November 10, 1987, officially filed December 15, 1987.

T. 30 N., R. 4 E., accepted October 15, 1987, officially filed December 16, 1987.

The above plats represent dependent resurveys and subdivisions.

Inquiries about these lands should be addressed to Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Date: January 4, 1988.

Donald A. Simpson,

Chief, Land Services Section.

[FR Doc. 88-703 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-GG-M

[WY-040-08-4100-90]

Meeting and Tour of the Rock Springs District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings and tour of the Rock Springs District Advisory Council.

DATE: Meeting will be held Wednesday, February 17, 1988, at 9:30 a.m. Tour will be conducted Thursday, February 18, 1988.

ADDRESS: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Donald Sweep, District Manager, Rock Springs District, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The Rock Springs District Advisory Council will meet on Wednesday, February 17, 1988, at 9:30 a.m. in the Rock Springs District Office building. The agenda will include a general briefing and orientation, election of chairman, and tour. The meeting is open to the public.

A trona mine tour will leave the District Office parking lot on Highway 191 North, Rock Springs, at 9 a.m. on Thursday, February 18, 1988, and return about 1 p.m. the same day. If anyone is interested in participating in the tour, advance request to the District Manager by February 10 is mandatory.

Donald H. Sweep,

District Manager.

January 6, 1988.

[FR Doc. 88-608 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-22-M

[AZ-940-08-4212-12; A-22448]

Arizona; Opening Order

January 5, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Order providing for opening of surface estate in Arizona.

SUMMARY: This notice is to inform the public of the opening of the surface estate in 10,851.68 acres acquired by the United States in State Exchange A-22448.

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

SUPPLEMENTARY INFORMATION: At 9:00 a.m. on February 16, 1988, the reconveyed land described below will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on February 16, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Gila and Salt River Meridian, Arizona

T. 11 N., R. 11 W.,
Sec. 13, N½;
Sec. 14, N½.
T. 11 N., R. 15 W.,
Sec. 8, E½;
Sec. 16, N½, SW¼.
T. 12 N., R. 14 W.,
Sec. 16, E½.
T. 12 N., R. 15 W.,
Sec. 2, lots 1-4, incl., NW¼SW¼.
T. 12 N., R. 16 W.,
Sec. 16, SE¼SE¼.
T. 13 N., R. 13 W.,
Sec. 16, E½;
Sec. 36, all.
T. 13 N., R. 14 W.,
Sec. 32, E½E½, SW¼;
Sec. 36, SW¼.
T. 13 N., R. 15 W.,
Sec. 32, all.
T. 14 N., R. 12 W.,
Sec. 2, lots 1-4, incl., S½N½, S½.
T. 15 N., R. 10 W.,
Sec. 2, lots 1-4, incl., S½N½, S½;
Sec. 16, S½.
T. 16 N., R. 10 W.,
Sec. 36, all.
T. 19 N., R. 19 W.,
Sec. 16, N½.
T. 19 N., R. 20 W.,
Sec. 2, SE¼NE¼, SW¼NW¼, S½S½.
T. 21 N., R. 20 W.,
Sec. 36, lots 1-4, incl.
T. 22 N., R. 21 W.,
Sec. 2, lots 1-4, incl., S½N½, S½.
T. 24 N., R. 18 W.,
Sec. 2, lot 4.
T. 25 N., R. 18 W.,

Sec. 2, lots 1-4, incl., S½N½, S½.
T. 25 N., R. 19 W.,
Sec. 36, all.
T. 26 N., R. 18 W.,
Sec. 26, all;
Sec. 34, NE¼, E½NW¼, S½.
T. 28 N., R. 15 W.,
Sec. 32, lots 1 and 2, W½, W½SE¼, SE¼SE¼.
T. 28 N., R. 16 W.,
Sec. 36, NE¼SE¼, S½SE¼.

The areas described comprise 10,851.68 acres in La Paz, Mohave and Yavapai Counties.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-607 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-050-08-5410-10, A-23099]

Arizona; Yuma District Notice of Filing, Request for Conveyance of Federally-Owned Minerals in Mohave County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing, request for conveyance of Federally-owned minerals.

SUMMARY: An application was filed on November 12, 1987, for Federally-owned mineral rights under the following described privately-owned lands by Ixtapa Builders Corporation, Lake Havasu City, Arizona, under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719:

T. 19 N., R. 22 W., Gila and Salt River Meridian, Arizona,
Sec. 12, N½S½, S½N½, containing 320 acres.

Upon publication of this Notice in the **Federal Register**, these mineral interests shall be segregated from all forms of appropriation under the public land laws, including the mining laws. This segregative effect shall terminate upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application, or 2 years from the date of filing of the application (November 12, 1989), whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602-855-8017.

J. Darwin Snell,

District Manager.

Date: January 5, 1988.

[FR Doc. 88-605 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-940-08-4212-13; A-22311]

Arizona; Conveyance of Public Land; Order Providing for Opening of Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action serves to inform the public of the conveyance of 37.43 acres of public land out of Federal ownership and the acquisition of 320.00 acres by the United States. This Notice will open the 320.00 acres of reconveyed land in Mohave County to surface entry.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Bureau of Land Management, Arizona State Office (602) 241-5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the completion of an exchange between the United States and Paul L. Overman and Dolores M. Overman. The Bureau of Land Management transferred the following described land on December 30, 1987, by Patent No. 02-88-0023, pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 15 N., R. 19 W.,
Sec. 6, lot 7.
Containing 37.43 acres in Mohave County.

In exchange the surface in the following described land was reconveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 18 W.,
Sec. 11, W½.
Containing 320.00 acres in Mohave County.

At 9:00 a.m., on February 16, 1988, the land described above will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on (February 16, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The mineral estate was not reconveyed to the United States and therefore, will not be subject to entry under the mining or mineral leasing laws.

This exchange enabled Paul L. Overman and Dolores M. Overman to acquire land near developed areas and enabled the United States to acquire land containing multiple resource values. The public interest was well served by the completion of this exchange.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-606 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-32-M

[UT-060-4410-08]

Proposed Resource Management Plan and Final Environmental Impact Statement; San Juan Area, UT

January 6, 1988.

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of extension of protest period for the San Juan Proposed Resource Management Plan and Final Environmental Impact Statement.

SUMMARY: The protest period for the Proposed Resource Management Plan and Final Environmental Impact Statement (RMP/EIS) for the San Juan Resource Area, Moab District, Utah has been extended to February 1, 1988. The protest period commenced on December 18, 1987.

FOR FURTHER INFORMATION CONTACT: Ed Scherick, San Juan Resource Area Manager, BLM P.O. Box 7, Monticello, Utah 84535; (801) 587-2141.

SUPPLEMENTARY INFORMATION: The RMP will guide management of 1.8 million acres of the public lands and resources in the San Juan Resource Area, Bureau of Land Management (BLM) in San Juan County, Utah.

This notice amends the Notices of Availability published in the **Federal Register** by the BLM on December 10, 1987, and by the Environmental Protection Agency (EPA) On December 18, 1987. Those notices stated that the protest period would end 30 days after publication of the EPA notice, or on January 18, 1988. The protest period has been extended to February 1, 1988.

The proposed RMP is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5-2. Protests must be received by the Director of the BLM, 18th and C Streets NW., Washington, DC 20240, on or before February 1, 1988.

Gene Nodine,

District Manager.

[FR Doc. 88-604 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-040-08-4212-14; W79576]

Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Withdrawal of Competitive Sale Reference Federal Register Document 83-22711 appearing on page 37535, August 18, 1983. The competitive sale of the following public land in Wyoming is hereby withdrawn:

Sixth Principal Meridian, Wyoming

T. 18 N., R. 105 W.;
Sec. 18: Lot 5, N½NE¼, NE¼NW¼.

FOR FURTHER INFORMATION CONTACT: Sally Haverly, Realty Specialist, (307) 362-6422.

Gene C. Herrin,

Associate District Manager.

Dated: December 30, 1987.

[FR Doc. 88-609 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-22-M

[MT-920-08-4332-08]

Public Review of Mineral Survey Reports on Wilderness Study Areas (WSAs), Montana

ACTION: Notice of the availability of five Mineral Survey Reports produced by the U.S. Geological Survey (USGS)/U.S. Bureau of Mines (USBM), on Bureau of Land Management (BLM) WSAs in Montana. Announcement of a 60-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Montana BLM is requesting the public to review combined USGS and USBM "Mineral Survey Reports" which have been completed for preliminarily suitable WSAs. If the public identifies significant differences in interpretation of the data presented in these reports, or submits significant new minerals data for consideration, the BLM will request that USGS/USBM evaluate these comments in relation to their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations. Copies of the WSA reports can be reviewed in BLM offices in Billings, Butte, Lewistown, and Miles City, Montana.

DATE: New information will be accepted on the reports enumerated in this notice until March 15, 1988.

ADDRESS: Send information on reports to the Deputy State Director, Division of Mineral Resources, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Jerry Klem, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Telephone (406) 657-6841.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or nonsuitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas.

To ensure that all available minerals data are considered by the BLM prior to making its final wilderness suitability recommendations to the Secretary of the Interior, the Montana State Director is providing this public review and comment period. Usually there is a 1- to 2-year lag time between actual field work and final printing of a mineral survey report. New information may have been collected by the public during this lag time, or the public may have a new interpretation of the data presented in the mineral survey reports. Any new data or new interpretations of data in the reports will be screened for its significance and validity by the BLM. Significant new minerals data or new interpretations of the minerals data will be forwarded to the USGS and USBM for further consideration. Evaluations received by the BLM from the USGS and USBM will be considered by the State Director in the final wilderness suitability recommendations.

Information requsted from the public via this invitation is not limited to any specific energy or mineral resource. Information can be in the form of a letter and should be as specific as possible, and include:

1. The name and number of the subject WSA and Mineral Survey Report.
2. Mineral(s) of interest.
3. A map or land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject WSA.
4. Information and documents that depict the new data or reinterpretation of data.
5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc., should be included. Published literature and reports may be cited. Each comment should be limited to a specific WSA. All information submitted and marked confidential will be treated as proprietary data and will not be released to the public without consent.

The following is a list of available Mineral Survey Reports by WSA on which new information will be accepted:

Burnt Lodge Wilderness Study Area, Phillips and Valley Countries, Montana (USGS Bull. 1722-A).

Terry Badlands Wilderness Study Area, Prairie and Custer Counties, Montana (USGS Bull. 1722-B).

Ruby Mountains Wilderness Study Area, Madison County, Montana (USGS) Bull. 1724-A).

Blacktail Mountains Wilderness Study Area, Beaverhead County, Montana (USGS Bull. 1724-B).

Farlin Creek Wilderness Study Area, Beaverhead County, Montana (USGS Bull. 1724-C).

Reports available for review in BLM offices will not be available for sale or removal from the office. Copies of the listed reports may be purchased from: U.S. Geological Survey, Books and Open File Reports, P.O. Box 25425, Federal Center, Denver, CO 80225.

Marvin LeNoue,

Acting State Director.

Date: January 4, 1988.

[FR Doc. 88-594 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-08-4220-11; GP-08-041; ORE-03141, ORE-05531, OR-19229, OR-19236, OR-32812, OR-22243(WASH), OR-22618(WASH), WASH-02135]

Proposed Continuation of Withdrawals; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers proposes that all or portions of eight separate land withdrawals continue for an additional 100 years and requests that the lands involved remain closed to surface entry and mining, and, where closed, be opened to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State

Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

The U.S. Army Corps of Engineers proposes that the following identified land withdrawals be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. All the lands are within The Dalles Lock and Dam Project and are described as follows:

1. ORE-03141, Public Land Order No. 1256 of November 28, 1955. Containing 55.37 acres.
   Located in Sherman County near Biggs, Oregon.
   T. 2 N., R. 16 E., W.M., secs. 7, 9, 10 and 18, Oregon.
2. ORE-05531, Act of Congress of June 23, 1959. Containing 4.70 acres.
   Located in Wasco County, 6 miles northeast of The Dalles, Oregon.
   T. 2 N., R. 14 E., W.M., sec. 16, Oregon.
3. OR-19229, Executive Order of January 31, 1898. Containing 5.00 acres.
   Located in Wasco County, 5 miles northeast of The Dalles, Oregon.
   T. 2 N., R. 14 E., W.M., sec. 31, and T. 2 N., R. 15 E., W.M., sec. 21, Oregon.
4. OR-19236, Public Land Order No. 45 of October 7, 1942. Containing 6.40 acres.
   Located in Wasco County, near Celilo, Oregon.
   T. 2 N., R. 14 E., W.M., sec. 29, and T. 2 N., R. 15 E., W.M., secs. 17 and 20, Oregon.
5. OR-32812, Executive Order No. 1212 of June 22, 1910. Containing 6.00 acres.
   Located in Wasco County, near Celilo, Oregon.
   T. 2 N., R. 15 E., W.M., sec. 15, Oregon.
6. OR-22243(WASH), Public Land Order No. 45 of October 7, 1942. Containing 41.26 acres.
   Located in Klickitat County, Washington, near Celilo, Oregon.
   T. 2 N., R. 15 E., W.M., secs. 18 and 19, Washington.
7. OR-22618(WASH), Secretarial Order of March 28, 1910. Containing 91.70 acres.
   Located in Klickitat County, Washington, 6 miles northeast of The Dalles, Oregon.
   T. 2 N., R. 14 E., W.M., sec. 19, Washington.
8. WASH-02135, Public Land Order No. 1260 of December 1, 1955. Containing 31.30 acres.
   Located in Klickitat County, Washington, near Celilo, Oregon.
   T. 2 N., R. 14 E., W.M., secs. 13, 17 and 19, and T. 2 N., R. 15 E., W.M., sec. 14, Washington.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws and some of the lands are closed to the mineral leasing laws. The U.S. Army Corps of Engineers requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to applications and offers under the mineral leasing laws where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: December 30, 1987.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Mineral Operations.

[FR Doc. 88-610 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Comprehansive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan) for the Tetlin National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: The U.S Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Tetlin National Wildlife Refuge (Refuge), Alaska, pursuant to section 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); Section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative C, with five changes, for implementation. As described in the Plan, Alternative C is the alternative preferred by the Service. The Service is not recommending any additional on the Tetlin Refuge to the National Wilderness Preservation System.

Alternative C provides a high degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

Date: January 8, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-619 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-55-M

Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan) for the Kanuti National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: The U.S Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Kanuti National Wildlife Refuge (Refuge), Alaska, pursuant to section 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Land Act); Section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative C, with nine changes, for implementation. As described in the Plan, Alternative C is the alternative preferred by the Service.

The Service is not recommending any additions on the Kanuti Refuge to the National Wilderness Preservation System.

Alternative C provides a high degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

Date: January 8, 1988.

Walter O. Steiglitz,

Regional Director.

[FR Doc. 88-620 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-55-M

Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review (Plan) for the Kodiak National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Deicision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Kodiak National Wildlife Refuse, Alaska pursuant to section 304 (g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980; section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATE: This Decision on the Plan will be implemental immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: Alternative C with some modifications, described in the Decision, has been selected by the Service for implementation. As desribed in the Plan, Alternative C is the alternative preferred by the Service. The Service is recommending that 1.17 million acres on the Kodiak Refuge be added to the National Wilderness Preservation System.

Alternative C emphasizes protection of fish and wildlife populations and habitats as well as protection of resource values in specific river drainages while providing for anticipated increase in public use.

Dated: January 8, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-618 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-55-M

Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan (Plan) for the Nowitna National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan for the Nowitna National Wildlife (Refuge), Alaska, pursuant to section 304(g)(1), 605, 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemental immediately with specific management plans undergoing development and regulation proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has Alternative A, with five changes, for implementation. As described in the Plan, Alternative A is the current situation and the alternative preferred by the Service. The Service is recommending any additions on the Nowitna Refuge to the National Wilderness Preservation System.

Alternative A provides the highest degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

Date: January 8, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-621 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31199]

G. Richard Abernathy; Continuance in Control; Exemption; Tennessee Southern Railroad Co.; Inc.

G. Richard Abernathy has filed a notice of exemption under 49 CFR 1180.4(g) regarding his continuance in control of Tennessee Southern Railroad Company, Inc. (TSRC), under the provisions of 49 CFR 1180.(d)(2). At present, Mr. Abernathy controls Georgia Northeastern Railroad Company, Inc., Walking Horse & Eastern Railroad Company, Columbia & Silver Creek Railroad Company, and Sequatchie Valley Railroad. TSRC, a noncarrier controlled by G. Richard Abernathy, has filed concurrently a notice of exemption in Finance Docket No. 31198, *Tennessee Southern Railroad Company, Inc.—Acquisition and Operation Exemption—Rail Lines of CSX Transportation, Inc.*, seeking an exemption to acquire by lease and purchase and operate approximately 117.86 miles of railroad located in Tennessee and Alabama. The lines will be purchased and leased from CSX Transportation, Inc. (CSX).

Mr. Abernathy indicates that: (1) The railroads will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier, and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). [1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to

[1] The Railway Labor Executives' Association has requested the imposition of labor protective conditions. Because this transaction falls within the scope of 49 U.S.C. 11343, such conditions have been imposed routinely.

revoke will not automatically stay the transaction.

Decided: December 22, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-410 Filed 1-13-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31198]

Tennessee Southern Railroad Co., Inc., Acquisition and Operation Exemption; Rail Lines of CSX Transportation, Inc.

Tennessee Southern Railroad Company, Inc. (TSRC), a noncarrier, has filed a notice of exemption to acquire by lease and purchase and to operate approximately 117.86 miles of railroad located in Tennessee and Alabama from CSX Transportation, Inc. (CSX). The rail lines extend from milepost 229.50 at Natco, TN, to milepost 233.40 at Columbia, TN; from milepost 233.00 at Columbia, TN, to milepost 272.70 at Nucarbon, TN; from milepost 272.70 at Nucarbon, TN, to milepost 312.26 at Florence, AL; from milepost 233.40 at Columbia, TN, to milepost 265.80 at Pulaski, TN; and from milepost 229.50 at Natco, TN, to milepost 227.20 at Godwin, TN.

The agreement for transfer of the lines between TSRC and CSX was to be consummated on or before December 29, 1987. This transaction will also involve the issuance of securities by TSRC, which will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1.

A transaction relating to the control of TSRC by G. Richard Abernathy is the subject of a notice of exemption filed concurrently in Finance Docket No. 31199, *G. Richard Abernathy—Continuance in Control Exemption—Tennessee Southern Railroad Company, Inc.* Any comments must be filed with the Commission and served on Mark M. Levin, of Weiner, McCaffrey, Brodsky & Kaplan, P.C., 1350 New York Avenue NW., Suite 800, Washington, DC 20005-4797, and David W. Hemphill, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 22, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-411 Filed 1-13-88; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 2, Finance Docket No. 32000]

Rio Grande Industries, Inc., SPTC Holding, Inc., and The Denver and Rio Grande Western Railroad Co.; Control; Southern Pacific Transportation Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed procedural schedule.

SUMMARY: The Commission proposes an expedited procedural schedule for this proceeding as set forth below.

