1-26-90
Vol. 55 No. 18
Pages 2601-2802

federal register

Friday
January 26, 1990

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 55 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054
Single copies/back copies:	
Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: February 23, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

Contents

Federal Register
Vol. 55, No. 18
Friday, January 26, 1990

Acquired Immune Deficiency Syndrome, National Commission
See National Commission on Acquired Immune Deficiency Syndrome

Agricultural Marketing Service
RULES
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 2601
Oranges (navel) grown in Arizona and California, 2604

Agriculture Department
See Agricultural Marketing Service; Forest Service

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Meetings:
Tuberculosis Elimination Advisory Committee, 2701

Coast Guard
RULES
Ports and waterways safety:
Tampa, FL; safety zone, 2645

Commerce Department
See Foreign-Trade Zones Board; National Institute of Standards and Technology

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1990:
Additions and deletions, 2677
(2 documents)

Consumer Product Safety Commission
PROPOSED RULES
Poison prevention packaging:
Household glue removers containing acetonitrile and home cold wave permanent neutralizers containing sodium bromate or potassium bromate; child-resistant packaging requirements
Correction, 2733

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Radian Corp., 2709

Education Department
RULES
Postsecondary education:
Language resource centers program, 2772
NOTICES
Grants and cooperative agreements; availability, etc.:
Developmental bilingual education program, 2678
Meetings:
National Assessment Governing Board, 2678

Employment and Training Administration
NOTICES
Adjustment assistance:
Car-Mal Sportswear, Inc., 2711
Deutz of America Corp. et al., 2711
Sensus Technologies, Inc., 2711
Texaco U.S.A., 2712
Federal-State unemployment compensation program:
Extended benefit periods—
Puerto Rico, 2712

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 2713

Energy Department
See also Energy Research Office; Federal Energy Regulatory Commission
PROPOSED RULES
Acquisition regulations:
Profit making and fee bearing management and operating contracts; contracting practices, 2796
NOTICES
Meetings:
National energy strategy development, 2678
Natural gas exportation and importation:
Yuma Gas Corp., 2679
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Selkirk Cogen Partners, L.P., et al., 2680

Energy Research Office
NOTICES
Meetings:
Energy Research Advisory Board, 2690

Environmental Protection Agency
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 2690
Weekly receipts, 2691
Hazardous waste:
Land disposal restrictions; exemptions—
National Steel Corp., 2691

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 2731

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus Industrie, 2634
Boeing, 2635
Lockheed, 2636, 2639
(2 documents)

McDonnell Douglas, 2638
PROPOSED RULES
Airworthiness directives:
Boeing, 2667, 2668, 2671
(3 documents)
British Aerospace, 2672
Fairchild Industries, Inc., 2669
Airworthiness standards:
Special conditions—
McDonnell Douglas MD-11 series airplanes, 2665
Transition areas, 2674
VOR Federal airways, 2675
NOTICES
Advisory circulars; availability, etc:
Aircraft—
Aircraft and engine kits assembled outside U.S., 2728
Airport noise compatibility program:
Noise exposure map—
Texarkana Regional Airport, AR, 2727
Environmental statements; availability, etc.:
Louisville Airport, KY, 2728

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arizona, 2664

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 2731

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
People's Electric Cooperative et al., 2681
Natural gas certificate filings:
Tennessee Gas Pipeline Co. et al., 2683
Applications, hearings, determinations, etc.:
Ithaca, NY, 2682
Natural Gas Pipeline Co. of America, 2682

Federal Maritime Commission
NOTICES
Agreements filed, etc., 2698

Federal Register Office
NOTICES
Guide to Record Retention Requirements in CFR; supplement, 2736

Federal Register, Administrative Committee
See Federal Register Office

Federal Reserve System
RULES
Securities credit transactions; OTC margin stocks list (Regulations G, T, U, and X), 2631
NOTICES
Meetings; Sunshine Act, 2731
(2 documents)
Applications, hearings, determinations, etc.:
Amcore Financial, Inc., et al., 2698
FCB Corp. et al., 2698
FDH Bancshares, Inc., 2699
Industrial Bank of Japan, Ltd., et al., 2699
Masten, Donald L., et al., 2699

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 2700

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 2707

Food and Drug Administration
RULES
Human drugs:
Antibiotic drugs—
Gentamicin sulfate-prednisolone acetate ophthalmic ointment, 2642
Mupirocin ointment, 2640
NOTICES
Food additive petitions:
Polysar Ltd., 2701
Human drugs:
Export applications—
Asacol (5-aminosalicylic acid) 400 mg Tablet, 2702
Meetings:
Consumer infomation exchange, 2702

Foreign Assets Control Office
RULES
Cuban assets control:
Specially designated nationals; list—
Deletions, 2644

Foreign-Trade Zones Board
PROPOSED RULES
Foreign-trade zones in U.S., 2760

Forest Service
RULES
Range management:
National Forests in Eastern States; grazing fees, 2646

Health and Human Services Department
See also Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; National Institutes of Health; Public Health Service
NOTICES
Agency information collection activities under OMB review, 2700

Health Care Financing Administration
RULES
Medicare and medicaid:
Capital expenditures; Federal participation limits, 2652
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Tennessee, 2702
Washington, 2703
Meetings:
Social Security Advisory Council, 2704

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
NOTICES
Environmental statements; availability, etc.:
Dade County, FL, 2705

Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 2706
Mortgage and loan insurance programs:
Multifamily coinsurance programs; increased monitoring activities for existing lenders, 2706

Immigration and Naturalization Service
RULES
Nonimmigrant classes:
Temporary alien workers classification, 2606
NOTICES
Immigration:
Aliens; employment authorization document availability, 2710

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Surface Mining Reclamation and Enforcement Office

International Trade Commission
NOTICES
Import investigations:
Pressure-sensitive PVC battery covers from West Germany, 2708

Interstate Commerce Commission
NOTICES
Motor carriers:
Agricultural cooperative transportation filing notices, 2709
Compensated intercorporate hauling operations, 2709

Justice Department
See Drug Enforcement Administration; Immigration and Naturalization Service

Labor Department
See Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefits Administration

Land Management Bureau
RULES
Coal management:
Royalty rates, 2653
NOTICES
Realty actions; sales, leases, etc.:
Arizona, 2707

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 2731

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Black Nuggett Mining, Inc., 2714
Manville Sales Corp., 2714
United States Gypsum Co., 2714

National Archives and Records Administration
See Federal Register Office

National Commission on Acquired Immune Deficiency Syndrome
NOTICES
Meetings, 2717

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
COBOL; correction, 2733

National Institutes of Health
NOTICES
Committees; establishment, renewal, termination, etc.:
AIDS and Related Research Study Sections et al., 2705
Meetings:
National Cancer Institute, 2705

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Illinois Power Co. et al., 2717
Toledo Edison Co. et al., 2721
Export and import license applications for nuclear facilities or materials, 2718
Meetings:
Reactor Safeguards Advisory Committee, 2718, 2721 (2 documents)
Applications, hearings, determinations, etc.:
Basin Services, Inc., 2719
Duke Power Co., 2720
Safety Light Corp. et al., 2722

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards:
Hazardous waste operations; training programs accreditation, 2776

Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities under OMB review, 2715

Public Health Service
See also Centers for Disease Control; Food and Drug Administration; National Institutes of Health
RULES
Medicare and medicaid:
Capital expenditures; Federal participation limits, 2652

Resolution Trust Corporation
NOTICES
Meetings; Sunshine Act, 2731

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 2732
Self-regulatory organizations; proposed rule changes:
International Securities Clearing Corp., 2722
National Association of Securities Dealers, Inc., 2723
National Securities Clearing Corp., 2725
New York Stock Exchange, Inc., 2726

Small Business Administration
NOTICES
License surrenders:
Multi-Purpose Capital Corp., 2727

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania, 2675

Transportation Department
See Coast Guard; Federal Aviation Administration

Treasury Department
See also Foreign Assets Control Office
NOTICES
Agency information collection activities under OMB review, 2729

Separate Parts In This Issue

Part II
National Archives and Records Administration, Office of the Federal Register, 2736

Part III
Department of Commerce, Foreign-Trade Zones Board, 2760

Part IV
Department of Education, 2772

Part V
Department of Labor, Occupational Safety and Health Administration, 2776

Part VI
Department of Energy, 2796

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
905 2601
907 2604

8 CFR
214 2606

12 CFR
207 2631
220 2631
221 2631
224 2631

14 CFR
39 (5 documents) 2634–2639

Proposed Rules:
21 2665
25 2665
39 (5 documents) 2667–2672
71 (2 documents) 2674, 2675

15 CFR
Proposed Rules:
400 2760

16 CFR
Proposed Rules:
1700 2733

21 CFR
430 2640
444 2642
455 2640

29 CFR
Proposed Rules:
1910 2776

30 CFR
Proposed Rules:
938 2675

31 CFR
515 2644

33 CFR
165 2645

34 CFR
669 2772

36 CFR
222 2646

42 CFR
100 2652
405 2652
413 2652
447 2652

43 CFR
3470 2653

47 CFR
73 2664

48 CFR
Proposed Rules:
970 2796

Rules and Regulations

Federal Register
Vol. 55, No. 18
Friday, January 26, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-90-125FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule relaxes current grade and size requirements for domestic and export shipments of Valencia oranges, grapefruit, and Dancy tangerines grown in Florida and imported grapefruit for the remainder of the 1989-90 season. A severe freeze in late December 1989 damaged much of the remaining Florida citrus crop available for fresh market use. The Citrus Administrative Committee (committee) unanimously recommended these relaxations to allow handlers to maximize utilization of the remaining supplies of marketable fruit. This action is based on an analysis of the 1989-90 season Florida citrus crop and current and prospective market conditions.

EFFECTIVE DATE: January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, 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 Agreement and Marketing Order No. 905, both 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 about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. In addition, there are about 13,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

Section 905.306 of the rules and regulations (7 CFR 905.306) specifies minimum grade and size requirements for most varieties of Florida oranges, grapefruit, and tangerines for both domestic and export markets. Minimum grade and size requirements for domestic shipments of Florida citrus are specified in section in Table I of paragraph (a) and for export markets in Table II of paragraph (b). The domestic market was redefined as the 48 contiguous States and the District of Columbia of the United States and export markets as any destination other than the 48 contiguous States and the District of Columbia of the United States by an amendment to the marketing order (54 FR 37290, September 8, 1989), which revised §§ 905.9 and 905.52. Section 905.306 has been amended to reflect these changes to the order.

To allow handlers to maximize utilization of the remaining supplies of marketable fruit, the committee recommended the following relaxations:

1. Reduce the minimun external quality requirement for domestic and export shipments of Valencia and other late type oranges from U.S. No. 1 to U.S. No. 1 Golden.

2. Reduce for white seedless grapefruit the minimum external quality requirements for domestic and export shipments to U.S. No. 2 grade from Improved No. 2 grade and the minimum size requirement for domestic shipments of white seedless grapefruit to 3 5/16 inches in diameter from 3 9/16 inches in diameter.

3. Reduce for pink seedless grapefruit the minimum external quality requirements for domestic and export shipments to U.S. No. 2 grade from Improved No. 2 grade and the internal quality requirements for domestic shipments to U.S. No. 2 grade from U.S. No. 1 grade.

4. Reduce the minimum grade requirement for domestic shipments of Dancy tangerines to U.S. No. 2 from U.S. No. 1 and the minimum size requirement to 2 1/8 inches in diameter from 2 1/4 inches in diameter.

These relaxations need to be made effective immediately, and are to remain in effect through August 19, 1990 for grapefruit and Dancy tangerines, and through September 23, 1990 for Valencia oranges. The minimum grade and size requirements for these fruits will revert back to the tighter requirements specified in § 905.306 immediately following the relaxation periods for each of these fruits.

The committee, which administers the program locally, unanimously recommended these relaxations on January 16, 1990. The grade and size relaxations are based on the committee's assessment of the current crop conditions and the remaining available supply of marketable fruit. The committee meets prior to and during each season to review the handling requirements, effective on a continuous basis, for each regulated citrus fruit. Committee meetings generally are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews

committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

A severe freeze in late December 1989 damaged much of the Florida citrus crop available for fresh market use. The severe cold was especially damaging because all of the Valencia orange crop and much of the grapefruit and Dancy tangerine crops were still on the trees at the time of the freeze. The economic loss because of the freeze is expected to be high. According to the January 11 crop report issued by the National Agricultural Statistics Service, the Florida citrus production estimate is 25 percent lower than in December 1989. Florida's Valencia orange crop is estimated to be 45 percent below the December estimate of 32,000,000 boxes, and the grapefruit crop is estimated at almost 14 percent below the December estimate of 44,000,000 boxes, and the Dancy tangerine crop is estimated to be 35 percent below the December estimate of 800,000 boxes. The surveys for the January forecast were completed on January 5, only 12 days after the freeze. Hence, the total fruit damage could not be completely assessed. Consequently, the committee believes that there will be more fruit loss than the January forecast reflected.

After evaluating crop conditions, the committee has determined that the recommended reductions in the grade and size requirements for Valencia oranges, grapefruit, and Dancy tangerines are in the best interest of the industry at this time to market remaining supplies of merchantable fruit.

Because supplies of Valencia oranges, grapefruit, and Dancy tangerines for fresh use were substantially reduced by the freeze, the industry desires to utilize as much of the crop in the fresh market as possible. The recommended grade and size relaxations will help satisfy consumer demand for fresh citrus fruits while maximizing returns to producers and handlers.

The recommended quality relaxations lower the external quality requirements for domestic and export shipments of Valencia and other late type oranges from U.S. No 1 to U.S. No. 1 Golden. The internal quality of fruit grading U.S. No. 1 Golden is the same as that for fruit grading U.S. No. 1. Thus, the eating quality of the additional fruit which will be utilized in the fresh market as a result of this grade relaxation should be the same. The recommended quality relaxations also lower the external quality requirements for domestic and export shipments of white and pink seedless grapefruit from Improved No. 2 to U.S. No. 2. The only difference between these two grades of fruit is that fruit meeting the requirements of Improved No. 2 must meet the requirements of U.S. No. 1 with respect to shape and color. Thus, the eating quality of the additional fruit which will be utilized in the fresh market as a result of this grade relaxation should be the same. Also, for pink seedless grapefruit the minimum internal quality requirement for domestic shipments will be reduced from U.S. No. 1 to U.S. No. 2, allowing dryer but acceptable fruit to be shipped. The grade reduction from U.S. No. 1 to U.S. No. 2 for domestic shipments of Dancy tangerines would also permit dryer but acceptable fruit to be shipped. As temperatures rise following a freeze, fruit tends to dry out rapidly.

The relaxation of size requirements for domestic shipments of white seedless grapefruit and Dancy tangerines will allow fruit smaller than the current minimum sizes to be utilized in the fresh market. This will allow fruit which had to be harvested slightly smaller because of the freeze to be utilized in the fresh market. Normally when there is an adequate supply of larger sized fruit, smaller fruit would be used for processing. Because supplies of white seedless grapefruit and Dancy tangerines are expected to be drastically reduced by the freeze, the industry desires to utilize as much of the crop in the fresh market as possible. The recommended size relaxation will help satisfy consumer demand for fresh citrus fruits while maximizing returns to producers and handlers.

Some Florida citrus fruit shipments are exempt from the handling 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 provision. 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.

Section 8e of the Act (7 U.S.C. 608e-1) provides that whenever specified commodities, including oranges and grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply the regulations for that area to the imported commodity.

Grapefruit import requirements are specified in § 944.106 (7 CFR part 944), and are effective under § 8e of the Act. That section requires that grapefruit imported into the United States must meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Since this action reduces minimum grade and size requirements for domestically produced Florida white and pink seedless grapefruit, the reduced grade and size requirements also apply to imported white and pink seedless grapefruit. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed 4/5-bushel cartons exempt from the import requirements.

Orange import requirements are specified in § 944.312 (7 CFR part 944), and are effective under section 8e of the Act. That section requires that oranges imported into the United States must meet the same minimum grade and size requirements as those specified for Texas oranges in paragraphs (a)(1) and (a)(2) of § 906.365 Texas Orange and Grapefruit Regulation 34 [54 FR 51737, December 18, 1989]. Accordingly, the findings and determinations for imported oranges in part 944 would not be changed by this action and no change in the provisions of part 944 is necessary. Thus, import requirements would continue to be based upon Taxas orange requirements under M.O. 906.

This action reflects the committee's and the Department's appraisal of the need to make the grade and size relaxations hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it would allow Florida cirtus handlers to ship those grades and sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the 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, and other information, it is found that the relaxations set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and 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 relaxes the grade and size requirements currently in effect for Valencia orange, grapefruit, and Dancy tangerines; (2) handlers of these fruits will need no additional time to comply with the relaxed requirements; and (3) prompt implementation of these relaxations is needed so that the industry can ship the fruits as soon as possible so as to lessen grower and handler losses from the December 1989 freeze.

List of Subjects in 7 CFR Part 905

Florida, Grapefruit, Marketing agreements and orders, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

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.

2. The provisions of § 905.306 are amended to read as follows:

Note: This action will be published in the Code of Federal Regulations.

A. In Paragraph (a), Table I, the entries for oranges, grapefruit, and tangerines are revised to read as set forth below.

B. In paragraph (b), Table II, the entries for oranges and grapefruit are revised to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6.

(a) * * *

TABLE I.

Variety	Regulation period	Minimum grade	Minimum diameter
(1)	(2)	(3)	(4)
* * *	* * *	* * *	*
Oranges			
Valencia and other late type	01/22/90–09/23/90	U.S. No. 1 Golden	2 4/16
	On and after 09/24/90	U.S. No. 1	2 5/16
* * *	* * *	* * *	*
Grapefruit			
Seedless, except pink	01/22/90–08/19/90	U.S. No. 2 (external) U.S. No. 1 (internal)	3 5/16
	On and after 08/20/90	Improved No. 2 (external) U.S. No. 1 (internal)	3 3/16
Seedless, pink	01/22/90–08/19/90	U.S. No. 2 (external) U.S. No. 2 (internal)	3 5/16
	08/20/90–10/21/90	Improved No. 2 (external) U.S. No.1 (internal)	3 5/16
	On and after 10/22/90	Improved No. 2 (external) U.S. No. 1 (internal)	3 3/16
* * *	* * *	* * *	*
Tangerines			
Dancy	01/22/90–8/19/90	U.S. No. 2	2 3/16
	On and after 8/20/90	U.S. No. 1	2 5/16
* * *	* * *	* * *	*

(b) * * *

TABLE II.

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	*
Ornages			
Valencia and other late type	01/22/90–09/23/90	U.S. No.1 Golden	2 4/16
	On and after 09/24/90	U.S. No. 1	2 5/16
* * *	* * *	* * *	*
Grapefruit			
Seedles, except pink	01/22/90–08/19/90	U.S. No. 2 (external) U.S. No. 1 (internal)	3 5/16
	On and after 08/20/90	Improved No. 2 (external) U.S. No. 1 (internal)	3 5/16
Seedless, pink	01/22/90–08/19/90	U.S. No. 2 (external) U.S. No. 1 (internal)	3 5/16
	On and after 08/20/90	Improved No. 2 (external) U.S. No. 1 (internal)	3 5/16
* * *	* * *	* * *	*

Dated: January 22, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-1803 Filed 1-25-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Regulation 704]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 26 through February 1, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 704 (7 CFR part 907) is effective for the period from January 26 through February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 382-1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR part 907) as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988-89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988-89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989-90 production is 83,000 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988-89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 60 percent of the 1989-90 crop of 83,000 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (9 percent), processed (29 percent), or designated for other uses (2 percent). This compares with the 1988-89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989–90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Pello. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the **Federal Register** (54 FR 42966). The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Three comments were received. The Department is continuing its analysis of the comments received, and the analysis will be made available to interested persons. That analysis is assisting the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on January 23, 1990, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, with seven members voting in favor, three opposing, and one abstaining, that 1,900,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1989–90 marketing policy. This recommended amount is 250,000 cartons more than estimated in the January 9, 1990, tentative shipping schedule. Of the 1,900,000 cartons, 1,577,000 are allotted for District 1, 266,000 are allotted for District 2, and 57,000 are allotted for District 4. District 3 is not regulated since approximately 79 percent of its crop to date has been utilized.

During the week ending on January 18, 1990, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,900,000 cartons compared with 1,705,000 cartons shipped during the week ending on January 19, 1989. Export shipments totaled 355,000 cartons compared with 479,000 cartons shipped during the week ending on January 19, 1989. Processing and other uses accounted for 502,000 cartons compared with 661,000 cartons shipped during the week ending on January 19, 1989.

Fresh domestic shipments to date this season total 19,182,000 cartons compared with 14,921,000 cartons shipped by this time last season. Export shipments total 3,130,000 cartons compared with 2,323,000 cartons shipped by this time last season. Processing and other use shipments total 4,912,000 cartons compared with 4,092,000 cartons shipped by this time last season.

For the week ending on January 18, 1990, regulated shipments of navel oranges to the fresh domestic market were 1,879,000 cartons on an adjusted allotment of 1,740,000 cartons which resulted in net overshipments of 104,000 cartons. Regulated shipments for the current week (January 19 through January 25, 1990) are estimated at 1,835,000 cartons on an adjusted allotment of 1,746,000 cartons. Thus, overshipments of 89,000 cartons could be carried over into the week ending on February 1, 1990.

The average f.o.b. shipping point price for the week ending on January 18, 1990, was $7.26 per carton based on a reported sales volume of 1,606,000 cartons compared with last week's average of $7.20 per carton on a reported sales volume of 1,594,000 cartons. The season average f.o.b. shipping point price to date is $7.76 per carton. The average f.o.b. shipping point price for the week ending on January 19, 1989, was $6.75 per carton; the season average f.o.b. shipping point price at this time last season was $8.35 per carton.

Over the weekend of December 22–25, Florida, Texas, Georgia, and Louisiana experienced a major freeze in produce-growing areas. In Florida, temperatures were at or below 27 degrees for the longest duration in many years. In addition, Texas citrus grown in the Rio Grande Valley experienced at least 16 hours of temperatures below 26 degrees on December 22–23.

According to a January 11 crop report issued by the National Agricultural Statistics Service, the citrus production estimate is 18 percent lower than in December and 25 percent below last season. This significant reduction is due mostly to the severe freezing temperatures in the Florida and Texas citrus belts. Fruit droppage is increasing in all areas of Florida, and the Texas fresh market citrus harvest has ended. In addition, orange production is down 19 percent from a December 1 forecast and 24 percent below last season. This decline is due mostly to Florida's 29 percent decrease from December and 37 percent decline from last season. The severe December freeze in Florida's citrus belt further reduced an already short orange crop. Both the Committee and the Department are continuing to monitor the effects of the Texas and Florida freezes on the California-Arizona navel orange industry.

The Committee reports that overall demand for navel organges is good and the market is firm. Committee members and observers discussed different levels of allotment, including open movement. However, only two Committee members favored open movement.

The 1988–89 season average fresh equivalent on-tree price for California-Arizona navel oranges was $3.86 per carton, 65 percent of the season average parity equivalent price of $5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1989–90 season average fresh on-tree price is estimated to be between $4.80 and $5.10 per carton. This range is equivalent to 73–78 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. Thus, the 1989–90 season average fresh on-tree price is not expected to exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from January 26 through February 1, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a

substantial number of small entities and that this section will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until January 23, 1990, and this action needs to be effective for the regulatory week which begins on January 26, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements, Navel oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

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

2. Section 907.1004 is added to read as follows:

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

§ 907.1004 Navel Orange Regulation 704.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 26 through February 1, 1990, is established as follows:

(a) District 1: 1,577,000 cartons;

(b) District 2: 266,000 cartons:

(c) District 3: unlimited cartons;

(d) District 4: 57,000 cartons.

Dated: January 24, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–1970 Filed 1–25–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1040–89]

RIN 1115–AA44

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends regulations of the Immigration and Naturalization Service relating to temporary alien workers seeking classification under section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. 1101. This nonimmigrant category applies to an alien having a residence in a foreign country which he or she has no intention of abandoning, who is coming to the United States temporarily to perform services or labor, or to receive training. The alien may be classified under section 101(a)(15)(H)(i) as an alien of distinguished merit and ability, or under section 101(a)(15)(H)(ii)(a) as an alien coming to perform agricultural services or labor, or under section 101(a)(15)(H)(ii)(b) as an alien coming to perform other temporary service or labor, or under section 101(a)(15)(H)(iii) as an alien trainee. These classification are assigned nonimmigrant visa symbols H–1, H–2A, H–2B, and H–3, respectively.

This final rule clarifies the Service's requirements for classification, admission, and maintenance of status under the H–1, H–2B, and H–3 nonimmigrant classifications; consolidates into regulation policies previously set forth in precedent decisions, Operations Instructions, and other policy issuances; and establishes criteria which will promote consistency in the adjudication of H petitions.

DATE: *Effective date:* February 26, 1990.

These amendments apply to H petitions for temporary workers filed on or after February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Flora T. Richardson, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Room 7223, Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: On October 26, 1988, at 53 FR 43217, the Immigration and Naturalization Service published a Notice of Proposed Rulemaking proposing to amend the Service's regulations at 8 CFR 214.2(h). The proposed rule superseded a previous Notice of Proposed Rulemaking published on August 8, 1986, at 51 FR 28576, and included numerous modifications to provisions of the previous proposed rule as the result of public comments and consultation with other agencies and organizations. A main objective of the rule was to establish realistic standards for determining who qualifies as an alien of distinguished merit and ability for H–1 classification. In this respect, the rule defined profession and prominence and listed the eligibility criteria for a member of the professions and for a person who is prominent in his or her field. The rule also clarified the licensure requirement for H–1 classification.

The proposed rule specified the different filing requirements for certain types of petitions and made other technical amendments designed to promote consistency in the adjudication of H petitions. Some requirements were made more definitive, such as those relating to accompanying aliens, documentation of qualifications of aliens, restrictions on training programs, revocation of approved petitions, and limits on a temporary stay in the United States. Other requirements for obtaining benefits, such as those for extension of visa petitions and validity periods of petitions, were modified. For the most part, the proposed rule simply restated in regulatory form existing Service policy for the H nonimmigrant category. Interested parties were invited to submit written comments on the proposed amendments by November 25, 1988.

Discussion of Comments on Proposed Regulations

During the 30-day comment period, the Service received 36 comments, all of which were reviewed and considered in developing this final rule. The Service has also noted the views of 46 late commenters who addressed basically the same issues and expressed similar concerns as the timely commenters.

Numerous commenters stated that the proposed rule was a significant improvement over the previous proposal, noted that the rule incorporated many changes recommended by commenters on the

previous rule, and commended the Service for its efforts to establish reasonable and specific standards for H-1 classification. A major concern of business was that professionals who have less than two years of college or no college education could not qualify for H-1 classification as professionals under the proposal. Some representatives of business interests stated that the rule would inhibit American businesses, especially small businesses, from recruiting and hiring urgently needed temporary workers and from making use of some of the best minds in the world.

More than half of the commenters believed that folk artists must have an H-1 visa in order to perform in the United States, and that the Service was proposing stricter rules for H-1 classification which would prevent folk artists from performing here. They thought the category would only be available to those who are commercially successful, thus harming the cultural interests of the United States. The final rule should dispel this impression, as it makes it clear that foreign artists who are not qualified for H-1 classification may seek H-2B classification to perform the same services after obtaining from the Department of Labor a labor certification or notice that such certification cannot be made. The commenters viewed the H-2B labor certification process as too time-consuming and unworkable for the entertainment industry. Nevertheless, it is inappropriate to use the H-1 classification for workers who are not of distinguished merit and ability merely because petitioners believe that the H-2B classification is inconvenient. Specific concerns about H-2B processing procedures are covered later in this discussion.

Other major issues of concern to employers and labor organizations in the arts, cultural, and entertainment fields were filing procedures, standards for prominence, definition of accompanying alien, and Service consultation with labor and management organizations regarding the distinguished merit and ability of aliens in the entertainment field.

Several commenters were critical of publication of the proposed rule and viewed it as an effort to circumvent the Congressional ban on publication of a final H rule. The proposed rule served its purpose of eliciting additional comments on modifications to controversial provisions of the previous proposed rule. The Congressional ban expired on October 1, 1989. The Immigration Nursing Relief Act of 1989, H.R. 3259, initially included a provision which would have placed a further ban on publication of final H-1 regulations until October 1, 1992. When H.R. 3259 was passed by Congress, the bill report stated that the provision which prohibits the Attorney General from changing the H-1 regulations has been deleted. This action eliminates the need to resolve the constitutional question of the limits that can be placed on the Executive Branch's ability to promulgate regulations on issues it enforces. The Service views this action as an indication of Congressional support to proceed with publication of a final H rule which reflects Service policy and accommodates, to the extent possible, the concerns expressed by commenters on both proposed rules.

The final rule contains some modifications to the proposed rule. However, the Service is restricted by the statutory requirements of the H classification and cannot make interpretations of the statute which clearly do not conform to Congressional intent in order to facilitate admission of aliens in certain industries. Where it is feasible and lawful to do so, the Service has developed special procedures which take into account the unique circumstances of particular industries but, at the same time, meet the statutory requirements of the H classification. For most occupations and industries, the same standards must apply to every alien seeking H classification.

The discussion that follows summarizes the major issues raised, provides the Service's position on the issues, and indicates the revisions adopted in the final rule.

Filing of Petitions—Section 214.2(h)(2)(i)

(A) *Adjudication of petitions for entertainers at Regional Service Centers*—§ 214.2(h)(2)(i)(A). The proposed rule prescribed general and specific filing requirements for petitions which do not fit the usual situation involving one employer, one beneficiary, and employment in one location. How and where to file petitions are discretionary decisions which the Service must make to better manage workload and to improve the efficiency of its operation.

The Service had proposed that all petitions in the arts, cultural, or entertainment industry would be filed at the appropriate Regional Service Center, except petitions for Canadian musicians to be employed within 50 miles of the U.S.-Canadian border.

Six commenters were concerned about the complete elimination of processing of petitions in the arts, cultural, and entertainment fields at district offices, even in emergent situations. They stated that expedited processing is critical to the entertainment industry in emergency situations, such as the sudden illness of an essential talent, and the very nature of the industry requires the ability to secure visas for guest stars and directors within a few days or one day. They did not believe that it was appropriate to single out the entertainment industry for special treatment and deprive that industry of district office processing of petitions in emergency situations. There was concern that the processing time for the four Regional Service Centers (RSCs) varies widely, with petitions requesting expedited handling taking up to three weeks. Two of the commenters recommended the implementation of consistent procedures at RSC's to accommodate expedited processing of H-1 petitions. All of the commenters recommended district office processing in legitimate emergency situations.

The Service had found from operating experience that petitioners in the arts, cultural, and entertainment industry often wait until the last minute to file petitions, claiming an emergency or lack of knowledge that a petition was required. This places undue pressure on district offices to adjudicate petitions on the spot and diminishes the Service's ability to achieve consistency in the adjudication of petitions in this industry.

Direct mail of petitions to RSCs has eliminated some of the problems with requests for emergency processing at district offices. Experience has shown that emergencies have ceased or have been adequately handled at RSCs in districts which have declined to adjudicate petitions filed at the last minute. Petitioners who do advance planning and use express mail and facsimile machines to communicate with RSCs have been receiving expeditious service. The Service recognizes, however, that there are truly unusual circumstances where district office processing of a petition in the arts, cultural, and entertainment industry may be necessary due to time constraints. In view of the legitimate concerns expressed by commenters, the final rule has been modified to require the filing of all petitions, including those in the arts, cultural, and entertainment industry, at the appropriate RSC, except in emergent situations. The rule provides that a district director may adjudicate an H petition only in emergent situations.

(B) *Agents as petitioners*—§ 214.2(h)(2)(i)(F). In recognition of the fact that certain services involve workers who are traditionally self-

employed and who use agents to arrange their employment with numerous employers, the Service had proposed to permit an established agent instead of the employer to file a petition under two circumstances. The agent could file an H petition involving multiple employers as the representative of the actual employers and the beneficiary(ies) if the supporting documentation includes a complete itinerary of services or engagements. In addition, the agent could assume responsibility as the actual employer, such as a modeling agency, but must guarantee the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary(ies).

One commenter requested clarification of the phrase "an established agent," and clarification that the petitioning agent is not the employer of record and is not responsible for withholding and other tax payments.

The regulations already describe an "established agent" at paragraph (h)(2)(i)(F) as a United States person or business in business as an agent. This means that the service which the person or business provides in the normal course of doing business is that of an agent. A determination of withholding and tax payments is one which must be made by the Internal Revenue Service, not by the Service.

Another commenter stated that an entertainment agent furnishes the services of entertainers to various promoters for live and recorded performances. Agents do not guarantee the offered wage or terms and conditions of employment, although they issue a contract in which the promoter makes these guarantees.

The Service recognizes the circumstance where agents represent promoters who are, in fact, the actual employers in paragraph (h)(2)(i)(F)(*1*). When the Service, in this situation, requires a contract describing the wages and terms and conditions of employment, it must be signed by the appropriate promoter/employer.

Several labor organizations were critical of the agent provision because an agent is not the employer-in-fact. By allowing the agent also to act as the employer, they believed the rule may seriously damage the agent/employee relationship. The provision would encourage potential employers to pay an agent a commission, which could compromise the agent's relationship and fidelity to his/her client, the employee. Unless the employer-in-fact petitions for the temporary worker, the commenters believed the Service may encourage agents to find employment for such workers after rather than before they enter the United States, and engage in stockpiling such workers.

The proposal to allow agents to petition for H classification on behalf of the actual employers and the beneficiary(ies) codifies into regulation a long-standing practice. In occupations where workers are traditionally self-employed, such as entertainers and models, the Service has permitted the agent to file as the petitioner. This has allowed for more efficient coordination of engagements and reduces paperwork for the Service. Whenever the beneficiary(ies) will be employed by a single employer or when the beneficiaries are not using the services of an established agent, the actual employer(s) must file the petition.

To the Service's knowledge, the practice of allowing established agents to file as the petitioner has not been abused. Codifying this practice into regulation is not expected to generate new interest in this procedure or to cause abuses. Service Center processing of H petitions also deters any inclination to abuse this practice.

(c) *Named Beneficiaries*—§ 214.2(h)(2)(iii). The regulations had proposed that every nonagricultural I-129H petition must include the names of beneficiaries and other required information when filed.

An attorney organization recommended that when the names of the beneficiaries are unknown at the time the petition is filed, the Service should allow the employer to file more than one petition involving the same labor certification, and permit such filings at different times as the names of the beneficiaries become known. The initial petition would reference the entire number of aliens who will be allowed to enter; the subsequent petitions would reference the file numbers of previous petitions and include a copy of the temporary labor certification.

The determination which the Service must make before granting H-1, H-2B, or H-3 classification relates not just to the services or training, but also to the alien's qualifications or circumstances. For example, an H-2B petition for skilled construction or logging workers or a computer programmer or aerospace technician would be accompanied by a labor certification which specifies the training, experience, and special requirements against which the availability of U.S. workers was tested. It is the Service's responsibility to determine in the petition process if the alien beneficiaries meet those requirements before according H classification. In addition, the Service views the identification of beneficiaries as a control against abuses which could occur, such as inflating the actual number of workers needed and including ineligible beneficiaries in a group petition.

The Service recognizes, however, that there are emergency situations, such as disasters caused by storms, where numerous alien workers may need to be brought into the United States on short notice to supplement an employer's workforce. The regulations at paragraph (h)(2)(iii) have been modified not only to accommodate this situation, but also to accommodate the suggestion of the attorney organization. The final regulations provide that every I-129H petition must include the names of beneficiaries and other required information when filed, except in emergency situations involving multiple beneficiaries as determined by the director. If all of the beneficiaries covered by an H-2B labor certification have not been identified at the time a petition is filed, multiple petitions may be filed at different times with a copy of the same labor certification as the beneficiaries are identified. Each petition must reference all previously filed petitions for that labor certification.

H-1 Classification for Aliens of Distinguished Merit and Ability—Section 214.2(h)(3).

(A) *Interpretation of distinguished merit and ability*—§ 214.2(h)(3)(i). The Service had proposed to codify into regulations its interpretations of the statutory standard for distinguished merit and ability under the H-1 classification. Distinguished merit and ability may be established in one of two ways. First, aliens who are members of the professions within the meaning of section 101(a)(32) of the Act, 8 U.S.C. 1101(a)(32), are classifiable as aliens of distinguished merit and ability. *Matter of Essex Cryogenics Industries, Inc.*, 14 I&N Dec. 196 (Dep. Assoc. Comm. 1972); *Matter of General Atomic Company*, 17 I&N Dec. 532 (Comm. 1980). Second, aliens who are prominent or renowned in their field of endeavor are classifiable as aliens of distinguished merit and ability. *Matter of Shaw*, 11 I&N Dec. 277 (D.D. 1965).

Several labor organizations and a nonprofit organization objected to entry-level professionals being considered aliens of distinguished merit and ability. Their position was that the sole authority for the proposition that nonimmigrant professional workers are persons of distinguished merit and ability is the *Essex* case, since the later *General Atomic* case rests entirely on

the holding in the *Essex* case. They stated that the core holding in the *Essex* case is one sentence which reads, "The Service has long held that a person who is qualified as a member of the professions qualifies as a person 'of distinguished merit and ability' as that term is used in section 101(a)(15)(H)(i) * * *" The *Essex* case was, in their opinion, a distortion of the meaning of the statutory language on which it was based. These organizations also asserted that the Service's policy that recently-graduated engineers, computer programmers, teachers who have just received a teaching certificate, and nurses who have just passed a state board examination are persons of distinguished merit and ability is contrary to the plain meaning of the statutory language.

The Service's interpretation that members of a profession are aliens of distinguished merit and ability is long-standing. When Congress amended section 101(a)(15)(H)(i) of the Act in 1970 to eliminate the requirement that the position to be held by an H-1 beneficiary must be of a temporary nature, the interpretations of "distinguished merit and ability" were also considered. House Report No. 91-851, U.S. Code Cong. & Ad. News 2751-2755 (1970), noted that there were ample interpretations of "distinguished merit and ability" and declared that this term implies a degree of skill and recognition substantially above that ordinarily encountered, to the extent that a person so described is prominent or has a high level of education in his field of endeavor.

When Congress approved of the Service's interpretations in 1970, it did not contradict the position that entry-level members of a profession *per se* fit under the H-1 classification. The Service has considered membership in a profession and performance of services in a profession as qualifying for H-1 classification for the past 17 years. *Essex, supra; General Atomic, supra; Matter of Sea*, I.D. 3089 (Comm. 1988). A change in the present interpretation would undoubtedly create adverse consequences for American businesses, universities, hospitals, and other institutions. These employers regard the H-1 classification as a critical and rapid means of obtaining professional workers needed to remain competitive in today's international economy and rapidly changing labor market. The Service has no evidence of widespread abuse of the H-1 classification by employers and alien members of the professions. In addition, a 1988 labor market study contracted by the Service to determine the impact of H-1 workers on the labor market found that H-1 nonimmigrants admitted to the United States do not have an adverse impact on job opportunities and wages of U.S. workers. The Service believes that a Congressional amendment to the statute would be required to change the current interpretation after such a long time.

(B) *Standards for a Profession* — § 214.2(h)(3)(ii)(A) and (iii)(A). The term "profession" is defined by example in section 101(a)(32) of the Act. That section states: The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries. Using these examples, the Service's interpretation over the years has been that the common denominator for determining that an occupation is a profession is the requirement of at least a baccalaureate degree awarded for academic study in a specific discipline or narrow range of disciplines for entry into the occupation.

The proposed rule defined "profession" as an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor as: architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business, accounting, law, theology, and the arts. The definition also indicated that a profession requires completion of a specific course of education at an accredited college or university, culminating in a baccalaureate or higher degree in a specific occupational specialty, where attainment of such degree or its equivalent is the minimum requirement for entry into the profession in the United States. The exceptions to this standard were specified. There are two categories of persons who do not meet these standards but are nevertheless regarded as professionals. They are persons who, after passage of normal professional tests and requirements, are granted full state licenses (or registration or certification) to practice the profession, and persons who lack the required degree but, by virtue of a combination of academic training and professional experience are, in fact, lawfully practicing at a professional level.

An attorney organization recommended deletion of the word "specific" and the phrase "in a specific occupational specialty" from the definition of profession. That portion of the definition would then read, "A profession requires completion of a course of education at an accredited college or university, culminating in a degree, where attainment of such degree or its equivalent is the minimum requirement for entry into the profession in the United States."

Acceptance of this recommendation would be a significant change in the Service's definition of a profession. Such a change would mean that any field in which a college or university grants a degree would become a profession. From the examples listed in the statute, the Service does not believe that Congress ever intended such a broad interpretation of the term "profession." In addition, such a change could multiply the number of aliens who could qualify for admission into the United States under the H-1 classification, without regard to availability of United States workers. Since the definition of "profession" in these regulations will also be used for third preference classification of aliens intending to immigrate to the United States, significantly more aliens would be competing for third preference numbers. The Service is opposed to such a broad interpretation and has no legal basis for making such a change.

Another commenter criticized the Service for not recognizing that a liberal arts degree is an appropriate degree in a profession. The commenter stated that many American businesses prefer that recruited graduates for business positions have a liberal arts degree because that provides them with the intellectual insight and educational development together with the mental flexibility necessary for one to be successful in a business career. The Service is opposed to broadening the definition of a profession to this extent for the same reasons that it opposes deletion of the requirement for a degree in a specific occupational specialty. However, the Service recognizes that many of an individual's college-level courses, regardless of how broad the major field, will closely relate to the coursework required for a more specific baccalaureate degree program. When combined with appropriate experience, the holder of such a degree may be able to demonstrate membership in a specific profession.

The Service did not enumerate specific standards in the proposed rule for determining whether a position is a profession, except those included in the definition of a profession. Adverse court decisions rendered since the rule was proposed have somewhat broadened the definition of a profession by holding that

the complexity of a job's duties alone are sufficient to make it a profession, and a degree is not required. *Hong Kong T.V. Video Program, Inc.* v. *Ilchert*, 685 F. Supp. 712 (N.D. Cal. 1988); *American Bictech Inc., et al.*, v. *INS*, CIV-2-88-262 (U.S.D.C., E.D. Tenn., Northeastern Division, March 27, 1989); *Augat* v. *Tabor*, Civil No. 88-1458-S (USDC, District of Massachusetts, April 12, 1989). If a job's duties are so complex that theory, knowledge, and skills normally gained by attainment of a baccalaureate or higher degree in certain occupational specialties are required, then the Service would conclude that the position is a profession. However, a standard of complexity of duties alone is insufficient to determine the professional nature of a position. Jobs of skilled workers often involve complex duties.

To assure that the standards for a professional position are clear, a new paragraph (h)(3)(iii)(A) has been added to the final regulations to reflect the specific criteria which the Service uses.

(C) *Standards for a member of the professions*—§ 214.2(h)(3)(iii)(B). The Service had proposed to clarify and simplify the rules for determining when a person may be considered a member of a profession by virtue of education, specialized training, and/or experience. The standard proposed recognized that a combination of college-level education, experience, and accomplishments may result in training which is equivalent to the professional training that is normally gained through attainment of a baccalaureate or higher degree from an accredited college or university. To have qualified as a member of a profession, the alien would have to have completed at least two years of college-level training appropriate to the profession, have demonstrated that he or she has sufficient specialized training and/or professional experience combined with the college-level education to be equivalent to a United States baccalaureate or higher degree required by the profession, and have attained professional standing and recognition in the particular field. Three years of specialized training and/or professional experience would have been equivalent to one year of college-level training for purposes of calculating the amount of specialized training and/or professional experience needed to account for the remaining years of college-level training which would be necessary to obtain the required degree.

Eleven commenters objected to the requirement for two years of formal college training, as it would eliminate from consideration as a professional anyone with less college-level training or no college training. They believed that the Service should not impose any formal training requirement because it negates the idea that an individual may gain the equivalent of a formal education through experience. Recognized professionals who obtained all of the required specialized knowledge through alternatives to academic training (e.g., in-house training, industry courses, and apprenticeships) would be unjustifiably excluded from H-1 status. One commenter noted that whether an alien is actually practicing at a professional level is evidenced by such facts as the alien's actual duties, the normal education level of his or her peers, and membership in professional organizations. In addition, where an alien is holding a position normally recognized as professional, that fact is logical prima facie evidence of his qualifications. Two commenters stated that the broad range of occupations and the variety of human experience make it exceptionally difficult to create a formula to equate experience to education, except on a case-by-case basis.

Several commenters believed that professionals who obtain their training outside academic institutions should not be held to a higher standard of proof than those who have academic training. Professionals who have a degree are not required to provide further evidence of their professional standing with documentation, such as expert opinions or membership in a professional association. The commenters stated that these additional requirements are confusing and impose without justification new burdens on business petitioners that far exceed the statute's requirements.

All of the commenters recommended that the regulations should be amended to reflect the fact that professional training can be obtained entirely outside academic institutions. One recommended a modification to ensure that a credentials evaluation that demonstrates that a person's professional training and experience is equivalent to the required degree should be sufficient evidence of professional standing. Another commenter recommended a case-by-case analysis which would include a review of the employer's hiring practices pertaining to degreed and non-degreed candidates. The employer should be able to prove that specific non-degreed employees have been able to achieve promotions, increased responsibility, and professional recognition at the same level as those who are degreed. Lastly, an attorney recommended alternatives which provided for a two-to-one substitution of specialized training or experience for academic education.

The Service has published precedent decisions over the years involving persons who do not have a college degree, but have a combination of college-level education, professional experience, and occupational achievements which the Service deemed to be equivalent to the professional training that is normally gained through attainment of a baccalaureate or higher degree. In none of the published decisions of the Service has an alien been classified as a member of a profession in the absence of higher education.

A number of recent court decisions have been adverse to the Service's position with respect to requirement of college-level education. *Hong Kong T.V. Video Program, Inc.* v. *Ilchert, supra; American Bictech Inc., et al.*, v. *INS, supra; Augat* v. *Tabor, supra; Globenet, Inc.* v. *Attorney General*, No. 88-1261 (D.D.C., January 10, 1989). The aliens in these cases had little or no college-level training, but possessed substantial amounts (over 20 years) of experience in their field. In addition to the trend of court decisions, representatives of business interests have maintained that it is a common practice among modern businesses to equate education, specialized training, and/or experience to college-level training required for a profession.

The Service has attempted to determine from professional associations, state licensing or certification authorities, publications, and the United States Office of Personnel Management the methods and standards which are used to determine the equivalency of training acquired through nonacademic sources and professional experience to that acquired through attainment of a college degree. The Service was advised that methods and standards vary widely among states and associations and the various professions. In general, employers and organizations establish their own standards for evaluating equivalency, including the Office of Personnel Management for purposes of Federal employment. Prevalent among associations and state licensing, registration, or certification authorities are the requirements for certain academic credentials, a certain number of years of professional experience, and passage of a test in order to hold ones

self out to the public as a member of a particular profession.

The Service is in the unique position of having to determine whether the evidence submitted by a petitioner establishes equivalency in any number of professional occupations. The Service's adjudicators are not experts in these professional fields and are required to make determinations within a very short time period due to the large volume of petitions handled by the Service. Where the alien possesses a degree in the professional field, a copy of the degree (and an evaluation of its equivalency to a U.S. degree in some cases) is sufficient to make the determination that an alien qualifies as a professional. In order to make consistent, accurate decisions in cases involving equivalency of education, training, and/or experience, adjudicators need specific criteria for determining the sufficiency of the evidence submitted. In addition, the sources outside the Government which make determinations of equivalency must be recognized for their authority and expertise to make such determinations. The lack of specific criteria in the Service's current regulations has caused adjudicators, in some cases, to grant professional status based on dubious evaluations and has resulted in adverse court decisions which reverse long-standing Service policy.

Due to the concerns of commenters, rulings in recent court decisions, and further research by the Service regarding requirements for professional status, the final rule has been modified to eliminate the absolute requirement of two years of appropriate college-level training. The rule requires education, specialized training, and/or experience that is equivalent to training acquired by attainment of a baccalaureate or higher degree in the profession. The rule provides that equivalence to training acquired by the attainment of a baccalaureate or higher degree shall be determined by one or more of the following:

- An evaluation from an official who has authority to grant college-level credit in the profession at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, or
- The results of college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP) or Program on Noncollegiate Sponsored Instruction (PONSI), or
- An evaluation of foreign education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials, or
- Evidence of certification or registration from a nationally-recognized professional association or society for the profession which is known to grant certification or registration to members of the profession who have achieved a certain level of competence in the profession, or
- Substitution by the Service of specialized training and/or progressively responsible experience in the profession for college-level training which would have been necessary to acquire a degree in the profession, in addition to evidence of professional standing and recognition. For purposes of this paragraph, three years of specialize training and/or experience which culminated in professional-level employment and recognization as a member of the profession shall be equivalent to one year of college-level training.

For the benefit of petitioners and applicants who may have difficulty in seeking and obtaining a determination of equivalency through authoritative sources, the Service adopted its own standard for substituting specialized training and/or experience for college-level training, and for assuring that the alien is recognized as a member of the profession. The three-for-one formula which will be used is based on a survey of relevant precedent decisions which reflect the number of years of experience held by aliens who did not have degrees, but were regarded by the Service as members of their profession. *Matter of Bienkowski*, 12 I&N Dec. 17 (D.D. 1966); *Matter of Yaakov*, 13 I&N Dec. 203 (R.C. 1969); *Matter of Devnani*, 11 I&N Dec. 800 (D.D. 1966); *Matter of Arjani*, 12 I&N Dec. 649 (R.C. 1967).

Finally, a commenter suggested that the experts who may be called upon to evaluate experience should not be from an official list promulgated by the Service. In addition, the definition of these experts should be more precise.

To assure that the Service obtains credible evaluations, the final rule limits determinations of equivalency, except where the Service will make the determination, to certain types of authorities in the professional field. The definition of a recognized authority in paragraph (h)(3)(ii)(E) has been modified to specify the information which the expert's opinion should include, such as the writer's qualifications and experience in giving such opinions and how the conclusions were reached.

(D) *Standards for prominence*—§ 214.2(h)(3)(iv). The proposed regulations defined prominence as a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading or well-known in the field of endeavor. An alien has always been considered prominent if he or she has national or international acclaim and recognition for achievements in a field of endeavor. The Service had proposed two new categories of prominence, to include business persons who have exceptional career achievement and unique or traditional artists. Specific criteria for qualifying under each category were proposed. The final rule also includes standards for determining if a position requires a person of prominence.

(E) *Business persons with exceptional career achievement*—§ 214.2(h)(3)(iv)(B)(*3*). The Service had proposed that persons who have achieved positions of responsibility and significance in business would qualify as "prominent" under the H-1 classification. This new standard was created to rectify the situation whereby certain aliens with substantial amounts of work experience and significant achievements in business are employed in high-level positions requiring a broad range of responsibilities, but have not been able to qualify for H-1 classification as professionals or persons of prominence under current standards, while a recent college graduate in a profession, such as an engineer, can qualify. To qualify as prominent the proposed rule required the alien to have exceptional career achievement in business in executive, managerial, or highly technical positions evidenced by at least three factors, such as: managerial responsibility for an organization or subdivision which has a gross annual income of at least $25 million; at least 10 years of progressively responsible experience; a salary of at least $75,000; responsibility for a workforce of 100 or more employees, at least 50 percent of whom are managerial, supervisory, or professional employees; or recognition for achievements and significant contributions to the industry.

Eight commenters expressed appreciation for the creation of a new prominence category for successful business persons, but were concerned that the criteria are still too stringent. Some of the specific concerns about the examples of documentation required were:

—The requirement of $25 million is much too large. Many companies with sales in the $10 million range require a

professional or prominent individual as general manager or chief executive officer.

—The requirement of managing an entity with an annual income of $25 million or a salary of $75,000 will preclude virtually all managers of small businesses.

—The requirement of 10 years of experience would eliminate some prominent business persons, particularly in the newer, rapidly developing technological fields. Consideration should be given to shortening that period to 5 to 7 years.

—Responsibility for a workforce of 100, at least 50 percent of whom includes professional, supervisory, or managerial personnel, is not realistic for many organizations today. Corporations have had to restructure and decentralize which has meant streamlining and elimination of layers of management. Managers and other senior employees may actually have very few employees, yet they may have enormous financial operating responsibilities.

One commenter suggested that the Service examine an applicant's total accomplishments rather than requiring that certain specific factors be satisfied. Several commenters asserted that this prominence standard cannot take the place of the professional standard if it will later result in disqualification for third preference immigrant status. They stated that virtually all foreign personnel who meet the proposed criteria for prominence would be considered professionals by modern business standards. One commenter suggested that achievement of business prominence should be another way of demonstrating professional status for H-1 eligibility.

To accommodate the concerns of commenters, the Service has modified the same standards that were proposed by making them less restrictive in the final rule. However, the standards must remain high enough to assure that such aliens possess skills and recognition in the business field substantially above the ordinary. Every individual who owns or manages a business or who holds a high-level position in business is not considered prominent. Also, this category was not meant to accommodate all other business persons who cannot qualify as professionals. The Service does not believe that the standards are inappropriate for persons employed by small businesses. Since those listed as examples are not mandatory, persons employed by small or large businesses can submit other appropriate documentation to establish eligibility. The revised type of factors which can be used to document exceptional career achievement are specified in paragraph (h)(3)(iv)(B)(*3*).

Several commenters would have the Service directly correlate the standards for H-1 classification to those for third preference classification and allow all prominent business persons to qualify as professionals. While an alien who meets third preference standards would qualify for H-1 classification to perform services as an alien of distinguished merit and ability, the opposite is not true. Also, the belief that the Service is obligated to develop standards for H-1 temporary classification that guarantee that an alien will qualify to immigrate under third preference classification is incorrect. The two classifications are alike in that members of a profession qualify under both. The Service will use the same standards for members of a profession in whatever classification they are considered. The Service cannot guarantee that every prominent business person or unique or traditional artist will qualify as a member of the professions or person of exceptional ability in the arts or sciences as required for third preference eligibility.

(F) *National or international acclaim and recognition*—§ 214.2(h)(3)(iv)(B)(*1*). Seven commenters in the entertainment industry objected to the requirement for a showing of "sustained" national or international acclaim and recognition. They believed that the standard is unrealistic and will eliminate many individuals who should properly be accorded H-1 classification as prominent artists in their particular fields. They stated that a sustained record of success may properly be considered, but the key factors in the H-1 process should be the creative abilities of the artist, popular or critical acclaim, and commercial marketability at the present time. If aliens have achieved national or international acclaim and recognition, it should not have to be sustained.

The Service used the word "sustained" to describe the type of national or international acclaim and recognition required for H-1 classification. The word makes it clear that persons with ephemeral or short-lived acclaim and recognition in their field, especially in a field such as entertainment, are not eligible for H-1 classification as set forth in *Shaw*, supra. Distinguished merit and ability requires skill and recognition substantially above that ordinarily encountered in the field. To establish this, the alien must have a significant record of successes and achievements. The alien must, except in rare cases, furnish recent documentation that he or she is an alien of distinguished merit and ability, except in rare cases. An individual who was a "superstar" or one of such distinguished merit and ability that the name or reputation standing by itself is sufficient to establish eligibility may not be required to document recent achievements; the name and reputation of such individuals are not usually diminished by the passage of time. An individual who has had one success and no record of other achievements is generally ineligible for H-1 classification. An exception would be where the one success generates such acclaim and recognition that is very likely that the individual will continue to have international acclaim and recognition in the future. For example, a person who was awarded a Nobel Prize or Academy Award for a first success could be accorded H-1 classification based on that achievement.

The Service believes that the word "sustained" accurately describes the nature of the acclaim and recognition required by this standard. The final rule retains the requirement that the alien or group have sustained national or international acclaim and recognition for achievements in the particular field.

Several commenters criticized the standards for failing to include as a criterion the fact that an alien has been accorded H-1 status on a previous occasion. The Service did not include evidence of a prior H-1 approval as a form of actual documentation in a subsequent new petition because it cannot serve as the basis for future eligibility; however, knowledge of prior approval of an H-1 petition can be helpful to the Service when considered along with other indicators of H-1 eligibility. A prior approval, however, does not obligate the Service to approve a subsequent petition or relieve the petitioner of providing sufficient documentation to establish current eligibility.

Thirty-eight commenters believed the regulations would bar many lesser known, but excellent performers, especially ethnic and folk performers from performing in the United States. They requested that the Service ease regulations which appear to require commercial and media success before these performers are permitted to enter the United States. The commenters felt that a restrictive policy effectively cuts off ideas and curtails freedom of expression. They stated that many of the world's great artists have not experienced great acclaim in mainstream media or commanded high fees or performed at major mainstream

venues. Only an expert in their particular field would know the worth of these artists. They would not qualify under the standards for sustained national or international acclaim and recognition. Some believed that the regulations will harm the cultural interests and the national economy as many American businesses will be harmed if foreign artists are not allowed to perform in the United States.

A number of the commenters stated that use of the H-2 visa classification by performers is entirely unrealistic. The nature of the industry causes many contracts to be made on short notice, and often verbally. Adjudication of an H-2 petition usually takes months, which has the practical effect of denying H-2 classification as a matter of procedure, rather than on the merits of the individual case. The commenters further stated that, in entertainment occupations, the real job skills required are almost always considered subjective or unduly restrictive, thus barring virtually all H-2 labor certifications for entertainers.

Most of the commenters are under the impression that a foreign performer must obtain an H-1 visa in order to perform in the United States. It is apparent from the comments that petitioners have come to rely on the H-1 classification as the most expedient nonimmigrant classification for alien performers. Although the Service is sensitive to the concerns of commenters, every foreign performer cannot be accorded H-1 classification. Only those who have national or international renown because of their achievements or those who have exceptional skills in a unique or traditional art as recognized by experts or authorities in the field are eligible. Others must seek H-2B temporary worker classification.

An alien performer who does not qualify for H-1 classification may be classified and admitted to the United States as an H-2B temporary worker after obtaining a labor certification determination from the Department of Labor. The Department of Labor must determine if United States workers are available for the job opportunity and if the wages and working conditions being offered to the alien will adversely affect the wages and working conditions of United States workers who are similarly employed. The petitioner may then file a petition for H-2B classification with the Service, which normally adjudicates such petitions within two to three weeks, or less time in emergent situations. Meanwhile, the Service is working with Department of Labor officials, labor union officials, and representatives of employer/management organizations to determine what steps can be taken to make it less difficult and/or time-consuming for aliens in the arts, cultural, and entertainment industry to obtain classifications which permit them to perform in the United States. The parties are still considering resolutions to issues raised. Nevertheless, it is inappropriate to use the H-1 classification for all performers because petitioners believe the H-2B classification is too difficult.