DATES: Public comments must be filed by January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: January 12, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Lamboley and Simmons.

Noreta R. McGee,

Secretary.

Proposed Schedule for the DRGW-SPT Consolidation

Day 1 Application filed. Discovery begins.

D+15 Notice of the application published in the **Federal Register**.

D+20 Discovery conference on application held.

D+75 Comments and protests due on the application; requested conditions and inconsistent applications due.

D+80 Discovery conference on comments, protests, conditions, and inconsistent applications held.

D+115 Response to comments, protests, conditions and rebuttal in support of primary application due.

D+120 Rebuttal in support of comments, protests, conditions, and inconsistent applications due.

D+130 Briefs due, all parties.

D+140 Oral argument.

D+180 Decision served.

[FR Doc. 88-711 Filed 1-13-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980; South Carolina Department of Health and Environmental Control, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on October 28, 1987, a proposed partial consent decree in *United States* v. *South Carolina Department of Health and Environmental Control, et al.*, Civ. No. 80-1274-6 was lodged with the United States District Court for the District of South Carolina. Aquair is one of four defendants sued by the United States. The other three defendants have not settled and an appeal of this case is currently pending before the United States Court of Appeals for the Fourth Circuit, *United States* v. *Monsanto, et al.* No. 86-1261 (L).

The proposed consent decree provides that Aquair will pay the United States $5,000 in a post-judgment settlement. Aquair is a specialized chemical producer which generated hazardous substances disposed of at the Bluff Road site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *South Carolina Department of Health and Environmental Control, et al.*, D.J. Ref. 90-7-1-61.

The proposed decree may be examined at the office of the United States Attorney, Federal Building, 1100 Laurel Street, Columbia, South Carolina, 29201, and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365. Copies of the Consent Decree may be examined or obtained in person or by mail at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th and

Pennsylvania Avenue NW., Washington, DC 20530.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-598 Filed 1-13-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration

Agreement and Undertaking
1215-0034; OWCP-1
On occasion
Businesses or other for-profit
300 responses; 75 hours; 1 form

The OWCP-1 is a joint use form (Longshore and Black Lung programs) completed by employers to provide the Secretary of Labor with authorization to sell securities, or to bring suit under indemnity bonds deposited by self-insured employers in the event there is a default in the payment of benefits.

Employment Standards Administration

Housing Terms and Conditions
1215-0146; WH-521, 521a and 521b
On occasion
Individuals or households; farms; businesses or other for-profit; small businesses or organizations
431 responses; 647 hours; 2 forms

The Migrant and Seasonal Agricultural Worker Protection Act requires any farm labor contractor, agricultural employer or agricultural association providing housing to post or present, by written statement, to each migrant agricultural worker the terms and conditions, if any, of occupancy.

Mine Safety and Health Administration

First Aid Training for Supervisory Employees 1219-0085
On occasion
Businesses or other for profit; small businesses or organizations
5,115 respondents; 2,558 hours

Requires coal mine operators to keep records of first aid training received by supervisory employees.

Mine Safety and Health Administration

Annual Status Report and Certification and Weekly Inspections of Refuse Piles and Impoundments
1219-0015
Annually; weekly
Businesses and other for profit; small businesses or organizations
675 respondents; 76,230 hours

Requires coal mine operators to submit to MSHA an annual status report and certification on refuse piles and impoundments; and to keep records of the results of weekly examinations and instrumentation monitorings of impoundments.

Employment Standards Administration

Worker Information
1215-0145; WH-516, 16a and 16b
On occasion
Individuals or households; farms, businesses or other for profit; small businesses or organizations
52,000 responses; 26,882 responses; 3 forms

The Migrant and Seasonal Agricultural Worker Protection Act requires farm labor contractors, agricultural employers, and agricultural associations who recruit migrant and seasonal agricultural workers to disclose in writing the terms and conditions of employment and to provide, upon request, a written statement of such terms.

Signed at Washington, DC, this 7th day of January, 1988.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 88-659 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-27 4510-43-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Ethyl Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 28, 1987-January 1, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) The increase of impacts of articles like or direclty competitive with articles produced by the firm or appropriate subdivision have contributed

importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,209; Ethyl Corp., Sayreville, NJ

TA-W-20,221; Century Brass Products, Inc., Waterbury, CT

TA-W-20,223; Faulkner Mills, Inc., North Billerica, MA

TA-W-20,247; Woodland Foundry Co., Woodland, WI

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,241; Universal Wire Products, Inc., North Haven, CT

U.S. imports of wire and cable declined absolutely in 1986 compared to 1985 and in the first three quarters of 1987 compared to the same period in 1986.

TA-W-20,239; Munsingwear, Inc., Ashland, WI

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-20,227; Miss Elaine, Inc., O'Fallon, IL

A certification was issued covering all workers of the firm separated on or after October 19, 1986.

TA-W-20,235; General Motors Corp., BOC Conner St., Detroit, MI

A certification was issued covering all workers of the firm separated on or after October 30, 1986.

I hereby certify that the aforementioned determinations were issued during the period December 28, 1987-January 1, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: January 5, 1988.

[FR Doc. 88-661 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Westran Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assitance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are elibible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 25, 1988.

Interested persons are invitied to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 25, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 4th day of January 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Westran Corporation Alloy Steel Div. (Wkrs)	Duncan, OK	1/4/88	12/24/87	20,362	Steel.
American Trading & Production Corp. (Company)	Houston, TX	1/4/88	12/16/87	20,363	Oil & Gas.
Baxter Travenol (Workers)	Kingstree, SC	1/4/88	12/17/87	20,364	Hospital Products.
College-Town (I.L.G.W.U.)	Braintree, MA	1/4/88	12/22/87	20,365	Sportswear.
Control Data Corp. (Workers)	Arden, Hills, MN	1/4/88	12/1/87	20,366	Computer Systems.
Eska Company (IAMAW)	Dubuque, IA	1/4/88	12/17/87	20,367	Motors.
Gates Energy Products (Workers)	Paris, MO	1/4/88	12/22/87	20,368	Batteries.
Hagales Industries, (Workers)	Forsyth, MO	1/4/88	12/17/87	20,369	Slacks.
Health-Tex. Inc. (ACTWU)	Central Falls, RI	1/4/88	12/23/87	20,370	Clothing.
Kiewit/Tulsa-Houston, A Joint Venture (IUE)	Oyster Creek, TX	1/4/88	12/15/87	20,371	Oil/Gas Pipelines.
M&S Convoy, Inc. (Teamsters)	New Stanton, PA	1/4/88	12/17/87	20,372	Autos.
Oxford Shirt Company (Workers)	Dublin, GA	1/4/88	12/22/87	20,373	Shirts.
RTE (Workers)	Waukeska, WI	1/4/88	12/4/87	20,374	Transformers.
Rohm and Haas Tennessee (AB&GWIU)	Knoxville, TN	1/4/88	12/21/87	20,375	Plexiglas Acrylic Sheet.
Samax Dress Co. (ILGWU)	New York, NY	1/4/88	12/8/87	20,376	Dresses.
Texaco U.S.A.-Onshore Exploration Dept. (Workers)	New Orleans, LA	1/4/88	12/17/87	20,377	Petroleum Products.
VW Federal Credit Union (Workers)	Youngwood, PA	1/4/88	12/15/87	20,378	Autos.
Volkswagen of America (Workers)	Valley Forge, PA	1/4/88	12/18/87	20,379	Auto Parts.
Westinghouse Electric Corp. (Company)	Round Rock, TX	1/4/88	12/17/87	20,380	Motors & Generators.
Action International LTD (UAW)	Mt. Clemens, MI	1/4/88	12/18/87	20,381	Flatware & Holloware Potter.

[FR Doc. 88-662 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-30-M

Apprenticeship 2000 Initiative; Public Meetings

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of public meetings.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor is announcing three public meetings to be held as part of the Apprenticeship 2000 initiative. These meetings will provide interested individuals with an opportunity to present oral or written views to ETA on the role of apprenticeship as a means of meeting the challenges of a changing American work place. The meetings will focus on basic issues relating to the concept of apprenticeship and its place in the American workforce in the year 2000 and beyond.

DATES: The dates of the three public meetings are as follows:

February 17, 1988: Washington, DC
February 23, 1988: Chicago, Illinois
February 25, 1988: San Francisco, California

The meetings will begin at 9:00 a.m. and adjourn at 5:00 p.m. There will be a one hour break for lunch (12:00 noon to 1:00 p.m.). Although each meeting will be limited to one day, it may be possible to extend the ending time to later in the day, if necessary. Persons desiring to present oral statements at the meeting shall submit a notice of intent to appear, postmarked on or before February 5, 1988.

ADDRESSES: The locations of the three public meetings are as follows:

Washington—Quality Inn Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.
Chicago—Dirksen Federal Building, Room 2525, 219 South Dearborn Street, Chicago, Illinois 60604.
San Francisco—San Franciscan Hotel, 1231 Market Street, San Francisco, California 94103.

Notices of intent to present oral statements or written statements shall be mailed to:

Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor, Room N-4649, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James D. Van Erden, Acting Director, Bureau of Apprenticeship and Training, Employment and Training Administration, Room N-4649, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202-535-0540.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA), Department of Labor is holding three public meetings as part of the Apprenticeship 2000 initiative announced in the December 2, 1987, **Federal Register**, 52 FR 45904. The focus will be on the broad issues surrounding the concept of apprenticeship and its potential for meeting the needs of American industry. Background information and agenda topics/issues as well as meeting objectives are set forth below.

Background on Apprenticeship and on Workforce Projections

Formal apprenticeship began with the medieval trade guilds and continues today throughout the Western world. The basic concept of apprenticeship, while becoming more structured, has remained unchanged. Apprenticeship is on-the-job training combined with related instruction in occupations that require a wide and diverse range of skills and knowledge, as well as independent judgment. Apprenticeship programs are operated by employers, employer associations or jointly by management and labor on a voluntary basis. Currently, over 43,000 apprenticeship programs are registered with State or federal apprenticeship agencies.

The formal American apprenticeship system was established in 1937 with the passage of the National Apprenticeship Act. Pub. L. 75-308 (29 U.S.C. 50). During the past 12 months approximately 340,000 registered apprentices have received training in more than 770 apprenticeship occupations. The Federal Government's role in apprenticeship is largely one of promotion and technical assistance. The Federal Government provides no direct financial support to apprenticeship programs. States with formal apprenticeship councils (about half the States) also largely provide technical, rather than financial, support to apprenticeship programs. See 29 CFR Parts 29 and 30.

The apprenticeship concept is particularly well-suited to industries and occupations that require skilled and versatile workers. Apprenticeship programs involve employers, unions, workers and government acting cooperatively to meet the demands of the work place. For employers, apprenticeship offers a well-rounded, highly skilled worker who can be expected to complete complex tasks and meet unanticipated work challenges through independent action and mature judgment. For workers, apprenticeship means earning while learning; the promise of high paying skilled jobs with opportunity for advancement and credentials that permit movement within an industry. For government, apprenticeship programs offer a large return in human capital for a very small investment in government resources. All these factors suggest an expanded role for the apprenticeship of a shifting job market and a changing workforce composition.

The Department of Labor is looking at apprenticeship as a key means of developing new and replacement skilled workers. In doing so, a number of issues need to be explored to determine the apprenticeship role.

Agenda Topics/Issues

Five major issues surrounding expansion of apprenticeship were laid-out in the issue paper previously published in the December 2, 1987, **Federal Register** notice. 52 FR at 45906-45907. These same issues will continue to frame the debate surrounding the apprenticeship role and, while not limited to these issues, will be the focus of the public meetings. They are restated below:

Issue #1: Should/Can the Apprenticeship Concept be Broadened to All Industries? Construction trades account for well over half of all apprentices. Is it feasible and/or desirable for there to be a major expansion to other industries? In looking at this issue it is important to explore all the ramifications of an expanded apprenticeship program and its impact on the current system. Further, while an apprenticeship presence in all industries may be unrealistic, is it possible to target specific industries for expansion of apprenticeship. If so, which ones?

Issue #2: What Should Be the Limitations or Parameters, in Terms of Occupations, of An Expanded Apprenticeship Effort? There are currently over 770 recognized apprenticeable occupations. However, over three-quarters of all apprentices are being trained in just 30 occupations. What do these facts mean in terms of possibilities for expansion of occupations? What other occupations are suited to the apprenticeship concept? Are changes needed, or even desirable, in the basic apprenticeship concept is order to fit the occupations of today and tomorrow?

Issue #3: What Should Be the Delivery System for an Expanded Apprenticeship System? A strength of apprenticeship in construction trades is the joint apprenticeship committees which provide the core organization around which small construction firms and labor organizations can pool their resources and share the cost of providing extensive training. Are there similar existing delivery systems that can be utilized for expansion of apprenticeship? If so, how could these systems be best utilized? What new delivery systems would need to be created and how should they be structured? Establishing a strong local infrastructure to support apprenticeship in new industries or expand the use of apprenticeship in industries now

utilizing such system of training may be the key to possible expansion.

Issue #4: What Should Be the Role of Government in an Expanded Apprenticeship System? The governments' current role n apprenticeship is unique. As stated earlier, unlike other publicly supported training programs, the Federal Government's role is largely limited to promotion and technical assistance. The amount of resources, if any, devoted to apprenticeship by the states is generally small and varies considerably from State to State. Should government's role be expanded beyond current promotional, registration and servicing activities for apprenticeship programs? Should government have a more active role in setting standards, certifying apprentices, providing accreditation of programs, or developing supporting training systems for related instruction? What are the proper linkages among public agencies? Which agencies properly have a role in apprenticeship and what are those roles? What other organizations could play those roles, if not a governent agency?

Issue #5: How Can Apprenticeship Be More Effectively Linked to the Education System? With a shrinking number of new labor force entrants, our country can ill-afford young workers spending unproductive years looking for an appropriate place in the labor market. School-to-work programs, linking students to an apprenticeship during the last year of high school, as is common in Europe, should be explored. How can these programs be expanded and how should they be tailored to meet the needs of society, employers and student workers?

The above issues and questions by no means include all possible avenues of exploration; however, they may prove helpful to potential participants in preparing written or oral comments and are intended to provide focus to the debate. Participants are welcome to raise and discuss other issues and questions related to the concepts of apprenticeship.

Meeting Objectives and Procedures

The ETA is seeking participation in the meetings from a wide spectrum of interested individuals. Speakers will be scheduled, to the extent feasible, to provide a broad but balanced number of viewpoints and to reflect a variety of interests represented at the public meetings. The ETA recognizes that individuals have some problems and concerns relating to a very specific aspect or operation in the current apprenticeship program. However, we believe these issues are best addressed through regular channels rather than through the public meeting forum. Accordingly, speakers are encouraged to focus their remarks on the broad issues surrounding the apprenticeship review.

The goal of the meetings is to provide maximum factual input from members of the public. Therefore, the meetings will be structured to include a brief introduction followed by scheduled speakers. As noted in the **DATES** and **ADDRESSES** sections above, speakers wishing to present statements shall file notices of intent. To assist the ETA in appropriately scheduling speakers, the written notice of intent to present oral comments should include the following information:

(1) The name, address, and telephone number of each person to appear;

(2) Affiliation; and

(3) The issues and/or concerns that will be addressed.

Individuals who do not register in advance will be permitted to register and speak at the meeting in order of registration, if time permits. Speakers should plan to limit their oral remarks to no more than five minutes. While it is anticipated that all persons desiring to do so will have an opportunity to speak, time limits may not allow this to occur. However, all written statements will be accepted and incorporated into the public record. The Department of Labor will make the final determination on selection and scheduling of speakers.

A Department of Labor official will preside at each of the three meetings. The proceedings will be audiotaped and transcribed.

Next Steps

The ETA plans to analyze all comments received in response to this initiative. A report on the outcome of these public meetings and responses to the issue paper will be published as a **Federal Register** notice. Further input and public discussion may also be solicited to clarify, review or expand on the results of the public comments received in response to the Apprenticeship 2000 initiative. The comments received in response to the December 2, 1987, notice also are being considered as part of this process.

The ETA plans to continue research on apprenticeship issues and to consult individually with interested parties. Research questions to be explored include studies of the current system and its potential for accommodating change. Research projects of 6 to 12 months duration will be undertaken.

The ETA plans to complete the first phase of this project by summer. Results of the review and any preliminary recommendations on the feasibility of modification of the apprenticeship system will be published at that time.

Signed at Washington, DC, this 11th day of January, 1988.

Roberts T. Jones,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 88-660 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-258-C]

The Helen Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

The Helen Mining Company, R.D. #2, Box 2110, Homer City, Pennsylvania 15748-0504 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Homer City Mine (I.D. No. 36-00926) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that mining is being conducted to develop a combination belt and track entry. When development is completed, the return entry will be eliminated and will become an intake aircourse. The approximate length of the combination track/belt development section is 10,000 feet. It will be necessary to utilize a 750 kva, 600 kva and possibly a 150 kva transformer, to provide power to the belt drives and pumps.

3. As an alternate method, petitioner proposes that—

(a) The electric equipment will be housed in a fire proof structure or area with automatic closing fire doors. The fire doors will be activated by thermal devices with an activation temperature not greater than 165 degrees, and will be designed to enclose all associated electric components in a reasonably air tight enclosure in case of a fire or excessive temperature;

(b) A signal activated by a heat sensor will be located so that it can be seen or heard by a responsible person;

(c) The electric equipment will be protected with thermal devices, or

equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure;

(d) An automatic fire suppression system will be installed and maintained in the fire-proof area;

(e) Flammable or combustible material will not be stored or allowed to accumulate in the fire-proof structure or area;

(f) Fire-fighting equipment will be provided on the outside of the fire-proof structure on the intake side; and

(g) The electric equipment will be examined, tested, and maintained by a qualified person, and the area enclosing the structure will be examined for hazardous conditions daily. The records of the examinations will be kept in a book on the surface.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 16, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 7, 1988.

[FR Doc. 88-663 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-233-C)

Mountain View Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mountain View Coal Company, RD #1, Box 104, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescuers) to its R & S Slope (I.D. No. 36-07850) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such persons for one hour or longer.

2. Petitioner states that the devices are too bulky and, heavy to be worn safely while working or in the steeply pitching and narrow areas of the mine.

3. The mine is always damp to wet, and very little electrical equipment is used.

4. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

5. Petitioner states that the mine can be evacuated in less than 10 minutes.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 16, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 6, 1988.

[FR Doc. 88-664 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. 87-259-C]

White County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

White County Coal Corporation, Route 1, P.O. Box 457, Carmi, Illinois 62821 has filed a petition to modify the application of CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Pattiki Mine (I.D. No. 11-02662) located in White County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, in lieu of coursing air currents directly into the return, petitioner proposes to use the air ventilating the electrical equipment as part of the overall intake ventilation for active workings.

3. In support of this request, petitioner proposes to install an early warning fire detection system. Low-level carbon monoxide sensors will be installed within 50 feet inby of all underground transformer stations, shops, battery-charging stations, substations compressor stations and permanent pumps where the air ventilating these facilities is used to ventilate active workings. The monitoring device will be capable of giving warning of a fire for four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated senor and for monitoring electrical continuity to detect any malfunctions.