(G) *Unique or traditional artists*—§ 214.2(h)(3)(iv)(B)(*2*). The Service had proposed to liberalize the H-1 classification for the arts, cultural, and entertainment industry by including under the H-1 classification certain unique or traditional artists who previously have not qualified for H-1 classification, but clearly possess qualifications and which are exceptional in nature as attested to by experts. Such artists would have to be recognized by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in the particular field for their expertise in developing, interpreting, or representing a unique or traditional ethnic, folk, cultural, musical, or theatrical performance or presentation. In addition, the artists would have to be coming to the United States primarily for educational or cultural events and be sponsored primarily by educational, cultural, or governmental organizations.

Several commenters stated that the exclusion of all folk, ethnic, or culturally unique artists who are coming to the United States primarily to perform at commercial venues or who have commercial sponsors is arbitrary and without basis in the wording of the statute. Commercial artists who perform at a commercial venue may still be recognized exponents of various forms of artistic expression. They believed that the artists should not have to represent a narrow and clearly identifiable performance or presentation because many significant artists do not fit so neatly into a narrow category. In addition, they believed that the documentation such artists should be required to supply is unrealistic because the artists must fulfill all, not simply one, of the various requirements.

A government agency which sponsors such artists indicated that agencies such as the Smithsonian which have preeminent on-staff expertise and employ on contract those foreign and U.S. scholars most knowledgeable of the specific art form or artists may have no one to go to, outside themselves, to provide letters or affidavits which attest to the alien's qualifications. A cultural organization stated that the requirement for letters from at least two different U.S. experts, other than sponsors, may be difficult to fulfill since cultural organizations, scholars, or critics who are the most knowledgeable may also be involved in support of the artists or be a petitioning employer.

This category of prominence was established to accommodate artistic performances and presentations which by their nature cannot receive the widespread acclaim and recognition in what might be termed the mainstream arts or at commercial venues. Such artists must be recognized for their excellence in performing or presenting a unique or traditional art form by experts, such as anthropologists, folklorists, ethnomusicologists, arts administrators, and scholars. Artists who are coming to the United States primarily to provide commercial entertainment are excluded from qualifying under this provision. Therefore, it must be determined in each case whether the events are primarily educational or cultural in nature or mainly held for commercial entertainment. The term "primarily" as used in this provision means that an itinerary for such artists may include some engagements which are commercial in nature, and some sponsors of events do not have to be educational, cultural, or governmental organizations.

The types and amount of documentation required for eligibility were developed in consultation with the types of experts who will provide opinions. An authoritative opinion from the alien's home country and letters from two U.S. experts were considered to be reasonable and appropriate. However, the final rule has been modified to accommodate the concerns and recommendations of two commenters. In paragraph (h)(3)(iv)(B)(*2*)(*ii*), the prospective employer(s) will be permitted to provide testimonial letters. In addition, a new paragraph (h)(3)(iv)(B)(*2*)(*iii*) has been added to provide an alternative to the two types of documentation, in the form of a letter or certification from a U.S. government cultural or arts agency such as the Smithsonian Institution, the National Endowment for the Arts, the National Endowment for the Humanities, or the Library of Congress.

(H) *Accompanying Aliens* § 214.2(h)(3)(ii)(D). The Service had proposed to expand accompanying alien status to include essential support staff to other H-1 aliens in the arts, cultural, entertainment, and professional sports

fields, besides performing artists, if certain conditions are met. Accompanying alien status would not be extended to H-1 aliens in other fields and industries. Essential support staff would derive H-1 classification from the H-1 alien or group to whom their skills are essential if the services cannot be readily performed by U.S. workers, their services are essential to the successful performance of services by the H-1 alien or group, and the accompanying aliens possess appropriate qualifications, significant prior experience with the H-1 alien or group, and critical knowledge of the specific type of services to be performed so as to render success of the services by the H-1 alien or group dependent upon their participation.

Five commenters were concerned that the provision requiring that the support services for the principal H-1 alien cannot be readily performend by a U.S. worker in order for accompanying alien to qualify will eliminate eligibility for critical accompanying crew members upon whom the success of the primary artist in a motion picture, recording tour or television production depends. They stated that there is no question that the artistic integrity of the work would be jeopardized by elimination of such key personnel as the camera operator, gaffer, grip, or sound and lighting engineers in the case of a director, or road crews for musical artists. They asserted that a U.S. worker would not understand the subtleties of the aesthetics and sensibilities required by the creative relationship with the principal H-1 artist and recommended elimination of the requirement.

Two commenters were concerned about the situation where a production is initially filmed abroad and then requires further shooting in the United States. They stated that continuity of the production demands the same key production personnel and believed that the new requirement that the services cannot be readily performed by a U.S. worker in order for accompanying aliens to qualify is likely to lead to unreasonable and arbitrary denials which may jeopardize many international productions.

Several labor unions strongly opposed expansion of the accompanying alien provision and wanted the regulations to retain the provision restricting accompanying alien status to the essential support staff for performers. They believed the proposed rule would make it even easier for foreign film crews tc obtain H-1 visas, and that the rule, regardless of the professed restrictions, will open the floodgates to the importation of literally hundreds of thousands of unskilled, untalented aliens whose services can easily be performed by American workers.

The accompanying alien provision was intended to recognize that certain individuals or groups in the arts, cultural, entertainment, and professional sports field provide a variety of short-term services and rely on the same individuals to regularly provide essential support for their services, such as the band for an H-1 singer or the choreographer for a dance troupe. The provision was never intended to permit H-1 individuals or groups to select and bring to the United States foreign support staff with whom they prefer to work in the United States. The personal preferences of the H-1 alien or group for working with a particular individual is not a consideration in granting accompanying alien status.

Aliens who are working together on a particular project, such as the production of a motion picture will, in many cases, have to seek individual classification based on their own merits. Those who do not qualify for accompanying alien status will have to seek H-1 or H-2B classification separately and apart from the principal alien.

The Service believes that it is reasonable and necessary to limit accompanying alien status to those aliens who are performing essential support services that cannot be readily performed by U.S. workers. An example where the services cannot be readily performed by a U.S. worker would be where unusual special effects are a primary part of the activity or performance and the quality and success of the services would be significantly diminished by the substitution of a U.S. worker.

The Service will review and monitor the implementation of this provision at regional service centers to assure that the concerns of labor unions regarding abuse of this provision are not realized. Also, the Service will continue to work with labor and industry groups to more clearly identify qualifying essential support staff. Although the accompanying alien provision is more liberal than previous requirements, the Service does not anticipate an influx of aliens under the new requirements. The final rule retains the provision as it was proposed.

(I) *Consultation with experts*—§ 214.2(h)(3)(v)(A)(*1*)(*iii*). Under the H-1 classification, the Service consults with experts on petitions in the arts, cultural, and entertainment field when there is doubt about the alien's qualifications as an alien of distinguished merit and ability and the distinguished nature of the services to be performed. The Service had proposed to require consultation with a management organization whenever an opinion is sought from a labor organization. The director would have the discretion to consult with critics or other experts instead of a labor and a management organization.

Several labor organizations were opposed to consultation with a management organization which they viewed as giving management two chances to provide an opinion (the petitioner's and a management organization's). They believed the rule provides the Service with numerous incentives to circumvent union consultation altogether and increases the director's discretion to do so. They stated that entertainment guilds and unions are the only organizations able to present a perspective independent of the employer. As organizations of craftspeople and/or artists, entertainment unions are the organizations most able to reflect the expertise of the alien's professional peers. Further, by failing to consult with unions and in fact, by not obligating itself to notify the appropriate labor unions when considering H-1 petitions, the Service threatens to undermine the purpose of the legislation that originally created and defined this process. The unions stressed that it is essential for the Service to compile and disseminate meaningful data on the H-1 classification to enable unions to uncover abuses and protect job opportunities for American workers.

One commenter stated that labor unions have no particular expertise in judging a person's prominence, and as representatives of the U.S. workers, are institutionally biased. The commenter suggested looking to recognized critics instead, such as university arts departments or newspaper critics.

It has been and continues to be the Service's policy that the views of experts, as determined by the Service, must be sought in doubtful cases in the arts, cultural, and entertainment field before a director approves the petition. A balance of views is appropriate and helpful to the director in deciding the merits of a case. Where a party has a direct or indirect interest in the petitioning process as the employer, an employer organization, or a labor union which covers workers in the occupation, the Service believes that some bias exists. Since such opinions are only advisory to the Service, the director has the discretion to use information

provided that it is reasonable and credible.

The Service is not obligated to consult with or notify the appropriate labor union of its consideration of and determinations on H-1 petitions. Congress neither provided for consideration of the availability of U.S. workers under the H-1 classification, nor was there any implication that Congress intended labor unions to have an official role in the adjudication of H-1 petitions. However, the Service appreciates the advice which labor unions provide and is sensitive to their efforts to protect job opportunities for U.S. workers. The Service is continuing to develop better ways to compile and disseminate meaningful data on the nonimmigrant worker classifications to the public and to Congress. This rule, however, is not intended to address issues relating to collection and dissemination of statistical information. The final rule retains the requirement for consultation with experts as it was proposed.

(J) *Licensure*—§ 214.2(h)(3)(vii). The Service had proposed that in any occupation where licensure is required to work in the United States, the alien must have that license to be found eligible to enter the United States and immediately work in the occupation. The Service had proposed to approve the H petition only for a period of one year unless the alien already has a permanent State license. The alien would not receive an extension or be the beneficiary of a new petition after the one year unless the alien had obtained the permanent license or continued to hold a valid temporary license. As required under current regulations, professional nurses would have to have passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination and be authorized to work as a professional nurse in the State of intended employment, or have a full and unrestricted permanent license to practice professional nursing in the State of intended employment.

A nursing organization was pleased to see the licensure requirements for H classification continue to mandate passage of the CGFNS examination or proof of permanent State licensure before a nurse may engage in the practice of nursing. The organization believed that the regulations should also include criteria which would have hospitals demonstrate that they are decreasing their reliance on foreign nurses.

One commenter indicated that there are many foreign nurses who have a permanent license to practice professional nursing in a state other than the state of intended employment, but must wait weeks or months for the state of intended employment to issue a permanent license based on reciprocity. Also, having to wait to file an H-1 petition until a new permanent license is processed creates an undue burden on the petitioning hospital.

Another commenter stated that the regulations are unclear on the treatment of foreign nurses who have passed the CGFNS examination and intend to work in the twenty-one states which do not grant a temporary license or other temporary authorization to work.

The Service would need a statutory amendment to the H-1 classification in order to include in its regulations a requirement that employers of professional nurses demonstrate that they are reducing their reliance on professional nurses. In fact, Congress has recently passed such legislation. When the legislation is required to be implemented, the Service will modify these final regulations to reflect the new provisions relating to foreign nurses.

The Service has policy instructions which deal with the concerns of the other commenters. The final rule incorporates that policy by providing that a permanent license in any state or territory of the United States and temporary authorization to practice professional nursing in the state of intended employment is qualifying for H-1 classification. The regulations also clarify that in addition to the CGFNS examination, foreign nurses must also meet temporary or interim licensing requirements which authorize the nurse to be employed. In the states which do not issue temporary licenses or other temporary authorization to engage in the practice of nursing, a foreign nurse who does not have a permanent license cannot obtain H-1 classification to work as a professional nurse.

An organization for foreign lawyers was concerned that the Service would apply the licensure requirements to foreign lawyers where there is no license required for the tasks performed by these foreign lawyers. The organization stated that under the Code of Professional Responsibility, foreign lawyers may not hold themselves out as lawyers, render any advice directly to clients, or otherwise render services to clients in a legal capacity. It was recommended that the Service avoid getting into the difficult task of scrutinizing the nature of the tasks performed by foreign lawyers to determine whether compliance with local licensing rules is required.

The Service recognizes that licensure is not required for foreign lawyers who provide consulting services to their employers and the Service does not require evidence of licensure in such cases. The petitoner must clearly describe the consulting services which the foreign lawyer will be providing. The Service cannot rule out the possibility that an alien lawyer can become a member of the bar in the United States and obtain H-1 classification to practice as a lawyer. The adjudications process requires the Service to scrutinize the nature of the services and specific job duties of every alien seeking H classification.

(K) *Petitioners with a record of approvals or denials*—(provision eliminated). The Service had proposed that where the petitioner has a significant record with the Service of consistently obtaining approval of H-1 classification for professionals and prominent aliens, the director would accept the statements of the petitioner and waive the requirement for actual evidence of the alien's qualifications. On the other hand, where the petitioner has a significant record with the Service of filing H-1 petitions which cannot be approved, a higher burden of proof would be required in the form of extensive evidence.

Five commenters, including an attorney organization, believed that all H-1 petitions should be adjudicated according to a single, uniform standard and that all petitioners should be held to the same burden of proof. They recommended that the proposed disparate treatment be withdrawn. One commenter favored the provision relating to petitioners with a record of H-1 approvals, but did not agree that petitioners with a record of H-1 denials should have a higher burden of proof.

In proposing this provision, the Service was attempting to reduce the paperwork burden on petitioners with a record of H-1 approvals and to facilitate classification and admission of professionals and prominent aliens which they are seeking to employ. At the same time, petitioners with a record of denials would be discouraged from filing frivolous cases because of the extensive evidence that would be required to establish eligibility. Since favorable reaction to this provision was minimal, the Service has eliminated the provision in the final rule.

H-2B Classification for Temporary Nonagricultural Workers—§ 214.2(h)(5)

(A) *Definition of temporary services*—§ 214.2(h)(5)(ii). The Service had proposed to incorporate into regulations the test for determining the temporary nature of services to be performed by an H-2B temporary worker. The rule

specified that the test for determining "temporary services or labor" for H-2B classification is whether the need of the employer for the duties to be performed is temporary. It is the nature of the employer's need, not the nature of the duties, that is controlling. *Matter of Artee Corporation*, 18 I&N Dec. 366 (Comm. 1982).

Labor unions viewed the change from a test of temporary duties to temporary need as a regressive step. To make sure that the H-2B program does not become indiscriminately available to any employee in the United States, they recommended that the test for determining the temporary nature of services or labor should be governed by the labor certification process since it is essentially an employment issue.

The Service's test for determining the temporary or permanent nature of employment for H-2B classification was first set forth in *Artee*, supra. In that decision, the Service held that it is not the nature of the duties of the position which must be examined to determine the temporary need; it is the nature of the employer's need for the duties to be performed which determines the temporariness of the position. This interpretation did not make the H-2B classification indiscriminately available to any employer since, in most cases, the nature of the employer's need usually coincides with the nature of the job. For example, the position of restaurant chef is considered permanent and ongoing. The restaurant owner's need for the services of a restaurant chef is also permanent and ongoing. The Service's interpretation is flexible in that it allows for the possibility that the same employer's need for the temporary services of a restaurant chef could also be temporary, e.g., to train workers or to assist with a one-time special event or peak season.

The *Artee* test of temporariness has been used by the Service for over six years, and there has not been a noticeable increase in the use of H-2B temporary workers. The Service has no reason to believe that incorporation of the *Artee* test into the final regulations will cause any increase in employer use of H-2B workers. It should be noted further that an April 23, 1987, opinion from the Department of Justice, Office of Legal Counsel, confirmed for the Service and the Department of Labor that it is the nature of the employer's need for the duties to be performed that determines the temporary nature of the job.

(B) *Types of temporary need*—§ 214.2(h)(5)(ii)(B). The Service had proposed that the petitioner's need for the services or labor would have to be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. The rule included proposed definitions of these terms.

A labor union commented that the concept of seasonal and peakload do not belong in a rule implementing H-2B; it is only under H-2A for agricultural workers that the statute employs the concept of seasonal need. The commenter stated that not only does this depart from the statutory language, but when considered outside the agricultural context, the seasonal concept can mean so many different things to different petitioners that it can only provide a means to circumvent the intent of the statute. Further, the authorization of H-2B visas for recurring seasonal work will enable employers to depend upon a cadre of foreign workers for workload situations which occur on a regular, predictable basis, for which workers in the United States should be recruited.

The terms "seasonal" and "peakload" are common terms which the Service and the Department of Labor have used over the years to decribe the nature of temporary work which is appropriate for employment of temporary nonagricultural workers. The H regulations codify the definitions of these and other acceptable types of temporary need. The Service has no reason to believe that the abuses perceived by the union will occur.

One commenter stated the definition of "one-time occurrence" is too restrictive and suggested "infrequent occurrence" instead. Another commenter suggested that under the definition of "seasonal," the Service should delete the statement that the employment is not seasonal if periods when the services are not needed is considered a vacation period for the petitioner's permanent employees. These changes were not adopted in the final rule because the language proposed serves to appropriately limit the temporary situations which will be qualifying under this provision.

The Department of Labor commended the Service for defining the types of temporary need and believed the definitions proposed are helpful and a step in the right direction, but were concerned about the time periods specified in the definitions of peakload and intermittent need since there are legitimate temporary situations which might be precluded under the time periods proposed. The agency also wondered whether the Service attached any significance to an Administrative Appeals Unit decision which stated that the theoretical maximum for a season is nine months. After meeting with the Department of Labor and considering the same concerns from commenters in the Territory of Guam, the Service has eliminated the time period "no more than once a year" from the definition of peakload and "30 days or less" from the definition of intermittent need in the final rule.

The Department of Labor was also concerned that the regulations would permit part-time employment under the H-2B classification and stated that this is contrary to long-standing Department of Labor policy. The agency believed that permitting part-time employment of aliens may lead to substitution of part-time aliens for full-time U.S. workers, since part-time employment may be less attractive to U.S. workers.

The Service has explained to the Department of Labor that exclusion of part-time employment from the H-2B classification would be contrary to long-standing service policy. It has been the Service's operating experience that there are legitimate part-time employment situations which are appropriate for H-2B certification, such as referees for certain sports, repairmen who are servicing complex equipment which was manufactured abroad, or certain entertainers. In cases involving part-time employment, Department of Labor officials usually issue a notice that a determination of availability and adverse effect on wages and working conditions of U.S. workers cannot be made. When the petition is filed, the Service considers the merits of the petitioner's countervailing evidence and, if warranted, will grant H-2B classification.

The Department of Labor was concerned that the requirement that H-2B workers would not displace U.S. workers goes beyond the statute and assumed that the Service was assigning itself the responsibility of enforcing this requirement. However, the agency was still concerned that it could one day be held responsible for enforcing a requirement that it cannot implement.

Since the Attorney General has sole responsibility for administering the H-2B classification, the Service will enforce this requirement. Section 101(a)(15)(H)(ii)(B) of the Act authorizes admission of aliens to perform temporary services or labor if unemployed persons capable of performing such services or labor cannot be found in this country. If the petitioner already employs a U.S. worker to perform the services or labor, the petitioner cannot truthfully state that it cannot find a U.S. worker to perform the services or labor. When the petitioner has fired a U.S. worker for legitimate reasons and cannot find a U.S. worker to replace the worker, then the Service

would not invoke this requirement. In cases where the Service finds that a petitioner, without proper cause, has replaced or intends to replace a U.S. worker with an alien worker under the H-2B classification, the petition will be denied or revoked if it has already been approved. The Service believes this requirement is consistent with the statutory language and Congressional intent for the H-2B classification.

Finally, the Department of Labor noted that the definition of one-time occurrence does not allow for the employer to have a one-time need for a temporary worker in what is essentially a permanent position. The agency recommended language similar to that in the preamble of the H-2A regulations which states: "In some situations, the employer's need may create a temporary job opportunity in an employment situation which may otherwise have been permanent in nature. Where the employer can show clearly that the need for the H-2A worker's services or labor is of a short, identified event located in time, the job opportunity is temporary." The Service has modified the definition of one-time occurrence in the final rule to accommodate this recommendation.

(c) *H-2B processing procedures*—§ 214.2(h)(5)(iii). Several commenters stated that the whole system of H-2B is ridiculous and out of line with reality. They believed that the requirement of a temporary labor certification with yearly renewals is too great a burden to require of any employer, and that readvertising and processing through the state and federal level of the Department of Labor is laborious and an overwhelming burden for any employer. The commenters stated that it is essential that an expedited process be implemented in order to make the H-2B process viable for employers, especially in the entertainment industry. Also, H-2B labor certifications and petitions should be handled in a priority, expedited fashion since the employer's need for the services is of a limited nature. One commenter recommended a full three year admission for H-2B workers.

The Service must seek advice from the Department of Labor under the H-2B classification because the statute requires a showing that unemployed U.S. workers are not available to perform the services before a petition can be approved. The Department of Labor is the appropriate agency of the Government to make such a labor market finding. The Service supports the process which the Department of Labor uses for testing the labor market and assuring that wages and working conditions of U.S. workers will not be adversely affected by employment of alien workers. The concerns of commenters that the labor certification process is too time-consuming and burdensome have been relayed to the Department of Labor. The Service and the Department of Labor have been and will continue to develop and implement ways in which the processing procedures for temporary workers can be expedited.

(d) *Temporary workers in Guam.*—§ 214.2(h)(5)(v). The Service had proposed to codify current policy for labor certifications in the Territory of Guam regarding frequency and timing of wage surveys, reporting on labor certification activity, and recruitment by employers in other areas of the United States besides Guam. The rule included a new provision which would give the Governor of Guam authority to expedite the processing of petitions in the entertainment industry by reducing the recruitment period by as much as 20 days. The general requirements for H-2B temporary worker petitions, such as the definition of temporary, the types of temporary need, and processing procedures would apply to petitions supported by a labor certification from the Governor of Guam or the Department of Labor.

Numerous commenters in Guam, the Governor of Guam, Guam's Legislature, the Department of Interior, and the Department of the Navy were concerned that the regulations would effectively eliminate the ability of contractors in Guam to employ H-2B construction workers and seriously impair the island's economy.

The regulations continue to provide for classification and admission of H-2B temporary workers in Guam when the petitioner's need for the work to be done is temporary, the employer offers prevailing wages and working conditions, and U.S. workers are not available. The Service, in consultation with Guam officials and other interested agencies, completed an extensive review of the temporary nature of construction work in Guam in 1986. It was determined that the Service would approve H-2B petitions to cover peakload employment in Guam. Such petitions would be for workers over and above the employer's base work force. This policy has not changed in the final rule. The removal of a time period from the definition of peakload and intermittent will assure that legitimate temporary employment in Guam is not affected.

Some of the commenters objected to regulation provisions which they believed would prevent the Governor of Guam from issuing a labor certification unless he finds that qualified workers in the United States are not available, and would require a Guam contractor to recruit workers in other areas of the United States. They stated that the U.S. Department of Labor does not require employers to test the availability of workers outside the area of intended employment.

The regulations reflect the statutory requirements for H-2B classification. The Immigration and Nationality Act provides for admission of H-2B nonimmigrants to perform other temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country. The requirement for Guam contractors to recruit workers in other areas of the United States is consistent with the statute and our original response to this issue when authority to issue labor certifications was granted to the Governor. The summary to the April 18, 1984 final rule at FR 15183 stated, "The Act requires that the Governor of Guam make job opportunities in Guam available to residents of the entire United States. In making availability determinations, it is not required that the Governor survey the entire United States for possible workers. A simple inquiry and placement of a job order with the local Job Service Office of the Department of Labor will make the availability of job opportunities on Guam known to the remainder of the United States." Previous regulations and this final rule, therefore, require the placement of a job offer with an appropriate agency of the territorial Government which operates as a job referral service to the unemployed at least 30 days in advance of the need for the services or labor to commence. This rule also gives the Governor the authority to require a job offer to be placed more than 30 days in advance to accommodate recruitment in other areas of the United States. The labor certification procedures of the U.S. Department of Labor also require recruitment outside the area of intended employment in occupations where workers generally move from one location to another for employment.

Several commenters stated that the prevailing wage system would require the inclusion of data from sources outside Guam, and would remove from the Governor of Guam and vest in the Commissioner of Immigration and Naturalization the authority to establish prevailing wages in Guam, suggesting that the Commissioner does not trust the

Governor to honestly administer the wage rate system.

The regulations proposed no change in the current system for establishing prevailing wage rates in Guam. As is current policy, the Government of Guam conducts a construction wage survey which includes a mixture of the types and sizes of establishments on Guam in private industry, the Guam Government, and Federal Government installations. The survey methodology and average wage rates must be approved by the Commissioner before implementation of new rates. This is an oversight responsibility which the Service has retained since the delegation of authority to the Governor. The Service has sole responsibility for classification and admission of temporary H-2B workers under the statute. The Service seeks advice in the form of a labor certification from the Governor of Guam and the Secretary of Labor on availability of U.S. workers and prevailing wages and working conditions in carrying out this responsibility. The Service exercises oversight responsibility over wage rates paid to alien construction workers in Guam because this has been a very contentious issue over the years. This oversight is not a reflection on the Governor of Guam's honesty or capabilities, but a means of keeping abreast of and accepting responsibility for a problem area for which the Service has statutory responsibility.

The Department of the Navy indicated that its Ship Repair Facility on Guam must frequently react to emergency or unscheduled operations requiring off-island skilled labor. The agency stated that such situations often occur more than once a year and require periods of employment longer than 30 days. The agency also requested a ten day recruitment period for applications involving the national defense, like those for entertainment.

The final rule eliminates the time periods from the definition of peakload and intermittent which will accommodate the Department of the Navy's concerns. In addition, the final rule gives the Governor authority to reduce the recruitment period for applications from the armed forces of the United States and those in the entertainment industry to 10 days.

H-3 Classification for Trainees—§ 214.2(h)(6)

(A) *Restrictions on a training program*—§ 214.2(h)(6)(iii). The Service had proposed a number of restrictions on training programs to clarify for petitioners and Service officers the conditions under which an H-3 training program fails to meet qualifying standards for a training program.

One commenter stated that the standard for productive labor should be modified so that it can be realistically involved with the training, and the best way to receive training is to do hands on work. Another commenter suggested adding on to the restriction on an alien who already possesses substantial training and expertise in the proposed field an exception if the petitioner conclusively proves that a short period of training is absolutely necessary for someone with substantial training and experience in the field due to a specialized application or other unique reason that is proprietary to the petitioner.

The Service already permits productive employment that is incidental and necessary to the training under the H-3 classification. When a training program is characterized as on-the-job training, it is difficult to establish that the training is not principally productive employment. The H-3 classification cannot be used to staff U.S. operations; therefore, only minimal productive employment is permitted. Too often, petitioners who cannot obtain H-1 or H-2B classification for workers will submit petitions for such workers under the H-3 classification with the intention of employing them under the guise of a training program. For example, the health care industry is experiencing a severe shortage of nurses, especially in hospitals and nursing home facilities. The Service has been receiving requests for approval of H-3 training programs from such facilities to train foreign nurses who are already qualified as professional nurses in their own country. The Service has not found it credible that facilities which do not have significant programs for the training of U.S. nurses will not use scarce resources to train foreign nurses for a career abroad. Such circumstances suggest that the nurses would be engaging in productive employment, and that the purpose of the training programs was to prepare the nurses to eventually qualify for H-1 classification and employment in the United States.

(B) *Duration of a training program*—§ 214.2(h)(8)(iii)(C). The Service had proposed to limit the duration of an H-3 training program to two years. One commenter recommended that the initial H-3 approval should be for a period of up to two years with a cap of two or three years. Another commenter recommended that the initial petition should be valid for as much as two years with six month extensions permitted.

The Service believes that a maximum time limit on training program is necessary to assure that the H-3 classification is used only to train aliens for a career abroad and not as a means of supplementing the staff of U.S. operations. Testimony before the Committee on the Judiciary in March 1986 by an employer organization representing over 160 multinational corporations indicated that a two-year period is fairly standard for most training programs. The Service believes that this is a reasonable period and has retained it in the final rule.

Limits on a Temporary Stay—Section 214.2(h)(12)

The Service had proposed to adopt a specific time limit on a temporary stay in the United States under the H-3 classification. Existing regulations already limit the stay on an H-1 beneficiary to five years (or six years in extraordinary circumstances) and limit the stay of an H-2 beneficiary to three years. The Service had proposed to limit the stay of an H-3 beneficiary to two years. In addition, after an H-2 beneficiary has spent three years in the United States, and an H-3 beneficiary has spent two years in the United States, the rule had proposed that a new petition for the alien in the H or L classification would not be approved unless the alien departed voluntarily and resided outside the United States for six months. The limits would not apply to aliens who did not reside continually in the United States and whose employment was seasonal or intermittent or an aggregate of six months or less per year. In addition, the limits would not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment.

One commenter stated that the arbitrary five year cap on H-1 status should be reinvestigated, and the Service should at least have the discretion to grant more than five/six years for good cause shown. Another commenter urged the Service to continue to emphasize the temporariness of the H-1 classification. An attorney organization stated that the Service's attempt to set an absolute limit on admisson with respect to H-2B and H-3 aliens is not justified by the language of the statute or its legislative history. In addition, under the H-2B classification, the basic issues involved the availability of U.S. workers, the effect of admitting foreign workers on wage levels, and temporary intent. The organization believed that there is no

logic underlying an absolute limit on the length of H-2B status.

The final rule specifies the time limits on what is regarded as a temporary period of stay in the H-1, H-2B, and H-3 classifications to reflect the temporary nature of these classifications and to achieve consistency in the handling of repeated requests for extension of stay. An alien who seeks to remain in the United States continuously or to reenter in a work-authorized capacity a short time after spending an extensive period of time in the United States is viewed by the Service as having a permanent intent to remain in the United States, and thus should be classified as an immigrant rather than a nonimmigrant. Because of the unavailability of preference visa numbers, many aliens seek to use the H classification principally to enter and remain permanently in the United States while they wait for a preference number to become available. The H nonimmigrant classifications may not be used for this purpose. By residing outside the United States for the required period of time after spending the maximum allowable stay in the United States, the alien will have demonstrated to the Service that he or she has the temporary intent required for H classification.

Brief trips to the United States for business or pleasure will not break the continuity of time abroad, but will not count towards fulfillment of the time the alien is required to spend abroad. In addition, the time limit on a temporary stay in an H classification and the requirement to reside abroad cannot be avoided by leaving the United States before the expiration of the time limit and reentering within a short period of time under a new petition. In such cases, the approval period of the new petition will be consistent with the maximum allowable limit on an alien's temporary stay. For example, an alien who spends four and a half years in the United States under the H-1 classification, then leaves the United States and in less than a year seeks to reenter the United States under another three-year H or L petition, will receive a six-month approval of the new petition.

Effect of Obtaining a Permanent Labor Certification or Filing a Preference Petition on H-2 or H-3 classification—Section 214.2(h)(15)

The Service had proposed that the Service's temporary/permanent intent policy which applies to H-1 nonimmigrants would not apply to aliens admitted to the United States under the H-2A, H-2B, and H-3 classifications. Under the Service's temporary/permanent intent policy, a petitioner may legitimately have the intent to use the services of an alien lawfully for a temporary period and, in the future, to permanently employ the alien when and if the petitioner can lawfully do so; the alien may also legitimately have the intent to come to the United States temporarily and depart voluntarily at the end of his or her authorized stay unless, within that period, the alien has become a permanent resident of the United States. The approval of a permanent labor certification or the filing of a preference petition for an alien would not by itself be a basis to deny nonimmigrant status during the period of temporary stay allowed for the nonimmigrant classification. The Service had proposed that approval of a permanent labor certification or the filing of a preference petition for an H-2A and B or H-3 beneficiary in the same or a different job or training position with the same employer would be a basis for denying a new petition or the alien's application for an extension of stay or change of status.

One commenter asserted that H-2B aliens are as capable of having the same lawful temporary/permanent intent and respect for the terms of a temporary stay as H-1 and L aliens. With respect to H-3 trainees, the commenter agreed that the filing of a preference petition would contradict the alien's purpose for being in this country since the H-3 trainee is generally gaining knowledge to be applied to a job abroad.

The Service cannot extend the concept of temporary/permanent intent to the H-2 and H-3 classifications where the same petitioner which sought the H-2A and B or H-3 nonimmigrant classification also seeks permanent resident status on behalf of the beneficiary. H-1 status permits the beneficiary to perform services for which there may be a permanent need; the ongoing nature of the duties often results in an employer's interest in filling the job permanently with the H-1 incumbent (see 52 FR 5747). Continuing H-2A and B status requires the employer's need for the services to remain temporary, and H-3 status terminates when the beneficiary's training is not for the purpose of continuing a career outside the United States. Petitioners will not be permitted to circumvent these requirements by applying for permanent status on behalf of the alien in a different job. This strategy was often used when the Service's Operations Instructions required denial of a petition filed on behalf of an H-2 nonimmigrant by the same employer who filed the H-2 petition, if the petition indicated that the beneficiary would be engaged in the same job for which he or she was accorded H-2 status. The final rule has not been modified to provide for temporary/permanent intent on the part of H-2A and B and H-3 beneficiaries.

Effect of a Strike—Section 214.2(h)(16)

Although the Service basically restated current regulation provisions regarding strikes or labor disputes involving a work stoppage in the proposed rule, the following comments were submitted by the legal counsel for a labor union and endorsed by the Office of Professional Employees, AFL-CIO. The commenter stated:

> The proposed rule includes a detailed, multi-section provision setting forth in a complicated manner what effect a strike by workers in the United States would have on a pending or approved H nonimmigrant visa. We think that in its detail and in its scope, this provision is ill-advised. We endorse the following general concept: approval of H visas should be suspended when a labor dispute involving a work stoppage is in progress in the occupation at the place of employment or training.
>
> What is troublesome is the unauthorized intrusion into labor law. It is not the business of INS to determine whether a majority of workers have voted for a strike. In any event, labor law does not require that there be a vote authorizing a strike. It is labor law, not immigration law, which determines who should be authorized to strike.
>
> It is the National Labor Relations Board (NLRB), not INS, which determines whether employees are "employees" within the meaning of the National Labor Relations Act (NLRA). It is not within the province of INS to make determinations regarding coverage of workers by the NLRA, participation of workers in strike decisions, and whether and by whom a strike has been declared.
>
> We recommend that INS revise its proposal to provide simply that H category visas will not be approved, or if already approved, approval will be suspended whenever a labor dispute involving a work stoppage is in progress in the occupation at the place of employment or training.

For some time, the Service has been inclined to modify the provisions of the H regulations to simplify its role when there is a strike or labor dispute involving a work stoppage; the current provisions are complex, contentious, and difficult to administer. The provisions provide that when the Secretary of Labor notifies the Service that there is a strike or labor dispute involving a work stoppage in the occupation at the place of employment, the Service will not approve new petitions, will suspend approved petitions for aliens who have not entered the United States, and will suspend petitions for aliens who are

already working. When the alien is already working, the regulations require determinations by the Department of Labor relating to definitions in the NLRA.

A recent court decision which ruled that the provision relating to suspension of work authorization of "employees" under the NLRA when there is a strike or labor dispute involving a work stoppage exceeded the Service's rulemaking authority under the Immigration and Nationality Act and was therefore invalid. Further, the effect of the provision runs counter to the policy and essential purposes of the NLRA and discriminates against "employees" who would otherwise be protected by the NLRA. *WJA Realty Ltd.* v. *Alan Nelson, et al.*, No. 88-0810, (S.D. Fla. March 9, 1989). The National Labor Relations Board was allowed to intervene in the case and argued that the regulation was invalid because it permits the Service to interfere with the rights of employees.

The judge ruled that the Service's regulation is preempted by the NLRA. The NLRB argued that because the Service's regulation requires the alien to cease working if the strike is certified, it is in conflict with the rights "employees" are entitled to under the NLRA. Once an alien is permitted to work, the alien has the rights to which an employee is entitled. The judge was concerned that the regulation left the alien no choice in whether to work or not. Because of the regulation, a small percentage of employees can determine whether a strike can be authorized regardless of the position of the considerable majority of employees. The judge stated that the problems created by this incursion into the arena of labor policy are further highlighted by the provision in the regulation which, upon strike certification, changes the employee's status and ends the right to work. The judge was not convinced by the Service's and the Department of Labor's arguments that the regulation protected domestic labor and prevented aliens from being strike breakers. However, the judge indicated that a strike breaker is a new employee hired for the purpose of replacing a striking worker; such a rationale cannot, therefore, apply to those workers who are already in the United States and working at the time the strike commences. Based on the judge's order, the Service can properly deny new petitions and suspend approval of petitions for aliens who have not been admitted and those who are in the United States, but have not commenced employment under an approved petition.

Although this decision is binding on the Service only in the Southern District of Florida, the Service has concluded that its rationale is reasonable and should be applied to Service policy as it relates to strikes or labor disputes involving a work stoppage for the rest of the United States. The strike provisions in the final rule at paragraph (h)(16) have been simplified to provide that when the Secretary of Labor certifies to the Commissioner of Immigration and Naturalization that a strike or other labor dispute involving a work stoppage is in progress in the occupation at the place where the beneficiary will be employed or trained, the Service will deny new petitions filed by the employer and will suspend approval of petitions where the alien has not entered the United States, or has entered the United States but has not commenced employment. In situations where the alien is already employed, the Service will take no action. However, the regulations provide that an alien who is participating in a strike is technically failing to maintain status and is still subject to the limits on a temporary stay which apply to his or her classification.

Form I-129H, Petition for Temporary Worker

The Service had proposed that petitions for H classification would be filed on a new Form I-129H instead of the current Form I-129B. The Service may not be able to complete the distribution of this form in time to accompany the implementation of these final regulations. Therefore, petitioners filing for H-1, H-2A, H-2B, or H-3 classification may continue to use the current Form I-129B petition until June 30, 1990, after which petitions for H-1, H-2A, H-2B, or H-3 classification must be filed on Form I-129H.

Description of Final Rule

This final rule sets forth the policy and procedures whereby the benefits under section 101(a)(15)(H) of the Immigration and Nationality Act may be applied for, granted, denied, extended, revoked, or appealed. It describes the three classifications under section 101(a)(15)(H). An alien may be classified under section 101(a)(15)(H)(i) as an alien of distinguished merit and ability, or under section 101(a)(15)(H)(ii)(B) as an alien who is coming to perform temporary services or labor, or under section 101(a)(15)(H)(iii) as an alien who is coming as a trainee. These classifications are assigned nonimmigrant visa symbols H-1, H-2B, and H-3 respectively.

This rule specifies the different filing requirements for certain types of petitions. A main accomplishment of the rule is the establishment of definitive standards for determining who qualifies as an alien of distinguished merit and ability for H classification. In this respect, the rule defines profession and prominence and lists the eligibility criteria and documentary requirements for a member of the professions and a person who is prominent in his or her field. The rule also clarifies the licensure requirement for H classification.

The rule makes other technical amendments designed to promote consistency in the adjudication of H petitions. Some requirements were made more definitive, such as those relating to accompanying alien, documentation of qualifications of aliens, restrictions on training programs, revocation of approved petitions, and limits on a temporary stay in the United States. Other requirements for obtaining benefits, such as those for extension of visa petitions and validity periods of petitions, were modified to better accommodate the business needs of employers.

The rule consolidates into regulations for the H-1, H-2B, and H-3 classifications the Service's interpretation of the statutory requirements, definitions of terms, standards for eligibility, and documentary requirements for establishing eligibility.

Distinguished merit and ability for the H-1 classification implies a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person so described is prominent or has a high level of education in his field of endeavor. The Service has specified in this regulation the standards for determining who qualifies as a member of the professions or a person of prominence in his or her field. The rule also describes the current criteria for qualification based on case law and adds two new categories of prominence (one related to the arts, cultural, and entertainment fields and one related to business).

The rule sets forth requirements for H-2B classification as a temporary worker with particular emphasis on the labor certification determination that is required from the Secretary of Labor or the Governor of Guam before an H-2B petition may be filed with the Service. The statute requires H-2B foreign workers to be coming temporarily to the United States to perform temporary services or labor. These regulations prescribe the test for determining the temporary nature of the services as the

nature of the employer's need for the services, not the nature of the job duties. They define the types of temporary need, limit the term of a labor certification to one year, specify requirements for countervailing evidence, and require that petitioners document the alien's qualifications for the job offered in the labor certification. Minor technical changes were made to temporary labor certification procedures for the Territory of Guam to give the Governor authority to expedite the processing of applications in emergent situations and to clarify approval and reporting requirements.

The rule limits H-3 classification for a trainee to a maximum period of two years. It also prescribes the conditions under which a training program may be approved and lists a number of restrictions on approval of training programs.

Several significant technical amendments are reflected in the rule:

- The Service modified the approval period of an H petition. If the petition is approved before the date the petitioner indicates that the services or labor or training will begin, the approved petition will reflect the actual dates requested by the petitioner.
- An application for extension of stay requires only the filing of an application for extension of stay by the beneficiary, accompanied by a letter (or labor certification in H-2B cases) from the employer specifying the terms and conditions of employment.
- After an H-2 A or B beneficiary has spent three years in the United States and an H-3 beneficiary has spent two years in the United States, this rule requires that a new petition for the alien in the H or L classification would not be approved unless the alien departed voluntarily and resided outside the United States for six months.
- Approval of a permanent labor certification or the filing of a preference petition for an H-2 A and B or H-3 alien beneficiary in the same or a different job or training position with the same employer will be a ground to deny a new petition or the alien's application for an extension of stay.

The Service believes that the amendments reflected in this final rule will benefit the public to the extent that they consolidate and clarify requirements, and they also make clear Service policy regarding admission, the alien's temporary stay in the United States, and the specific requirements for petitioners and beneficiaries who seek approval or classification under the H nonimmigrant category.

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

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

Information collection requirements contained in this rule have been reviewed by OMB under the Paperwork Reduction Act and have been approved under control number 1115-0038.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, aliens, authority delegation, employment, organization and functions, passports and visas.

Accordingly, part 214 of chapter I of title 8 Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASS

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a.

2. Section 214.2 is amended by redesignating paragraph (h)(1) through (h)(16) as (h)(2) through (h)(17); adding a new paragraph (h)(1); and revising newly redesignated paragraphs (h)(2), (h)(3), and (h)(5) through (h)(17) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Temporary employees*—(1) *Admission of temporary employees—General.* (i) Under section 101(a)(15)(H) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services or labor for or to receive training from an employer, if petitioned for by that employer. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(H)(i) as an alien of distinguished merit and ability, or under section 101(a)(15)(H)(ii)(a) as an alien who is coming to perform agricultural labor or services of a temporary or seasonal nature, or under section 101(a)(15)(H)(ii)(b) as an alien coming to perform other temporary services or labor, or under section 101(a)(15)(H)(iii) as an alien who is coming as a trainee. These classifications are commonly called H-1, H-2A, H-2B, and H-3, respectively. The employer must file a petition with the Service for review of the services or training and for determination of the alien's eligibility for classification as a temporary employee or trainee, before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures whereby these classifications may be applied for and granted, denied, extended, revoked, and appealed.

(ii) *Description of classifications.* (A) An "H-1" classification applies to an alien who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability. In the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, the alien must be coming pursuant to an invitation from a public or nonprofit private educational research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency. Although the services to be peformed may be temporary or permanent in nature, it must be established that the employment is only for a temporary period.

(B) An "H-2A or H-2B" classification applies to an alien who is coming temporarily to the United States to:

(*1*) Perform agricultural labor or services of a temporary or seasonal nature, or

(*2*) Perform other temporary service or labor, if unemployed persons capable of performing such service or labor cannot be found in this country. This classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The temporary or permanent nature of the services or labor to be performed must be determined. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam or a notice from one of them that certification cannot be made prior to the filing of a petition with the Service.

(C) An "H-3" classification applies to an alien who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or taining. The alien may receive training from an employer in any field other than graduate medical education. This classification may not be used when all of the training will be at an academic or vocational institution.

(2) *Petitions*—(i) *Filing of petitions*—(A) *General*—A United States employer (or foreign employer under the H-1 classification) seeking to classify an alien as an H-1, H-2A, H-2B, or H-3 temporary employee shall file a petition in duplicate on Form I-129H with the regional service center which has

jurisdiction over I-129H, petitions in the area where the alien will perform services or receive training or as further prescribed in this section. A district director may, only in emergent circumstances, accept and adjudicate a clearly approvable I-129H petition for employment solely within his or her jurisdiction.

(B) *Service or training in more than one location.* A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph. If the petitioner is a foreign employer with no United States location, the petitioner shall be filed with the Service office that has jurisdiction over the area where the employment will begin.

(C) *Services or training for more than one employer.* If the beneficiary will perform nonagricultural services for, or received training from, more than one employer, each employer must file a separate petition with the Service office that has jurisdiction over the area where the alien will perform services or receive training, unless an established agent files the petition. The alien may work part-time for multiple employers provided each has an approved petition for the alien.

(D) *Change of employers.* If the alien is in the United States and decides to change employers, the new employer must file a petition on Form I-129H. If the alien is accorded the same H classification, an extension of stay is not required until the alien's previously authorized stay is about to expire. If the new petition is accompanied by an application for extension of stay on Form I-539 and the new petition is approved, the extension of stay may be granted for the validity of the approved petition, but may not exceed the limits on the alien's temporary stay that are prescribed in paragraphs (h)(12) and (h)(14) of this section.

(E) *Amended or new petition.* The petitioner shall file an amended or new petition with the Service office where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the beneficiary's eligibility as specified in the original approved petition and obtain approval from the Service. An amended or new H-2A or B petition must be accompanied by an amended or new labor certification determination.

(F) *Agents as petitioners.* An established United States agent may file a petition in cases involving workers who traditionally are self-employed or use agents to arrange short-term employment in their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A petition filed by a agent is subject to the following conditions:

(*1*) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary(ies) if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary(ies) may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*2*) An agent performing the function of an employer must guarantee the wage offered and the other terms and condition of employment by contractural agreement with the beneficiary(ies). The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(ii) *Multiple beneficiaries.*—(A) *H-1 petitions.* More than one beneficiary may be included in an H-1 petition if they are members of a group seeking classification based on the reputation of the group as an entity, or they are the accompanying aliens who derive H-1 classification from a principal H-1 beneficiary to whom their support is determined to be essential. The petition shall include the name and other identifying information required by Form I-129H for each beneficiary. If the beneficiaries will be applying for visas at more than one consulate, the petitioner shall submit a separate Form I-129H for each consulate. If the beneficiaries do not require visas and will be applying for admission at more than one port of entry, the petitioner shall submit a separate Form I-129H for each port of entry.

(B) *H-2 and H-3 petitions.* More than one beneficiary may be included in an H-2 or H-3 petition if the beneficiaries will be performing the same service or receiving the same training for the same period of time and in the same geographical area. If they will be applying for visas at more than one consulate, the petitioner shall submit a separate I-129H petition for each consulate. If the beneficiaries will be applying for admission at more than one port of entry, the petitioner shall submit a separate Form I-129H for each port of entry.

(iii) *Named beneficiaries.* Nonagricultural I-129H petitions must include the names of beneficiaries and other required information at the time of filing. Under the H-2B classification, exceptions may be granted in emergent situations involving multiple beneficiaries at the discretion of the director. If all of the beneficiaries covered by an H-2A or B labor certification have not been identified at the time a petition is filed, multiple petitions naming subsequent beneficiaries may be filed at different times with a copy of the same labor certification. Each petition must reference all previously filed petitions for that labor certification.

(iv) *Substitution of beneficiaries.* Beneficiaries may be substituted in H-1 and H-2B petitions that are approved for a group, if the qualifications of individual beneficiaries will not be or were not considered in according H classification. To request a substitution, the petitioner shall, by letter and a copy of the petition's approval notice, notify the consular office at which the alien will apply for a visa or the port of entry where the alien will apply for admission.

(v) *H-2A Petitions.* Special criteria for admission, extension, and maintenance of status apply to H-2A petitions and are specified in paragraph (h)(4) of this section. The other provisions of § 214.2(h) apply to H-2A only to the extent that they do not conflict with the special agricultural provisions in paragraph (b)(4) of this section.

(3) *Petition for alien of distinguished merit and ability (H-1)*—(i) *Types of H-1 classification*—H-1 classification may be granted to an alien as an individual or as a member of a group, or to accompanying alien as defined in paragraph (h)(3)(ii)(D) of this section. The petition must indicate the capacity in which the alien is seeking H-1 classification at the time of filing.

(A) *H-1 classification in individual capacity.* H-1 classification may be granted to an alien who is of distinguished merit and ability. An alien of distinguished merit and ability is one who is a member of the professions or who is prominent in his or her field. The alien must be coming to the United

States to perform services which require a member of the professions or person of prominence.

(B) *H-1 classification as a member of a group.* A group of distinguished merit and ability consists of two or more persons who function as a unit, such as an athletic team or performing ensemble. The group as a whole must be prominent in its field and must be coming to the United States to perform services which require a group of prominence. A person who is a member of a group of distinguished merit and ability may be granted H-1 classification based on that relationship, but may not perform services separate and apart from the group unless he or she is granted H-1 classification in an individual capacity.

(C) *H-1 classification as an accompanying alien.* A person who is an accompanying alien as defined in paragraph (h) (3) (ii) (D) of this section may be granted H-1 classification based on a support relationship to an individual or group of distinguished merit and ability. The H-1 classification derived from the individual or group of distinguished merit and ability does not entitle an accompanying alien to perform services separate and apart from the individual or group of distinguished merit and ability.

(ii) *Definitions.* (A) "Profession" means an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor as: architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts. A profession requires completion of a specific course of education at an accredited college or university, culminating in a baccalaureate or higher degree in a specific occupational speciality, where attainment of such degree or its equivalent is the minimum requirement for entry into the profession in the United States. There are two categories of persons who do not meet these requirements but are nevertheless regarded as members of a profession. They are: persons who, after passage of normal professional tests and requirements, are granted full state licenses to practice the profession; and persons who lack the required degree but, by virtue of a combination of education, specialized training and/or professional experience are recognized as members of a profession and are in fact lawfully practicing at a professional level.

(B) "Prominence" means a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of endeavor.

(C) "Group" means two or more persons established as one entity to provide some form of service or activity. The reputation of the group, not that of individual members, is considered in according H classification.

(D) "Accompanying alien" means a support person such as a manager, trainer, musical accompanist, or other highly skilled, essential person determined by the director to be coming to the United States to perform support services which cannot be readily performed by a United States worker and which are essential to the successful performance of the services to be rendered by an H-1 individual or group in the arts, cultural, entertainment or professional sports field. Such alien must possess appropriate qualifications, significant prior experience with the H-1 individual or group, and critical knowledge of the specific type of services to be performed so as to render success of the services dependent upon his or her participation. A highly skilled alien meeting the above criteria may be accorded H-1 classification based on this relationship with the H-1 individual or group to whom his or her services are essential.

(E) "Recognized authority" means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an opinion must state:

(*1*) The writer's qualifications as an expert;

(*2*) The writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom;

(*3*) How the conclusions were reached; and

(*4*) The basis for the conclusions, including copies or citations of any research material used.

(iii) *Criteria and documentary requirements for a member of the professions.* For H-1 classification as a member of the professions, the position offered to the alien must be in a profession and the alien must qualify as a member of the professions.

(A) *Standards for a position in the professions.* To qualify as a profession, the position must meet the following criteria:

(*1*) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular profession;

(*2*) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by a member of the profession;

(*3*) The employer normally requires a degree or its equivalent for the position;

(*4*) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree; and

(*5*) The position's level of responsibility and authority are commensurate with professional standing.

(B) *Standards for a member of the professions.* To qualify as a member of the professions, the alien must:

(*1*) Hold a United States baccalaureate or higher degree required by the profession from an accredited college or university; or

(*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the profession from an accredited college or university; or

(*3*) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the profession and be immediately engaged in that profession in the state of intended employment; or

(*4*) Have education, specialized training, and/or professional-level experience that is equivalent to training acquired by the attainment of a United States baccalaureate or higher degree in the profession.

(C) *Equivalence to training acquired by attainment of a college degree.* For purposes of paragraph (h)(3)(iii)(B)(*4*) of this section, equivalence to training acquired by attainment of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the profession that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the profession; and shall be determined by one or more of the following:

(*1*) An evaluation from an official who has authority to grant college-level credit in the profession at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience; or

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI); or

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the profession that is known to grant certification or registration to members of the profession who have achieved a certain level of competence in the profession; or

(5) A determination by the Service that the equivalent of college-level training in the profession has been acquired through a combination of specialized training and progressively responsible work experience in areas related to the profession, and that the alien has achieved professional standing and recognition as a result of such training and experience. For purposes of determining equivalency to a baccalaureate or higher degree in the profession, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required at the professional level of the occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who are themselves professionals; and that the alien has professional standing and recognition evidenced by at least one type of documentation such as:

(i) Recognition of professional standing by at least two recognized authorities in the professional field,

(ii) Membership in a recognized foreign or United States association or society in the professional field,

(iii) Published material by or about the alien in professional publications, books, or major newspapers,

(iv) Licensure or registration to practice the profession in a foreign country, or

(v) Professional achievements which a recognized authority has determined to be significant contributions to the professional field.

(iv) *Criteria and documentary requirements for prominence.* Prominence in a field may be established by an individual alien or by a group. The reputation of the group as an entity, not the qualifications or accomplishments of individual members, shall be evaluated for H-1 classification. The work which a prominent alien or group is coming to the United States to perform must require the services of a prominent alien or group.

(A) *Standards for a position requiring prominence.* To qualify as a position requiring prominence, it must meet one of the following criteria:

(1) The position or services to be performed involve an event, production or activity which has a distinguished reputation;

(2) The services to be performed are as a lead or starring participant in a distinguished activity for an organization or establishment that has a distinguished reputation or record of employing prominent persons;

(3) The services primarily involve educational or cultural events sponsored by educational, cultural, or governmental organizations which promote international educational or cultural activities; or

(4) The position is with a business that requires the services of a prominent executive, manager, or highly technical person due to the complexity of the business activity or the broad range of responsibility required.

(B) *Standards for prominent aliens.* An alien or group may establish prominence in either one of the following categories. The alien(s) must:

(1) Have sustained national (foreign or U.S.) or international acclaim and recognition for achievements in the particular field, as evidenced by at least three different types of documentation showing that the alien or group:

(i) Has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, or contracts;

(ii) Has been the recipient of significant national or international awards or prizes for services performed;

(iii) Has achieved national or international recognition for achievements evidenced by critical reviews or other published material by or about the individual or group in major newspapers, trade journals, or magazines;

(iv) Has performed and will perform services as a lead or starring participant for organizations and establishments that have a distinguished reputation;

(v) Has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as title, rating, or standing in the field, box office receipts, credit for original research or product development, record sales, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(vi) Has received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field in which the alien or group is engaged. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(vii) Has commanded and now commands a high salary or other substantial remuneration for services, evidenced by contracts or other reliable evidence.

(2) Be an artist who, or an artistic group that, is recognized by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in the particular field for excellence in developing, interpreting, or representing a unique or traditional ethnic, folk, cultural, musical, theatrical, or other artistic performance or presentation; be coming to the United States primarily for educational or cultural event(s) to further the understanding of or development of that art form; and be sponsored primarily by educational, cultural, or governmental organizations which promote such international cultural activities and exchanges. An artist or group which seeks H-1 classification under this provision must provide affidavits, testimonials, or letters from recognized experts attesting to the authenticity and excellence of the alien's or group's skills in performing, or presenting the unique or traditional art form, explaining the level of recognition accorded the alien or group in the native country and the United States, and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill and recognition. The alien or group must provide at a minimum:

(i) Evidence that most of the performances or presentations will be educational or cultural events sponsored by educational, cultural, or governmental agencies; and

(ii) Both an affidavit or testimonial from the Ministry of Culture, USIA Cultural Affairs Officer, the academy for the artistic discipline, a leading scholar, a cultural institution, or a major university in the alien's own country or from a third country, and a letter from a United States expert who has knowledge in the particular field, such as a scholar, arts administrator, critic, or representative of a cultural organization or government agency; or

(*iii*) A letter or certification from a U.S. Government cultural or arts agency such as the Smithsonian Institution, the National Endowment for the Arts, the National Endowment for the Humanities, or the Library of Congress.

(*3*) Have exceptional career achievement in business in executive, managerial, or highly technical positions, as evidenced by at least three significant factors such as:

(*i*) Managerial responsibility for an organization or a major subdivision of an organization which has a gross annual income of at least 10 million dollars;

(*ii*) At least 10 years of progressively responsible experience culminating in a high level executive, managerial, or technical position that involves a broad range of responsibilities;

(*iii*) A salary of at least $75,000 per year;

(*iv*) Responsibility for a sizeable work force which includes a significant number of professional, supervisory, or other managerial employees;

(*v*) Original development of a system or product which has major significance to the industry in which the alien is employed as reported in published materials or opinions of recognized experts in the field or industry; or

(*vi*) Recognition for achievements and significant contributions to an industry or field by recognized experts in the industry or field.

(v) *Special H-1 requirements for certain groups*—(A) *H-1 petitions for prominent aliens in the arts, cultural, or entertainment field*—(*1*) *Adjudication of petition*—(*i*) In determining whether an alien in the arts, cultural, or entertainment field is prominent and whether the services require a person of prominence, the director shall consider, but not be limited to, evidence described in paragraph (h)(3)(iv) of this section, and where he or she deems necessary, may require further evidence on any of those or other appropriate factors.

(*ii*) The director may decide not to require full documentation of any of the factors in paragraph (h)(3)(iv) of this section, if the alien or group is of such distinguished merit and ability that the name or reputation standing by itself would be sufficient to establish without any question that the alien or group is of distinguished merit and ability and that the alien or group is coming to the United States to perform services which require such merit and ability. In such a case, the petitioner's statement which describes the beneficiary's standing and achievements in the field of endeavor may be accepted as sufficient for approval of the petition.

(*iii*) The director shall approve or deny the petition based on the information in the record when that information clearly establishes H-1 eligibility or ineligibility in accordance with paragraph (h)(3)(iv) of this section. In all other cases, before making a decision, the director shall consult with the appropriate union and a management organization, or recognized critics or experts in the appropriate field, for an advisory opinion regarding the qualifications of the alien and the nature of the services to be performed.

(*2*) *Advisory opinions.* An advisory opinion may be furnished orally by an appropriate official, subject to later confirmation in writing, when requested by the director. The written opinion shall be signed by a duly authorized and responsible official of the organization consulted. Advisory opinions shall be non-binding upon the Service.

(*3*) *Accompanying alien or member of a group.* When an alien is entitled to H-1 classification as an accompanying alien or as a member of a group, the phrase "Accompanying Alien" or the name of the group shall be noted on the approved petition, the alien's travel documents, and arrival-departure record, Form I-94.