4. The CO system will be visually examined at least once each coal-producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the facility or location will be patrolled and monitored for carbon monoxide by a qualified person once each hour until the monitoring system becomes operable.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. The comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virgina 22203. All comments must be postmarked or received in that office on or before February 16, 1988. Copies of the petition

are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 7, 1988.

[FR Doc. 88-665 Filed 1-13-88; 8:45am]

BILLING CODE 4510-43-M

[Docket No. M-87-262-C]

White County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

White County Coal Corporation, Route #1, P.O. Box 457, Carmi, Illinois 62821 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Pattiki Mine (I.D. No. 11-02662) located in White County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, petitioner proposes to use the belt haulage entry as an intake aircourse.

3. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide detection system will be installed in all belt entries used as intake or return aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring device will be capable of giving warning of a fire for four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity to detect any malfunctions.

4. The CO system will be visually examined at least once each coal-producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 16, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

January 7, 1988.

[FR Doc. 88-666 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM87-9]

Recordation and Certification of Coin-Operated Phonorecord Players

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of public hearing.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is reviewing the operation of the jukebox compulsory license of the copyright law (17 U.S.C. 116). In particular, the Copyright Office is interested in learning the extent to which the 1985 voluntary agreement between the performing rights societies and the Amusement and Music Operators Association (AMOA) is working satisfactorily. This notice requests participation in a public hearing intended to elicit comments, views, and information which will assist the Office in this review of the effectiveness of the jukebox compulsory licensing system, and the regulations issued to facilitate the parties' voluntary agreement.

DATES: The public hearing will be held on March 10, 1988 in Washington DC beginning at 10 a.m., in Room LM-621 (yellow quadrant). Anyone desiring to testify should contact the Office of the General Counsel, Copyright Office at (202) 287-8380 by March 3, 1988. Ten copies of written statements should be submitted to the Copyright Office by 4:00 p.m. on March 7, 1988. Comments are also invited from persons who do not wish to testify by March 7, 1988.

ADDRESSES: Hearing location: The hearing will be held in Room LM-621 of the James Madison Memorial Building, Library of Congress, First and Independence Ave., SE., Washington, DC beginning at 10:00 a.m..

Ten copies of written statements, supplementary statements, or comments should be submitted as follows:

If sent by mail: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC.

All requests to testify should clearly identify the individual or group desiring to testify.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION: The Copyright Act of 1976, Title 17 U.S.C. 116 establishes conditions under which operators of coin-operated phonorecord players—commonly referred to as "jukeboxes"—may obtain a compulsory license for the performance of nondramatic musical works..

A compulsory license permits the use of a copyrighted work without the consent of the copyright owner, if certain conditions are met and royalties paid. Section 116 establishes general rules governing the conditions of the compulsory license for coin-operated phonorecord players, and requires the Register of Copyrights to prescribe regulations governing compulsory license applications and certificates to be affixed to licensed phonorecord players.

The administration and civil enforcement of the compulsory licensing system has caused friction between copyright owners and jukebox operators.[1] The royalty fee initially

[1] In general, the licensing of performing rights in musical compositions is handled by the performing rights societies. Section 116(e) of the copyright law identifies the performing rights societies as the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music Inc. (BMI), and SESAC, Inc. In copyright matters, jukebox operators have been represented by their trade association, Amusement & Music Operators Association (AMOA).

established in the 1976 Copyright Act was a yearly $8 per coin-operated phonorecord player. In 1981, the Copyright Royalty Tribunal, under its statutory authority, raised the royalty fee 46 FR 884 (1981). In 1982 and 1983 the fee became $25 per jukebox and thereafter, $50 per jukebox, subject to a cost of living adjustment on January 1, 1987. Jukebox operators argued this increase was too high, but the rate adjustment was upheld by the courts. *Amusement and Music Operator's Association* v. *Copyright Royalty Tribunal*, 676 F.2d 144 (7th Cir. 1982), *cert. denied*, 459 U.S. 907 (1982). The Copyright Office implemented the rate adjustment by publishing final regulations at 47 FR 25004 (June 9, 1982). The current rate is $63 per jukebox.

The AMOA then sought legislative reform of the jukebox compulsory license, particularly with respect to the copyright royalties payable. Several bills were introduced in the 98th Congress (e.g., S. 1734, H.R. 3853, and H.R. 4010), which would have established a one-time royalty fee per jukebox for the entire useful life of the box, in lieu of the current annual licensing fee.

The performing rights societies opposed these bills on the ground of fairness and countered with arguments that voluntary compliance with the compulsory licensing scheme by operators was low. While the Copyright Act of 1976 contains significant penalties for performing copyrighted musical compositions without a negotiated or compulsory license, enforcement is expensive. As a result of perceived noncompliance with the licensing scheme, copyright owners say they lose a significant portion of the royalties to which they are entitled under the existing law.

In order to reach a mutually acceptable solution without legislation, Congressional leaders in the 98th Congress, including Representative Robert Kastenmeier of Wisconsin, Chairman of the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice, urged the interested parties to enter into private negotiations. Adopting this advice, the performing rights societies and AMOA succeeded in reaching an agreement in 1985, which will be in effect until 1990. Although the agreement itself has not been made public, the main provisions were described in a press release by Mr. Kastenmeier. Under the agreement, the performing rights societies agreed to provide rebates to operators who obtain a compulsory license. Payment of the rebate, however, is conditional upon an increase in the number of jukeboxes licensed. The AMOA further agreed to encourage its membership to record their jukeboxes with the Copyright Office. In addition, the parties agreed to allow jukebox operators to transfer certificates from jukeboxes not in service to those that were publicly performing musical compositions. The Copyright Office promoted this portion of the agreement by modifying the content of the jukebox certificate, and adjusting its regulations. 50 FR 52458 (1985).

Despite the existence of the special agreement, the number of jukeboxes licensed has continued to decline. In calendar year 1984 the number of machines licensed was 104,391. In 1985 the number dropped to 99,985, in 1986 to 99,069, and in 1987 to 96,204.

On November 16, 1987, Representative Kastenmeier wrote to the Copyright Office in his capacity as Chairman of the House Subcommittee on Courts, Civil Liberties and the Administration of Justice concerning the experience under the special agreement. The Subcommittee expressed interest in assessing the extent to which the voluntary agreement is working, and requested the assistance of the Copyright Office in securing this important information.

Accordingly, the Copyright Office has decided to hold a public hearing on March 10, 1988 to obtain information about the experience under the voluntary agreement between the music performing rights societies and AMOA. The Office, through its representative on the administrative committee established by the parties to oversee the agreement's implementation, has received regular briefings about developments. Through a public hearing, parties to the agreement (and other members of the public) can give the Office their own assessment of the experience under the special agreement and can perhaps offer constructive suggestions for improving it. The Office seeks all information relevant to the operation of the jukebox compulsory license and the experience under the special voluntary agreement. In particular, the Office would like to receive information on the following points:

(1) Has the change in Copyright Office regulations regarding the content of the jukebox certificate served its purpose of facilitating transfer of certificates from active to inactive boxes? Has this regulatory change led to any abuses of the certificate, such as licensing a smaller number of boxes than are actually active?

(2) Has the number of licensed jukeboxes decline because fewer boxes are in criculation, because of the increase in the royalty fees, because of ignorance of the law, because of willful noncompliance, because of a combination of the factors, or because of other factors? How many jukeboxes are in active circulation and operation in the United States?

(3) Can any of the parties to the voluntary agreement suggest ways to improve the agreement, or other ways to ensure compliance with the copyright law?

Dated: January 5, 1988.

Ralph Oman,

Register of Copyrights.

[FR Doc. 88-629 Filed 1-13-88; 8:45 am]

BILLING CODE 1410-07-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-01]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Flight Research and Technology.

DATE AND TIME: January 28, 1988, 8:30 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 647, Federal Office Building 10B, Washington, DC 20546.

FURTHER INFORMATION CONTACT: Mr. Jack Levine, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2835.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on Flight Research and Technology, chaired by Mr. Joseph T. Gallagher, is comprised of six members.

The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

January 28, 1988

8:30 a.m.—Opening Remarks.
9:30 a.m.—Purpose, Scope and Approach.
10 a.m.—Historical Perspective.
11 a.m.—Concerns/Issues.
1 p.m.—Overview of Programs.
3 p.m.—Summary Session.
5 p.m.—Adjourn.

January 7, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

FR Doc.88-654 Filed 1-13-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (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).

DATES: Comments on this information collection must be submitted on or before February 16, 1988.

ADDRESS: 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 and Ms. Elaina Norden, 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 extensions. 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 will 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 entries are subject to 44 U.S.C. 3504(h).

Category Revision

Title: Process of Application, Evaluation, Award, and Report of NEH Travel to Collections Fellowships.

Form Number: 3136-0065.

Frequency of Collection: Collections occur twice yearly, according to individual program application deadlines.

Respondents: Academic scholars, teachers and independent scholars.

Use: Application, evaluation, and award process for individuals in the Travel to Collections programs.

Estimated Number of Respondents: 1,080.

Estimated Hours of Respondents to Provide Information: 6,800.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 88-652 Filed 1-13-88; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee; Meeting

December 29, 1987.

Name: Division of Microelectronic Information Processing Systems Advisory Committee.

Date and Time: February 8, 1988, 8:30 a.m.-5:00 p.m; February 9, 1988, 8:30 a.m.-3:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Stephanie Gorman, National Science Foundation, (202) 357-7373.

Minutes: May be obtained from contact person.

Purpose of Meeting & Agenda: To discuss the content of the Division's program goals and objectives and to advise on areas and priorities, new initiatives and other topics of interest to the Division.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 88-623 Filed 1-13-88; 8:45 am]

BILLING CODE 7555-01-M

DOE/NSF Nuclear Science Advisory Committee; Meeting

The National Science Foundation announces the following meeting.

Name: DOE/NSF Nuclear Science Advisory Committee

Date and Time: February 5, 1988, 9:00 a.m.-12:00 p.m., 2:00 p.m.-5:00 p.m.; February 6, 1988, 9:00 a.m.-3:00 p.m.

Place: Millikan Board Room, Millikan Library, California Institute of Technology, 1201 California St., Pasadena, CA 91125.

Type of Meeting: Open.

Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357-7993.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

Friday, February 5, 1988, 9:00 a.m.-12:00 noon, Presentation and discussion of NSF and DOE budgets and manpower data and of Theory Subcommittee report.

2:00 p.m.-5:00 p.m., Discussion of Theory and Inflation Subcommittee reports. Report on meeting of Canadian Delegation and NSF/DOE Agency representatives concerning invitation to participate in KAON.

Saturday, February 6, 1988, 9:00 a.m.-3:00 p.m. Discussion of Instrumentation Subcommittee. Report on activities of HEPAP Subpanel on Future Modes of Experimental Research in High Energy Physics. General discussion and comment.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-624 Filed 1-13-88 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Regulatory Biology; Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Regulatory Biology.

Date and Time: February 3, 4, and 5, 1988, 8:30 a.m. to 5:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Stephen Bishop, Program Director, Regulatory Biology Program, Room 321, National Science

Foundation, Washington, DC 20550, Telephone 202/357-7975.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of (5) U.S.C. 553b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 88-625 Filed 1-13-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-368]

Arkansas Power and Light Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF-6, issued to Arkansas Power and Light Company (the licensee), for operation of Arkansas Nuclear One, Unit 2 (ANO-2) located in Russellville, Arkansas.

The proposed amendment would modify the technical specifications to permit the licensee to render eight of the ten main steam safety valves inoperable and reset the remaining two valves in order to carry out a 10 year hydrostatic test on the main steam system in accordance with the licensee's application for amendment dated November 30, 1987. The test is to be carried out with the plant in the Hot Standby mode. The technical specification presently require that all main steam safety valves be operable in Hot Standby. The licensee also proposes using steam for the test rather than water.

Before 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 the proposed finding is as follows:

Criterion 1—Does Not Involve A Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change would not involve an increase in the probability or consequences of an accident previously evaluated because the reactor would not be critical and the pressures in the main steam system would not exceed the design margin. Although the hydrostatic test requires the main steam system to be at a higher than normal pressure, sufficient overpressure protection will be provided by the two operable code safety valves. Therefore, the probability of a main steam line break (MSLB) accident will not be increased. The elevated secondary system pressure will require a higher primary system average temperature because of the thermodynamic coupling at the hot standby (Mode 3) plant conditions. A reactor coolant system (RCS) average temperature of 545°F at Hot Standby results in a saturated secondary steam pressure of about 1000 psi. The required hydrostatic test pressure upper bound of 1200 psi will correspond to a RCS average temperature about 20°F higher. In the event of a postulated MSLBk, this could result in a slightly greater cooldown, and therefore a slightly greater positive reactivity addition than that assumed in the MSLB evaluation. However, the consequences of a postulated MSLB would still be bounded by the MSLB accident analysis. The hydrostatic test will be performed with significantly greater available shutdown margin and a much less negative moderator temperature coefficient. The negative reactivity associated with these considerations is much greater than the slight additional positive reactivity addition made possible by the elevated secondary system pressure; therefore, an increase in the consequences of a postulated MSLB is not involved.

The higher RCS average temperature associated with the elevated main steam system pressure required for the hydrostatic test was also evaluated by the licensee for any affects on related Chapter 15 events, including Uncontrolled Control Element Assembly (CEA) Withdrawal from a Subcritical Condition and the CEA Ejection. Although the conservative assumptions used for the FSAR Chapter 15 analyses would still bound the consequences of these events with the higher initial RCS temperature, the licensee has elected to perform the hydrostatic test with all CEAs inserted in the reactor core, and has proposed the TS change to require that the reactor trip breakers shall be open for the duration of the test to effectively prevent any possible CEA withdrawal scenario. The worth of the assumed ejected CEA is less than the amount the core will be subcritical. Therefore, an increase in the probability or consequences of a CEA withdrawal or ejection event is not involved. At the end of core file, criticality can not occur at hot conditions with all rods inserted. Additionally, the available shutdown margin and dilution monitor administrative procedural requirements further assure that an increase in the probability or consequences of a Boron dilution event is not involved.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated. Analyses of a spectrum of MSLB and CEA withdrawal accidents were performed for the ANO-2 FSAR and evaluated again for each core reload to demonstrate acceptable consequences. Allowing a system hydrostatic test will not create the possibility of a new or different kind of accident.

Criterion 3—Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change would not involve a significant reduction in a margin of safety because the relatively small amount of energy required to provide the pressures for testing could be dissipated through the two operable code safety valves, thus preventing an overpressure in the main steam system. In addition, the proposed change would allow testing such that the steam system will not incur the stresses which would result from the weight of the water if tested by water pressure. Although it could be perceived that the proposed change could allow some reduction in a margin of safety by allowing a higher than normal main steam pressure with a lower steam relief capacity, hydrostatic

testing is required by ASME Section XI and, in fact, preserves the margin of safety by demonstrating the integrity of the main steam system pressure boundary. It could also be perceived that the higher RCS average temperature associated with the elevated secondary system pressure required for the hydrostatic testing could reduce the margin of safety, but as discussed under Criterion 1, this potential effect is slight and is offset by the conservatisms inherent in the accident analyses and the conditions under which the testing will be performed.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determifnation unless it receives a request for a hearing.

Written comments may be submitted by mail to Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 11, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commision'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. The petition should specifically explain the reason why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contentions 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 determination 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 no 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 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 shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission'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 or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth St. 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 dated November 30, 1987 which is available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland this 6th day of January, 1988.

For The Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Project Directorate-IV, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-457 Filed 1-13-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-353]

Philadelphia Electric Co., Limerick Generating Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of the latest construction completion date specified in Construction Permit No. CPPR-107 issued to Philadelphia Electric Company (PECo or applicant) for the Limerick Generating Station, Unit No. 2. The facility is located at the applicant's site on the Schuylkill River near Pottstown, in Limerick Township, Montgomery County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPPR-107 to January 1, 1992. The proposed action is in response to the applicant's request dated August 13, 1987.

The Need for Proposed Action

The proposed action is needed because construction of the facility is not yet fully completed. The change in the schedule for completion of the construction of Unit 2 results from suspension of construction by the Applicant in accordance with the terms of an order issued by the Pennsylvania Public Utility Commission (PaPUC) on December 23, 1983. Such order directed the Applicant to: (1) Suspend construction of Unit 2 pending operation of Unit 1; or (2) cancel Unit 2 or (3) continue construction of Unit 2 solely with internally generated funding. Applicant advised the PaPUC on January 24, 1984 that of the choices available, it had suspended construction of Unit 2 pending operation of Unit 1. As a result of this action all activities at the Unit 2 construction site were suspended during the period from January 1, 1984 to February 1, 1986 except essential activities required to protect the site, the public and workers and actions required to allow a prompt resumption of construction.

The PaPUC's order of December 23, 1983 and the subsequent suspension of construction of Unit 2 resulted from an order entered by the PaPUC on October 10, 1980, which initiated an investigation into the need for and the economy of the Limerick facility. At the conclusion of this investigation, the PaPUC issued an Opinion and Order on August 27, 1982 that concluded that either cancellation or suspension of construction at Limerick Unit 2 would be in the public interest. Applicant appealed such Opinion and Order. After the affirmation of the August 27, 1982 order by the Pennsylvania Supreme Court, the PaPUC entered a further order on June 10, 1983 which required Applicant to comply with its Order of August 27, 1982.

On July 21, 1983 Applicant filed a response to the PaPUC Order which resulted in a series of replies in opposition by several parties, following which the PaPUC entered its December 23, 1983 Opinion and Order discussed above. On January 24, 1984 Applicant filed its response to the PaPUC Order dated December 23, 1983 in which it advised the PaPUC that Applicant had suspended construction of Limerick Unit 2 pending operation of Limerick Unit 1. Thus, by January 1984, essentially all construction activity at Limerick Unit 2 had been suspended. In an Order entered February 22, 1984 the PaPUC accepted the Applicant's response as being in compliance with the PaPUC Orders of August 27, 1982, June 10, 1983 and December 23, 1983.

On August 7, 1984, with construction of Unit 2 still suspended, the PaPUC commenced a further investigation of Limerick by issuing an Order to Show Cause why the completion of Limerick Nuclear Generating Station Unit 2 would be in the public interest. Following this investigation, the PaPUC entered an Opinion and Order dated December 5, 1985 finding that completion of Limerick Unit 2 is in the public interest if the Applicant accepted certain cost-containment and operation incentive plans set forth in the PaPUC's Opinion and Order. On December 23, 1985, Applicant notified the PaPUC of its plan to complete Limerick Unit 2 and its acceptance of the PaPUC's cost containment and operation incentive programs. On January 2, and 6, 1986, two parties to the PaPUC proceeding filed petitions for review with the Pennsylvania Commonwealth Court challenging the PaPUC Order. On January 17, 1986, the Applicant filed its own petition for review in the nature of a cross-appeal seeking certain modifications of the PaPUC's Order in the event that one or more of the positions of the opposing parties should prevail. On February 18, 1986, the Commonwealth Court affirmed the December 5, 1985 Opinion and Order of the PaPUC in all respects.