(B) *H-1 petitions for physicians*—(*1*) *Beneficiary requirements.* An H-1 petition for a physician shall be accompanied by evidence that the physician:

(*i*) Has a license to practice medicine in the state of intended employment if the physician will perform direct patient care and the state requires the license, and

(*ii*) Has a full and unrestricted license to practice medicine in a foreign state or has graduated from a medical school in the United States or in a foreign state.

(*2*) *H-1 classification for alien graduates of foreign medical schools*—(*i*) *Petitioner requirements.* If the alien graduated from a medical school in a foreign state, the petitioner must establish that the alien physician is coming to the United States primarily to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency at the invitation of that institution or agency, and that no patient care activities will be performed, except those that are incidental to the physician's teaching or research.

(*ii*) *Exemption for physicians of national or international renown.* A physician who graduated from a medical school in a foreign state and who is of national or international renown in the field of medicine is exempt from the requirements in paragraph (h)(3)(v)(B)(*2*)(*i*) of this section.

(*3*) *H-1 classification for alien graduates of United States medical schools.* An alien who graduated from a medical school in the United States and who is in all respects qualified for nonimmigrant classification under section 101(a)(15)(H)(i) of the Act is eligible for that classification in order to participate in a medical residency in the United States and to perform any other services as a member of the medical profession, including services primarily involving direct patient care.

(C) *H-1 Classification for a professional nurse*—(*1*) *Beneficiary requirements.* An H-1 petition for a professional nurse shall be accompanied by evidence that the nurse:

(*i*) Has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education, or has received nursing education in the United States or Canada;

(*ii*) Has passed the examination given by the Commission on Graduates of Foreign Nursing Schools, or has obtained a full and unrestricted (permanent) license under state law to practice professional nursing in the state of intended employment, or has obtained a full and unrestricted (permanent) license in any state or territory of the United States and received temporary authorization to practice professional nursing in the state of intended employment;

(*iii*) Is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States, and is authorized under such laws to be employed by the employer; and

(*iv*) Otherwise meets the requirements of section 101(a)(15)(H)(i) of the Immigraiton and Nationality Act.

(*2*) *Other.* If the laws governing the place where the services will be performed place any limitations on the services to be performed by the beneficiary, a statement from the petitioner shall contain details as to the limitations. The director shall consider any limitations in determining whether the services which the beneficiary would perform are those of a professional nurse.

(vi) *General documentary requirements for H-1 classification.* An H-1 petition filed on Form I-129H shall be accompanied by:

(A) Documentation, certifications, affidavits, degrees, diplomas, writings, reviews, or any other required evidence sufficient to establish that the beneficiary is a person of distinguished merit and ability as described in paragraph (h)(3)(i) of this section, and that the services the beneficiary is to perform require a person of such merit and ability. The evidence shall conform to the following:

(*1*) School records, diplomas, degrees, affidavits, contracts, and similar documentation submitted must reflect periods of attendance, courses of study, and similar pertinent data, be executed by the person in charge of the records of the educational or other institution, firm, or establishment where education or training was acquired, and be an original document or a certified copy. Uncertified photocopies of documents such as advertisements, playbills, reviews, and other such published material may be submitted.

(*2*) Affidavits submitted by present or former employers or recognized experts certifying to the recognition and outstanding ability of the beneficiary shall specifically describe the beneficiary's recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(B) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed, if there is no written contract.

(vii) *Licensure for H classification*—(A) *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except a professional nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

(C) *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

(D) *Professional nurses.* In lieu of licensure, professional nurses may provide the evidence required in paragraph (h)(3)(v)(C) of this section.

(E) *Limitation on approval of petition.* Where licensure is required in any occupation, including professional nursing, the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. An alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year unless he or she has obtained a permanent license in the state of intended employment or continues to hold a temporary license valid for the period of the requested extension.

* * * * *

(5) *Petition for alien to perform temporary nonagricultural services or labor (H-2B)*—(i) *General.* An H-2B nonagricultural temporary worker is an alien who is coming temporarily to the United States to perform temporary services or labor, is not displacing United States workers capable of performing such services or labor, and whose employment is not adversely affecting the wages and working conditions of United States workers.

(ii) *Temporary services or labor*—(A) *Definition.* Temporary services or labor under the H-2B classification refers to any job in which the petitioner's need for the duties to be performed by the employee(s) is temporary, whether or not the underlying job can be described as permanent or temporary.

(B) *Nature of petitioner's need.* As a general rule, the period of the petitioner's need must be a year or less, although there may be extraordinary circumstances where the temporary services or labor might last longer than one year. The petitioner's need for the services or labor shall be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need:

(*1*) *One-time occurence.* The petitioner must establish that it has not employed workers to perform the services or labor in the past and that it will not need workers to perform the services or labor in the future, or that it has an employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker.

(*2*) *Seasonal need.* The petitioner must establish that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner shall specify the period(s) of time during each year in which it does not need the services or labor. The employment is not seasonal if the period during which the services or labor is not needed is unpredictable or subject to change or is considered a vacation period for the petitioner's permanent employees.

(*3*) *Peakload need.* The petitoner must establish that it regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short-term demand and that the temporary additions to staff will not become a part of the petitioner's regular operation.

(*4*) *Intermittent need.* The petitioner must establish that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers to perform services or labor for short periods.

(iii) *Procedures.* (A) Prior to filing a petition with the director to classify an alien as an H-2B worker, the petitioner shall apply for a temporary labor certification with the Secretary of Labor for all areas of the United States, except the Territory of Guam. In the Territory of Guam, the petitioning employer shall apply for a temporary labor certification with the Governor of Guam. The labor certification shall be advice to the director on whether or not United States workers capable of performing the temporary services or labor are available and whether or not the alien's employment will adversely affect the wages and working conditions of similarly employed United States workers.

(B) An H-2B petitioner shall be a United States employer, or the authorized representative of a foreign employer having a location in the United States. The petitioning employer shall consider available U.S. workers for the temporary services or labor, and shall offer terms and conditions of employment which are consistent with the nature of the occupation, activity, and industry in the United States.

(C) The petitioner may not file an H-2B petition unless the United States petitioner has applied for a labor certification with the Secretary of Labor or the Governor of Guam within the time limits prescribed or accepted by each, and has obtained a labor certification determination as required by paragraph (h)(5)(iv) or (h)(5)(v) of this section.

(D) The Secretary of Labor and the Governor of Guam shall separately establish procedures for administering the temporary labor certification program under his or her jurisdiction.

(E) After obtaining a determination from the Secretary of Labor or the Governor of Guam, as appropriate, the petitioner shall file a petition on I-129H, accompanied by the labor certification determination and supporting documents, with the director having jurisdiction for I-129Hs in the area of intended employment.

(iv) *Labor certifications, except Guam*—(A) *Secretary of Labor's determination.* An H-2B petition for temporary employment in the United States, except for temporary employment on Guam, shall be accompanied by a labor certification determination that is either:

(*1*) A certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similary employed United States workers; or

(*2*) A notice detailing the reasons why such certification cannot be made. Such notice shall address the availability of U.S. workers in the occupation and the prevailing wages and working conditions of U.S. workers in the occupation.

(B) *Validity of the labor certification.* The Secretary of Labor may issue a temporary labor certification for a period of up to one year.

(C) *U.S. Virgin Islands.* Temporary labor certifications filed under section 101(a)(15)(H)(ii)(b) of the Act for employment in the United States Virgin Islands may be approved only for entertainers and athletes and only for periods not to exceed 45 days.

(D) *Attachment to petition.* If the petitioner receives a notice from the Secretary of Labor that certification cannot be made, a petition containing countervailing evidence may be filed with the director. The evidence must show that qualified workers in the United States are not available, and that the terms and conditions of employment are consistent with the nature of the occupation, activity, and industry in the United States. All such evidence submitted will be considered in adjudicating the petition.

(E) *Countervailing evidence.* The countervailing evidence presented by the petitioner shall be in writing and shall address availability of U.S. workers, the prevailing wage rate for the occupation of the United States, and each of the reasons why the Secretary of Labor could not grant a labor certification. The petitioner may also submit other appropriate information in support of the petition. The director, at his or her discretion, may require additional supporting evidence.

(v) *Labor certification for Guam*—(A) *Governor of Guam's determination.* An H-2B petition for temporary employment on Guam shall be accompanied by a labor certification determination that is either:

(*1*) A certification from the Governor of Guam stating that qualified workers in the United States are not available to perform the required services, and that the alien's employment will not adversely affect the wages and working conditions of United States resident workers who are similarly employed on Guam; or

(*2*) A notice detailing the reasons why such certification cannot be made. Such notice shall address the availability of U.S. workers in the occupation and/or the prevailing wages and working conditions of U.S. workers in the occupation.

(B) *Validity of labor certification.* The Governor of Guam may issue a temporary labor certification for a period up to one year.

(C) *Attachments to petition.* If the employer receives a notice from the Governor of Guam that certification cannot be made, a petition containing countervailing evidence may be filed with the director. The evidence must show that qualified workers in the United States are not available, and that the terms and conditions of employment are consistent with the nature of the occupation, activity, and industry in the United States. All such evidence submitted will be considered in adjudicating the petition.

(D) *Countervailing evidence.* The countervailing evidence presented by the petitioner shall be in writing and shall address availability of United States workers, the prevailing wage rate, and each of the reasons why the Govenor of Guam could not make the required certification. The petitioner may also provide any other appropriate information in support of the petition. The director, at his or her discretion, may require additional supporting evidence.

(E) *Criteria for Guam labor certifications.* The Governor of Guam shall, in consultation with the Service, establish systematic methods for determining the prevailing wage rates and working conditions for individual occupations on Guam and for making determinations as to availability of qualified United States residents.

(*1*) *Prevailing wage and working conditions.* The system to determine wages and working conditions must provide for consideration of wage rates and employment conditions for occupations in both the private and public sectors, in Guam and/or in the United States (as defined in section 101(a)(38) of the Act), and may not consider wages and working conditions outside of the United States. If the system includes utilitzation of advisory opinions and consultations, the opinions must be provided by officially sanctioned groups which reflect a balance of the interests of the private and public sectors, government, unions and management.

(*2*) *Availability of United States workers.* The system for determining availability of qualified United States workers must require the prospective employer to:

(*i*) Advertise the availability of the position for a minimum of three consecutive days in the newspaper with the largest daily circulation on Guam;

(*ii*) Place a job offer with an appropriate agency of the Territorial Government which operates as a job referral service at least 30 days in advance of the need for the services to commence, except that for applications from the armed forces of the United States and those in the entertainment industry, the 30-day period may be reduced by the Governor to 10 days;

(*iii*) Conduct appropriate recruitment in other areas of the United and its territories if sufficient qualified United States construction workers are not available on Guam to fill a job. The Governor of Guam may require a job order to be placed more than 30 days in advance of need to accommodate such recruitment;

(*iv*) Report to the appropriate agency the names of all United States resident workers who applied for the position, indicating those hired and the job-related reasons for not hiring;

(*v*) Offer all special considerations, such as housing and transportation expenses, to all United States resident workers who applied for the position, indicating those hired and the job-related reasons for not hiring;

(*vi*) Meet the prevailing wage rates and working conditions determined

under the wages and working conditions system by the Governor; and

(*vii*) Agree to meet all Federal and Territorial requirements relating to employment, such as nondiscrimination, occupational safety, and minimum wage requirements.

(F) *Approval and publication of employment systems on Guam—(1) Systems.* The Commissioner of Immigration and Naturalization must approve the system to determine prevailing wages and working conditions and the system to determine availability of United States resident workers and any future modifications of the systems prior to implementation. If the Commissioner, in consultation with the Secretary of Labor, finds that the systems or modified systems meet the requirements of this section, the Commissioner shall publish them as a notice in the **Federal Register** and the Governor shall publish them as a public record in Guam.

(*2*) *Approval of construction wage rates.* The Commissioner must approve specific wage data and rates used for construction occupations on Guam prior to implementation of new rates. The Governor shall submit new wage survey data and proposed rates to the Commissioner for approval at least eight weeks before authority to use existing rates expires. Surveys shall be conducted at least every two years, unless the Commissioner prescribes a lesser period.

(G) *Reporting.* The Governor shall provide the Commissioner statistical data on temporary labor certification workload and determinations. This information shall be submitted quarterly no later than 30 days after the quarter ends.

(H) *Invalidation of temporary labor certification issued by the Governor of Guam—(1) General.* A temporary labor certification issued by the Governor of Guam may be invalidated by a director if it is determined by the director or a court of law that the certification request involved fraud or willful misrepresentation. A temporary labor certification may also be invalidated if the director determines that the certification involved gross error.

(*2*) *Notice of intent to invalidate.* If the director intends to invalidate a temporary labor certification, a notice of intent shall be served upon the employer, detailing the reasons for the intended invalidation. The employer shall have 30 days in which to file a written response in rebuttal to the notice of intent. The director shall consider all evidence submitted upon rebuttal in reaching a decision.

(*3*) *Appeal of invalidation.* An employer may appeal the invalidation of a temporary labor certification in accordance with Part 103 of this chapter.

(vi) *Evidence for H-2B petitions.* An H-2B petition filed on Form I-129H shall be accompanied by:

(A) *Labor certification or notice.* A temporary labor certification or a notice that certification cannot be made, issued by the Secretary of Labor or the Governor of Guam, as appropriate;

(B) *Countervailing evidence.* Evidence to rebut the Secretary of Labor's or the Governor of Guam's notice that certification cannot be made, if appropriate;

(C) *Alien's qualifications.* Documentation that the alien qualifies for the job offer as specified in the application for labor certification, except in petitions where the labor certification application requires no education, training, experience, or special requirements of the beneficiary; and

(D) *Statement of need.* A statement describing in detail the temporary situation or conditions which make it necessary to bring the alien to the United States and whether the need is a one-time occurrence, seasonal, peakload, or intermittent. If the need is seasonal, peakload, or intermittent, the statement shall indicate whether the situation or conditions are expected to be recurrent.

(6) *Petition for alien trainee (H-3)*—(i) *General.* The H-3 trainee is a nonimmigrant who seeks to enter the United States at the invitation of an organization or individual for the purpose of receiving instruction in any field of endeavor, such as agriculture, commerce, communications, finance, government, transportation, or the professions, as well as training in a purely industrial establishment. This category shall not apply to physicians, who are statutorily ineligible to use H-3 classification in order to receive any type of graduate medical education or training.

(A) *Externs.* A hospital approved by the American Medical Association or the American Osteopathic Association for either an internship or residency program may petition to classify as an H-3 trainee a medical student attending a medical school abroad, if the alien will engage in employment as an extern during his/her medical school vacation.

(B) *Nurses.* A petitioner may seek H-3 classification for a nurse who is not H-1 if it can be established that there is a genuine need for the nurse to receive a brief period of training that is unavailable in the alien's native country and such training is designed to benefit the nurse and the overseas employer upon the nurse's return to the country of origin, if:

(*1*) The beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where the beneficiary obtained a nursing education, or such education was obtained in the United States or Canada; and

(*2*) The petitioner provides a statement certifying that the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training.

(ii) *Evidence*—(A) *Conditions.* The petitioner is required to demonstrate that:

(*1*) The proposed training is not available in the alien's own country;

(*2*) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(*3*) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(*4*) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(*1*) Describes the type of training and supervision to be given, and the structure of the training program;

(*2*) Sets forth the proportion of time that will be devoted to productive employment;

(*3*) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(*4*) Describes the career abroad for which the training will prepare the alien;

(*5*) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(*6*) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training

and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

(7) *Certification of documents.* A copy of a document submitted in support of a visa petition filed pursuant to section 214(c) of the Act and section 214.2(h) of this part may be accepted without the original, if the copy bears a certification by an attorney or by a voluntary agency in accordance with section 204.2(j) of this chapter or by a United States immigration or consular officer. However, the original document shall be submitted if requested by the director.

(8) *Approval and validity of petition*—(i) *Approval.* The director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist his or her adjudication. The director shall notify the petitioner of the approval of the petition on Form I-171C, Notice of Approval or Form I-797, Notice of Action. The approval shall be as follows:

(A) The approval notice shall include the beneficiary's(ies') name(s) and classification and the petition's period of validity. A petition for more than one beneficiary and/or multiple services may be approved in whole or in part. The approval notice shall cover only those beneficiaries approved for classification under section 101(a)(15)(H) of the Act.

(B) The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services or training.

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are:

(A) If a new H petition is approved before the date the petitioner indicates that the services or training will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner as the validity period, not to exceed the limits specified by paragraph (h)(8)(ii) of this section or other Service policy.

(B) If a new H petition is approved after the date the petitioner indicates that the services or training will begin, the approved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date requested by the petitioner, as long as that date does not exceed either the limits specified by paragraph (h)(8)(ii) of this section or other Service policy.

(C) If the period of services or training requested by the petitioner exceeds the limit specified in paragraph (h)(8)(ii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity.* The initial approval period of an H petition shall conform to the limits prescribed as follows:

(A) *H-1 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(i) of the Act shall be valid for a period of up to three years.

(B) *H-2B petition*—(*1*) *Labor certification attached.* If a certification by the Secretary of Labor or the Governor of Guam is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii)(B) of the Act, the approval of the petition shall be valid for a period of up to one year.

(*2*) *Notice that certification cannot be made attached*—(*1*) *Countervailing evidence.* If a petition is submitted containing a notice from the Secretary of Labor or the Governor of Guam that certification cannot be made, and is not accompanied by countervailing evidence, the petitioner shall be informed that he or she may submit the countervailing evidence in accordance with paragraphs (h)(5)(iii)(E) and (h)(5)(iv)(D) of this section.

(*ii*) *Approval.* In any case where the director decides that approval of the H-2B petition is warranted despite the issuance of a notice by the Secretary of Labor or the Governor of Guam that certification cannot be made, the approval shall be certified by the Director to the Commissioner pursuant to 8 CFR 103.4. In emergent situations, the certification may be presented by telephone to the Chief of the Administrative Appeals Unit, Central Office. If approved, the petition is valid for the period of established need not to exceed one year. There is no appeal from a decision which has been certified to the Commissioner.

(C) *H-3 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(ii) of the Act shall be valid for a period of up to two years.

(iv) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to H nonimmigrant classification, subject to the same period of admission and limitations as the beneficiary, if they are accompanying or following to join the beneficiary in the United States. Neither the spouse nor a child of the beneficiary may accept employment unless he or she is the beneficiary of an approved petition filed in his or her behalf and has been granted a nonimmigrant classification authorizing his or her employment.

(9) *Denial of petition*—(i) *Multiple beneficiaries.* A petition for multiple beneficiaries may be denied in whole or in part.

(ii) *Notice of intent of deny.* When an adverse decision is proposed on the basis of evidence not submitted by the petitioner, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(iii) *Notice of denial.* The petitioner shall be notified on Form I-292 of the decision, the reasons for the denial, and the right to appeal the denial under section 103 of this chapter.

(10) *Revocation of approval of petition*—(i) *General.* The petitioner shall immediately notify the Service of any changes in the employment of a beneficiary which would affect eligibility under 101(a)(15)(H) of the Act and paragraph (h) of this section.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner goes out of business or files a written withdrawal of the petition.

(iii) *Revocation on notice*—(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or

(*2*) The statement of facts contained in the petition was not true and correct; or

(*3*) The petitioner violated terms and conditions of the approved petition; or

(*4*) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or

(*5*) The approval of the petition violated pargraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed

statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

(11) *Appeal of a denial or a revocation of a petition*—(i) *Denial.* A petition denied in whole or in part may be appealed under Part 103 of this chapter.

(ii) *Revocation.* A petition that has been revoked on notice in whole or in part may be appealed under Part 103 of this chapter. Automatic revocations may not be appealed.

(12) *Admission.*—(i) *General.* A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The authorized period of the beneficiary's admission shall not exceed the above limits. The beneficiary may not work except during the validity period of the petition.

(ii) *H-1 limitation on admission.* An alien who has spent five, or in certain extraordinary circumstances, six years in the United States under section 101(a)(15)(H)(i) and or (L) of the Act may not seek extension, change status, or be readmitted to the United States under the H or L visa classification, unless the alien has resided and been physically present outside the United States, except for brief trips for pleasure or business, for the immediate prior year. In view of this restriction, a new petition shall not be approved for an alien who has spent five or six years in the United States under section 101(a)(15)(H)(i) and/or (L) of the Act, unless the alien has resided and been physically present outside the United States for the immediate prior year. Brief trips for pleasure or business to the United States during the immediate prior year are not interruptive of the one-year requirement, but do not count towards fulfillment of that requirement. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purposes of any trips to the United States for the previous year.

(iii) *H-2B and H-3 limitation on admission.* An alien who has spent three years in the United States under section 101(a)(15)(H)(ii) or two years under section 101(a)(15)(H)(iii) of the Act may not seek extension, change status, or be readmitted to the United States under the H or L visa classification unless the alien has resided and been physically present outside the United States for the immediate prior six months. In view of this restriction, a new petition shall not be approved for an alien who has spent three years in the United States under section 101(a)(15)(H)(ii) or two years under section 101(a)(15)(H)(iii) of the Act unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior six months. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous six months. Brief trips for business or pleasure to the United States during the immediate prior six months are not interruptive of the six-month requirement, but do not count towards fulfillment of that requirement.

(iv) *Exceptions.* The limitations in paragraph (h)(12(ii) and (h)(12)(iii) of this section shall not apply to H-1, H-2B, and H-3 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for an exception. Such proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(13) *Extension of visa petition validity.*—(i) *Approval.* A visa petition under section 101(a)(15)(H) of the Act shall be automatically extended, without the filing of Form I-129H, if the director extends the stay of the alien beneficiary(ies) in accordance with paragraph (h)(14) of this section. A new approval notice shall be issued to the petitioner at the same time that the beneficiary is notified that his or her extension of stay application has been approved. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. No action shall be taken on the visa petition if the alien's application for extension of stay is denied.

(ii) *Denial.* Although an application for extension of stay under the H classification does not require the filing of a petition extension, the director may consider information relating to the petition in adjudicating the beneficiary's extension of stay. If the director determines that there are grounds to readjudicate the petition before granting or denying the extension, the director shall move to reopen or reconsider the original petition in accordance with 8 CFR 103.5. If the petition is denied, the alien's extension of stay shall be denied for lack of an approved supporting petition.

(14) *Extension of stay.*—(i) *Procedure*—(A) *H-1 and H-3 beneficiaries.* If maintaining status, the beneficiary of an H-1 or H-3 petition may apply for an extension of stay by submitting an application for extension of stay, a copy of the original petition's approval notice, and a letter from the petitioner which describes the beneficiary's current duties, hours of work, and salary; indicates whether any terms and conditions of the original petition have changed, gives the reasons for the extension, gives the dates of the alien's periods of stay in the United States for the previous six years under H-1 or the previous three years under H-3, and specifies the new dates of employment or training requested.

(B) *H-2B beneficiaries.* The petitioner must obtain a new labor certification or a notice that certification cannot be made in order for the H-2B beneficiary to apply for an extension of stay. If maintaining status, the H-2B beneficiary may apply for an extension of stay by submitting an application for extension of stay, a copy of the original petition's approval notice, a statement which gives the dates of the alien's periods of stay in the United States for the previous three years, and the new labor certification or notice with countervailing evidence.

(C) *Multiple beneficiaries.* An application for extension of stay on behalf of multiple beneficiaries covered by the same original petition must be filed by each individual alien, except that in the case of an extension of stay for members of a group as defined in paragraph (h)(3)(i)(B) of this section, one application for extension of stay is required with an attached list of beneficiaries.

(ii) *Extension periods*—(A) *H-1 extension of stay.* An extension of stay may be authorized for a period of up to two years for a beneficiary of an H-1 petition. The alien's total period of stay may not exceed five years, except in extraordinary circumstances. Beyond five years, an extension of stay not to exceed one year may be granted under extraordinary circumstances. Extraordinary circumstances shall exist when the director finds that termination of the alien's services will impose extreme hardship on the petitioner's

business operation or that the alien's services are required in the national welfare, safety, or security interests of the United States. No further extensions may be granted. If the director decides that approval of the one-year extension is warranted because of extraordinary circumstances, the decision shall be certified to the Administrative Appeals Unit.

(B) *H-2B extension of stay.* An extension of stay for the beneficiary of an H-2 petition may be authorized for the validity of the labor certification or for a period of up to one year. The alien's total period of stay as an H-2B worker may not exceed three years, except that in the Virgin Islands, the alien's total period of stay may not exceed 45 days.

(C) *H-3 extension of stay.* An extension of stay may be authorized for a period of up to one year for the beneficiary of an H-3 petition. The alien's total period of stay as an H-3 trainee, however, may not exceed two years.

(iii) *Denial of extension of stay.* If an H beneficiary's request for extension of stay is denied, the alien shall be notified of the reasons for the denial. There is no appeal from the denial of an alien's application for an extension of stay.

(15) *Effect of approval of a permanent labor certification or filing of a preference petition on H classification*—(i) *H-1 classification.*—(A) *Petitioner*—(*1*) *Conditions.* The approval of a permanent labor certification or the filing of a preference petition for an alien is not by itself a ground to deny an H-1 petition if the director, in his/her judgment, determines that the following conditions are met:

(*i*) The dates of employment must be within the time limit for which an H-1 petition may be authorized, and

(*ii*) The petitioner must establish that temporary classification is not being requested for the principal purpose of enabling the employee to enter the United States permanently in advance of the availability of a visa number.

(*2*) *Evidence.* In deciding whether or not the foregoing conditions have been met, the director will consider evidence provided by the petitioner of factors such as, but not limited to the following, as appropriate:

(*i*) Petitioner's prior history of use of aliens in temporary and permanent capacities and extent to which petitioner has employed aliens without lawful authorization, and

(*ii*) Whether the employment appears to be an accommodation rather than a bona fide employer/employee relationship.

(B) *Beneficiary*—(*1*) *Conditions.* The approval of a labor certification or the filing of a preference petition is not by itself a ground to deny an H-1 beneficiary's application for admission, change of status, or extension of stay if the director, in his or her judgment, determines that the following conditions are met:

(*i*) The alien must demonstrate that he or she has not abandoned residence abroad; and

(*ii*) The alien must establish that he or she intends to enter and remain in the United States only in accordance with any authorized stay and to return abroad voluntarily at or before termination of that authorization, unless he or she has become a permanent resident of the United States in the meantime.

(*2*) *Evidence.* In determining whether the alien meets these conditions, the director shall consider evidence provided by the alien that establishes factors such as, but not limited to, the following:

(*i*) Evidence of a residence abroad, such as home, bank accounts, or prospects of a job abroad at the end of the authorized stay;

(*ii*) Close family ties abroad;

(*iii*) History of previous visa classifications and stays in the United States, and evidence that the alien has not entered or remained in the United States in violation of United States immigration laws; and

(*iv*) Employment history within and outside the United States.

(ii) *H-2B and H-3 classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien in the same or a different job or training position and for the same petitioner shall be a ground to deny the alien's request for extension of stay.

(16) *Effect of a strike.* If the Secretary of Labor certifies to the Commissioner of Immigration and Naturalization that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place where the beneficiary is to be employed or trained, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(i) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied.

(ii) If a petition has been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced the employment, the approval of the petition is automatically suspended, and the application for admission on the basis of the petition shall be denied.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or labor dispute involving a work stoppage of workers, the alien:

(A) Is failing to maintain his or her nonimmigrant status, and

(B) Remains subject to the time limits on a temporary stay which apply to his or her classification.

(17) *Use of approval notice, Form I-171C or Form I-797.* The Service shall notify the petitioner on Form I-171C or Form I-797 whenever a visa petition or an extension of a visa petition is approved under the H classification. The beneficiary of an H petition who does not require a nonimmigrant visa may present a copy of the approval notice at a port of entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use an original Form I-171C or Form I-797 to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I-171C or Form I-797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner and when applying for an extension of stay.

* * * * *

Dated: January 5, 1990.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 90-1701 Filed 1-25-90; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Securities Credit Transactions; List of Marginable OTC Stocks; Regulations G, T, U and X

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four

times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List which was effective November 13, 1989, and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: February 12, 1990.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452-2781. For the hearing impaired only, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. This supersedes the last List which was effective November 13, 1989. Additions and deletions for that List were published on October 30, 1989 (54 FR 43952). A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks.