On February 1, 1986 Limerick Unit 1 was declared to be in commercial operation and construction of Limerick Unit 2 was resumed later in that month and is continuing. At the time of suspension of construction activities in January, 1984 Unit 2 construction was approximately 30 percent complete and engineering activity was approximately 82.5 percent complete. Since the resumption of work on Unit 2, engineering has progressed to the point where it is, as of October 1987 approximately 91 percent complete and construction activities are approximately 73 percent complete.

The events described above relating to suspension of construction have resulted from conditions which were beyond the control of Applicant and could not have been predicted at the time the construction schedule upon which the present construction completion date of CPPR-107 was established. The completion dates proposed by Applicant are considered reasonable based upon Applicant's present schedule of engineering and construction activities, progress in these areas since resumption of work on Unit 2, and taking into account the uncertainties involved in a major construction effort of this type.

Environmental Impacts of the Proposed Action

The environmental impacts associated with the construction of Limerick Unit 2 have been previously discussed and evaluated in NRC's Final Environmental Statement (FES) issued in November 1973 for the construction permit stage which covered construction of both units. The environmental impacts associated with operation of the Limerick Generating Stations, Units 1

and 2, were discussed in NRC's FES issued April 1984 (NUREG-0974).

The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The extension will merely grant the applicant more time to complete construction in accordance with the previously approved construction permit. The probability of accidents has not been increased and post-accident radiological releases will not be greater than previously determined, nor does the proposed extension otherwise affect radiological plant effluents. Therefore, the Commission concluded that there are no significant radiological environmental impacts associated with this proposed extension.

With regard to potential non-radiological impacts, the proposed extension involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. This extension does not allow any work to be performed of the type not previously authorized by the existing construction permit. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with this proposed extension.

Alternatives to the Proposed Action

An alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the benefit of power production. Further, this option would not eliminate the environmental impacts of construction already incurred. Therefore, this alternative is rejected.

Alternative Use of Resource

This action does not involve the use of resources not previously considered in the FES for the Limerick Generating Station.

Agencies and Persons Consulted

The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for extension dated August 13, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room, Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland, this 6th day of January 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-669 Filed 1-13-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Research Program; Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on January 29, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Friday, January 29, 1988—8:30 a.m. until 1:00 p.m.

The Subcommittee will discuss the methodology to be used by the RES Staff to prioritize NRC research activities.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allowed therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 11, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-690 Filed 1-13-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Structural Engineering; Meeting

The ACRS Subcommittee on Structural Engineering will hold a meeting on January 22, 1988, at the AMFAC Hotel, 2910 Yale Blvd., SE., Albuquerque, NM.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, January 22, 1988—9:30 a.m. until the conclusion of business

The Subcommittee will review the results of the concrete containment model test.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting

has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio G. Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 7, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc 88-691 Filed 1-13-88; 8:45 am]

BILLING CODE 7590-01-M

Proposed Amendments Regarding Safeguards Requirements for Fuel Facilities Possessing Formula Quantities of Strategic Special Nuclear Material; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC staff will discuss draft guidance related to the proposed amendments for safeguards requirements for fuel facilities possessing formula quantities of strategic special nuclear material which were published on December 31, 1987, for public comment (52 FR 49418).

DATES: January 19-20, 1988.

ADDRESS: White Flint 1, 11555 Rockville Pike, Rockville, Maryland, 20852.

FOR FURTHER INFORMATION CONTACT: Kristina Z. Jamgochian, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-0360.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to further the licensee's understanding of the proposed amendments, which strengthen safeguards at fuel facilities possessing formula quantities of strategic special nuclear material and which upgrade the facilities to a level equivalent to the protection in place at comparable Department of Energy facilities. The meeting will elicit industry comments on the associated guidance and answer questions on the proposed physical security requirements.

The meeting will be divided into sessions for the NRC presentations and for licensee questions on the current draft guidance.

Since classified information may be discussed during the briefing, there will be two sessions: One open to the public, and one closed.

Dated in Silver Spring, Maryland, this 6th day of January, 1988.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88-672 Filed 1-13-88; 8:45 am]

BILLING CODE 7590-01-M

Change of Address at Region I

Effective January 19, 1988, NRC's Region I Office will be moved to a new location. The new address will be U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406. The current commercial telephone number (215-337-5000) remains unchanged. The FTS switchboard number has been changed to 8-346-5000. Individual staff members may be reached by dialing FTS 8-346-5XXX, as the last three digits of their current telephone numbers remain the same as listed in the NRC Telephone Directory (NUREG/BR-0046).

Dated at Bethesda, Maryland, this 11th day of January 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-671 Filed 1-13-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354]

Public Service Electric & Gas Co. and Atlantic City Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-57 issued to Public Service Electric & Gas Company and Atlantic City Electric Company (the licensees) for operation of the Hope Creek Generating Station, located in Salem County, New Jersey.

The proposed amendment would:

(1) Increase the Minimum Critical Power Ratio (MCPR) safety limit in Technical Specifications (TS) 2.1.2 and 3/4.4.1 and in Bases sections related to these TSs.

(2) Replace the curves in Figures 3.2.1-1 and 3.2.1-2 to provide Maximum Average Planar Heat Generation limit curves for two new fuel types that will replace two existing fuel types during the next operating cycle (Cycle 2).

(3) Change TS 3/4.2.3 to provide new MCPR limits for Cycle 2 operation providing limits for two exposure ranges rather than a single exposure range as in the existing TS. The two ranges are (a) from Beginning-of-Cycle (BOC) to End-of-Cycle (EOC) minus 2000 MWD/ST and (b) from EOC minus 2000 MWD/ST to EOC. The *Action* and *Surveillance Requirements* for TS 3/4.2.3 would also be revised to reflect this new option of using either of the two new exposure ranges and to delete the existing option of operating at 400°F or less.

(4) Revise existing Figure 3.2.3-1, MCPR vs Tau, by providing the MCPR vs Tau curves for the first exposure range discussed above and revise existing Figure 3.2.3-2, K_f Factor by deleting the K_f Factor curve and replacing it with the MCPR vs Tau curves for the second exposure range discussed above.

(5) Add a new Figure 3.2.3-3 with a new K_f Factor curve for Cycle 2 operation.

(6) Delete Table 3.2.3-1 which currently provides MCPR Feedwater Heating Capacity Adjustments for operation below 400°F.

(7) Revise the TSs to allow operation above the 100% Load Line and up to 105% Rated Core Flow by:

(a) Extending the K_f Factor curve up to 110% of Rated Core Flow (instead of the current 100%).

(b) Clamping the Upscale Setpoints for the Rod Block Monitor in TS Table 3.3.6-2 at the 100% recirculation flow value.

(c) Increasing the Motor Generator Set mechanical and electrical stops in TS 4.4.1.1.3 to physically allow for increased core flow.

Prior to issuance of the prosposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By February 16, 1988, the licensees 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 in the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention:

Docketing and Service Branch, or may be delivered to the Commission'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 or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, 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 dated December 14, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Bethesda, Maryland, this 6th day of January 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-670 Filed 1-13-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

Extension

Rule 17f-1
File No. 270-236

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17f-1 under the Investment Company Act of 1940. Rule 17f-1 sets forth conditions under which a registered management investment company may place or maintain its assets in the custody of a member of a national securities exchange. The rule imposes a burden of about 4 hours annually, per respondent.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

January 6, 1988.

[FR Doc. 88-641 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16205; 812-6918]

Banco De Vizcaya, S.A.; Application

Date: January 6, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 ("1940 Act").

Applicant: Banco De Vizcaya, S.A.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order to permit the issuance and sale of its equity securities in the United States.

Filing Dates: The application was filed on November 17, 1987, and amended on December 22, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person

may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 1, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicant, c/o Jeffrey Small, Esq., Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3033, or Brion Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's representations:

1. Applicant is a full service commercial bank incorporated and registered in the Kingdom of Spain, which provides a comprehensive range of banking and other financial services to the public. Applicant maintains an extensive network of branches in Spain and also maintains branches, agencies, subsidiaries and representative offices in a number of other countries in Europe, North and South America and Asia. As of December 31, 1986, Applicant was the fifth largest banking group in Spain in terms of total consolidated loans and advances ($9.84 billion), and the sixth largest in terms of total consolidated assets ($20.41 billion), with total consolidated customer deposits of approximately $13.43 billion.

2. The Bank of Spain is the central bank of Spain and exercises general supervision over all Spanish financial institutions in a manner similar to that of the central banks of most European countries and the United States. The Bank of Spain supervises the compliance of Spanish banks with liquidity, investment and guarantee ratios. In addition, Spanish banks are subject to inspection by auditors designated by the Bank of Spain.

3. Applicant conducts its United States operations through a branch in New York and agencies in Miami and San Francisco. Applicant also owns a subsidiary bank in Puerto Rico and has a 48% interest in a bank holding company in New Mexico. These banking activities subject the Applicant to the supervisory authority of the Board of Governors of the Federal Reserve System, the banking departments of the States of New York, Florida and California and the Commissioner of Financial Institutions of the government of Puerto Rico. Moreover, Applicant is fully subject to the Bank Holding Company Act of 1956 and the International Banking Act of 1978 ("IBA").

Applicant's Conditions:

1. In connection with Applicant's proposal to issue and sell its equity securities in a public offering in the United States, either directly or in the form of American depositary shares represented by American depositary receipts ("ADRs"), Applicant undertakes that any such public offering will be duly registered under the Securities Act of 1933 ("1933 Act"). Applicant will not sell its equity securities in any such public offering until the appropriate registration statements pertaining thereto have been declared effective by the SEC. Further, Applicant will comply with the prospectus delivery requirements of the 1933 Act in connection with any such public offering.

2. In the case of a private offering of its equity securities Applicant undertakes to comply with the requirements for the exemption from registration provided by section 4(2) of the 1933 Act or Regulation D thereunder. Such private offering would be made only to a limited number of sophisticated institutional investors or other investors as permitted by Regulation D, and Applicant will provide for the delivery to such investors of information concerning the Applicant, its business and the securities being offered.

3. Applicant undertakes to submit to the jurisdiction of the New York State and United States Federal courts sitting in The City of New York for the purpose of any suit, action or proceeding arising out of the offering of its equity securities, and, will appoint a corporation with an office in The City of New York engaged in providing corporate services for lawyers as agent to accept service of process in any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable for as long as any of the Applicant's equity securities issued in reliance upon an order of the SEC are outstanding in the United States. Such submission to jurisdiction and appointment of agent for service of process will not affect the right of any holder of Applicant's equity securities to bring suit in any court which may have jurisdiction over the Applicant by vertue of the offer and sale of its equity securities or otherwise. The agent for service of process will not be a trustee for the holders of any securities issued by the Applicant or have any responsibilities or duties to act for such holders as would a trustee.

4. Applicant undertakes that it will not make any offering of its equity securities in the United States in reliance upon the requested exemptive order if either: (1) Applicant ceases to be regulated as a commercial bank in the Kingdom of Spain, or (2) Applicant ceases to be subject to banking regulation in the United States. Moreover, Applicant has (a) no present intention of withdrawing its presence in the United States and (b) no present intention to curtail its banking operations in Spain to the extent that it would cease to be regulated as a bank in Spain.

5. If Applicant's operations are curtailed in the future with the result that Applicant is no longer regulated as a foreign bank in the United States, Applicant agrees to continue to comply with its undertakings concerning submission to jurisdiction and appointment of an agent to accept service of process until such time as there are no holders in the United States of its equity securities issued in reliance on the requested order.

Applicant's Legal Analysis:

Applicant asserts that the requested order is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant submits that the requested exemption will advance the policies underlying the IBA of nondiscriminatory treatment of foreign banks in the United States. Applicant states that access to the United States investment market will provide it with a new source of capital which constitutes an important element of any bank's capital structure. Applicant also asserts that the proposed exemption will benefit the general public as well as institutional and other sophisticated investors in the United States by making Applicant's equity securities available to such investors. Applicant notes that the exception from the 1940 Act's definition of an investment company for domestic banks under section 3(c)(3) of the 1940 Act was provided because the particular abuses

against which the 1940 Act was directed were deemed unnecessary for commercial banking entities because of the comprehensive regulation and supervision of banks. Applicant contents that these reasons also apply to Applicant because its operations are controlled and overseen by Spanish banking authorities and its United States operations are subject to United States banking laws and various state banking laws. Hence, Applicant concludes that it would be inappropriate to subject it to regulation under the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-646 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

AGS Computers Inc.
Common Stock, $.10 Par Value (File No. 7-0974)
Allstate Municipal Income Trust
Common Stock, $.01 Par Value (File No. 7-0975)
Ameron Inc.
Common Stock, $2.50 Par Value (File No. 7-0976)
Arco Chemical Co.
Common Stock, $1.00 Par Value (File No. 7-0977)
Belco (A.H.) Corp.
Common Stock, $.67 Par Value (File No. 7-0978)
Belding Heminway Co.
Common Stock, $1.00 Par Value (File No. 7-0979)
Edison Brothers Stores, Inc.
Common Stock, $1.00 Par Value (File No. 7-0980)
Equifax Inc.
Common Stock, $2.50 Par Value (File No. 7-0981)
Equitec Financial Group
Common Stock, $.01 Par Value (File No. 7-0982)
Flexi-Van Corp.
Common Stock, $.01 Par Value (File No. 7-0983)
Florida Steel Corp.
Common Stock, $.100 Par Value (File No. 7-0984)
Hancock Fabrics Inc.
Common Stock, $.01Par Value (File No. 7-0985)
Hartmarx Corp.
Common Stock, $2.50 Par Value (File No. 7-0986)
International Multifoods Corp.
Common Stock, $1.00 Par Value (File No. 7-0987)
Interstate Bakeries Corp.
Common Stock, $.10 Par Value (File No. 7-0988)
Katy Industries Inc.
Common Stock, $1.00 Par Value (File No. 7-0989)
Lawter International Inc.
Common Stock, $1.00 Par Value (File No. 7-0990)
Logicin Inc.
Common Stock, $.10 Par Value (File No. 7-0991)
Manhattan Ind., Inc.
Common Stock, $1.00 Par Value (File No. 7-0992)
Mark IV Ind., Inc.
Common Stock, No Par Value (File No. 7-0993)
MFS Municipal Income Trust
Common Stock, $.01 Par Value (File No. 7-0994)
Munford Inc.
Common Stock, $1.00 Par Value (File No. 7-0995)
National Semiconductor Corp.
$4.00 Cumulative Exchangeable Depository Preferred, No Par Value (File No. 7-0996)
British Petroleum Co., Ltd.
Warrants (File No. 7-0997)
Brooklyn Union Gas Co.
Common Stock, $50 Par Value (File No. 7-0998)
Buckeye Partners, L.P.
Common Stock, No Par Value (File No. 7-0999)
Cenvill Investors Inc.
Common Stock, $.01 Par Value (File No. 7-1000)
Christiana Co., Inc.
Common Stock, $1.00 Par Value (File No. 7-1001)
Clayton Homes
Common Stock, $.10 Par Value (File No. 7-1002)
CRS Sirrine Inc.
Common Stock, $1.00 Par Value (File No. 7-1003)
Desoto Inc.
Common Stock, $1.00 Par Value (File No. 7-1004)
Dreyfus Strategic Municipals Inc.
Common Stock, $.0001 Par Value (File No. 7-1005)
NCH Corp.
Common Stock, $1.00 Par Value (File No. 7-1006)
Nerco International Inc.
Common Stock, No Par Value (File No. 7-1007)
Newell Co.
$2.08 Cumulative Convertible "A" Preferred, $1.00 Par Value (File No. 7-1008)
Neiman Marcus Group Inc.
Common Stock, $.01 Par Value (File No. 7-1009)
Pilgrims Pride Corp.
Common Stock, $.01 Par Value (File No. 7-1010)
Placer Dome Inc.
Common Stock, No Par Value (File No. 7-1011)
Republic NY Corp.
Common Stock, Par Value $5.00 (File No. 7-1012)
RLI Corp.
Common Stock, $1.00 Par Value (File No. 7-1013)
Royal International Optical Corp.
Common Stock, $.10 Par Value (File No. 7-1014)
Service Corp. International
Common Stock, $1.00 Par Value (File No. 7-1015)
Sprague Technologies Inc.
Common Stock, $1.00 Par Value (File No. 7-1016)
Tandum Computers Inc.
Common Stock, $2.50 Par Value (File No. 7-1017)
UST Inc.
Common Stock, $.50 Par Value (File No. 7-1018)
Universal Foods Corp.
Common Stock, $.10 Par Value (File No. 7-1019)
USPCI Inc.
Common Stock, $.10 Par Value (File No. 7-1020)
Amek Fructose Corp.
Class "A" Common Stock, $.10 Par Value (File No. 7-1021)
Baker Hughes Inc.
Common Stock, $1.00 Par Value (File No. 7-1022)
Blount Corp.
Class "A" Common Stock, $1.00 Par Value (File No. 7-1023)
Claremont Capital Corp.
Common Stock, $1.00 Par Value (File No. 7-1024)
Giant Food Inc.
Class "A" Common Stock, $1.00 Par Value (File No. 7-1025)
Turner Corp.
Common Stock, $1.00 Par Value (File No. 7-1026)
Kysor Industrial Corp.
Common Stock, $1.00 Par Value (File No. 7-1027)

These securities are listed and registered on one or more other national securities exchange and are reported in

the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 28, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-642 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16203; 812-7994]

Girozentrale und Bank der Osterreichischen Sparkassen Aktiengesellschaft and Girozentrale Vienna Finance (Delaware) Inc.; Application

January 6, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Girozentrale und Bank der Osterreichischen Sparkassen Aktiengesellschaft (the "Bank") and Girozentrale Vienna Finance (Delaware) Inc. (the "Issuer")

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order exempting them from all provisions of the 1940 Act in connection with the offer and sale of the Issuer's debt securities in the United States.

FILING DATE: The application was filed on November 3, 1987, and amended on December 21, 1987.

HEARING OF NOTIFICATION OF HEARINGS: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 1, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Michael Gruson, Esq., Shearman & Sterling, 599 Lexington Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst, (202) 272-2847 or Brion R. Thompson, Special Counsel, (202) 272-3016 (Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300.

Applicants' Representations:

1. The Bank is a joint stock company, formed in Vienna in 1937, which acquired its present corporate form in 1958. The Bank is the second largest banking institution, largest non-nationalist bank, and leading investment bank in Austria. Counsel to the Applicants further states that, based upon discussions with the appropriate staff of the Bank, the Bank is engaged regularly in, and derives a substantial portion of its business from, extending commercial and other types of credit, and accepting demand and other types of deposits, that are customary in Austria. On March 2, 1987, the Bank was given a license by the Comptroller of the Currency to establish and operate a branch in New York.

2. The Bank is subject to extensive supervision of and regulation by Austrian banking authorities that is comparable in many respects to the supervision of United States commercial banks. The Bank is authorized to carry on a banking business under the Kreditwesengesetz 1979, as amended (Banking Act) and is subject to supervision and regulation by the Budesminister for Finanzen (Federal Minister of Finance) and the Osterreichische National Bank (Austrian National Bank). In addition, pursuant to the Bank Holding Company Act of 1956 and the International Banking Act of 1978, the United States operations of the Bank are supervised and regulated by the Comptroller of the Currency and the Federal Reserve Board.