The List of Marginable OTC Stocks includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The List also includes any stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List of Marginable OTC Stocks:

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

3CI Incorporated
$.01 par common
ABQ Corporation
$.01 par common
AFP Imaging Corporation
$.01 par common
American Savings & Loan Association of Florida
$.01 par preferred
Braniff, Inc.
$.01 par common
Brown, Robert C. & Co., Inc.
$.01 par common
Central Bancorporation
$1.67 par common
Chemex Pharmaceuticals, Inc.
$.01 par common
1989-1 Warrants (expire 03-31-94)
City Investing Company Liquidating Trust
Units of beneficial interest
Columbia Pictures Entertainment, Inc.
Warrants (expire 06-01-92)
Commercial Decal, Inc.
$.20 par common
Commodore Environmental Services, Inc.
$.10 par common
Connaught Biosciences Inc.
No par common
Constar International, Inc.
Warrants (expire 11-13-89)
Entree Corporation
$.01 par common
First American Bank and Trust of Palm Beach County
Class A, $1.00 par common
Flight International Group, Inc.
$.01 par common
Fonar Corporation
$.0001 par common
Frances Denney Companies, Inc.
$.01 par common
Frontier Savings Association
$.80 par capital
Harvard Knitwear, Inc.
$.001 par common
Hauserman, Inc.
$1.00 par common
High Plains Corporation
$.10 par common
Kimmons Environmental Service Corp.
9% convertible subordinated debentures
Kurzweil Music Systems, Inc.
$.001 par common
Lyphomed, Inc.
$.01 par common
5½% convertible subordinated debentures
Macrochem Corporation
$.005 par common
Management Assistance Inc. Liquidating Trust
Units of beneficial interest
McM Corporation
$1.00 par common
Medical Sterilization, Inc.
$.01 par common
Monoclonal Antibodies, Inc.
No par common
Northern Trust Corporation
Series B, no par preferred stock
Pantera's Corporation
$.01 par common
Plains Resources Inc.
$1.00 par cumulative convertible preferred
Ports of Call, Inc.
$.20 par common
Priam Corporation
$.001 par common
Properties of America, Inc.
$.01 par common
Rentrak Corp.
$.001 par common
Rudy's Restaurant Group, Inc.
$.01 par common
Scanforms, Inc.
$.01 par common

Silvar-Lisco
No par common
Skipper's Inc.
$.10 par common
Unifast Industries, Inc.
$.01 par common
Yorkridge-Calvert Savings and Loan Association (Maryland)
$1.00 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

Alco Health Services Corporation
$.01 par common
Alliance Financial Corporation
$10.00 par common
American Home Shield Corporation
$.04 par common
American Savings Financial Corporation (Washington)
$1.00 par common
Associated Natural Gas Corp.
$.10 par common
Beaman Corporation
$1.00 par common
Clinical Sciences, Inc.
$.01 par common
CMS Enhancements, Inc.
$.01 par common
Coast Federal Savings and Loan Association (Florida)
$.01 par common
Convex Computer Corporation
$.01 par common
Crawford & Company
$1.00 par common
CVB Financial Corp.
No par common
CVN Companies, Inc.
No par common
Digilog, Inc.
$.01 par common
Dumagami Mines Limited
$1.00 par common
Dunkin' Donuts Inc.
$1.00 par common
Dyatron Corporation
$.66⅔ par common
E.I.L. Instruments, Inc.
$.10 par common
Elan Corporation PLC
American Depositary Receipts
First Banc Securities, Inc.
$5.00 par common
First Ohio Bancshares, Inc.
$6.25 par common
Gen-Probe Incorporated
$.01 par common
Guber-Peters Entertainment Company, The
$.01 par common
H.M.S.S., Inc.
$.01 par common
HCC Industries Inc.
$.10 par common
Hibernia Corporation
Class A, no par common
Howard Bancorp
$5.00 par common
Inca Resources, Inc.
No par common
International Genetic Engineering, Inc.
No par common
Jefferson Smurfit Corporation
$1.00 par common
Leo's Industries, Inc.
$.001 par common
Management Science America, Inc.
$.0025 par common
Marine Transport Lines, Inc.
$.10 par common
Mayfair Super Markets, Inc.
Class A, $.01 par common
Microbilt Corporation
No par common
Midwest Financial Group, Inc.
$5.00 par common
Noxell Corporation
Class B, non-voting $1.00 par common
Numerex Corporation
$.01 par common
Pace Membership Warehouse, Inc.
$.01 par common
Pacific First Financial Corp.
$1.00 par common
Pacific Silver Corporation
$.25 par common
Peoples Savings Bank F.S.B.
$1.00 par common
Praxis Biologics, Inc.
$.01 par common
Precision Castparts Corp.
No par common
Ravenswood Financial Corp.
$1.00 par common
Reisterstown Federal Savings Bank (Maryland)
$1.00 par common
Resurgens Communications Group, Inc.
$.01 par common
Rhone-Poulenc S.A.
American Depositary Receipts
Richton International Corp.
$.10 par common
RSI Corporation
$.05 par common
Safecard Services, Inc.
$.01 par common
Sag Harbor Savings Bank (New York)
$1.00 par common
Security American Financial Enterprises, Inc.
$.10 par common
Starpointe Savings Bank
$2.00 par common
Stratus Computer, Inc.
$.01 par common
Trustcorp, Inc.
$1.00 par common
Weisfield's, Inc.
$2.00 par capital
Westmarc Communications, Inc.
Class A, $.01 par common

Additional to the List of Marginable OTC Stocks

Allied Capital Corporation II
$1.00 par common
American Capital and Research Corporation
Class A, $.01 par common
Amtech Corporation
$.01 par common
Aztar Corporation
$.01 par common
BKLA Bancorp
No par common
Borland International, Inc.
$.01 par common
Boston Technology, Inc.
$.001 par common
BT Shipping Limited
American Depositary Receipts
Caere Corporation
$.001 par common
Candela Laser Corporation
$.01 par common
Cellular Information Systems, Inc.
Class A, $.01 par common
Century South Banks, Inc.
No par common
Continental Gold Corporation
No par common
Cray Computer Corporation
$.01 par common
Cupartino National Bancorp
No par common
Cytogen Corporation
$.01 par convertible exchangeable preferred
Economy Savings Bank, PASA
$1.00 par common
Energy Ventures, Inc.
$1.00 par common
Exabyte Corporation
$.001 par common
Exide Electronics Group, Inc.
$.01 par common
Financial Center Bancorp
No par common
First American Financial Corporation, The
Class B, $1.00 par common
First Bank of Philadelphia
$2.00 par common
First Federal Capital Corp.
$.01 par common
G-III Apparel Group, Ltd.
$.01 par common
GEHL Company
$.10 par common
Great Southern Bancorp, Inc.
$.01 par common
Harmonia Bancorp, Inc.
$.01 par common
Healthsource, Inc.
$.10 par common
Henley Group, Inc., The (Delaware)
$.01 par common
Home Nutritional Services, Inc.
No par common
Hycor Biomedical Inc.
$.01 par common
Ilio, Inc.
$.01 par common
Warrants (expire 10-25-92)
Immunogen, Inc.
$.01 par common
Industrial Funding Corporation
Class A, no par common
Keegan Management Company
$.001 par common
Knowledgeware, Inc.
No par common
Landmark Bancorp
No par common
Laserscope
No par common
Lattice Semiconductor Corporation
$.01 par common
MAF Bancorp, Inc.
$1.00 par common
Mips Computer Systems, Inc.
No par common
New Horizons Savings & Loan Association
No par common
Nucorp, Inc.
Class C, warrants (expire 06-30-01)
Pacific Bank, N.A., The
$5.00 par common
Pamrapo Bancorp, Inc.
$.01 par common

Parametric Technology Corporation
$.01 par common
People's Telephone Company, Inc.
$.01 par common
Pinnacle Financial Services, Inc.
$10.00 par common
Players International, Inc.
$.005 par common
Procyte Corporation
$.01 par common
Ramtron Australia Limited
American Depositary Receipts
Receptech Corporation
Paired common stock & a warrant
Ren Corporation—USA
No par common
Robec, Inc.
$.01 par common
Sierra Tucson Companies, Inc.
$.01 par common
Smith International, Inc.
Class A, warrants (expire 02-28-95)
Solectron Corporation
No par common
Summit Technology, Inc.
$.01 par common
Sun Sportsware, Inc.
No par common
T2 Medical, Inc.
$.01 par common
TW Holdings, Inc.
No par common
United Artists Entertainment Company
12.875%, no par cumulative convertible preferred
Urcarco, Inc.
$.01 par common
Ventura County National Bancorp
No par common
Village Financial Services, Inc.
$.01 par common
Westcott Communications, Inc.
$.01 par common
Workmen's Bancorp, Inc.
$1.00 par common
Yes Clothing Company
No par common

By order of the Board of Governors of the Federal Reserve System, acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), January 26, 1990.

William W. Wiles,
Secretary of the Board.

[FR Doc. 90-1755 Filed 1-25-90; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-158-AD; Amdt. 39-6491]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections to detect cracks in the left-hand and right-hand lower radius of fuselage frame 47, and repair, if necessary. This amendment is prompted by full-scale fatigue testing which revealed cracks in the lower radius of fuselage frame 47. This condition, if not corrected, could compromise the structural capability of the fuselage.

DATES: Effective March 1, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections to detect cracks in the left-hand and right-hand lower radius of fuselage frame 47, and repair, if necessary, was published in the **Federal Register** on September 11, 1989 (54 FR 37475).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the rule, but recommended that paragraph A.5.b. be changed from, "within 12,600 landings," to read, "within 12,000 landings." The FAA concurs. This typographical error was corrected in the **Federal Register**, on October 23, 1989 (54 FR 43217). In the final rule, paragraph A.5.b. has been renumbered to A.6.b. and will read, "within 12,000 landings."

The commenter also noted that the proposal did not identify specific compliance times for airplanes identified as configuration 11. The FAA concurs and a new paragraph A.5. has been added to the final rule to include this information.

Another commenter questioned the need for the rule since the referenced service bulletin, in time, will become a part of the Supplemental Structural Inspection Program (SSIP). The FAA acknowledges that the service bulletin is a part of the SSIP; however, when the Notice was issued, the SSIP document was under preparation and its date of issuance was not known. Now that the SSIP has been issued, the FAA may consider further, separate rulemaking to address it. Since some operators may currently have airplanes which are approaching the specified number of cycles where the actions described in the service bulletin are necessary, the FAA has determined that it is appropriate to proceed with this rulemaking to require those actions.

This commenter also noted that the service bulletin does not have an equivalency provision which allows operators to purchase equivalent parts manufactured in the United States, and once the rule is adopted the operator must then request prior approval from the FAA to purchase equivalent parts under the alternate means of compliance provision. The commenter recommended that the FAA add a new provision which would allow operators to make minor changes in the accomplishment instructions of an AD without prior approval from the FAA. Such deviations could be approved by the manufacturer's Designated Engineering Representatives (DER) or the appropriate FAA Principal Maintenance Inspector (PMI). The FAA does not concur with the commenter's suggestion. Where parts equivalency (or repair) data doesn't exist, it is essential that the FAA have feedback as to the type of parts being installed (or repairs being made), and the FAA has determined it is appropriate that the Manager of the Standardization Branch approve any such deviations to AD requirements. Given that possible new relevant issues might be detected or unearthed during this process, it is imperative that the FAA, at this level, have such feedback. Only by reviewing deviation approvals, can the FAA be assured of this feedback and of the adequacy of the installed parts.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. These changes will neither increase the economic burden on any operator, nor will it increase the scope of the AD.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that

it will take approximately 15 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $39,600.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR part 39:

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent structural failure of the fuselage, accomplish the following:

A. Prior to the accumulation of the number of landings indicated below or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform either a visual or eddy current inspection of the left-hand and right-hand lower radius of frame 47, in accordance with Airbus Industrie Service Bulletin A300-53-259, dated January 26, 1989.

1. For airplanes identified as Configuration 3 in the service bulletin, the initial inspection must be performed prior to the accumulation of 22,200 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 4,600 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 13,200 landings.

2. For airplanes identified as Configuration 4 in the service bulletin, the initial inspection must be performed prior to the accumulation of 30,300 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 4,600 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 13,200 landings.

3. For airplanes identified as Configuration 7 in the service bulletin, the initial inspection must be performed prior to the accumulation of 19,200 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 3,700 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 10,600 landings.

4. For airplanes identified as Configuration 10 in the service bulletin, the initial inspection must be performed prior to the accumulation of 14,700 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 2,800 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 8,200 landings.

5. For airplanes identified as Configuration 11 in the service bulletin, the initial inspection must be performed prior to the accumulation of 18,700 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 2,800 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 8,200 landings.

6. For airplanes identified as Configuration 12 in the service bulletin, the initial inspection must be performed prior to the accumulation of 27,600 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 4,200 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 12,000 landings.

B. If cracks found are less than or equal to 4.2 mm (.165 inch), repair prior to further flight and perform an eddy current inspection to ensure that the crack has been eliminated, in accordance with Airbus Industrie Service Bulletin, A300-53-259, dated January 1989. Repeat the inspections at intervals indicated in paragraph A., above.

C. If cracks are greater than 4.2 mm (.165 inches), repair prior to further flight and reinspect in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 1, 1990.

Issued in Seattle, Washington, on January 16, 1990.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 90-1775 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-180-AD; Amendment 39-6495]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires installation of control cable block plates. This amendment is prompted by

an FAA certification inspection which revealed that, under simulated cable system proof load, there was enough cable slack for the empennage cables to hang up on the cable shroud brackets above the Door 5 crew rest area. This condition, if not corrected, could lead to the control cables snagging on the cable shroud brackets above Door 5 crew rest area, which could reduce the ability of the pilot to safely control the airplane.

DATE: Effective March 5, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing 747 series airplanes, which requires installation of control cable block plates, was published in the **Federal Register** on October 3, 1989 (54 FR 40673).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America, on behalf of its members, expressed no objection to adoption of the proposed rule. However, one ATA member stated that the service bulletin referenced in the proposed rule should be identified as Boeing Service Bulletin "747-27-2776." The FAA contacted Boeing Commerical Airplanes and was advised that Boeing Service Bulletin "747-25-2776," as was indicated in the Notice, is the correct number. The final rule remains unchanged.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 13 Model 747 series airplanes of the affected design in the worldwide fleet. Currently, no airplanes of U.S. registry are affected by this AD; therefore, there is no cost impact of this AD on U.S. operators. However, should an affected airplane be imported and placed on the U.S. Register in the future, approximately 8 manhours will be necessary to accomplish the actions required by this Ad, and the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $320 per airplane.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes with a door 5 crew rest area, listed in Boeing Service Bulletin 747-25-2776, dated June 8, 1989, certificated in any category. Compliance required within the next 12 months after the effective date of this AD, unless previously accomplished.

To prevent empennage control cables from snagging on the cable shroud brackets above the Door 5 crew rest area, accomplish the following:

A. Install control cable block plates in accordance with Boeing Service Bulletin 747-25-2776, dated June 8, 1989.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 5, 1990.

Issued in Seattle, Washington, on January 18, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 90-1776 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-170-AD; Amdt. 39-6494]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Lockheed L-1011 series airplanes, which requires inspection and replacement of the flap vane carriage fitting. This amendment is prompted by reports of flap vane separations.This condition, if not corrected, could result in danger to persons and property on the ground.

DATES: Effective March 5, 1990.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems

Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept 65-33, U-33, B-1. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California 90806-2425; telephone (213) 988-5225.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Lockheed Model L-1011 series airplanes, which requires inspection and replacement of the flap vane carriage fittings, was published in the **Federal Register** on October 3, 1989 (54 FR 23277).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter stated that the proposed rule would unreasonably penalize operators who have chosen to implement the procedure contained in Lockheed Service Bulletin 093-57-156, which is the removal of the rub strip, by imposing on them such a stringent timetable for the first inspection. Also, the commenter stated that the period for replacement of the aluminum fittings is too restrictive if the rub strips had been previously removed. The FAA disagrees. The rub strip removal can be expected to alleviate the problem and enhance the fatigue life due to a decrease of the preload on the carriage fitting in most cases; nevertheless, if the clearance was not set correctly through proper rigging, there remains a situation wherein the flap vane would still experience high induced load from contact with the spoiler. Further, the airplane that had experienced the No. 3 flap vane separation, as discusssed in the preamble to the Notice, had the rub strip removed.

One commenter suggested that the proposal should be rewritten to include the installation of the seals in accordance with Lockheed Service Bulletin 093-57-174, since the failure of the flap vane was caused by vibration, and the opening of the clearance between the spoiler and the flap vane had made the problem worse. The FAA disagrees. It has not been demonstrated that vibration is the primary cause of the failure of the flap vanes. Although the installation of the seals described in the Lockheed Service Bulletin eliminates the vibration that may occur due to the "venturi" effect at a certain flap setting, the FAA considers that, at most, this is a transient effect and contributes very little to the overall fatigue loads that the flap vane may experience in its lifetime.

The same commenter pointed out that the inspection/rerigging requirement for increasing clearance of the No. 5 and No. 6 spoiler to he No. 4 flap vane should be deleted, since no operator has ever experienced similar problems with the No. 4 flap vane. The FAA agrees, and has revised paragraph A.4. accordingly.

The cost impact paragraph, below, has been amended to indicate the current kit cost per airplane.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 240 Model L-1011 series airplanes of the affected design in the worldwide fleet. It is estimated that 130 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20.0 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour, and the Kit cost is $8,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,144,000.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed Aeronautical System Company: Applies to Model L-1011 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the failure of No. 3 flap vane outboard carriage link assembly, accomplish the following:

A. Prior to the accumulation of 6,000 landings or 15,000 flight hours, whichever occurs first, or within 30 days after the effective date of this AD, whichever occurs later, conduct the following in accordance with Section 2, "Accomplishment Instructions," of Lockheed Service Bulletin 093-57-209, dated August 10, 1989:

1. Inspect the left and right No. 3 flap vane outboard carriage link assembly for cracks, using the eddy-current procedure as described in the Service Bulletin.

2. If no cracks are found, conduct repetitive eddy current inspections in accordance with the Service Bulletin at intervals not to exceed 1,000 landings.

3. If a crack is found, replace the link assembly with a new link assembly, P/N 1562426-101/-105, or with a titanium No. 3 flap vane outboard carriage link assembly, P/N 1562426-109.

4. If not previously accomplished, remove existing rub strips on the lower surface of spoilers No. 3 through No. 6 in accordance with the procedure described in the Service Bulletin. Then conduct a No. 3 flap vane-to-flap contact check, rigging check, and adjustment in accordance with L-1011 Maintenance Manual, Section 27-51-00. Check the vane-to-spoiler clearance to ensure that a minimum clearance of 0.20 inch is maintained.

5. If rub strips were previously removed, check the vane to spoiler clearance as described in the L-1011 Maintenance Manual, Section 27-51-00.

B. Installation of the titanium link assembly, P/N 1562426-109, constitutes

terminating action for the repetitive inspections required by paragraph A.2., above.

C. Within 2½ years after the effective date of this AD, replace all aluminum fittings with titanium fittings.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520 Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective March 5, 1990.

Issued in Seattle, Washington, on January 18, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 90-1777 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-277-AD; Amendment 39-6493]

Airworthiness Directives; McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) Series Airplanes, and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) series airplanes, which currently requires inspection of the oxygen box door at the forward cabin attendant station to determine proper oxygen box door opening and modification if interference exists. This amendment adds the Model MD-88 to the applicability statement, and requires additional Model DC-9-80 series and Model MD-88 series airplanes be inspected. This amendment is prompted by a report that the forward cabin attendant oxygen box door on a Model MD-88 was blocked from opening properly by the adjacent structure during ground check. This condition, if not corrected, could result in the forward cabin attendant being deprived of oxygen in the event of cabin depressurization.

DATES: Effective February 15, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: On September 18, 1989, the FAA issued AD 89-20-05, Amendment 39-6338 (54 FR 39349; September 26, 1989), to require inspection for clearance of the oxygen box door opening and modification, if necessary. That action was prompted by a routine ground check of the emergency oxygen mask deployment which revealed that the forward cabin attendant oxygen box door made contact with the adjacent structure when deployed. The door must open 90 degrees to allow the oxygen mask to drop out for the forward cabin attendant's use. The oxygen box had been installed in a position that resulted in interference between the oxygen box door and the adjacent structure. This condition, if not corrected, could result in the forward cabin attendant being deprived of oxygen in the event of cabin depressurization.

Since issuance of that AD, the manufacturer has advised the FAA that Model MD-88 series and 107 additional airplanes, not listed in the referenced service bulletin, are also subject to the same interference.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A35-17, Revision 1, dated October 31, 1989, which describes the procedures for visual inspection of the oxygen box door for interference with surrounding structure and, if interference exists, repositioning the oxygen box to assure proper clearance for the oxygen box door; and adds additional planes to the effectivity.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 89-20-05 to revise the applicability to include the Model MD-88 and to include additional airplanes in accordance with the service bulletin previously described.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6338 (54 FR 39349; September 26, 1989), AD 89-20-05, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and Model MD-88 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin A35-71, Revision 1, dated October 31, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

Note: Work already accomplished in accordance with AD 89-20-05 satisfies the requirements of this AD.

To prevent the possibility of the forward cabin attendant being deprived of oxygen in the event of depressurization, accomplish the following:

A. Within 30 days after October 13, 1989 (the effective date of Amendment 39-6338), for those airplanes listed in McDonnell Douglas Alert Service Bulletin A35-17, dated August 22, 1989, inspect the forward cabin attendant oxygen box door for interference and, if interference exists, modify before further flight, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A35-17, dated August 22, 1989.

B. Within 30 days after the effective date of this AD, for those airplanes listed in McDonnell Douglas Alert Service Bulletin A35-17, Revision 1, dated October 31, 1989, not included in paragraph A., above, inspect the forward cabin attendant oxygen box door for interference and, if interference exists, modify before further flight, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A35-17, Revision 1, dated October 31, 1989.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801-0001, ATTN: Business Unit Manager, Technical Publications, HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425.

This amendment supersedes Amendment 39-6338, AD 89-20-05.

This amendment becomes effective February 15, 1990.

Issued in Seattle, Washington, on January 18, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1778 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-279-AD; Amendment 39-6492]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Lockheed Model L-1011 series airplanes, which requires inspection and repairs, if necessary, of the aft pressure bulkhead. This amendment is prompted by an incident during which a decompression was experienced due to a small rupture at the aft pressure bulkhead. The rupture was later determined to be due to fatigue. This condition, if not corrected, could result in failure of the aft pressure bulkhead.

DATE: Effective February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5225.

SUPPLEMENTARY INFORMATION: On December 8, 1989, an operator of a Model L-1011 series airplane experienced a small rupture on the aft pressure bulkhead gore panel during climb out. An emergency descent was initiated and oxygen masks were deployed. The airplane made an uneventful landing and there were no injuries to the passengers or crew.

Inspection revealed a 16 inch by 12.5 inch hole in an aft pressure bulkhead gore panel at approximately fuselage station 1817, left butt line 20, waterline 320. The rupture was in the gore panel only and began at the aft edge of the inner gore doubler and extended circumferentially and aft with the gore panel piece peeled back but still attached. It is believed that presence of the engine inlet "S" duct prevented the torn panel from becoming any bigger. Laboratory examination of the fracture surface indicated that the crack initiation was due to fatigue, with evidence of air leakage from an approximately 2 to 3 inch circumferential crack in the gore at the edge of the inner doubler. This condition if not corrected, could lead to failure of the aft pressure bulkhead.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires a visual inspection to detect cracks in the aft pressure bulkhead gore panels, and repair, if necessary. Additionally, operators are required to submit a report of findings to the FAA; based on data received from these reports, the FAA may consider further rulemaking on this subject.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an

unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed Aeronautical Systems Company: Applies to Model L-1011 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure of the aft pressure bulkhead, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, and unless previously accomplished within the last 60 days, gain access to the forward or aft side of the aft pressure bulkhead and visually inspect for cracks in the 0.040 inch thick portion of the aft pressure bulkhead gore panels adjacent to the bonded 6 inch wide circumferential doubler, at approximately fuselage station (FS) 1817, waterline (WL) 317, and extending 23 inches left of butt line (BL) 0.0 for Serial Numbers (S/N) 1002 to 1250, 46 inches right of BL 0.0 for S/N 1002 to 1012, and 23 inches right of BL 0.0 for S/N 1013 to 1250.

B. If cracks are found, prior to further flight, repair in accordance with data approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Within 10 days after the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

This amendment becomes effective February 13, 1990.

Issued in Seattle, Washington, on January 16, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1779 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430 and 455

[Docket No. 89N-0495]

Antibiotic Drugs; Mupirocin Ointment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, mupirocin ointment. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective February 26, 1990. Written comments, notice of participation, and request for hearing by February 26, 1990. Data, information, and analyses to justify a hearing by March 27, 1990.

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

FOR FURTHER INFORMATION CONTACT: Peter A. Dionee, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, mupirocin ointment. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish it safety and efficacy when used as directed in the labeling and that the regulations should be amended by adding new 21 CFR 430.4(a)(61), 430.5 (a)(96) and (b)(98), 430.6(b)(98), 455.40, and 455.540 to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective February 26, 1990. However, interested persons may, on or before February 26, 1990, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file ojections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before February 26, 1990, a written notice of participation and request for hearing, and (2) on or before March 27, 1990, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a

hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

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

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 455

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 430 and 455 and amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. The authority citation for 21 CFR part 430 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 357, 371); secs. 215, 301, 351, of the Public Health Service Act (42 U.S.C. 216, 241, 262).

2. Section 430.4 is amended by adding new paragraph (a)(61) to read as follow:

§ 430.4 Definitions of antibiotic substances.

(a) * * *

(61) *Mupirocin.* Each of the antibiotic substances produced by the growth of *Pseudomonas fluorescens,* and each of the same substances produced by any other means, is a kind of mupirocin.

3. Section 430.5 is amended by adding new paragraphs (a)(96) and (b)(98) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(96) *Mupirocin.* The term "mupirocin master standard" means a specific lot of mupirocin or a salt thereof that is designated by the Commissioner as the standard of comparison in determining the potency of the mupirocin working standard.

(b) * * *

(98) *Mupirocin.* The term "mupirocin working standard" means a specific lot of a homogeneous preparation of mupirocin or a salt thereof.

4. Section 430.6 is amended by adding new paragraph (b)(98) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(98) *Mupirocin.* the term "microgram" applied to mupirocin means the activity (potency) calculated as mupirocin activity (potency) contained in 1.075 micrograms of the mupirocin master standard.

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

5. The authority citation for 21 CFR part 455 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

6. New § 455.40 is added to Subpart A to read as follows:

§ 455.40 Mupirocin.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Mupirocin is nonanoic acid, 9-[[3-methyl-1-oxo-4-[tetrahydro-3,4-dihydroxy-5-[[3-(2-hydroxy-1-methylpropyl)oxiranyl]methyl]-2*H*-pyran-2-yl]-2-butenyl]oxy]-,[2*S*-[2*a*(*E*),3*B*,4*B*,5[2*R**,3*R**(1*R**,2*R**)]]]-. It is a white to off-white crystalline solid. It is so purified and dried that:

(i) Its potency is not less than 920 micrograms per milligram on an anhydrous basis.

(ii) Its moisture content is not more than 1.0 percent.

(iii) the pH of a saturated aqueous solution of mupirocin is not less than 3.5 and not more than 4.0.

(iv) It is crystalline.

(v) It gives a positive identity test for mupirocin.

(2) *Labeling.* It shall be labeled in accordance with the requirements of §432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, moisture, pH, crystallinity, and identity.

(ii) Samples, if required by the Center for Drug Evaluation and Research: 10 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.216 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 229 nanometers, a column packed with microparticulate (3 to 10 micrometers in diameter) reversed phase packing material such as an octadecylsilane, a flow rate of not more than 2.0 milliliters per minute, and a known injection volume of between 10 and 20 microliters. Use the resolution test solution to determine resolution in lieu of the working standard solution. Reagents, working standard and sample solutions, resolution test solution, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(A) *Acetonitrile.* Distilled in glass. Ultraviolet grade.

(B) *Phosphate buffer, pH 6.3.* Prepare a 0.05*M* sodium monobasic phosphate solution and adjust to pH 6.3 with 1.0*N* sodium hydroxide.

(C) *Mobile phase.* To 750 milliliters of 0.05*M*, pH 6.3 phosphate buffer, add 250 milliliters of acetonitrile. Filter through a suitable filter capable of removing particulate matter to 0.5 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(ii) *Preparation of working standard, sample, and resolution, test solutions*—(A) *Working standard solution.* Accurately weigh approximately 11 milligrams of the mupirocin working standard into a 100-milliliter volumetric flask. Dissolve the standard in about 20 milliliters of acetonitrile and dilute to volume with pH 6.3 phosphate buffer. Mix well.

(B) *Sample solution.* Transfer approximately 11 milligrams of sample, accurately weighed, to a 100-milliliter volumetric flask. Dissolve the sample in about 20 milliliters of acetonitrile and dilute to volume with pH 6.3 phospate buffer. Mix well.

(C) *Resolution test solution.* Acidify approximately 10 milliliters of the working standard solution with 6*N* hydrochloric acid to pH 2.0. Allow to stand at room temperature for about 2 hours. Neutralize this solution. Use this solution to determine the resolution requirement for the chromatographic system.

(iii) *System suitability requirements*—(A) *Asymmetry factor.* Calculate the asymmetry factor (A_s), measured at a point 5 percent of the peak height from the baseline as follows:

$$A_s = \frac{a+b}{2a}$$

where:

a = Horizontal distance from point of ascent to point of maximum peak height; and
b = Horizontal distance from the point of maximum peak height to point of descent.

The asymmetry factor (A_s) is satisfactory if it is not more than 1.5.

(B) *Efficiency of the column.* From the number of theoretical plates (n) calculated as described in § 436.216(c)(2) of this chapter, calculate the reduced plate height (h_r) as follows:

$$h_r = \frac{(L)(10{,}000)}{(n)(d_P)}$$

Where:

L = Length of the column in centimeters;
n = Number of theoretical plates; and
d_P = Average diameter of the particles in the analytical column packing in micrometers.

The absolute efficiency (h_r) is satisfactory if it is not more than 20.0, equivalent to 1,500 theoretical plates for a 30-centimeter column of 10 micrometer particles.

(C) *Resolution factor.* The resolution factor (R_s) between the peak for mupirocin and its nearest eluting peak produced from its acid degradation is satisfactory if it is not less than 2.0. The chromatogram of the resolution test solution should show a significantly reduced mupirocin peak immediately preceded by a peak due to mupirocin degradation products. This degradation peak may appear as a single peak or be partially resolved showing a shoulder or two overlapping peaks.