3. The Issuer was organized under the laws of the State of Delaware on July 17, 1987. All of its outstanding capital stock is owned by the Bank. There has been, and in the future there will be, no public offering of the Issuer's capital stock or of any other equity security of the Issuer. Similarly, there will be no offering in the United States of the Bank's capital stock or of any other equity security of the Bank other than in conformity with applicable United States laws, regulations and rules. The Issuer's sole business will consist of issuing and selling the Issuer's commercial paper notes (the "Notes") and depositing the net proceeds from the sale thereof (the "Deposits") at the Grand Cayman Branch (the "Branch") of the Bank pursuant to a deposit agreement (the "Deposit Agreement") to be entered into by the Issuer, the Branch and the Bank.

4. Substantially all of the Issuer's assets will consist of a single evidence of indebtedness of the Branch issued to the Issuer evidencing the Issuer's Deposits. Under certain provisions of the Deposit Agreement, the Branch unconditionally agrees to repay to the Issuer each Deposit made by the Issuer at the Branch, including accrued interest thereon, on the maturity's date of the Deposit. In the Deposit Agreement, the Branch waives any and all right of set-off it may have in respect to the Deposits. In addition, each Noteholder is assigned as security and granted a security interest in the Deposit and accrued interest corresponding to his Note. If the Issuer fails to pay a Note in accordance with its terms, the Deposit Agreement entitles the Noteholder to receive payment by the Branch of the Deposit and accrued interest.

5. The Bank confirms expressly in the Deposit Agreement that the aforementioned obligations of the Branch to the Issuer and to the Noteholder are its own obligations. The Bank in the Deposit Agreement expressly waives any defenses available to it against performance of its obligations to the extent that such defenses exist under Cayman Islands law and are based on insolvency, moratorium, liquidation or similar laws of the Cayman Islands affecting the Branch, or based on currency or foreign exchange laws of the Cayman Islands or acts of state of the Cayman Islands Government relating to expropriation, seizure or moratorium of payment affecting the Branch as such or affecting the obligations of the Branch to repay its deposits in general.

6. The Issuer proposes to issue and sell in the United States short-term negotiable Notes. The Notes will be offered and sold pursuant to the

exemption from the registration requirements of the Securities Act of 1933, as amended (the "1933 Act") provided by section 3(a)(3) thereof. The Notes will be sold in minimum denominations of $100,000, will have maturities not exceeding nine months, and will neither be payable on demand prior to maturity nor eligible for any extension, renewal, or automatic "rollover" at the option of either the holders or the Issuer. The Bank and the Issuer do not currently intend to sell commercial paper notes in the United States in excess of an aggregate amount for the Bank and the Issuer, of US $500,000,000 at any time outstanding.

7. The Issuer will not market any Notes prior to receiving an opinion of its United States counsel's to the effect that the proposed offering is exempt from the registration requirements of the 1933 Act by virtue of section 3(a)(3) thereof. The Issuer does not request SEC review or approval of such counsel's opinion regarding the availability of an exemption for the Notes under section 3(a)(3) of the 1933 Act.

8. The Notes will be offered publicly, through one or more major dealers, only to the types of sophisticated and largely institutional investors that ordinarily participate in the United States commercial paper market. While an announcement of the establishment of the commercial paper facility may be made as a matter of record, the offering will not be advertised. The Issuer will ensure that each dealer of the Notes will furnish to each offeree memoranda describing the businesses of Applicants, and will provide financial information from the most recent annual audited financial statements for the Bank, together with a description of the material differences between the Austrian accounting principles utilized in the preparation of the financial statements of the Bank and generally accepted accounting principles as applied in the United States. The memorandum prepared by each dealer of the Notes will be updated as promptly as practicable to reflect material adverse changes in the financial status of Applicants and will be at least as comprehensive as memoranda customarily used in offering commercial paper in the United States. The Issuer will select a major commercial bank to act as issuing and paying agent for the Notes (the "Depositary").

9. Under Austrian law and pursuant to the Deposit Agreement, the repayment obligation of the Branch in respect of the Deposits is an obligation of the Bank. the Bank's obligations in respect of its liabilities to the Issuer will rank at least pari passu among themselves and with all other unsecured and unsubordinated indebtedness (including deposit liabilities) of the Bank and superior to rights of shareholders; the holders of the Notes will have a direct course of action against the Bank in the event of any default in payment on the Notes.

10. The Issuer represents that, prior to their issuance, the Notes will have received one of the three highest investment grade ratings from at least one unaffiliated, nationally recognized statistical rating organization and the Issuer's United States counsel shall have certified that the rating was received. The Bank will submit to the jurisdiction of any state or federal court in the Borough of Manhattan in the City of New York, and will appoint the Issuer as agent to accept any process which may be served in any action based upon its obligations to the Issuer as described herein. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to the Deposits and all obligations of the Bank to the Issuer as described herein have been paid. The authorized agent will not be, or be obligated to act as, a trustee for the holders of the Notes.

11. The Bank and the Issuer may, from time to time, offer their debt securities or non-voting preferred stock other than the Notes for sale in the United States. The obligations of the Issuer in respect of any such debt securities and non-voting preferred stock issued by the Issuer will be supported by the Bank's guarantee. Any future issuance of Applicant's debt securities or non-voting preferred stock will be made in reliance upon Rule 6c-9 under the 1940 Act, unless Applicants file an application seeking to amend any order issued on this application to substitute the Bank's guarantee with a functional equivalent.

Applicants' Legal Analysis:

1. Approval of the application is both necessary and appropriate in the public interest. It would benefit not only the Bank but also institutional and other sophisticated investors in the United States who would otherwise be precluded from purchasing securities issued by foreign banks, which represent an important segment of the short term, prime quality securities available for purchase on the international market.

2. Approval of the exemption would be consistent with the protection of investors because the existing regulatory structure to which the Bank is subject affords sufficient protection for investors. The Bank is subject to extensive regulation under Austrian banking law comparable in many respects to that imposed on United States banks and such regulation renders the 1940 Act's protection unnecessary. In addition, with respect to any offering of its securities in the United States, the Bank would be subject to the antifraud provisions of the 1933 Act and of the Securities Exchange Act of 1934.

3. The rationale for granting a section 6(c) exemption to the Bank extends to the Issuer as well because of the parent-subsidiary relationship between the Bank and the Issuer. The sole business of the Issuer will be to operate as a financing vehicle for the Bank. The proceeds from the sale of Notes by the Issuer will be lent to or deposited with the Branch. If the Bank, instead of issuing the Notes directly, chooses to use the Issuer as a financing vehicle, the same policy considerations should apply and the Issuer should be granted an exemption. This rationale applies particularly here, because, as a consequence of the parent-subsidiary relationship, payment of the Notes does not depend upon the operations or investment policy of the Issuer, for as a result of the Deposit Agreement, the holders of the Notes may ultimately look to the Bank. Accordingly, the concerns of public policy which dictated the enactment of the 1940 Act are not applicable to the Issuer nor do the holders of the Issuer's Notes require the protection afforded by the 1940 Act.

Applicants' Conditions: If the requested order is granted, Applicants agree to the following condition: Applicants consent to any SEC order being expressly conditioned on their compliance with the undertakings and representations summarized above and more fully set forth in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-647 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16204 (812-6906)]

The Horizon Funds; Application

Date: January 6, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order Under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Horizon Funds.

Relevant 1940 Act Sections: Order requested pursuant to section 17(d) and Rule 17d-1 thereunder.

Summary of Application: Applicant seeks an order to permit it to enter into master repurchase agreements with non-affiliated financial institutions such as broker-dealers and banks pursuant to which individual repurchase transactions would be effected as described below.

Filing Date: The application was filed on October 20, 1987, and amended on December 2, 1987, and January 4, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 1, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington DC 20549; Applicant, Thomas M. Collins, President, 156 West 56th Street, 19th Floor, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, (202) 272-3016, or Thomas Mira, Staff Attorney, (202) 272-3033 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4500).

Applicant's Representations

1. Applicant is registered under the 1940 Act as an open-end management investment company, and is a "series" investment company currently comprised of five series representing interests in five investment portfolios—The Horizon Prime Fund, The Horizon Treasury Fund, The Horizon Tax-Exempt Money Fund, The Horizon Intermediate Tax-Exempt Fund and The Horizon Intermediate Government Fund. The requested order concens only the Prime and Treasury Funds both of which are money market funds ("Subject Funds"). The net asset values of the Subject Funds are determined, and shares of each portfolio are priced, daily as of 4:00 p.m. Eastern Time by the amortized cost method of valuation. Currently, to be executed on a given date, a purchase order for shares of these portfolios must be received that day by the Subject Funds' custodian prior to 2:30 p.m. Eastern Time, which is also the latest time orders may be placed for overnight investment of monies received on that day. Purchase orders received prior to 2:30 p.m. Eastern Time on a business day are executed at 4:00 p.m. on the same day. Purchase orders received after 2:30 p.m. Eastern Time are not accepted.

2. Purchases or shares include customers of Applicant's investment adviser, Security Pacific National Bank ("Security Pacific"), and its affiliates which maintain customer directed, non-discretionary accounts with Security Pacific or its affiliates. Applicant wishes to permit Security Pacific to purchase shares of the Subject Funds, as agent for its customers, in automatic investment transactions whereby Security Pacific will follow the standing instructions of its customers and automatically invest excess cash balances of its customers' cutody, agency or other non-discretionary accounts in shares of one of the Subject Funds. These "sweep" transactions will be effected automatically by computer each business day as of 12:00 noon Pacific Time (3:00 p.m. Eastern Time) but the machine processing required to tabulate each day's transaction activities will be completed later during the day when the daily processing for its accounting system is completed ("Completion Time"). The Completion Time will normally be no later than 1:00 a.m. Eastern Time the following morning.

3. Net income with respect to the Subject Funds is determined and declared daily as a dividend to the respective shareholders of record as of the close of trading on the New York Stock Exchange (currently 4:00 p.m. Eastern Time). Accordingly, if Applicant were to accept orders from Security Pacific after 2:30 p.m. Eastern Time without special arrangements for investment of the proceeds of these orders, dividends would be payable on shares purchased pursuant to such orders but the proceeds of such orders would remain uninvested overnight and dividends to other Subject Fund shareholders would be diluted. The requested order is intended to permit Security Pacific to enter into repurchase transactions on behalf of the Subject Funds by 2:30 p.m. Eastern Time each business day, based upon amounts estimated to be received by Applicant on that day through the operation of the sweep program, with confirmation of the exact principal amount of the transaction for the account of Applicant occurring on the following business day.

4. In order to permit Applicant to invest anticipated net assets attributable to the sweep program on the same day they are available for investment (despite the fact that the exact amount therefor will not be known until the Completion Time), Applicant and Security Pacific propose the following procedure. Security Pacific will enter into a repurchase transaction with an unaffiliated entity ("Seller") under a repurchase agreement on behalf of Applicant in an amount which it considers, based upon experience in administering its computer sweep program, to be sufficient to invest any net assets of the Subject Funds attributable to the operation of the sweep program that day ("Sweep Repurchase Agreement"). For example, if Security Pacific estimates that the Subject Funds will receive an aggregate of $50 million during the day through sweep transactions (after allowing for other net sales or net redemption of shares of these Funds), Security Pacific will enter into a repurchase transaction on behalf of the Subject Funds in the amount of $50 million. Security Pacific will wire the sale price of the securities transferred by the Seller which serve as the collateral for the repurchase agreement to an account with the Applicant's custodian. At the same time the Seller in a transaction will transfer such securities to an appropriate account of Applicant and take action necessary to perfect a security interest in favor of Applicant in the securities at the time of their transfer. Until the Completion Time, Applicant will have a perfected security interest in all of the securities transferred in connection with the Sweep Repurchase Agreement. In connection with the proposed repurchase transactions Applicant will comply with the SEC's position concerning repurchase agreements set forth in Investment Company Act Release No. 13005, February 2, 1983, Investment Company Act Release No. 10666, April 18, 1979, and SEC interpretations set forth in letters to the Investment Company Institute dated January 5, April 17 and June 19, 1985.

5. To the extent that a repurchase transaction entered into on behalf of a Subject Fund was sufficient to make such Fund fully invested with respect to sweep funds, the account of such Fund will reflect the specific amount it had in fact invested in a transaction (including its ownership of the eligible securities purchased by such investment). If a

repurchase transaction was not sufficient to make such Fund fully invested with respect to sweep funds, Applicant's records will reflect the Fund's investment in the entire amount of such repurchase transaction and Security Pacific would retain an uninvested case position with respect to sweep funds in excess of the Sweep Repurchase Agreement. Therefore, the interests of Subject Fund shareholders would not be diluted because amounts in excess of the repurchase agreement would not be invested in shares of either Subject Fund. If the Sweep Repurchase Agreement exceeds amounts available for investment, Security Pacific will be deemed to have purchased such excess securities for its own account. Applicant states that Security Pacific normally has the ability to predict with a good degree of accuracy the likely aggregate daily amount of sweep funds and normally will enter into a Sweep Repurchase Agreement in an amount greater than its estimated sweep.

6. On the next business day, based on the amount actually invested by the Subject Funds through operation of the sweep program, the Seller and Applicant's custodian will confirm by telephone the amount of the repurchase transaction that the Subject Funds had in fact entered into with their own assets and the Sellers will issue the required telex or wire confirmations of the specific terms of Applicant's repurchase transactions. In addition, the Sellers will issue separate confirmations to Security Pacific for its own account confirming that those eligible securities transferred by the Sellers the previous day which the Subject Funds had not purchased with their own assets had, in fact, been purchased by Security Pacific with its own funds. Except for differences attributable to the differing amounts of the repurchase transactions, the terms of the transactions and the confirmations to Applicant and to Security Pacific would be identical. Applicant will continue to have a perfected security interest in those eligible securities which were confirmed to it as being subject to its repurchase transactions under the Sweep Repurchase Agreement. To the extent that any Sweep Repurchase Agreement is secured by two or more issues of securities differing as to quality, maturity or rate, each security will be apportioned between the Subject Funds and Security Pacific pro-rata to the extent possible. Where such pro-rata apportionment is not possible, securities will be apportioned in a manner that Security Pacific, acting as adviser to Applicant, believes will leave each party in a comparably secured position.

7. The effect of the proposed procedure will be to permit Security Pacific to purchase and pay for shares in the Prime and Treasury Funds, as agent for its customers, by 2:30 p.m. Eastern Time, even though the exact number of shares acquired by Security Pacific as agent is not determined until the Completion Time. Although there are other procedures for investment of the proceeds of any day's sweep pending determination of the exact amount of such proceeds at the Completion Time (*e.g.*, Security Pacific could delay investment in the Prime and Treasury Funds until the next business day and could invest sweep proceeds overnight in a separate repurchase transaction), Security Pacific believes that the proposed procedures are required to comply with its customers' directions to invest the excess balance in their sweep accounts directly in investments such as the Subject Funds. In addition, Security Pacific believes that the overall return to its customers will be greater if it invests sweep proceeds directly in the Subject Funds rather than placing such proceeds in an intermediate investment.

Applicant's Legal Analysis

1. Applicant and Security Pacific wish to adopt the proposed investment procedure in the interest of all shareholders in response to the demands placed on portfolio management by the sweep program. Applicant believes that the requested order is appropriate in the public interest because it will permit the investment of cash received through the sweep program on the day orders are executed and will thereby reduce any dilution in daily dividends. Applicant also believes that the proposed procedure provides only benefits and has no disadvantages to Subject Fund shareholders. Applicant's rights vis-a-vis Sellers under repurchase transactions will be protected by repurchase agreements which are substantially similar to the form of General Repurchase Agreement prepared by the Investment Company Institute for the mutual fund industry. Moreover, pending reconciliation of the day's transaction activity, Security Pacific will segregate and hold for the exclusive benefit of Applicant, all securities transferred to Security Pacific in connection with repurchase transactions entered into for the Subject Funds. Until the amounts of the Subject Funds' assets actually invested in a Sweep Repurchase Agreement are determined at the Completion Time, Security Pacific will assume that only Subject Fund assets were used for such transactions and their interests will be protected by a perfected security interest in such securities.

2. The interest of Security Pacific in negotiating the maximum interest rate available on any repurchase transaction entered into on behalf of the Subject Funds will be the same as the interest of such Funds. To the extent that Security Pacific is deemed to be a participant in the proposed investment procedure within the meaning of section 17(d) of the 1940 Act and Rule 17d-1 thereunder, Applicant concludes that Security Pacific's "participation" is not on a basis different from or less advantageous than that of the Subject Funds.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-648 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-0-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 7, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Americana Hotels Realty Corp.
  Common Stock, $1.00 Par Value (File No. 7-1031)
Avemco Corp.
  Common Stock, $.10 Par Value (File No. 7-1032)
British Petroleum
  Partial Payment, ADS 1st Installment, No Par Value (File No. 7-1033)
Cleveland Cliffs Inc.
  $2.00 Cumulative Convertible Exchangeable Preferred Vtg., No Par Value (File No. 7-1034)
Ennis Business Forms Inc.
  Common Stock, $2.50 Par Value (File No. 7-1035)
First Financial Fund Inc.
  Common Stock, $.001 Par Value (File No. 7-1036)
Hexcel Corp.
  Common Stock, No Par Value (File No. 7-1037)
IBP Inc.
  Common Stock, $.05 Par Value (File No. 7-1038)

Kaufman Broad Home Corp.
Common Stock, $1.00 Par Value (File No. 7-1039)
PNC Financial Corp.
Common Stock, $5.00 Par Value (File No. 7-1040)
United Water Resources Inc.
Common Stock, $3.50 Par Value (File No. 7-1041)
Variety Corp.
Cumulative Convertible Class 1 "A" Preferred, No Par Value (File No. 7-1042)
Fisher & Porter Co.
Common Stock, $1.00 Par Value (File No. 7-1043)
Gull Inc.
Common Stock, $.10 Par Value (File No. 7-1044)
Lilly, Eli & Co.
Cont. Pymt. Oblig. Units, No Par Value (File No. 7-1045)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 29, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-643 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

January 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Lionel Corporation
Common Stock, Par Value $.10 (File No. 7-0973)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 28, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-644 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 7, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Millipore Corporation
Common Stock, Par Value $1.00 (File No. 7-1046)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 29, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-645 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25237; File No. SR-PSE-87-30]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Pacific Stock Exchange, Inc.; Pilot Program for Display of Multiple-Series and Stock/Option Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 1, 1987, the Pacific Stock Exchange, Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 under the Securities Exchange Act (the "Act") of 1934, hereby proposes to extend a test of the dissemination of certain indications of market interest through the Autex Trading Information System ("AUTEX"). By Release dated May 29, 1987, (No. 34-24528; SR-PSE-87-07) the Securities and Exchange Commission approved a six-month test of a system by which PSE options members could display certain indications of interest for multiple options series orders and/or stock/option orders through AUTEX. To complete the test of this program the Exchange requests an extension of three months.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of

[1] For a more detailed description of the AUTEX pilot program, *see* Securities Exchange Act Release No. 24366 (April 20, 1987), 52 FR 13782.

and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

This proposal is for a continuation of a test to electronically disseminate indications of interests for certain types of options orders. The Exchange believes that three additional months are required to provide for ample input from members and customers as to the desirability of the system. The proposal is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it is intended to facilitate transactions in securities and will provide a greater ability to eliminate impediments in the marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [2] and the rules and regulations thereunder. The Commission understands that use of the AUTEX system to date has been extremely limited. The three-month pilot program extension requested by the PSE should enable the Exchange to better educate its members as to the availability and advantages of the AUTEX system and guage more closely the potential demand for such a system.