(D) *Coefficient of variation (relative standard deviation).* The coefficient of variation (S_R in percent of 5 replicate injections) is satisfactory if it is not more than 2.0 percent.

If the system suitability parameters have been met, then proceed as described in § 436.216(b) of this chapter.

(iv) *Calculations.* Calculate the micrograms of mupirocin per milligram of sample as follows:

$$\text{Micrograms of mupirocin per milligram} = \frac{A_u X P_s X 100}{A_s X C_u X (100-m)}$$

where:

A_u = Area of the mupirocin peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
A_s = Area of the mupirocin peak in the chromatogram of the mupirocin working standard;
P_s = Mupirocin activity in the mupirocin working standard solution in micrograms per milliliter;
C_u = Milligrams of mupirocin sample per milliliter of sample solution;
m = Percent moisture content of the sample.

(2) *Moisture.* Proceed as directed in § 436.201 of this chaper.

(3) *pH.* Proceed as directed in § 436.202 of this chapter using a saturated aqueous solution.

(4) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(5) *Identity.* Proceed as directed in § 436.211 of this chapter, using the sample preparation method described in § 436.211(b)(2).

7. New § 455.540 is added to Subpart F to read as follows:

§ 455.540 Mupirocin ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Mupirocin ointment is mupirocin in a suitable and harmless ointment base. Each gram of ointment contains 20 milligrams of mupirocin. Its mupirocin content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of mupirocin that it is represented to contain. It passes the identity test. The mupirocin used conforms to the standards prescribed by § 455.40(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The mupirocin used in making the batch for potency, moisture, pH, crystallinity, and identity.

(B) The batch for mupirocin content and identity.

(ii) Samples, if required by the Center for Drug Evaluation and Research:

(A) The mupirocin used in making the batch: 10 packages, each containing not less than 300 milligrams.

(B) The batch: A minimum of 10 immediate containers.

(b) *Tests and methods of assay*—(1) *Mupirocin content.* Proceed as directed in § 455.40(b)(1), preparing the sample solution and calculating the mupirocin content as follows:

(i) *Sample solution.* Accurately weigh approximately 0.5 gram of ointment and dissolve in 20 milliliters of acetonitrile. Transfer to a 100-milliliter volumetric flask with the aid of pH 6.3 phosphate buffer. Dilute to volume with pH 6.3 phosphate buffer. Mix well. The sample solution contains approximately 100 micrograms of mupirocin per milliliter (estimated).

(ii) *Calculations.* Calculate the mupirocin content in milligrams per gram as follows:

$$\text{Milligrams of mupirocin per gram} = \frac{A_u X P_s X d}{A_s X 1{,}000 X n}$$

where:

A_u = Area of the mupirocin peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
A_s = Area of the mupirocin peak in the chromatogram of the mupirocin working standard;
A_s = Mupirocin activity in the mupirocin working standard solution in micrograms per milliliter;
d = Dilution factor of the sample; and
n = Number of grams of sample assayed.

(2) *Identity.* The high-performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the mupirocin working standard.

Dated: January 17, 1990.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-1732 Filed 1-25-90; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 444

[Docket No. 89N-0524]

Antibiotic Drugs; Gentamicin Sulfate-Prednisolone Acetate Ophthalmic Ointment

AGENCY: Food and Drug Administration, NNS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new ophthalmic dosage form of gentamicin sulfate, gentamicin sulfate-prednisolone acetate ophthalmic ointment. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective February 26, 1990; written comments, notice of participation, and request for hearing by February 26, 1990; data, information, and

analyses to justify a hearing by March 27, 1990.

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

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new ophthalmic dosage form of gentamicin sulfate, gentamicin sulfate-prednisolone acetate ophthalmic ointment. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in part 444 (21 CFR part 444) by adding new § 444.320d to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective February 26, 1990. However, interested persons may, on or before February 26, 1990, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before February 26, 1990, a written notice of participation and request for hearing, and (2) on or before March 27, 1990, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

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

List of Subjects in 21 CFR Part 444

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 444 is amended as follows:

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 444 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. New § 444.320d is added to Subpart D to read as follows:

§ 444.320d Gentamicin sulfate-prednisolone acetate ophthalmic ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Gentamicin sulfate-prednisolone acetate ophthalmic ointment contains in each gram gentamicin sulfate equivalent to 3.0 milligrams of gentamicin and 6.0 milligrams of prednisolone acetate, with a suitable lubricant and preservative in a suitable and harmless white petrolatum base. Its gentamicin content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of gentamicin that it is represented to contain. Its prednisolone acetate content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of prednisolone acetate that it is represented to contain. It is sterile. Its moisture content is not more than 2.0 percent. It passes the test for metal particles. The gentamicin sulfate used conforms to the standards prescribed by § 444.20(a)(1). The prednisolone acetate used conforms to the standards prescribed by the United States Pharmacopeia.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The gentamicin sulfate used in making the batch for potency, loss on drying, pH, specific rotation, content of gentamicins C_1, C_{1a}, C_2, and identity.

(B) The prednisolone acetate used in making the batch for all USP XXI specifications.

(C) The batch for gentamicin content, prednisolone acetate content, sterility, moisture, and metal particles.

(ii) Samples, if required by the Center for Drug Evaluation and Research:

(A) *The gentamicin sulfate used in making the batch: 10 packages, each containing not less than 500 milligrams.*

(B) The batch:

(*1*) For all tests except sterility: A minimum of 15 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Gentamicin content.* Proceed as directed in § 436.105 of this chapter, except prepare the sample as follows: Place an accurately weighed representative portion of the ointment into a separatory funnel containing 50 milliliters of peroxide-free ether. Shake the sample

and ether until homogeneous. Add 20 to 25 milliliters of 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), and shake well. Allow the layers to separate. Remove the buffer layer and repeat the extraction with new portions of solution 3. Repeat any additional times necessary to insure complete extraction of the antibiotic. Combine the extractives and adjust to an appropriate volume to give a stock solution of convenient concentration. Further dilute with solution 3 to the reference concentration of 0.1 microgram of gentamicin per milliliter (estimated).

(2) *Prednisolone acetate content.* Proceed as directed in § 436.216 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 254 nanometers, a column packed with octadecyl hydrocarbon bonded silicas 3 to 10 micrometers in diameter, a flow rate of 2.0 milliliters per minute, and an injection volume of 30 microliters. Reagents, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(A) *Mobile phase.* Mix acetonitrile distilled deionized water (40:60). Filter the mobile phase through a suitable glass fiber filter or equivalent which is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(B) *Internal standard solution.* Accurately weigh 135 milligrams ± 10 milligrams of fluorometholone acetate into a 50-milliliter volumetric flask. Dissolve and dilute to volume with methyl alcohol.

(ii) *Preparation of working standard and sample solutions*—(A) *Working standard solution.* Prepare the working standard solution fresh before injection by dissolving approximately 40 miligrams ± 2 milligrams of prednisolone acetate, accurately weighed, into a 100-milliliter volumetric flask with 25 milliliters of methyl alcohol. Sonicate to dissolve and dilute to volume with methyl alcohol and mix well. Transfer 8 milliliters of this solution into a 50-milliliter volumetric flask. Add 25 milliliters of hexane and shake. Add 2.0 milliliters of internal standard as described in paragraph (b)(2)(i)(B) of this section, and dilute to volume with methyl alcohol. Shake vigorously for 30 seconds, allow the phases to separate, then aspirate the upper hexane layer and dilute to volume with methyl alcohol. Centrifuge for 10 minutes at 5,700 revolutions per minute.

(B) *Sample solution.* Accurately weigh 500 milligrams ± 20 milligrams of the sample into a 50-milliliter volumetric flask. Add 25 milliliters of hexane and sonicate. Add 2.0 milliliters of the internal standard. Dilute to volume with methyl alcohol. Shake vigorously for 30 seconds and allow the phase to separate. Aspirate the upper hexane and cloudy layers. Dilute to volume with methyl alcohol. Centrifuge for 10 minutes at 5,700 revolutions per minute.

(iii) *System suitability requirements*—(A) *Tailing factor.* The tailing factor (*T*) is satisfactory if it is not more than 1.50 at 5 percent of peak height.

(B) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory if it is greater than 2,500 theoretical plates.

(C) *Resolution.* The resolution (*R*) between the peak for prednisolone acetate and the internal standard is satisfactory if it is not less than 2.0.

(D) *Coefficient of variation.* The coefficient of variation (S_R in percent) of five replicate injections is satisfactory if it is not more than 2.0 percent. If the system suitability requirements have been met, then proceed as described in § 436.216(b) of this chapter. Alternate chromatographic conditions are acceptable provided comparable system suitability requirements are met. However, the sample preparation described in paragraph (b)(2)(ii)(B) of this section should not be changed.

(iv) *Calculations.* Calculate the percent of prednisolone acetate as follows:

$$\text{Percent of prednisolone acetate (w/w)} = \frac{R_u \times P_s \times d \times \frac{}{100}}{R_s \times W_u}$$

where:

R_u = Area of the prednisolone acetate peak in the chromatogram of the sample (at a retention time equal to that observed for the standard)/Area of internal standard peak;

R_s = Area of the prednisolone acetate peak in the chromatogram of the prednisolone acetate working standard/Area of internal standard peak;

P_s = Prednisolone acetate activity in the prednisolone acetate working standard solution in milligrams per milliliter;

W_u = Weight of sample in milligrams; and

d = Dilution factor of the sample.

(3) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in § 436.20(e)(3).

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *Metal particles.* Proceed as directed in § 436.206 of this chapter.

Dated: January 17, 1990.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-1773 Filed 1-25-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Removal from List of Specially Designated Nationals (Cuba)

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice of Deletions from the List of Specially Designated Nationals of Cuba.

SUMMARY: This notice provides the names of companies which have been removed from the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR Part 515).

EFFECTIVE DATE: January 26, 1990.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376-0400. Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Room 300, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Spanish firm Tabacalera, S.A., Madrid, Spain, and the West German Firm Reemstma, Hamburg, Federal Republic of Germany, were listed in the **Federal Register** as Specially Designated Nationals (Cuba) on November 29, 1989 (54 FR 49258) pursuant to the Cuban Assets Control Regulations (31 CFR part 515). It has been determined that these companies no longer come within the scope of the definition of a "specially designated national" of Cuba as defined in § 515.306 of the Regulations. Therefore, both companies are removed from the list of Specially Designated Nationals.

Specially Designated Nationals of Cuba, Removals

The list of Specially Designated Nationals, December 10, 1986 (51 FR 44459), as amended on November 3, 1988 (53 FR 44397), January 24, 1989 (54 FR 3446), March 7, 1989 (54 FR 9431), April 10, 1989 (54 FR 14215), August 4, 1989 (54 FR 32064), September 20, 1989 (54 FR 38810), October 31, 1989 (54 FR 45730),

and November 29, 1989 (54 FR 49258), is amended by removing the names:

Reemstma (previously listed as Reetsma).
Federal Republic of Germany

Tabacalera Espana (Tabacalera, S.A.) Spain

Date: January 9, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 16, 1990.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 90-1886 Filed 1-24-90; 11:14 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Tampa Regulation 90-1]

Safety Zone Regulations; Waters of Upper Hillsborough Bay and Connecting Channels Along Route of Gasparilla Water Invasion/Parade Route

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for vessels involved in the Gasparilla Pirate Invasion.

The zone is needed to protect several large vessels in parade formation from a safety hazard associated with hundreds of small spectator craft causing congestion in the navigable channels in the Port of Tampa, Florida.

On 10 February 1990 from 10:00 a.m. to 1:00 p.m. in the Hillsborough Cut "C" Channel north of lighted buoy "25" LLNR 1557, Hillsborough Cut "D" Channel, Sparkman Channel, Ybor Channel, Seddon Channel, and the Hillsborough River south of the Cass Street Bridge will be closed to all commercial marine traffic. Spectator craft and recreational vessels shall not anchor and shall stay clear of and giveway to all vessels officially entered in this marine event. Spectator craft and recreational vessels within the parade route must proceed at a slow no wake speed not to exceed 10 miles per hour. One-person waterjet propelled boats are prohibited from the parade route due to their small size and high speed.

On 10 February 1990 from 10 a.m. to 1 p.m. three (3) fixed bridges will be in place over Garrison Channel. In effect the channel is closed to navigation for all but the smallest of boats. Because of this, larger vessels in the parade will not be able to make an eastbound turn off from the intersection of Seddon and Garrison Channels. In order to avoid dangerous congestion in the turning basin at this intersection, vessels whose overall length exceeds 80 feet intending to participate in or accompany the marine parade and who have not made prior mooring arrangements will not be permitted to accompany the invasion parade group North bound past the intersection of Seddon and Sparkman Channels. These vessels must either stop south of Seddon Channel or divert up Sparkman Channel at the intersection with Seddon Channel, toward the eastern section of the Port of Tampa. In addition, on 10 February 1990 from 10:00 a.m. to 1:00 p.m. the Bayshore Marina from East Davis Island Bridge to the eastern portion of the Jose Gaspar Dock across to Hospital Point, Davis Island, is closed to marine traffic. Only those vessels whose operators can show proof that they have made arrangements to moor at City of Tampa docks may enter Bayshore Marina. No other vessels will be permitted to anchor or enter this area between 10 a.m. and 1 p.m.

EFFECTIVE DATES: This regulation becomes effective on 10 February 1990 at 10 a.m. and terminates on 10 February 1990 at 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: The Port Operations Department, Coast Guard Marine Safety Office, Tampa, FL at (813) 228-2189.

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 a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessels involved.

Drafting Information

The drafters of this regulation are LT S. P. METRUCK project officer for the Captain of The Port and LCDR D. G. DICKMAN, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will occur on 10 February 1990 from 10:00 a.m. to 1:00 p.m. The Annual Gasparilla Pirate invasion at Tampa will involve several large vessels in parade formation accompanied by hundreds of small spectator craft resulting in congestion of the navigable channels in the Port of Tampa, Florida.

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

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

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

2. A new § 165.T0701 is added to read as follows:

§ 165.T0701 Safety Zone: Waters of upper Hillsborough Bay and connecting channels along the route of the Gasparilla water invasion/Parade route.

(a) *Location:* The following area is a safety zone: Hillsborough Cut "C" Channel north of lighted Buoy "25" LLNR 1557, Hillsborough Cut "D" Channel, Sparkman channel, Ybor Channel, Seddon Channel, and the Hillsborough River south of the Cass Street Bridge.

(b) *Effective date:* This regulation becomes effective on 10 February 1990 at 10:00 a.m. and terminates on 10 February 1990 at 1:00 p.m.

(c) *Regulations:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is closed to all commercial marine traffic. Spectator craft and recreational vessels shall stay clear and give way to all vessels officially entered in this marine event. Spectator craft and recreational vessels within the parade route must proceed at a slow no wake speed not to exceed 10 miles per hour. One-person waterjet propelled boats are prohibited from the parade route due to their small size and high speed. All other entry into this zone is prohibited unless authorized by the Captain of the Port, Tampa, FL.

Dated: January 9, 1990.

Sincerely,

H. D. Jacoby,

Captain, U.S. Coast Guard, Captain of the Port, Tampa, Florida.

[FR Doc. 90-1748 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Grazing Fees on National Forest System Lands in the Eastern States

RIN 0596-AA55

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture hereby adopts final regulations for determining annual grazing fees on National Forest System lands in the Eastern United States. The rules do not apply to grazing fees on National Forest System lands in Oklahoma or National Grasslands in Texas which are covered under other grazing fee systems. Under the rule, fees for livestock grazing use and occupancy will be based on fair market value, as determined by: (1) Using comparable private grazing lease rates, adjusted for the difference in the costs of grazing comparable private leased lands and National Forest System lands, or (2) through use of prevailing prices in competitive markets for other Federal or State leased grazing lands that are the same as, or substantially similar to National Forest System grazing lands with adjustments as appropriate. Permittees currently under noncompetitive fee systems will have priority for noncompetitive issuance of new term permits. Competitive bidding shall be used where already established, and will be implemented for any permit issued for a new allotment of vacant allotment. Permittees under a competitive bid fee system shall have the right of first refusal of a new term permit by matching the high bid. Grazing fees will be based on a rate per head per month for each of the fee systems used. Grazing fee credits shall be available for agency-required range improvements. Any fee increases would be phased in over a 5-year period. The intended effect of the rule is to establish a uniform fee system for National Forest lands in the Eastern United States.

EFFECTIVE DATE: § 222.53 is effective March 1, 1990. § 222.54 is effective February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Robert M. Williamson, Director of Range Mangement, (703) 235-8139 or Edward R. Frandsen, Range Management Staff, Washington, DC (703) 235-8141.

SUPPLEMENTARY INFORMATION

Background

Fees are charged for the grazing use and occupancy on National Forest System (NFS) lands. Grazing is authorized under term, temporary, or livestock use permits. Different laws and policies guide grazing fees on NFS lands depending upon their geographic location and on whether the lands are National Forest, National Grasslands, or Land Utilization Project (LUP) lands. Statutory direction for all Federal Agency fees is provided in the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701). This Act states that fees shall be fair and based on: (1) Costs to the Government, (2) the value of the service or product provided to the recipient, and (3) public policy or interest served. Federal Executive policy on user charges is set forth in Office of Management and Budget (OMB) Circular A-25, User Charges, which states that:

> * * * user charges will be based on market prices when the Government is supplying services, property, or resources in its capacity as property owner, [and] * * * in the absence of competitive demand, market price will be determined by either competitive bidding, or prevailing prices in competitive markets for property, resources, or services that are similar to those provided by the Government, (e.g. grazing lands in the general vicinity of private ones [lands]), with adjustments as appropriate that reflect demand, level of service, and quality of the good or service.

For the Eastern and Southern Regions of the National Forest System, grazing fees are guided by the foregoing authorities, together with the Organic Act of 1897 (16 U.S.C. 551), the Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. 1010-1012), and the Granger-Thye Act of 1950 (16 U.S.C. 572). These authorities provide for the Secretary of Agriculture to establish rules and regulations to regulate the occupancy and use of NFS lands; charge user fees based on equity criteria, including principles and concepts of fair market value; and to develop and implement grazing fee systems which are self-sustaining to the extent possible. The existing rules governing grazing use and occupancy on NFS lands in the East and South are set forth in 36 CFR part 222, subpart A. Rules governing grazing fees are at 36 CFR part 222, subpart C.

The Eastern and Southern Regions have used different grazing fee systems for permitted livestock grazing under their respective jurisdictions. Review of these fee systems indicated a wide disparity in fees paid for grazing on National Forest System lands in the East. The market approach utilized in the Eastern Region clearly results in higher fees paid to the Treasury for permitted livestock grazing use and occupancy. Tests in the Southern Region have shown that competition for grazing does exist and that fees rise as a result of competition. The fee system in the Southern Region needs to more fully comply with the standards and guidelines of OMB Circular A-25 and the Independent Offices Appropriation Act of 1952 which state that user fees should: (1) Be self sustaining to the extent possible; (2) be based on principles of fair market value; and (3) provide a fair and equitable return to the public. Adoption of a fee system based on open and free market concepts is needed to comply with these criteria. Moreover, there are no strong economic indicators that argue for retaining distinctly different fee systems.

Publication of Proposed Rule

On February 10, 1989, a proposed rule was published in the **Federal Register** (54 FR 6425-6430). Under the proposed rule, a uniform grazing fee system would be implemented for livestock grazing use and occupancy. The proposed system would use two approaches: (1) Fair market value for noncompetitive permits would be determined by using comparable grazing lease rates, adjusted for the differences in the costs of using National Forest and private rangelands, and (2) competitive bidding where already established and implemented for any permit issued for a new allotment or vacant allotment. Under the proposed rule, the base market value of grazing use and occupancy on National Forest System lands, whether established noncompetitively or through competitive bidding will be annually adjusted by a 3-year average hay price index.

In proposing the rule, the Forest Service noted that adoption of market-based grazing fees, including comparable land lease rates and competitive bidding in both regions, would maintain continuity with the use of these fee methods since 1980 in the Eastern region and would be easily implemented through the experience that has already been gained. In addition to identifying the need for a uniform fee system, Forest Service review of fee systems in the Eastern and Southern Regions indicates a significant potential on Eastern National Forests to further vegetation management objectives through livestock grazing as outlined in Forest Land Management Plans. Financing range improvements through grazing fee systems and permittee involvement is as established mechanism on National Grasslands and Land Utilization Project lands. Under the proposed rule, the use of grazing fee credits could be granted for such improvements carried out by a grazing

permittee in accordance with approved vegetation management objectives established by the Forest Service.

Under the proposed rule, the annual grazing fee for both noncompetitive and competitive bid fee methods would be annually derived using the following formula:

Annual Grazing Fee = Base Grazing Value × Hay Price Index less Fee Credits

The noncompetitive grazing fee procedures were proposed to be set forth at 36 CFR 222.53, with procedures applicable to competitive bidding for grazing permits to be set forth at 36 CFR 222.54.

Analysis of Pubic Comments

Sixteen letters were received in response to the request for public comment on the proposed rulemaking. The comment period closed on April 11, 1989. Eight of the letters came from Florida, four from Louisiana, three from Washington, DC, and one from West Virginia. Responses were received from nine grazing permitees in Florida and Louisiana, three Federal agencies, three conservation or environmental organizations, and one university professor.

Of 959 permittees in the two Eastern regions, nine responded and submitted comments on the proposed rule. The nine permitteess generally opposed the proposed rule on the basis of expected fee increases and related economic issues. Comments from the conservation-environmental organizations, other Federal agencies, and academia supported the proposed grazing fee regulation changes on the basis that fair market value is required by law and policy and is fair and equitable to all interested and affected parties. The comments received and the Department's response follows.

Comments on Fair Market Value: Both proposed § 222.53 and § 222.54 would establish grazing fees to ensure that the Federal Government receives fair market value as required by law and policy. Four comments specifically addressed the establishment of a process for setting grazing fees at fair market value. A national conservation organization stated that the fee systems outlined was "long overdue" and would be fair to the taxpayers as well as grazing permittees. A university researcher concurred, but stated that landowners in his area have shown a reluctance to share information on private grazing lease rates which may constrain the determination of fair market value. Two grazing permittees accepted the concept of fair market value as a basis for grazing fees, but asked that the process:

> * * * include a provision for the thorough review of conditions peculiar to each allotment as opposed to the implementation of fees based upon an arbitrary formula deemed to be applicable to all allotments within particular regions.

Response: By law and executive policy, the Agency must charge fair market value. The proposed rule at § 222.53(b)(l), and § 222.54(b) provides for deriving the base grazing value for noncompetitive permits or the minimum bid price for competitive bid permits through use of comparable grazing land lease rate data. Use of comparable grazing land lease rates for properties that are the same or substantially similar to National Forest lands recognizes variation in lease rental markets, provides an acceptable indicator of market value for leased grazing lands, and is in the grazing permittee's best interest in establishing a fair and equitable base grazing value for National Forest System lands.

Recognition of "conditions peculiar to each allotment" as recommended by permittees is accommodated through subtracting the differences in the direct costs of grazing leased private lands and National Forest lands from private lease rates. This approach accounts for the peculiarities and differences in leased private grazing lands and public grazing lands. Also, in the final rule (§ 222.53(b)(1)), Florida has been added as a subregion to further recognize variability.

Comments on Competitive Bidding: Three current grazing permittees addressed the use of competitive bidding, two from Louisiana and one from Florida. These comments opposed competitive bidding because of the fear that bidders outside of the area, who were not familiar with woodland grazing in the South, would submit unrealistically high bids. This was seen as leading to a decrease in the number of permittees and cattle, as has been the case under the current fee system, according to the reviewers. In contrast to these comments, one reviewer noted that the concepts of competitive bidding for setting grazing fees on National Forest are superior to the current formulas being applied. This reviewer noted that competitive bidding would clearly establish the market value of Federal grazing through the open, free market process, and would allow all livestock producers to freely compete for the use of the National Forest lands.

Response: The proposed use of competitive bidding was not clearly understood by those responding to the proposed rule. Existing grazing permittees as specified at § 222.53(a)(1)(2), would have priority for noncompetitive issuance of new term grazing permits; and therefore, these permittee users would not be subjected to competition from nonpermittees. So long as an existing, noncompetitive, permittee does not vacate a grazing permit, he or she would have priority for issuance of new term permits and not be subject to competitive bidding.

As noted in the preamble to the proposed rule, the Department believes that it is not in the public interest to immediately convert all grazing permits to competitive bidding—that to do so could be disruptive to ongoing operations of current permittees. Therefore, under the final rule, competitive bidding would continue to be used on National Forest units in the Eastern Region where it has been in use since the 1980 grazing fee year. Also, it would be implemented in both the Eastern and Southern Regions as new grazing allotments are created and as allotments are vacated or terminated by current permittees. Competitive bidding, in this limited form, will provide producers who do not now have access to National Forest grazing an opportunity to compete for grazing use on NFS lands.

Competitive bidding, as set forth at § 222.54, will only be used where it is already established and will be implemented for any permit issued for a new allotment or vacant allotment. In these instances, existing permittees under competitive bid fee systems would have the right of first refusal of a new term permit by matching the high bid.

Comments on Economics and Social Well Being of Permittees and Grazing

Fees: A number of comments were received in regard to the economic impact of implementing the proposed fee rule. In general, the respondents stated that they should pay a fair market fee, based on local conditions. Six permittee respondents from Florida and one from Louisiana commented that higher costs associated with grazing National Forest lands reduced profits or resulted in operating losses; that grazing fees should not increasse until the cattle prices increase; and that many producers will be forced to sell their cattle and go out of business if grazing fees are raised. One respondent from Florida stated that:

> * * * increasing the cost of grazing on National Forest lands is a clear indication that the Forest Service wants to get out of the leased grazing program.

Other respondents expressed the desire to establish a fee that would be:

* * * adequate to recover the costs to the Forest Service of administering the grazing program below which no bid or value should be accepted.

Response: Fair market value, by definition, includes knowledge of the market, including local conditions, and demand for use of the resource. The price received for the sale of beef cattle directly affects the ability to pay for leased forage as well as the pricing of leased forage. Fair market value, the amount an individual is willing to pay, and the amount a seller or landlord is willing to accept takes into account these market factors. The proposed fee system is based on these fair market value concepts.

The objective is to charge a grazing fee that is fair and equitable to the parties involved: the grazing user, the Federal Government, the general public, and to the other users of National Forest lands.

The proposed grazing fee formula will not put livestock producers out of business as some respondents fear. The proposed fee system has been in use in the Eastern Region since 1980. The level of use did not change appreciably when a fair market value fee system was implemented. The issue of livestock producers' income (fair share, parity or ability to pay), is separate and distinct from the issue of fair market value grazing fees for National Forest System rangelands. The solution to economic problems of agricultural enterprises must be sought in the broad range of Federal economic policy. The Department of Agriculture has a continuing policy of assistance to the agricultural industry as necesary and appropriate within existing authority. Reducing grazing fees or charging below market grazing fees in an attempt to increase income of livestock producers would be an inequitable form of agricultural subsidy because it would be available only to those livestock producers who are also National Forest rangeland users. The relative economic condition of the southeastern sector of the livestock industry should not be used as a factor to determine National Forest grazing fees on Eastern National Forests for a limited part of the eastern livestock industry.

With regard to the suggestion that the costs of livestock production should be included in a grazing fee, these costs are accounted for through the proposed grazing fee formula. Under the rule, fees for livestock grazing use and occupancy would be based on fair market value, as determined by: (1) Using private grazing lease rates, adjusted for the difference in the costs of grazing comparable private leased lands and National Forest System lands, or (2) by reference to prevailing prices in competitive markets for other Federal or State leased grazing lands that are the same or substantially similar to National Forest System grazing lands with adjustments as appropriate.

Comments on Grazing Fee Formula: Five permittee comments addressed the proposed fee formula. The respondents stated that the proposed formula did not take into consideration local conditions that are costly to permittees. Public recreation, hunting, droughts, flooding, four-wheel drive vehicle use, littering, low-quality forage, poor soil fertility, supplemental feed requirements, vandalism, death loss, and the "eternal problem of trying to keep the gates closed and cattle off the highways" were local conditions of concern to the respondents. One respondent proposed that the beneficial effects of livestock grazing, such as controlling weeds and brush "to the benefit of fishermen, hikers, hunters and campers," should be considered in establishing individual grazing fees. One respondent addressed the concern that the proposed plan for grazing fees is difficult to evaluate because of the use of complicated formulas, unknown factors and coverage of too broad an area with different range [forage] values and conditions. The use of the hay price index was source of concern for two of the respondents.

These respondents were concerned that tying grazing fees to hay prices articicially inflated the price of grazing land.

Response: Grazing permittees on public rangelands are in competition with other users of Natioal Forest System lands. These include public recreation, hunting, and four-wheel drive vehicle use. This can result in vandalism, people leaving gates open, and death loss creating additional cost to permittee. Compensation for this added cost is reflected in the fee formula used in deriving the base value. The fair market value of public land grazing includes the difference in the total costs (fee and nonfee) of using leased private lands and the nonfee costs of using public lands. A prospective renter takes into consideration the additional costs resulting from impacts of vandalism, death loss, etc. in determining the value of the leased forgage. The grazing fee formula is based on the economic principle of supply and demand. If a competitive market exists for grazing forage, total user costs for comparable public land and private leased forage will be equal after adjusting for the differences in the cost of using public versus private leased grazing land.