The Exchange requests that the proposed rule change be granted accelerated effectiveness pursuant to section 19(b)(2) of the Act. The purpose of this rule filing is simply to extend for three months the operation of a pilot program approved previously pursuant to standard notice and comment procedures.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposal relates to a pilot program already published for comment and in operation for six months. Based on its experience during the three-month pilot extension, the Commission anticipates that by the conclusion of this period (*i.e.*, February 29, 1988), the PSE will be able to make a determination as to whether to seek permanent status for the AUTEX program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 4, 1988.

[FR Doc. 88-699 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

[2] 15 U.S.C. 78f (1982).

[Release No. 35-24558]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 7, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 1, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CSW Credit, Inc.; Central and South West Corporation (70-7218; 70-7113)

Central and South West Corporation ("CSW"), a registered holding company, and its factoring subsidiary, CSW Credit, Inc. ("CSW Credit"), 2121 San Jacinto Street, Dallas, Texas 75201, have filed a post-effective amendment to their applications-declarations pursuant to sections 6, 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By order dated July 19, 1985 (HCAR No. 23767), the Commission authorized CSW to organize and acquire CSW Credit, a corporation formed for the purpose of factoring accounts receivable of the CSW electric utility companies. CSW was authorized to make equity investments in CSW Credit in an amount up to $80 million, and CSW Credit was authorized to borrow up to $320 million, through December 31, 1986. By order dated July 31, 1986 (HCAR No. 24157), the Commission authorized CSW Credit to expand its factoring activities to include the purchase of receivables of electric utilities not associated with the CSW system, subject to the condition that the average amount of nonassociate company receivables purchased by CSW Credit during any twelve-month period would remain below the corresponding amount of associate company receivables. To finance these expanded activities through December 31, 1988, CSW was authorized to make

additional equity investments of up to $40 million in CSW Credit, through either capital contributions or the acquisition of common stock of CSW Credit; and CSW Credit was authorized to sell to CSW up to $40 million of its common stock and to borrow up to an additional $160 million pursuant to bank lines to credit or through the issuance of commerical paper. CSW and CSW Credit now request authorization through December 31, 1989 for CSW Credit to factor accounts receivable of nonassociate utility companies whose primary revenues are derived from the sale of gas and/or electricity, within the limitation imposed by the 1986 order. CSW Credit proposes to borrow up to $320 million and $304 million to finance the factoring of associate and nonassociate receivables, respectively. CSW also proposes to make equity investments in CSW Credit of up to $80 million and $76 million in connection with the factoring of associate and nonassociate receivables, respectively.

Jersey Central Power & Light Company, et al. (70–7333)

Jersey Central Power & Light Company ("JCP&L"), 161 Madison Avenue, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605 and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907 (collectively, "Companies"), subsidiaries of General Public Utilities Corporation, a registered holding company, have filed a post-effective amendment to their application pursuant to sections 9(a) and 10 of the Act.

By order dated March 11, 1987 (HCAR No. 24339), the Companies were authorized to enter into Lease Agreements ("Leases") with Prulease, Inc. ("Lessor"), an affiliate of The Prudential Insurance Company of America. Under the Leases, the Lessor would acquire title from and simultaneously lease to the Companies from time to time certain nuclear fuel, fuel assemblies and component parts ("Nuclear Material") for use in their jointly owned Three Mile Island, Unit No. 1 nuclear generating station. The Lessor's unrecovered acquisition costs for Nuclear Material and payments for related services and costs (collectively, "Acquisition Costs") would not exceed $100 million at any one time oustanding. Individual sublimits applicable to Met-Ed, JCP&L and Penelec were $50 million, $25 million and $25 million, respectively. The Leases further provided that the Lessor's unrecovered Acquisition Costs, when added to such costs under the lease agreements between the Lessor and JCP&L concerning Nuclear Material for use at JCP&L's Oyster Creek nuclear generating station, as authorized by order of the Commission of Setpember 24, 1986 (HCAR No. 23841), would not exceed a total of $175 million at any one time outstanding.

The Companies now propose to amend their respective Leases in order to (i) increase the total amount of Acquisition Costs at any one time outsanding to $125 million, (ii) increase the individual sublimits applicable to Met-Ed, JCP&L and Penelec to $62.5 million, $31.25 million and $31.25 million, respectively, and (iii) eliminate the restriction that such Acquisition Costs, when added to Acquisition Costs outstanding under JCP&L's Oyster Creek nuclear-material lease agreement with Prulease, may not exceed an aggregate of $175 million at any one time outstanding. Met-Ed also proposes to amend its Lease to reduce the Lease Rate payable with respect to any Acquisition Costs incurred after the date of amendment from 1.625% to 1.5% over the rate charged on 30-day dealer-placed commerical paper rate issued by Prudential Funding Corporation, as such rate is in effect from time to time on the 15th day of each month.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–700 Filed 1–13–88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #6587]

North Carolina; Declaration of Disaster Loan Area

Carteret, New Hanover, Onslow and Pender Counties in the State of North Carolina constitute an Economic Injury Disaster Loan Area because of the closure of the coastal waters to shellfishing from November 2, 1987, and continuing, by the Department of Natural Resources of the State of North Carolina due to red tide contamination. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file up applications for economic injury assistance until the close of business on October 4, 1988, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: January 4, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–602 Filed 1–13–88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2304]

Pennsylvania; Declaration of Disaster Loan Area

The City of White Haven, Luzerne County, in the State of Pennsylvania constitutes a disaster loan area because of damage from a fire which occurred on December 23, 1987. Applications for loans for physcial damage may be filed until the close of business on March 7, 1988 and for economic injury until the close of business on October 6, 1988 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308

or other locally announced locations. The interest rates are:

Homeowners With Credit Available Elsewhere	8.000%
Homeowners Without Credit Available Elsewhere	4.000%
Business With Credit Available Elsewhere	8.000%
Businesses Without Credit Available Elsewhere	4.000%
Businesses (EIDL) Without Credit Available Elsewhere	4.000%
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000%

The number assigned to this disaster is 230405 for physical damage and for economic injury the number is 659200.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: January 6, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–603 Filed 1–13–88; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C.

Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted by February 16, 1988. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: SBIR Mailing List and Confirmation Request

Form No.: SBA 1386

Frequency: On occasion

Description of Respondents: The information submitted by firms enables the Small Business Administration to maintain a mailing list and send publications to these firms explaining the SBIR Program.

Annual Responses: 30,000

Annual Burden Hours: 250

Title: Leave Policies in Small Business

Frequency: One time, non-recurring

Description of Respondents: This survey is needed to analyze the effects on varying firms sizes of pending Federal legislation that would require employers to provide unpaid family and medical leave to employees.

Annual Responses: 4,000

Annual Burden Hours: 1,000

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 88-713 Filed 1-13-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1044]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

1. *Summary:* Section 2 of Executive Order 12532 of September 9, 1985 (codified in Pub. L. 99-440), provides that no U.S. Government agency may intercede with any foreign government on behalf of any U.S. national who does not adhere to certain fair labor principles specified in the order. The following summarizes the information collection proposals submitted to OMB:

a. Type of Request—Reinstatement.
Originating Office—Bureau of African Affairs.
Title of Information Collection—Questionnaire Involving South Africa and Fair Labor Standards.
Frequency—Annual.
Respondents—U.S. firms operating in South Africa.
Estimated Number of Responses—35.
Estimated Total Number of Hours Needed to Respond—1,050.

b. Type of Request—Reinstatement.
Originating Office—Bureau of African Affairs.
Title of Information Collection—Application for Registration.
Form Number—DSP-95.
Frequency—Once.
Respondents—U.S. firms operating in South Africa.
Estimated Number of Responses—20.
Estimated Total Number of Hours Needed to Respond—20.

The final rule containing this collection of information was published in the **Federal Register** on December 31, 1985 (50 FR 53308).

2. *Summary:* The operation of a motor vehicle in the United States by foreign diplomatic personnel is a benefit under the Foreign Missions Act, 22 U.S.C. 4302, which must be obtained through the Department of State. The following summarizes the information collection proposal submitted to OMB.

Type of request—New.
Originating office—Office of Foreign Missions.
Title of information collection—Diplomatic Driver License Application.
Form Number—DSP-103.
Frequency—On occasion.
Respondents—Foreign government representatives.
Estimated Number of Responses—8,000.
Estimated Total Number of Hours Needed to Respond—4,000.

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult, (202) 395-7340.

Dated: December 31, 1987.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

[FR Doc. 88-611 Filed 1-13-88; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/1151]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 1, 1988 at 10:00 a.m. in Room 1408, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meeting will be to discuss issues related to the work of CCITT Study Group II. The meeting will address Issuer Identifier Code Administration and Assignment procedures for Automated International Telephone Credit Cards within the U.S.A. and preparations for the initial World Numbering Zone 1 Committee Meeting. The meeting may also consider other issues related to U.S. Study Group "C".

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC.; telephone (202) 653-6102. All attendees must use the C Street entrance to the building.

Date: January 4, 1988.

Earl S. Barbely,

Director Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 88-612 Filed 1-13-88; 8:45 am]

BILLING CODE 4710-07-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Section 301 European Community Oilseeds Case; Initiation of Investigation

ACTION: Initiation of investigation under section 302 of the Trade Act of 1974.

SUMMARY: Under 19 U.S.C. 2412(a), the U.S. Trade Representative (USTR) has determined to initiate an investigation of the European Community's (EC's) oilseed practices and policies as they affect imports of oilseeds, particularly soybeans, from the United States.

EFFECTIVE DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Marilyn Moore ((202) 395-5006), Laura Kneale ((202) 395-3074) or John Kingery ((202) 395-6800), Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20506.

SUPPLEMENTARY INFORMATION: On December 16, 1987, the American Soybean Association filed a petition under section 302 of the Trade Act of 1974, as amended (Trade Act), 19 U.S.C. 2412, alleging that the EC has engaged in practices affecting imports of oilseeds, particularly soybeans, that deny rights of the United States under a trade agreement, are inconsistent with a trade agreement, and are unjustifiable, unreasonable and burden or restrict United States commerce. The practices complained of are, inter alia, subsidies provided to the EC processors of oilseeds that encourage purchase of EC oilseeds to the detriment of imports of oilseeds, particularly soybeans, from the United States.

On January 5, 1988, the USTR initiated an investigation of these practices and requested consultations with the EC, as required by section 303(a) of the Trade Act. USTR will seek information and advice from the petitioner and the appropriate representatives provided for under section 135 of the Trade Act in preparing United States presentations for such consultations. Any interested person is invited to submit comments on the issues raised by the petition. Comments should be filed in accordance with the regulations at 15 CFR 2006.6 and are due no later than February 5, 1988. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Room 222, USTR, 600 17th Street, NW., Washington, DC 20506.

Judith Hippler Bello,

Chairman, Section 301 Committee.

[FR Doc. 88-657 Filed 1-13-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Multnomah County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed Sandy River Bridge project on the Crown Point Highway in Multnomah County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coodinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE, Salem, Oregon 97301, Telephone: (503) 399-5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to replace the bridge over the Sandy River in Troutdale. This bridge is part of the Columbia River Highway Historic District. The proposed improvement is considered necessary to provide for the existing and projected traffic demand and a safe and efficient highway meeting modern design standards.

Alternatives under consideration include building a new bridge for vehicle traffic in one of several locations downstream of the current bridge and maintaining the historic bridge for bicycle and pedestrian use and taking no action.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies. Public meetings will be held during project development, and a public hearing will be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program)

Issued on December 8, 1987.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 88-599 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA General Docket No. H-87-2]

Petition for Exemption or Waiver for Test Program; National Railroad Passenger Corp.

Notice is hereby given that the National Railroad Passenger Corporation (Amtrak) has submitted a request dated October 23, 1987, for an extension of time in which to complete the testing of additional equipment under the provisions of a temporary waiver of 49 CFR 213.57(b), that section of the Federal Track Safety Standards that prescribes the maximum allowable operating speeds for trains on curves as a function of actual superelevation and curvature. Amtrak requested this waiver, initially, for the test operation of an RTG II Turbine train on its Northeast Corridor line between New York and Boston at curving speeds which would produce up to six inches of lateral unbalance. This petition was conditionally approved by the Federal Railroad Administration October 5, 1987. These tests were conducted on October 8 and 9, 1987, in accordance with the conditions described in the **Federal Register** Volume 52, Number 197, pages 38035 and following. The period identified by FRA, within which the waiver was to be effective was scheduled to end on October 31, 1987. The request for the extension of the test period—from October 31, 1987, to January 31, 1988—was based on the petitioner's intention to test a type of turbine-powered passenger trainset quiet similar to the RTG II model at curving speeds resulting in seven inches of lateral unbalance. Before FRA could officially respond to this first extension request, Amtrak submitted a second, dated December 2, 1987, asking that the TRG-II Turbine trainset be included now in the seven-inch unbalanced operation series and that the test period be extended to March 31, 1988, to permit the investigation of vehicle response of both models at curving speeds resulting in seven inches of unbalanced superelevation.

The RTL trainset is very similar to the RTG II version; the latter was assembled in France from French

designs, the former was fabricated in this country under license issued by the French manufacturer. Certain modifications of the basic RTG design led to the RTL equipment having slightly different response characteristics when running than are exhibited by the parent model. For this reason, FRA will require of the petitioner, a series of instrumented RTL trainset round trips between Boston, Massachusetts, and New Haven, Connecticut, at gradually increased curving speeds. Of the total route, Boston to New York City, it is now recognized by FRA and Amtrak that it is practical to consider elevated curving speeds only east of New Haven. The purpose of the instrumented trainset operation is to observe in the data the onset, if indeed this occurs, of unfavorable vehicle behavioral features. Similar instrumented trainset operation will be required in the RTG II case to evaluate vehicle response above the six inch unbalanced speed regime for which data already exist.

An instrumented RTG II trainset has already been operated within this test zone at speeds producing six inches of curve unbalance (October 9, 1987). There are 272 curves to be negotiated, on both tracks, between New Haven and Route 128 Station, just west of Boston. Of this total, six curves were identified from a data analysis where transient input required that train speed be reduced somewhat from the values that would produce six inches of unbalance. From this low incidence of vehicle response to track perturbation, it can be concluded that this track section is relatively smooth. Even so, FRA adopts the position that the RTL Turbine trainset is different enough from the RTG model to demand an independent analysis of risk associated with test operations. A like inquiry will be directed to the proposed increase in testing speed for the RTG II. From these analyses, if test feasibility is demonstrated, will come a series of conditions attached to FRA approval for the petitioner to operate RTL/RTG Turbine trainsets at speeds developing seven inches of cant deficiency on curves. It is expected that these conditions would take the form of those applied to the original RTG Turbine trainset test operation. These conditions were described, as noted earlier, in the **Federal Register.**

The approach to evaluating the risk of accident to the RTL/RTG test trainsets will pursue the steps outlined below:

1. As was done with the RTG trainset, RTL equipment will be parked for the lean test, on each of two (reversed direction) curves, having six inches of superelevation. The lean of the two carbody types induced by the superelevation causes deflections in truck suspension springing. These dimensional changes will be consolidated with the same types of measurement values recorded while the trainset is parked on level track. All of these data will then be entered into a steady state curving model along with other data unique to the RTL trainset, the output of which will be in the form of estimated values for the following parameters:

- Body roll angle;
- Truck lateral force;
- High and low rail vertical loads;
- Distance from track center line of the resultant load intercept;
- Lateral carbody accelerations at floor level;
- Underbalance;

as a function of whatever speed Amtrak proposes for a given curve.

This exercise can be carried out with a high degree of confidence in the validity of results, remarkable correspondence having been demonstrated between predicted and actual values for the parameters measured in test, not only for the RTG II trainset, but in earlier other-vehicle tests.

As was done in the RTG II instance, estimated RTL trainset performance will then be compared with that of other vehicle types previously analyzed and tested and known to be safe within specific ranges.

2. Because it is desired to operate both the RTG and RTL trainsets at speeds that will be higher than experienced during the initial RTG II trainset tests, it becomes important to have some understanding of how equitably the trucks of the trainsets distribute applied loads. Consequently, each of the three truck types supporting an RTL trainset will be subjected to standard load equalization tests in order to determine how effectively vertical loads are distributed among the four truck wheels. RTG trainset trucks are identical to those of the RTL equipment and need not be so tested.

3. Amtrak staff created a continuous record of track geometry between New Haven and Boston in July 1987 and then in September. These two records will be carefully compared in order to identify any change.

If it is determined through this analysis that the risk of accident is acceptably low, the test conditions will then be formulated. These are the restrictions that FRA would attach to an approval of including an RTL Turbine trainset within the scope of the original October 5, 1987, waiver of compliance with 49 CFR 213.57(b) and including an RTG II trainset for test operation at seven inch unbalanced speed.

Typical conditions would be as follows:

- Installation onboard the test trainset of a suite of instrumentation measuring and recording, for example, lateral carbody accelerations and train speeds.
- Round trips shall be scheduled between Boston and New Haven at train speeds producing 4, 6, 7 and 8 inches of curve unbalance, successively. During and following each of these unbalanced speed runs, the strip chart output of the onboard instrumentation shall be observed and analyzed by Amtrak and FRA technical staff who will arrive at mutually acceptable interpretation of the values displayed in the data.

Locations where test train speeds cause the values shown below to be exceeded shall be identified and future operation at those sites shall be at a lower speed:

a. Carbody steady state lateral accelerations of approximately 0.20g;

b. Transient accelerations (related to track alignment and crosslevel variation) of approximately 0.33g.

These two values are individually and independently operative as limits; they are not to be combined.

- The location of the onboard accelerometer will be at floor level in the trailing power car located as close as possible to the pivot point of the leading (passenger compartment) truck or close to the pivot point of the trailing (power) truck if pretest vehicle analysis indicates this to be a more appropriate location and it is physically possible to gain access to this area.
- In no event shall the test train operate at more than 110 mph.
- Evidence of recent accelerometer calibration shall be available to the FRA Test Monitor prior to the start of test or, if not, calibration shall occur immediately following the test series, and the resulting documentation shall be provided to the FRA Test Monitor in copy form.
- There shall be a capability for understandable voice communication between the Amtrak Test Director and test train Engineman continuously operative during each test run. It is the responsibility of the petitioner to have sufficient spare devices for this purpose onboard to obviate communication interruption because of equipment failure.
- Copies of test train operating instructions not issued by a train

dispatcher shall be available to FRA Test Monitor before each test.

• During periods when wind gusts of 50 mph or greater are predicted, the test trainset shall not be operated at speeds developing more than 3 inches of unbalanced elevation.

• The Manual on Uniform Traffic Control Devices (for Streets and Highways), Revision No. 4 (page 8C-7) recommends a warning period of at least 20 seconds for actuated automatic highway grade crossing protection. If the operation of the test train produces a warning period of less than 20 seconds at any active highway grade crossing device, the petitioner shall present a plan to FRA prior to any unbalanced speed testing, which describes compensating measures that will be taken to provide highway traffic with the recommended warning interval.

• The FRA Test Monitor shall have the authority to withdraw, at anytime for cause, the waiver of (Amtrak) compliance with § 213.57(B) of the Federal Track Safety Standards.

• The Test RTL/RTG II Turbine trains shall be equipped in the control compartment(s) with accurate, operating speed indicating device(s).

• The waiver will automatically expire at 11:59 p.m., March 31, 1988.

FRA is seeking information and comments from all interested parties. FRA will take these comments into account in arriving at a final specification of conditions governing test conduct. Such comments may also have value in supporting FRA's response to future requests for approval to operate trains through curves at speeds producing more than the current standard of three inches of underbalance. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if by March 1, 1988 the party submits a written request for hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA General Docket No. H-87-2" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street SW., Washington, DC 20590.

Comments received by March 1, 1988, will be considered in this proceeding and in evaluating any future proposals by Amtrak or other railroad entity for similar test programs. All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Issued in Washington, DC on January 7, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-637 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-06-M

Petition for Exemption or Waiver of Compliance; Union Pacific Railroad Co. et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting writtent views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before March 1, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Union Pacific Railroad Company

Waiver Petition Docket Number LI-87-10

The Union Pacific Railroad Company (UP) requests a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229). The UP seeks a waiver of compliance with § 229.123 of the regulation for 32 locomotives currently assigned to Bailey Yard, North Platte, Nebraska, for switch and hump yard service and for any additional locomotives assigned to Bailey Yard for this service in the future. This type of service often requires the locomotives to move from one side of the hump to the other which involves moving over the car retarders at the discharge end of the hump. The height of these retarders above the rail and the angle of the rail are such that the pilots hit the retarders, damaging them and bending the locomotive pilots. The railroad is requesting that it be allowed to raise the end pilots to 8¾ inches above the top of the rail, instead of the allowable maximum 6 inches, to achieve sufficient clearance and avoid damage to the locomotive pilots and the retarders.

Norfolk Southern Corporation

Waiver Petition Docket Number LI-87-9

On behalf of its operating subsidiaries, the Norfolk Southern Corporation (NS) requests a waiver of compliance with certain provisions of the Steam Locomotive Rules (49 CFR 230.108(b), main reservoir hammer testing, and § 230.110, air brake equipment cleaning requirments) for their steam locomotive number 1218.

NS desires to have the main air reservoir and air brake systems made subject to the following provisons of the Locomotive Safety Standards: 49 CFR 229.31(c), drilling of telltale holes in the exterior surface of all welded main air reservoirs, and §§ 229.27 and 227.29, testing requirements for schedule 26L air brake components. The locomotive is used in excursion service, mostly, on weekends through the summer season.

Denver, Rio Grande and Western Railroad Company

Waiver Petition Docket Number SA-87-10

The Denver, Rio Grande and Western Railraod Company (DRGW) requests a 6 month temporary waiver of compliance with certain provisions of the Railroad Safety Appliance Standards pertaining to locomotives, 49 CFR 231.30(g)(1)(ii). Its locomotives presently in service were found to have the required horizontal end handholds, which in some instances also serve as horizontal uncoupling levers, located more than 50 inches above the top of the rail. The standard for the end handhold is that it may be not less than 30 inches nor more

than 50 inches above the top of the rail. The DRGW will begin a modification program immediately to bring its locomotives into compliance and plan to have the program completed within the 6 month period.

Claremont and Concord Railway Company

Waiver Petition Docket Number RSGM-87-13

The Claremont and Concord Railway Company (CLCO) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. These locomotives operate over approximately 3 miles of track through mostly rural and wooded areas which terminate in the city of Claremont, New Hampshire. The CLCO states that they operate in an area of very low vandalism. Carrier records indicate no reportable incidents relating to glazing defects by any acts of vandalism.

South Central Tennessee Railroad

Waiver Petition Docket Number RSGM-87-14

The South Central Tennessee Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The carrier operates approximately 50 miles of track, about 10 miles within the city limits of Centerville, Dickson, and Hohenwald, Tennessee. The remaining trackage is through rural agricultural communities and sparsely populated wooded areas. The carrier states that they have not experienced any acts of vandalism, rock throwing, or rifle fire directed at their equipment since they began operations in 1985. Carrier records do not reveal any incidents of vandalism. The carrier feels that the expense of retrofitting their locomotive with certified glazing would impose an undue financial burden on them for protection against situations they do not encounter.

The Hutchinson and Northern Railway Company

Waiver Petition Docket Number RSGM-87-15

The Hutchinson and Northern Railway Company (HN) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The HN operates approximately 6 miles of track located within a residential or light industrial area near Hutchinson, Kansas. The carrier states that these locomotives have never been vandalized in any fashion. Carrier records do not reveal any accidents or incidents involving glazing on these locomotives. The carrier indicates that the two locomotives operate at speeds below the 10 mph limit.

The Merchants Grain Railroad, Inc.

Waiver Petition Docket Number RSGM-87-16

The Merchants Grain Railroad, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates over approximately 4½ miles of track located near Jeffersonville, Indiana. The area of travel consists of rural wooded regions with no over- or underpasses. The carrier states that there have been no incidents of the locomotive striking debris on the track, being hit by thrown objects, or any injuries relative to the locomotive glazing. There has been no vandalism to the locomotive or injuries to the crew since they initiated operations in August 1985.

The Plymouth and Lincoln Railroad

Waiver Petition Docket Number RSGM-87-17

The Plymouth and Lincoln Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates over approximately 6½ miles of track located in heavily wooded regions and sparsely populated areas near Lincoln, New Hampshire. The carrier states that there have been no incidents of vandalism to their equipment or injuries due to glazing since they began operations in May 1987.

The Great Walton Railroad Company, Inc.

Waiver Petition Docket Number RSGM-87-18

The Great Walton Railroad Company, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The carrier began operation in March 1987 with 10 miles of track located between Social Circle, Georgia and Monroe, Georgia. The region consists mostly of rural, agricultural areas. There have been no reported instances of vandalism by the railroad's previous owner, CSX Transportation, Inc.

Issued in Washington, DC, on January 7, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-638 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

Denials of Petitions for Defect Remedy Hearing

This notice sets forth the reasons for the denials of two petitions to conduct a hearing to determine whether a manufacturer has reasonably met its obligation to remedy a safety-related defect (15 U.S.C. 1416).

Ms. Edrice Bram of Northbrook, Ill., petitioned the agency to conduct a public hearing to determine if the Toyota Motor Corporation had reasonably met its responsibility to notify her of a safety related defect and to repair her 1984 Toyota Supra vehicle without charge. As a result of her petition Toyota agreed to reissue a notification letter to all owners who had not yet had their vehicles repaired, thus obviating the need for an agency hearing. The petition was denied on February 3, 1986.

On August 27, 1987, Dal Sun Kim of Salt Lake City, Utah, asked NHTSA to conduct a hearing to determine if General Motors Corporation had reasonably met its responsibility to repair his 1983 Chevrolet Cavalier without charge. General Motors informed the agency that the vehicle was repaired to Mr. Kim's satisfaction on October 26, 1987, and on October 30 his petition was denied.

(Sec. 156, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1416); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 7, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88-639 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP 87-13; Notice 1]

General Motors Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors Corporation of Warren, Michigan, has petitioned to be exempted 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 571.102, Federal Motor Vehicle Safety Standard

No. 102, "Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect", 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. Section S3.2 of Standard No. 102 requires that:

Identification of shift lever positions of automatic transmissions and of the shift lever pattern of manual transmissions, except three forward speed manual transmissions having the standard "H" pattern, shall be permanently displayed in view of the driver.

Section 571.3 of 49 CFR defines the meaning of the word "driver" as "the occupant of a motor vehicle seated immediately behind the steering control system." In recent interpretations of Standard No. 102, NHTSA has ruled that Section S3.2's requirement that the identification of shift lever positions of automatic transmissions be permanently displayed in view of the driver requires a display whenever a driver is in the driver's seating position, even if the ignition is not turned on. General Motors has sold approximately 113,000 passenger cars that do not comply with this interpretation of FMVSS No. 102. The vehicles are equipped with electronic transmission shift lever position displays which are only visible to the driver when the ignition switch is turned to the positions of "on" or "off". According to NHTSA's rulings, this violates the requirement of permanently displayed shift lever positions. The following table shows the number of noncompliant vehicles sold between 1985 and 1987 by model type.

Model type	No. of vehicles sold		
	1985	1986	1987 [1]
Buick Electra and LeSabre	.....	9,637	21,574
Olds Regency and Delta 88	7,679	26,965	36,624
Olds Toronado	.....	3,164	7,360

[1] 1987 figures are General Motors projected sales.

General Motors vehicles equipped with electronic transmission shift lever position displays and built on or after November 15, 1987, have an additional message on the instrument panel which states: "Vehicle is in Park before [P]RNDL is Illuminated"

In General Motors' view, this eliminates any future noncompliance. General Motors believes the noncompliance is inconsequential for the following reasons:

First and, perhaps, foremost, we do not perceive a need for displaying the PRNDL based exclusively on occupancy of the driver's seating position. The need arises when someone is driving the vehicle and, by virtue of driving the vehicle, has occasion to shift the transmission. The affected GM vehicles are all equipped with backdrive. Therefore, it is not possible to shift the transmission when the key is in the 'lock' or 'accessory' positions. In addition, it is not possible to turn the key to the 'lock' or 'accessory' positions unless the transmission is in park. Given that the purpose of Section S3.2 is to avoid the likelihood of shifting errors, we believe GM's electronic PRNDL designs not only satisfy that objective, but may in fact represent an improvement over conventional mechanical designs.

A second major consideration is that the recent [agency] interpretations do not appear to use the term 'driver' as comprehended in the purpose of FMVSS 102. Recall that the requirement is that the PRNDL be permanently displayed in view of the driver. It seems to us that, for purposes of FMVSS No. 102, a driver is more than just someone who happens to be occupying the driver's seat. Any number of examples could be given, such as a small child who might crawl into that seat, or someone sitting at a drive-in theatre watching a movie, etc., where the seat is occupied, but where the vehicle is not being operated.

Interested persons are invited to submit written data, views and arguments on the petition of General Motors 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, a Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment Closing Date: February 16, 1988.

(Section 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 January 11, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–658 Filed 1–13–88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: January 7, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0230
Form Number: 6458
Type of Review: Extension
Title: Certification and Election Form
Description: Form 6458 is used to make elections and certifications under the Crude Oil Windfall Profit Tax Act of 1980. The form is used by persons seeking to have an exemption from, or a smaller amount of tax applied to them. It is also used by persons who desire to withhold the tax from other producers. The form is also used by the persons listed above to revoke these elections.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 2,381 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–613 Filed 1–13–88; 8:45am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: January 7, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by

calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0129.
Form Number: ATF F 4473 (ATF F 5300.9).
Type of Review: Revision.
Title: Firearms Transaction Record Part I, Intra-State Over the Counter.
Description: This form is used to establish the eligibility of a buyer and to determine if a firearms sale is legal. It becomes part of the dealer's records and is used by law enforcement in investigations/inspections to trace firearms or to confirm criminal activity of persons who have violated the Gun Control Act.
Respondents: Individuals or households, Businesses or other for profit, Small Businesses or organizations.
Estimated Burden: 1,829,331 hours.
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Wasington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88–614 Filed 1–13–88; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Early Poussin in Rome: The Origins of French Classicism," (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temprorary exhibition or display of these objects at the Kimbell Art Museum in Forth Worth, Texas, beginning on or about September 24, 1988, to on or about November 27, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

C. Normand Poirier,
Acting General Counsel.

Date: January 6, 1988.

[FR Doc. 88–593 Filed 1–13–88; 8:45am]
BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.
ACTION: Notice.

The Veterans Administration 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). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: January 5, 1988.
By direction of the Administrator

Frank E. Lalley,
Director, Office of Information Management and Statistics.

Reinstatement

1. Department of Medicine and Surgery.
2. Request for and Consent to Release of Drug Abuse, Alcoholism or Alcohol Abuse, or Sickle Cell Anemia Information from Medical Records.
3. VA Form 10–5345.
4. This form is used by the VA to obtain written consent from veterans to release medical records containing information on drug/alcohol abuse and sickle cell anemia.
5. On occasion.
6. Individuals or households.
7. 492,808 responses.
8. 24,640 hours.
9. Not applicable.

[FR Doc. 88–587 Filed 1–13–88; 8:45 am]
BILLING CODE 8320–01–M

Special Medical Advisory Group (SMAG); Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Special Medical Advisory Group (SMAG) has been renewed for a two year period beginning December 8, 1987, through December 8, 1989.

Dated: January 6, 1988.
By direction of the Administrator.

Dennis R. Boxx,
Deputy Associate Administrator for Public Affairs.

[FR Doc. 88–590 Filed 1–13–88; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 9
Thursday, January 14, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:05 p.m. on Thursday, January 7, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Matters relating to the closed Capital Bank & Trust Co., Baton Rouge, Louisiana; (2) matters relating to a request for financial assistance, pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) two personnel matters.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 11, 1988.

Federal Deposit Insurance Corporation.

Margaret Olsen,

Deputy Executive Secretary.

[FR Doc. 88-758 Filed 1-12-88; 12:39 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, January 20, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 21, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Furture Meetings.

Correction and Approval of Minutes.

Eligibility Report for Candiates to Receive Presidential Primary Matching Funds.

Draft Advisory Opinion 1987-33—Rodney D. Joslin on behalf of The Lawyers for Better Government Fund Federal.

Draft Revisions to the Affiliation and Earmarking Regulations (11 CFR 110.3—110.6).

Petition for Rulemaking filed by the Ted Haley Congressional Committee.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88-770 Filed 1-12-88; 2:54 pm]

BILLING CODE 6715-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 95, January 4, 1988.

DATE AND TIME: January 14, 1988.

PLACE: San Antonio Public Library, 203 South St. Mary's Street, San Antonio, Texas 78205.

STATUS: 4:15 p.m.-6:15 p.m.—closed. Subpart B, Sec. 1703.202(a)(7) & (9) of the Code of Federal Regulations, 45 CFR, Ch. XVII Part 1703.

FOR FURTHER INFORMATION CONTRACT: Vivian J. Arterbery, NCLIS Executive Director, 1111 18th Street, NW., Washington, DC 20036 (202) 254-3100.

Dated: January 7, 1988.

Jane D. McDuffie,

Staff Assistant.

[FR Doc. 88-759 Filed 1-12-88; 1:34 pm]

BILLING CODE 7527-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Board of Directors

TIME AND DATE: 1:30 p.m. (closed portion), 3:00 p.m. (open portion), Tuesday, January 26, 1988.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street, NW., Washington, DC.

STATUS: The first part of the meeting from 1:30 p.m. to 3:00 p.m. will be closed to the public. The open portion of the meeting will commence at 3:00 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:30 p.m. to 3:00 p.m.):

1. Finance Project in Middle Eastern Country
2. Worker Rights Determination
3. Country Concentration Monitoring
4. Country Concentration Underwriting
5. Report on Private Political Risk Insurance Market
6. Claims Report
7. Overview on Finance and Insurance Operations
8. Report on Debt to Equity Conversion Funds
9. U.S. Effects Study
10. Budget Status Report
11. Finance Report
12. Finance and Insurance Reports

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:00 p.m.)

1. Approval of the Minutes of the Previous Board Meeting
2. Approval of Proposed Regular Meetings of the Board
3. Amendments to OPIC Bylaws
4. Personnel Action
5. Treasurer's Report
6. Information Reports

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation, on (202) 457-7079.

Margaret A. Kole,

OPIC Corporate Secretary.

January 12, 1988.

[FR Doc. 88-760 Filed 1-12-88; 1:35 pm]

BILLING CODE 3210-01-M

Corrections

Federal Register
Vol. 53, No. 9
Thursday, January 14, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 70472-7197]

Groundfish of the Gulf of Alaska, Bearing Sea and Aleutian Islands

Correction

In rule document 87-29799 beginning on page 49021 in the issue of Tuesday, December 29, 1987 make the following correction:

On page 49021, in the second column, in the second line, "52 FR 22892" should read "52 FR 22829"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 87-ACE-8]

Proposed Alteration and Establishment of Restricted Areas; Fort Leonard Wood, MO

Correction

In proposed rule document 87-28453 beginning on page 47021 in the issue of Friday, December 11, 1987 make the following corrections:

1. On page 47022, in the first column, the first bold heading should read "**R-4501A, B, C and D Fort Leonard Wood, MO [Amended]**"

2. In the same column, the second bold heading should read "**R-4501F Fort Leonard Wood, MO [New]**"

3. In the same column, under **R-4501G Fort Leonard Wood, MO [New]**, in the fourth line, "37°44'00'" should read "37°44'48'"

BILLING CODE 1505-01-D

federal register

Thursday
January 14, 1988

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Bonds; Bond Release Application; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Bonds; Bond Release Application

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is amending the rules that govern the information required in an application to release a performance bond to include the name of the permittee and amending the bonding rules to allow third parties to guarantee a self-bond. These revisions are in accordance with the Secretary's brief of March 5, 1984, in which the Secretary addressed the National Wildlife Federation's challenge to the omission of the permittee's name in the published notice of bond release and in response to a June 16, 1986, petition for rulemaking from the National Coal Association/American Mining Congress (NCA/AMC) Joint Committee on Surface Mining Regulations requesting that OSMRE amend its rules to allow third parties to guarantee a self-bond. The rules were proposed on November 26, 1986, with a comment period that closed on February 5, 1987. Six parties commented on this proposal. These final rules are adopted for the permanent regulatory program.

EFFECTIVE DATE: This rule is effective on February 16, 1988.

FOR FURTHER INFORMATION CONTACT: Frank Mancino, Office of Surface Mining Reclamation and Enforcement U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; telephone No. (202) 343-7952.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments and Rules Adopted
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act, Pub. L. 95-87), 30 U.S.C. 1201 *et seq.*, sets forth the general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSMRE has by regulation implemented the general requirements of the Act and established performance standards to be achieved by different operations. The regulations dealing with the requirements for performance bonding are contained within 30 CFR Chapter VII, Subchapter J, Part 800. This part was revised on July 19, 1983 (43 FR 32932) and August 10, 1983 (43 FR 36429).

Section 800.40 of 30 CFR contains the requirements for release of performance bonds. Sections 800.5 and 800.23 of 30 CFR contain the requirements for acceptance of a self-bond. On November 26, 1986 (51 FR 42985) OSMRE proposed to revise these sections.

Section 800.5 was proposed to be revised by the removal of the term "parent corporation" from the definition of self-bond, and replaced by the term "corporate guarantor."

Section 800.23 was proposed to be revised by the removal of the term "parent corporation" and replaced by the term "corporate guarantor" in the requirements for obtaining a self-bond.

The changes proposed in §§ 800.5 and 800.23 resulted from the acceptance by OSMRE of a petition to change the regulations filed by the Joint National Coal Association (NCA)/American Mining Congress (AMC) Committee on Surface Mining Regulations. This petition, filed according to the rulemaking provisions of 30 CFR 700.12, was published in the **Federal Register** on October 29, 1985 (50 FR 43722) for public comment. On June 16, 1986, OSMRE made a decision to accept one proposal and to reject two other proposals of the petition. Notice of OSMRE's decision was published in the **Federal Register** on July 7, 1986 (51 FR 15047).

Section 800.40(a)(2) was proposed to be revised by the addition of the words "the permittee's name" to the requirements for release of performance bonds. This change was made in response to a commitment made by the Secretary in *In Re: Permanent Surface Mining Regulation Litigation (II)*, Civil Action 79-1144 (D.D.C. 1984).

II. Discussion of Comments and Rules Adopted

The public comment period for these rules opened on November 26, 1986, and closed February 4, 1987. The commenters generally favored the proposed changes in the bonding rules, with one exception discussed below. A total of six commenters filed written statements resulting in over 12 comments. Two were from State regulatory authorities, two were from coal operators, one was from a national coal industry trade organization, and one was from an environmental group. Five of the commenters favored the change in the self-bonding sections of the rules and one opposed the changes. Two of the commenters supported the change in the requirements for bond release notice and the other four did not comment. No public hearings or meetings were requested and none were held. After considering all the comments on the proposed rulemaking, OSMRE is finalizing the rule with some minor changes based on the comments received.

Some industry commenters proposed that OSMRE reconsider various proposals to revise the existing bonding regulations, discussed in the rulemaking petition of September 19, 1985 (51 FR 15047). These comments were not directed to the proposed rulemaking herein and are thus not relevant nor appropriate to this rulemaking.

OSMRE wishes to emphasize that although OSMRE has not proposed to include certain provisions in its national rules, States may submit for OSMRE's approval alternative systems under section 509(c) of the Act that will achieve the objectives and purposes of the bonding program as set forth in section 509.

Sections 800.5 and 800.23 Definitions and Self-bonding.

Section 800.5 contains definitions applicable to this section. OSMRE proposed to revise the definition of self-bond, to include a corporate guarantor in place of a parent corporation. Based on the comments received, as discussed below, OSMRE has adopted the proposal to define a self-bond to include a corporate guarantor but has revised the definition to require the permit applicant to execute the indemnity agreement as well as the corporate guarantor. The term "applicant" has been used instead of the term "permittee" in the definition to reflect the language of section 509 and to label more accurately the status of the potential permittee at the time the indemnity agreement is executed.

Section 800.23 contains the requirements for the qualification, acceptance and replacement of self-bonds. OSMRE proposed to revise this section by replacing the term "parent corporation guarantor" wherever it appeared with the term "corporate guarantor". The changes would have occurred in paragraphs (b), (c), (d), (e)(1), (e)(2), (e)(3), (f) and (g). Based on the comments received, OSMRE has retained the original provisions of 30 CFR 800.23 for those paragraphs dealing with parent guarantors of a self-bond, but has added new language concerning non-parent guaranteed self-bonds and included requirements for the self-bond

applicant whenever a non-parent entity guarantees the self-bond. One new provision relating to non-parent guarantors is contained in new paragraph 820.23(c)(2).

Section 800.23(g) obligates a permittee to post an alternate bond in the same amount as the self-bond if the financial conditions of the permittee or corporate guarantor no longer satisfy the financial criteria of §§ 800.23(b)(3) and 800.23(d). OSMRE wishes to clarify that under § 800.12(d) the alternate bond may consist of a self-bond guaranteed by a non-parent corporate guarantor and one or more of the other types of bonds. However it should be emphasized that under such circumstances a self-bond can only be used in an amount which will satisfy the applicable financial criteria and that the total amount of the combination bond must be equivalent to the self-bond being replaced.

OSMRE also wishes to clarify that the "continuous operation" requirement of § 800.23(b) that must be satisfied by the applicant and each guarantor may be satisfied by continuous operation as a business entity. It does not mean that the entity must have been in the coal mining business for five years.

One regulatory authority commenter suggested that OSMRE require in these final regulations that any corporate or third party guarantor must comply with State licensing requirements applicable to corporations which underwrite bonds, if fees are charged for their services. OSMRE did not accept this proposal because it is beyond the intent of SMCRA to deal with corporate licensing requirements that are the subject of State laws and regulations other than SMCRA. This rule is not intended to affect the applicability of any state licensing requirement.

One environmental organization commenter opposed the proposed revisions to both §§ 800.5 and 800.23 on the grounds that: (1) The proposal was not consistent with the Act; (2) the third party guarantor would have no interest in the successful mining and reclamation of the guaranteed operation; (3) the signing of an indemnity agreement by a utility or other non-parent guarantor might not be legally enforceable; (4) OSMRE or the States have no practical experience of non-parent guarantees of self-bonding and parent company self-bonding; (5) self-bonds are inherently riskier than surety bonds; (6) Congress intended that the objectives of self-bonding to be the same as for other types of bonding; and (7) the proposal decreases the permittee's responsibilities for reclamation. These issues will be discussed in turn.

1. Consistency of the Proposed Revisions With the Act

The commenter opposed this proposal on the gounds that section 509(c) of the Act does not authorize the acceptance of a self-bond by a party other than the permit applicant. OSMRE believes that the final rule is consistent with section 509(c) of SMCRA and is promulgating the rule as revised in response to many of the suggestions of the commenter. Section 509(c), which provides general guidance on self-bonding, neither prohibits a system that allows for a written guarantee on an *applicant's* self-bond nor limits the Secretary's discretion to provide for such a guarantee of a "self-bond". The intent of the performance bonding provision of section 509 is to provide a means of ensuring that reclamation requirements established by the Act will be fullfilled. The intent is not to financially penalize permittees but to have their performance guaranteed. Such guarantees can be obtained through a corporation licensed to do business as a surety, through posting of collateral or through filing a "self-bond", as defined by OSMRE. In developing the bonding regulations over the years, OSMRE has promulgated various provisions for achieving the intent of section 509.

In response to the commenter's concerns, the language being adopted in the final rule has been modified in a number of respects to emphasize that it is the permittee who posts the self-bond and that the third party functions as the guarantor. As mentioned above, the definition of "self-bond" reflects that in each instance, the permit applicant must be a person who executes the indemnity agreement, and not just the non-parent guarantor, as was proposed. Also the final rule recognizes that in situations involving non-parent corporate guarantors, the applicant must meet the "history or financial solvency and continuous operation" requirements of section 509(c) in order to become eligible for self-bonding. Thus, under new paragraph 800.23(c)(2) the applicant must meet the requirements of solvency and continuous operation set forth in 30 CFR 800.23(b) (1), (2) and (4). However, the final rule allows the "assets test" of 30 CFR 800.23(b)(3) to be met by the non-parent corporate guarantor. The regulatory authority may require additional financial information from the applicant under paragraph (b)(3), when such information is needed. The non-parent corporate guarantor must meet the standards of § 800.23(b) (1) through (b) (4) to serve in that capacity.

2. Third-Party Guarantor's Interest in the Mining Operation

The commenter cited preamble language from OSMRE's bonding rulemaking of 1983 (48 FR 36424) to support the view that OSMRE should not accept third party guarantees for self-bonds, on the basis that self-bonds did not provide sufficient assurance of a direct interest in the successful mining and reclamation operations of the permittee. OSMRE believes that its policy position in 1983 is no longer appropriate due to recent events in the bonding and surety industries.

Bonding regulations, as well as other OSMRE regulations have changed over the years and the policy set forth in the previous rulemaking have changed with changing conditions, new data and information. A regulatory agency is not bound by previous positions merely on the basis of consistency and should adjust its policy on the basis of experience and new information. Regulatory changes can be made on the basis of experience of new information on the operation of performance bonding in coal mining reclamation, an area that has changed considerably since the passage of the first set of OSMRE bonding regulations on in 1979. The assertion by the commenter that OSMRE must not change the regulations because of assumptions by OSMRE in previous rulemaking actions is not reasonable in view of new information and data contradicting those assumptions.

Recent events have shown that surety bonds do not always provide risk-free guarantees of reclamation. Guarantees provided by a surety company usually become worthless when the surety experiences bankruptcy and/or liquidation. At least 9 sureties and two banks have recently failed, affecting more than 400 mining companies, 25,000 permitted acres and over 8 million tons of annual coal production. These surety and bank failures have resulted in regulatory authorities not having the necessary funds to perform reclamation. Based on this experience and new information, OSMRE has concluded that a financially sound corporate guarantor may be in as good or better position to guarantee reclamation than some surety companies. In all its previous rulemaking, surety guarantees were considered by OSMRE to contain minimal risk and that they would almost always provide the funds needed for reclamation, in the event of forfeiture (44 FR 15114, March 13, 1979). However, the recent surety failures demonstrate that the issue of direct interest in an

operation is less important than the financial soundness of any guarantors, be they parent, non-parent, surety or banks. OSMRE believes that the regulatory authority needs to monitor and track all such guarantors' financial soundness through either its State insurance commission, or the Treasury Circular 570 which lists those sureties authorized to do business with the Federal government. The issue of the non-parent corporation's lack of interest in successful reclamation is directly addressed by making such a corporation party to the indemnity agreement. Once legally bound to ensure reclamation, the corporate guarantor should have the requisite interest in the permittee fulfilling its reclamation obligations. Therefore, the commenter's objection on the basis of direct interest in the operation is rejected.

3. Legality of Utility of Other Non-parent Guarantor Signing an Indemnity Agreement

The commenter asserted that signing of an indemnity agreement by a utility or other non-parent guarantor might not be legally enforceable. The proposed rule has been revised to respond to the comment. Paragraph (e)(2) has been revised to require the filing of an affidavit certifying that the signing of the indemnity agreement by the guarantor is valid under existing State and Federal law. Such an affidavit would preclude the unlawful agreement hypothesized by the commenter. This paragraph also contains a requirement that such guarantor provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond; this provides additional protection against possible legal conflicts.

4. OSMRE and State Experience With Non-parent Guarantees of Self-Bonding and Parent Company Self-Bonding

The commenter asserts that, because OSMRE and the States have no practical experience of non-parent guarantees of self-bonding and parent company self-bonding, it should not promulgate the proposed revision. The commenter cited 51 FR 42985 (November 26, 1986) and takes exception to the example of non-parent, self-bond envisioned by OSMRE. OSMRE believes that self-bonding with parent or non-parent guarantor as allowed by this final rule is as effective as surety bonding and will fully meet the intent of SMCRA to ensure that reclamation occurs in the event of operator non-performance. Mining operators have alleged to OSMRE that the reason for lack of applications for self-bonds at the Federal level is the high standard of the financial criteria of the regulations. It is important to note that these financial criteria are not changed by the proposed rulemaking for self-bond guarantees. Under the proposed rule, *any* party that seeks to guarantee the self-bond of a permittee must qualify according to the financial standards of 30 CFR 800.23, including the execution of an indemnity agreement to bind equally the permittee and the guarantor. This legally binding agreement is not changed by this revision to the OSMRE rules. Such an indemnity agreement binds all parties, be they corporate sureties, partnerships, public utility corporations, or other corporate guarantors regardless of their interest in the mining operation.

5. Self-Bonds Are Inherently Riskier Than Other Bond Types

The experiences of the previous five years do not bear out the generalization that self-bonds are riskier than surety guarantees. Surety failures have occurred in a number of States. The commenter's contention that surety bonds can be covered by reinsurance has not been the experience in recent surety failures in the area of surface mining operations. OSMRE and State regulatory authorities have initiated forfeiture proceedings on some mining operations which were guaranteed by those sureties now out of business. As discussed above, the probability of collecting funds to perform reclamation from these sureties is quite low. The previous fears that self-bonding would be abused as a means to circumvent reclamation requirements have not materialized. Moreover, whatever concerns may exist concerning non-guaranteed self-bonds, this final rule authorizes a category of self-bonds which are guaranteed in every instance by a financially sound corporation. In fact such corporations may be more financially sound that certain sureties.

6. Congressional Intent That Objectives of Self-Bonding to be the Same as for Other Types of Bonding

The commenter asserted that the Congress intended the objectives of self-bonding to be the same as for other types of bonding, that is, the assurance of the completion of the reclamation plan, at no expense to the public. OSMRE agrees with this statement and this final rule reflects this objective.

OSMRE is changing the bonding regulations because experience and new information warrants change. These rules are consistent with the objectives of bonding, and continue to assure the completion of the reclamation plan at no expense to the public. At no time does OSMRE intend to deviate from the Congressionally mandated purpose of bonding.

7. Permittee Responsibilities for Reclamation

A commenter asserted that the proposed revisions to §§ 800.5 and 800.23 decreases the responsibility of a permit applicant to comply with the reclamation plan. OSMRE disagrees. This rule does not diminish the permittees's responsibility to perform reclamation. What it does do is to provide another class of financially responsible entities to guarantee that the permittee meets its obligations. In the earliest OSMRE rulemaking on self-bonding, OSMRE stated that "the indemnity agreement provides joint and several liability for all individuals involved in a particular operation (and) gives all of them a significant incentive to comply with the Act." (44 FR 15117, March 13, 1979). This has not changed.

In terms of permittee responsibility, a permit holder is liable for reclamation specified by his permit. The permittee is liable for correcting violations and payment of fines or penalties associated with such violations. In the event of a forfeiture, the permittee is the party declared in forfeiture. Under most circumstances, the permittee would be unable to obtain any other coal mining permit. The permittee will be obligated to the party guaranteeing its self-bond under the indemnity agreement and will also be liable under such an agreement.

Section 800.40 Requirement to release performance bonds.

Section 800.40 contains the requirements for release of performance bonds. Subsection 800.40(a)(2) contains the requirements for public notification of bond release. This notification must contain the permit number and approval date, the location of the area affected, the acreage affected, the type and amount of bond, the portion of the bond to be released, the reclamation work performed and the result achieved, and the name and address of the regulatory authority to whom comments, objections or requests for public hearings on the proposed release are sent. These requirements were originally found at § 807.11, promulgated on March 13, 1979 (44 FR 14902). During the rule revisions of 1983, this section was incorporated into a new § 800.40 and the phrase, "the permittee's name" was removed from the section. The proposed revision was to restore the phrase to the requirements of this section. No commenter was opposed to this revision and OSMRE is promulgation the rule as proposed.

Reference Materials

Reference materials used to develop these final rules are as follows:

OSMRE, Proceedings of the Workshop on Coal-Mined Land Reclamation Bonding, September 11, 1986. 182 pp.

Washington Post, "Insurance Firm's Fall Raises Questions", "The Insurance Regulators", various articles on April 11–17, 1986 *Land Marc*, "The Bonding Crisis", All articles of November/December 1986 Issue. 29 pp.

OSMRE, "Monthly bond Insolvency Report Summary", January 1987.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements contained in 30 CFR Part 800 have been approved according to Office of Management and Budget procedures under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1029–0043.

Executive Order 12291

The U.S. Department of the Interior (DOI) has examined the final rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that is it not major and does not require a regulatory impact analysis. The rule will provide an additional alternative method of bonding which may result in lower costs for bonding to the coal industry.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the final rule would not have a significant economic impact on a substantial number of small entities. This rule will impact a relatively small number of coal operator the majority of which would not be small operators.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) of the impacts on the human environment by this proposed rulemaking. This EA is on file in the OSMRE Administrative Record at the address listed in the "ADDRESSES" section of this preamble. Based upon this EA, OSMRE has made a Finding of No Significant Impact on the quality of the human environment (FONSI) in accordance with OSMRE procedures under the National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. 4332(2)(c).

Author

The principal author of this final rule is Frank Mancino, Physical Scientist, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–1475.

List of Subjects in 30 CFR Part 800

Insurance, Reporting and Recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

Accordingly, 30 CFR Part 800 is amended to read as follows.

Date: December 3, 1987.

J. Stephen Griles,

Assistant Secretary for Land and Minerals Management.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

1. The authority citation for Part 800 is revised to read as follows:

Authority: Pub. L. 95–87, as amended, (30 U.S.C. 1201 *et seq.*), and Pub. L. 100–34.

2. Section 800.5 is amended by revising paragraph (c) to read as follows:

§ 800.5 Definitions.

* * * * *

(c) *Self-bond* means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority, with or without separate surety.

* * * * *

3. Section 800.23 is amended by redesignating paragraphs (c) introductory text, (c)(1), (c)(2) and (c)(3) as (c)(1), (c)(1)(i), (c)(1)(ii) and (c)(1)(iii), by adding new paragraph (c)(2), by adding a new sentence at the end of paragraph (d), and by revising paragraphs (e)(2), (e)(4), (f) and (g), to read as follows:

§ 800.23 Self-bonding.

* * * * *

(c) * * *

(2) The regulatory authority may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of paragraphs (b)(1), (b)(2) and (b)(4) of this section, and the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section. Such a written guarantee shall be referred to as a "non-parent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of paragraphs (c)(1)(i) through (c)(1)(iii) of this section. The regulatory authority may require the applicant to submit any information specified in paragraph (b)(3) of this section in order to determine the financial capabilities of the applicant.

(d) * * *

For the regulatory authority to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

(e) * * *

(2) Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the regulatory authority along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

* * * * *

(4) Pursuant to § 800.50, the applicant, parent or non-parent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the regulatory authority an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under State law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

(f) A regulatory authority may require self-bonded applicants, parent and non-parent corporate guarantors to submit an update of the information required under paragraphs (b)(3) and (b)(4) of this section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

(g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant, parent or non-parent corporate guarantor change so that the criteria of paragraphs (b)(3) and (d) of this section are not satisfied, the permittee shall notify the regulatory authority immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of § 800.16(e) shall apply.

4. Section 800.40 is amended by revising paragraph (a)(2) to read as follows:

§ 800.40 Requirement to release performance bonds.

(a) * * *

(2) Within 30 days after an application for bond release has been filed with the regulatory authority, the permittee shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the permittee's approved reclamation plan, and the name and address of the regulatory authority to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to § 800.40 (f) and (h). In addition, as part of any bond release application, the permittee shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

* * * * *

[FR Doc. 88-667 Filed 1-13-88; 8:45 am]

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H.R. 2598/Pub. L. 100-239

Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987. (Jan. 11, 1988; 101 Stat. 1778; 7 pages) Price: $1.00

S. 1389/Pub. L. 100-240

To amend the National Fish and Wildlife Foundation Establishment Act with respect to management requisition, and disposition of real property, reauthorization, and participation of foreign governments. (Jan. 11, 1988; 101 Stat. 1785; 3 pages) Price: $1.00