Therefore, as specified at § 222.53 (c) and § 222.54 (b), comparable grazing land lease rates would be used in establishing base grazing values for noncompetitive permits and minimum bid prices for competitive permits.

With regard to the concern over the use of grazing fee formulas, complicated factors, and broad areas that are hard to understand, the selected fee system is a cost effective process which has been successfully used since 1980 in the Eastern Region. Since it would be cost prohibitive to reestablish a new base grazing value each year, it is cost effective to use a grazing fee formula that annually charges a fair market value for National Forest grazing. To keep this fair market value or base value current with the market for leased forage an annual indexing process is required. Factors are readily available, and designed to keep pace with the competitive market for leased grazing lands.

Concerning the use of hay prices, the current fee system in the Eastern Region has successfully used a hay price index to keep the fee system current. Three-year average hay prices are currently used to annually adjust base grazing values. Their use has been cost effective and the indexes have proven to be a reliable basis for adjusting base private grazing land lease rate values annually. To maintain currency with the grazing lease market, the base grazing value established under both the noncompetitive and competitive fee systems needs to be annually updated. Therefore, to be cost effective, an index using 3-year average hay prices will be used to adjust each year the base grazing values established for both the noncompetitive and competitive fee systems. The hay price index measures the relative change in the cost of alternative livestock feed, and takes into account the annual changes or fluctuations in the agricultural economy.

Comments on Fair and Equitable Fee System: Comments from Florida and Louisiana grazing permittees, and the Florida Farm Bureau Federation stated that they believe "the present grazing fee for the South ($0.62–$0.87/Animal Month) is fair and equitable." The Louisiana Wildlife Federation, Inc., commented in favor of the proposed fee system.

Response: We disagree that the current grazing fee is fair and equitable to all affected and interested parties. The record clearly shows that below market grazing fees have been charged in the Southern Region and that a

competitive demand exists for use of these lands for livestock grazing. Further, statutory direction for all Federal Agency fees (Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701)), states that fees shall be fair and based on: (1) Costs to the Government, (2) the value of the service or product to the recipient, and (3) public policy or interest served. Federal Executive policy on user charges (Office of Management and Budget (OMB) Circular A-25, User Charges) further states that:

> * * * user charges will be based on market prices when the Government is supplying services, property, or resources in its capacity as property owner, [and] * * * in the absence of competitive demand, market price will be determined by either competitive bidding, or prevailing prices in competitive markets for property, resources, or services that are similar to those provided by the Government, (e.g. grazing lands in the general vicinity of private ones [lands]), with adjustments as appropriate that reflect demand, level of service, and quality of the good or service.

In developing the rulemaking and selected grazing fee system, the Forest Service considered several alternative fee systems, including retention of the current, below-market fee system in the Southern Region. In evaluating these alternatives, the agency applied equity criteria to determine whether alternative fee systems provided fair treatment to the current grazing user, interested groups, and individuals; whether the general public as a landowner was receiving a return on property of value; whether the system was fair to the current grazing user considering the value of the grazing use; and whether the system was fair to livestock growers who do not have the opportunity to graze the National Forest lands. In addition to complying with law and policy, the proposed grazing fee system, for both noncompetitive and competitive grazing permits, meets these equity criteria, and is considered fair and equitable to all interested and affected parties. Therefore, the system is being adopted without change in the final rule.

Comments on Miscellaneous Benefits: Grazing permittee respondents expressed concern that fee increases that might occur would significantly diminish the extent of the grazing program and the important role it plays in multiple-use on the National Forests in Florida. They emphasized that grazing produces beef, a needed commodity, and also benefits other resources.

Response: We agree that livestock grazing is a valid, multiple-use of National Forest System lands. Livestock grazing use and occupancy is an authorized use of National Forest System lands. We do not agree that the proposed fair market value fee system will eliminate livestock grazing on National Forest System lands. Since 1980, the proposed grazing fee system has been in use in the Northeastern Region, with limited use in the Southern Region (Jefferson National Forest-Virginia, and Oconee National Forest-Georgia). This use has been successful, and the Forest Service concludes that a competitive demand exists for permitted livestock grazing on National Forest System lands.

The rule deals with the rate or fee to be charged for permitted livestock grazing, not the question of permitted use. Agency required range improvements may be beneficial to the grazing of livestock as well as other multiple-resources. For this reason, under the fee rule, costs of range improvements could be accommodated through credits against the annual grazing fee and provide some mitigation to any increase in grazing fee costs. Where wildlife, recreation, watershed, or other resources are benefiting from livestock grazing, funding for improvements is offset by contributions from the benefiting function.

Comments on Fee Credits: Although allowance of fee credits for installation of Forest Service required improvements was a significant feature of the proposed rule, no comments were received from the livestock industry. The U.S. Environmental Protection Agency (EPA) offered the only comments. The EPA recommended that fee credits be applied to a wide range of activities that restore, maintain or improve watershed and riparian/wetland values affected by grazing. They stated that these activities would assist the Forest Service in achieving consistency in compliance with State and Federal regulations regarding water quality and related values. They further reasoned that these activities:

> * * * could benefit a broad cross-section of the public and assist the Forest Service in achieving water quality, fishery and wildlife, recreation and soil productivity in the eastern forests.

Response: Under the fee credit provision of the rule, activities that restore, maintain or improve watershed and riparian values would occur, as recommended by EPA. As part of the permitted grazing use, the Forest Service could require a permittee to develop or construct range improvements which benefit water quality, fishery and wildlife, soil productivity and other resource values. Accordingly, the annual grazing fee could be adjusted for the cost of Agency required range improvements. In determining the grazing fee to be charged, the authorized officer could, where appropriate, enter into a partnership agreement to credit the permittee for expenditures for specified range improvements if required as part of the grazing permit. In response to EPA's comments, the rules at § 222.53(c)(3)(ii) and § 222.54(g)(2) have been revised to specify more clearly that fee credits may only be allowed for needed capital improvements on National Forest System rangelands, in the East, which provide tangible, multiple resource benefits. Such improvements may include, but are not limited to, fences, water developments, seeding, liming, or other range improvements which the Forest Service requires of an individual grazing permittee to enhance management of the vegetation for resource protection on a specific grazing allotment.

Comments on Rangeland Management: Two comments were received concerning the rangeland program management. Both recommended that the criteria used to determine tangible public benefit be flexible enough to consider the full spectrum of public interest, including both consumptive (e.g. fishing, water supply) and non-consumptive uses (e.g. wildlife habitat, swimming). One comment stated that if:

> * * * grazing fees are changed, they should be adequate to make the Forest Service rangeland program self-sustaining; that the [range] program should be managed so that the resource is not depleted, and that other uses of the forest such as wildlife and recreation and values such as aesthetics and air and water quality, are not adversely affected.

Response: We agree with the respondents. An intent of the rule, in accordance with Executive policy (Office of Management and Budget Circular A-25), is to make Eastern National Forest grazing fees self-sufficient.

Some comments were outside the scope of the grazing fee issue. These comments will be addressed through an informational program to better inform internal and external audiences, including existing permittees, of the Forest Service rangeland management program on Eastern National Forest lands. Implementation of the change in the noncompetitive grazing fee system for National Forests in the East will begin with the 1990 grazing fee year, on March 1, 1990. The competitive bid fee system will be effective 30 days from date of publication of these final rules.

Therefore, having fully considered the comments received, the Department is adopting a new grazing fee system applicable to National Forest System lands in the Eastern United States which is identical to the proposed rule except for the change noted.

In addition to revising § 222.53 to add Florida as a subregion for establishing a base grazing value, the agency has made minor changes to the rule. First, the paragraphs and headings in 222.53 have been revised and redesignated for clarity. Second, paragraph (b)(2) of proposed § 222.53 has been redesignated as paragraph (c)(iii) and the text revised to make clear that only the Chief or an authorized officer to whom the Chief has delegated authority may establish the base grazing value using comparable, local lease rates for private grazing lands. Third, paragraphs (c)(3)(ii) of proposed § 222.53, and (g)(2) of proposed § 222.54 have been changed to reflect that the fee credit provision of the rule will apply only where the Forest Service requires an individual permittee to develop or construct capital improvements which involve costs which the permittee would not ordinarily incur. Fee increases will be phased in over a 5-year period.

Regulatory Impact

Under USDA procedures and Executive Order 12291, this action has been determined not to be a major rule. Thus, little or no effect on the National economy will result from this regulation. The Department of Agriculture has further determined that this rulemaking will not have an adverse impact on a substantial number of small entities under the Regulatory Flexibility Act, (5 U.S.C. 601 et seq). The provisions of this rulemaking are applicable to all persons or entities who seek or possess a grazing permit on National Forest or Land Utilization Project (LUP) lands in the Eastern States, without regard to the size of the operation. The procedures that would apply may have some initial economic impact on a few small livestock producers, who have permitted livestock grazing on National Forest lands in the Southern States, but they are not believed to be burdensome nor beyond their capability to adapt. This conclusion is based on both economic analysis and the fact that out of 959 current permittees covered by these rules, only nine permittees responded. Accordingly, there is no need to establish different procedures for small livestock producers or livestock entities.

It has been determined that establishing a formula to calculate a Forest Service grazing fee is not a major Federal action that would significantly affect the quality of the human environment. This rulemaking will have no significant impact on the human environment, individually or cumulatively. This determination is based on the following factors:

1. Physical and biological impacts of establishing a grazing fee formula are minor because:

a. The grazing fee or pricing of permitted livestock grazing does not determine the level or quantity of permitted livestock grazing use. Rather, the Forest Service determines and establishes permitted use and livestock stocking levels through range analysis and planning processes, which comply with the analysis requirements of the National Environmental Policy Act (NEPA);

b. The Forest Service controls the effects of permitted grazing use through its grazing permits;

c. Actual grazing use is normally less than permitted use and is correlated with broader economic conditions rather than with grazing fee levels;

d. Grazing fee levels have no known, measurable, or predictable effect on the physical and biological environment.

2. Social and economic effects would occur proportional to any possible increase in the grazing fee. However, "economic or social effects by themselves are not intended to require preparation of an environmental impact statement." (40 CFR 1508.14).

Information Collection Requirements

This rulemaking would not establish any additional information collection requirements as defined in 44 U.S.C. Ch. 35, and 5 CFR part 1320.

List of Subjects in 36 CFR Part 222

Grazing lands, livestock, National Forests, Range management, Wildlife.

Therefore, for the reasons set forth above, title 36 of the Code of Federal Regulations, part 222, subpart C—Grazing Fees, is amended as follows:

PART 222—[AMENDED]

1. The authority citation for part 222—Range Management is revised to read as follows:

Authority: 7 U.S.C. 1010–1012; 16 U.S.C. 551; 16 U.S.C. 572; 31 U.S.C. 9701; 43 U.S.C. 1901; E.O. 12548, 51 FR 1986 Comp., p. 188.

Subpart C—[Amended]

2. Revise § 222.53, and add a new § 222.54 to read as follows:

§ 222.53 Grazing fees in the East—noncompetitive procedures.

(a) *Scope.* Except as provided in § 222.54 of this subpart, the fee charged for commercial livestock grazing use and occupancy on National Forest System (NFS) lands in the States of New York, Missouri, Vermont, West Virginia, and in the Southern Region shall be determined through noncompetitive, fair market value procedures. These rules do not apply to grazing fees on National Forest System lands in Oklahoma or National Grasslands in Texas. Grazing permits under the noncompetitive fee method in the East are subject to the rules governing grazing permit administration in Subpart A of this part.

(b) *Applicability.* The rules of this section apply to the establishment of grazing fees for existing permittees in the Eastern and Southern Regions on National Forest System lands, including grazing associations in New York and Missouri as of March 1, 1990, to any livestock on-and-off permits defined in Subpart A of this part; and to any allotments advertised for competitive bidding which were not bid on (§ 222.54(h)). Noncompetitive permits vacated or terminated by an existing permittee and any new allotments created after the effective date of this rule shall be offered on a competitive bid basis as specified in § 222.54 of this subpart. As provided in Subpart A of this part, holders of term permits have first priority for receipt of a new permit.

(c) *Fee System.* The grazing fee charged under this section shall be based on fair market value, as determined by: Using comparable private grazing lease rates, adjusted for the difference in the costs of grazing comparable private leased lands and National Forest System lands, or by reference to prevailing prices in competitive markets for other Federal or State leased grazing lands that are the same or substantially similar to grazing lands offered or administered by the Forest Service in the East with comparability adjustments as appropriate. Comparable grazing lease rates shall be adjusted for the difference between the total costs of operating on leased grazing lands and the total costs (other than grazing fee costs) of operating on National Forest System lands.

(1) *Establishing Base Grazing Value.* (i) The Chief of the Forest Service, or an authorized officer to whom such authority has been delegated, shall determine an estimated base market value of grazing use and occupancy on National Forest System lands in the Eastern States for the following designated subregions:

(A) Corn Belt (Illinois, Indiana, Missouri, and Ohio);

(B) Lake States (Michigan, Minnesota, and Wisconsin);

(C) Northeast (Maine, New Hampshire, New York, Pennsylvania, and Vermont);

(D) Appalachia (Kentucky, North Carolina, Tennessee, Virginia, and West Virginia);

(E) Southeast/Delta (Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, and Texas); and

(F) Florida.

(ii) The Chief or authorized officer shall revise or update estimated market values of grazing use and occupancy, as necessary to respond to significant changes in the agricultural economy in the East, and to ensure that fees represent fair market value.

(iii) The Chief, or an authorized officer to whom authority has been delegated, where sufficient market data exist, may establish the base grazing value for grazing allotments using comparable, local lease rates for private grazing lands.

(2) *Annual Adjustment of Base Grazing Value.* To maintain currency with the private grazing lease market, the respective base grazing value(s) established for grazing permits under this section shall be annually adjusted through a hay price index, by respective subregion. The hay price index means the weighted average selling price of "other baled hay," computed by the National Agricultural Statistics Service of the U.S. Department of Agriculture, by designated State and subregion. This index shall be based on 3-year average hay prices and annually reflect the percentage change in the cost of alternative livestock feed.

(3) *Computation of Annual Grazing Fee.*—(i) *Annual Fee Basis.* The annual grazing fee shall equal the base grazing value, adjusted by the current period's hay price index, less the value of any agency required range improvements.

(ii) *Grazing Fee Credits for Range Improvements.* Any requirements for permittee construction or development of range improvements shall be identified through an agreement and incorporated into the grazing permit, with credits for such improvements to be allowed toward the annual grazing fee. Fee credits shall be allowed only for range improvements which the Forest Service requires an individual permittee to construct or develop on a specific allotment to meet the management direction and prescriptions in the relevant forest land and resource management plan and allotment management plan. These improvements must involve costs which the permittee would not ordinarily incur under the grazing permit, must be of tangible public benefit, and must enhance management of vegetation for resource protection, soil productivity, riparian, watershed, and wetland values, wildlife and fishery habitat, or outdoor recreation values. Maintenance of range improvements specified in allotment management planning documents or the grazing permit, and other costs incurred by the permittee in the ordinary course of permitted livestock grazing, do not qualify for grazing fee credits.

(4) *Implementation.* The grazing fee formula provided by this section shall be used to calculate fees for the 1990 grazing fee year. Where implementation would raise fees, the increase shall be phased in over a 5-year period. Full fair market value will be reached in 5 years, beginning in 1990.

§ 222.54 Grazing fees in the East—competitive bidding.

(a) *General Procedures.*—(1) *Applicability.* The rules of this section apply to grazing fees for any allotment established or vacated on National Forest System lands in the Eastern or Southern Regions, as of February 26, 1990 as well as to grazing fees for existing allotments for such lands that have already been established under competitive procedures as of the date of this rule. Permits offered for competitive bidding in the East are subject to the rules governing grazing permit administration in Subpart A of this part. The rules of this section do not apply to negotiated livestock use permits or permits with on-and-off grazing provisions as authorized in Subpart A of this part. Holders of term permits have first priority for receipt of a new term grazing permit in accordance with Subpart A of this part. These rules also do not apply to grazing fees on National Forest System lands in Oklahoma or National Grasslands in Texas.

(2) *Allowable Bidders.* Bids for grazing permits shall be accepted from individuals, partnerships, grazing associations (formed after February 26, 1990), joint ventures, corporations, and organizations.

(b) *Establishment of Minimum Bid Price.* Authorized officers shall establish a minimum bid price for each available allotment as described in § 222.53 of this subpart.

(c) *Prospectus.* (1) At such time as allotments are vacated, as new allotments are established, or as existing competitively bid permits expire, the authorized officer shall prepare and advertise a prospectus for those allotments on which grazing will be permitted.

(2) The prospectus shall include the terms and conditions of occupancy and use under the grazing permit to be issued, as well as document existing improvements and their condition. The prospectus shall also disclose the following:

(i) Estimated market value of the forage per head month of grazing use;

(ii) The minimum bid price the agency will accept;

(iii) Any required range improvements; and

(iv) The minimum qualifications that applicants must meet to be eligible for a permit.

(3) Copies of the applicable grazing permit, allotment management planning documents and allotment maintenance requirements, and the latest annual permittee instructions shall be made available to all prospective bidders upon request.

(d) *Submission of bid.* Each applicant shall submit an application for the grazing permit, along with a sealed bid for the grazing fee, and a bid deposit of 10 percent of the total amount of the bid.

(e) *Qualifications and Deposit Refunds.* Upon opening applicants bids, the authorized officer shall determine whether each bidder meets the qualifications to hold a permit as set forth in Subpart A of this part; and shall refund the deposit to any applicant who is not qualified or who does not offer the high bid.

(f) *Permit Issuance.* The authorized officer shall issue the grazing permit to the qualified high bidder, except as provided in paragraphs (f)(1) and (2) of this section. The successful bidder receives the privilege of obtaining or renewing a grazing permit and is billed for the occupancy offered and forage sold.

(1) *Priority for Reissuance.* On allotments where a current permit is expiring and competition has been held on a new grazing permit, the current grazing permittee shall have priority for retaining the permit. Accordingly, an applicant who holds the permit on the allotment under bid, who has a satisfactory record of performance under that permit, and who is not the higher bidder for the future grazing privileges in the specified allotment shall be offered the opportunity to match the high bid and thereby retain the permit. Should there be more than one existing permittee in the allotment under bid, each shall be offered the option of meeting the high bid; if only one current permittee opts to meet the high bid, the remaining allowable grazing use, if any, shall be awarded to the initial high bidder.

(2) *Identical Bids.* In cases of identical bids, the selection of the successful applicant shall be made through a drawing.

(g) *Computation of Successful Bidder's Annual Fee.*—(1) *Annual Fee Basis.* The highest bid received shall establish the base grazing value in the initial year of the grazing permit for each allotment offered. The annual grazing fee shall equal the base grazing value, adjusted by the current period's hay price index for the relevant subregion as described in § 222.53(c)(1), and (c)(3), less the value of any agency required range improvements. This hay price index shall be based on 3-year average hay prices and annually reflect the percent change in the cost of alternative livestock feed.

(2) *Grazing Fee Credits for Range Improvements.* Any requirements for permittee construction or development of range improvements shall be identified through an agreement and incorporated into the grazing permit, with credits for such improvements to be allowed toward the annual grazing fee. Fee credits shall be allowed only for range improvements which the Forest Service requires an individual permittee to construct or develop on a specific allotment to meet the management direction and prescriptions in the relevant forest land and resource management plan and allotment management plan. These improvements must involve costs which the permittee would not ordinarily incur under the grazing permit, must be of tangible public benefit, and must enhance management of vegetation for resource protection, soil productivity, riparian, watershed, and wetland values, wildlife and fishery habitat, or outdoor recreation values. Maintenance of range improvements specified in allotment management planning documents or the grazing permit, and other costs incurred by the permittee in the ordinary course of permitted livestock grazing, do not qualify for grazing fee credits.

(h) *No Bids Received.* If qualified sealed bids are not received, the authorized officer reserves the right to conduct an oral auction using the minimum bid price established under paragraph (b) of this section or to establish grazing fees through noncompetitive grazing fee procedures specified in § 222.53 of this subpart.

Dated: January 20, 1990.

Clayton Yeutter,

Secretary.

[FR Doc. 90-1667 Filed 1-25-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Health Service

42 CFR Parts 100, 405, 413 and 447

Removal of Obsolete Regulations on Limitation on Federal Participation for Capital Expenditures Under Section 1122 of the Social Security Act

AGENCY: Health Care Financing Administration, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule removes obsolete regulations governing the section 1122 capital expenditures review program. With the repeal of the comprehensive health planning authority, Title XV of the Public Health Service (PHS) Act, no funds were appropriated to support State capital expenditure review activities, or to administer the program.

EFFECTIVE DATE: Because this action simply removes obsolete regulations, we have determined that notice of proposed rulemaking and public comment thereon are unnecessary and not in the public interest. Accordingly, the rescission is effective January 26, 1990.

ADDRESS: Bureau of Maternal and Child Health, and Resources Development, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Emily Haley (301) 443-5400.

SUPPLEMENTARY INFORMATION:

Background

The section 1122 program was an early cost containment measure established under section 1122 of the Social Security Amendment of 1972 (Pub. L. 92-603). The intent of the legislation was to deter unwarranted capital expenditures by health care facilities and to support health planning activities in various States by requiring review and approval of proposed capital expenditures based upon plans, standards, and criteria developed by State and local health planning agencies. Section 1122 of the Social Security Act created a voluntary capital expenditure review program in which States were able to participate by entering into an agreement with the Secretary under section 1122(b). Under the section 1122 agreements, when a capital expenditure project was disapproved by a State, the Health Care Financing Administration (HCFA) withheld the capital portion of Medicare and Medicaid reimbursements for services furnished by the facility.

The repeal of the Title XV health planning authority effectively removed the funding mechanism for the section 1122 programs. Regulations governing health planning activities (42 CFR parts 121, 122 and 123) were removed by a notice published in the **Federal Register** on March 30, 1987 (52 FR 10094). On March 31, 1988 the Department of Health and Human Services published a notice in the **Federal Register** to announce that, as of October 1, 1987, it had terminated agreements between the Secretary and participating States to carry out provisions of section 1122 of the Social Security Act (53 FR 10431). The notice also announced that HCFA would discontinue withholding Medicare and Medicaid reimbursements with regard to past disapprovals.

List of Subjects

42 CFR Part 100

Health care, Health facilities.

42 CFR Part 405

Appeal procedures.

42 CFR Part 413

Appeal procedures, Health facilities.

42 CFR Part 447

Appeal procedures, Medicare, Medicaid.

For the reasons set out in the preamble, title 42 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 405, subpart R, continues to read as follows:

Authority: Secs. 205, 1102, 1814(b), 1815(a), 1833, 1861(v), 1871, 1872, 1878, and 1886 of the Social Security Act, (42 U.S.C. 405, 1302, 1395f(b), 1395g(a), 1395l, 1395x(v), 1395hh, 1395ii, 1395oo, and 1395ww).

2. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a-1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

3. The authority citation for part 447 continues to read as follows:

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

PART 100—[REMOVED]

4. Part 100 is removed.

PART 405—[AMENDED]

§ 405.1890 [Removed]

5. Section 405.1890 is removed.

PART 413—[AMENDED]

§ 413.161 [Removed]

6. Section 413.161 is removed.

PART 447—[AMENDED]

§ 447.35 [Removed]

7. Section 447.35 is removed.

Dated: November 9, 1989.

James O. Mason,

Assistant Secretary for Health.

Dated: October 27, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: January 10, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-1716 Filed 1-25-90; 8:45 am]

BILLING CODE 4160-15

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RIN 1004-AB45

[AA-660-00-4120-02; Circular No. 2621]

43 CFR Part 3470

Fees, Rentals, and Royalties

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends subpart 3473 of the Code of Federal Regulations to require that the underground royalty for all new and readjusted underground Federal coal leases be set at a flat rate of 8 percent of the value of the coal removed from the lease. In adopting this change, the rule removes the provision that allowed the authorized officer to determine a rate less than 8 percent, but not less than 5 percent, "if conditions warrant". This rule will be applied to new lease issuances and all existing Federal underground coal leases at the time of their next scheduled readjustment. This revision of the current regulations provides for a single consistent underground coal royalty rate, and recognizes that relief provided for under section 39 of the Mineral Leasing Act is the appropriate remedy for certain adverse lease-specific economic and other conditions affecting recovery of Federal coal reserves.

EFFECTIVE DATE: February 26, 1990.

ADDRESS: Suggestions or inquiries may be directed to Director (660), Bureau of Land Management (660), 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paul Politzer, (202) 343-7722, or Phillip C. Perlewitz, (202) 343-7722.

SUPPLEMENTARY INFORMATION: On July 29, 1988 (53 FR 28822), a proposed rule was published that would have replaced regulations at 43 CFR 3473.3-2(a)(1), which provide that for underground coal mining operations, "Royalty rates shall be determined on an individual case basis * * *." The proposed rule would also have modified 43 CFR 3473.3-2(a)(3), which states: "A lease shall require payment of a royalty not less than 8 percent of the value of coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant."

The proposal to adopt changes in the regulations for determining royalty rates on underground Federal coal leases evolved from a ruling by the United States Court of Appeals for the 10th Circuit (*Coastal States Energy Co.* v. *Hodel*, 816 F.2d 502 (1987)). This ruling held that while use by the Department of the Interior of an 8 percent royalty rate for underground coal leases at the time of lease readjustment was reasonable, the Department was also required to follow its own regulations by considering conditions which might warrant a royalty rate between 5 and 8 percent. The Court remanded the case back to the Department and stated:

> * * * it is error for the Bureau of Land Management to automatically fix the readjusted rate for all underground coal at 8 percent. Such completely ignores the ensuing provision [43 CFR 3473.3-2(a)(3)] that a lesser amount, but not less than 5 percent, may be set, "if conditions warrant."

In response to this ruling, the Assistant Secretary for Land and Minerals Management requested that the BLM study the various factors that should be considered in assessing the proper underground royalty rate for coal. Based on these studies, BLM prepared the proposed rule (53 FR 28822). The preamble of the proposed rule contained Chapter VII, Findings and Observations, from BLM's "Review of Issues for Setting Royalty Rates on Underground Federal Coal Leases", drafted in June 1988. This chapter suggested that the current market situation for underground coal in the Western States may not be as attractive, from the point of view of new investment, as it once was; that no long term contracts have been negotiated since 1982; and that spot-market prices for coal in the Western States have been falling since the early 1980's. The Findings and Observations listed possible negative effects of an 8 percent royalty on profitability of ongoing operations and raised issues that should be considered in establishing a regulatory policy to adopt a flat royalty rate at the time of lease issuance or readjustment, as opposed to the flexibility of the current regulations in allowing a rate between 5 and 8 percent "if conditions warrant" a royalty less than 8 percent.

The proposed rule noted the expense involved in conducting an individual case analysis of the lease royalty rate at the time of lease adjustment for underground coal leases. As of November 30, 1989, there were 312 Federal underground coal leases. Of these, 276 already have lease terms specifying a minimum royalty of 8 percent, because they were either issued, readjusted, or modified since 1976. Of these 276, 54 are producing. There are 36 Federal underground coal leases that are not yet due for readjustment (4 producing). Therefore, there are a minimum of 4 (producing only) to a maximum of 36 leases requiring analysis under the "if conditions warrant" provision of 43 CFR 3473.3-2(a)(3). Based on an estimate of about $30,000 to $50,000 per workyear per lease to conduct an individual analysis to determine "if conditions warrant" a rate other than 8 percent, the BLM estimated the administrative cost savings of changing the rule to establish a flat rate to be within a range from $120,000 to $1,800,000.

The BLM received a total of 72 comments on this proposed rule during the public comment period. These included 3 from western State Governors, 6 from U.S. Senators and Representatives, 15 from coal companies, 4 from electric utility companies, 24 from industrial customers of electric utilities companies in Utah and Colorado that use Federal coal to generate all or part of their electricity, 6 from industry associations and coalitions, 4 from environmental organizations, 3 from individuals, and one each from an Indian tribe, county government, chamber of commerce, private mineral lessor, regional council, union, and a representative of holders of an overriding royalty interest in Federal underground coal.

All except 2 of the comments supported a flat royalty rate of either 8 percent or of 5 percent, with a majority in favor of 5 percent. Of these two comments, one suggested a rate of 5 percent unless analysis supported a rate of 8 percent, and the other had no opinion on the choice of a royalty rate. A somewhat small majority expressly favored removal of the flexibility to select a royalty rate from within a range specified in the regulations.

All but 2 coal industry comments explicitly favored setting the royalty rate at 5 percent, as did all electric utilities, all industry associations, all

customers of electric utilities; the governors of Utah and Colorado, various members of the Congressional delegations of Utah, Colorado, Nevada, and Idaho, and a union, regional council, county government, and chamber of commerce. The 4 environmental organizations, the Governor of Wyoming, four members of the U.S. Senate Energy and Natural Resources Committee, a private mineral lessor, the Navajo Nation, counsel representing holders of a royalty interest in Federal underground coal, and the 3 individuals favored adopting a flat rate of 8 percent.

In general, those who support a 5 percent royalty based their rationale on a gradual deterioration in the underground coal mining industry in recent years, as evidenced by the loss of jobs in both Utah and Colorado. Governors and U.S. Representatives from those States appeared willing to accept a decline in royalty revenues over the near term in hope of fostering a stronger underground coal mining economy, preventing closure of additional mines, and keeping job losses to a minimum. Coal industry correspondents also stated that competitive pressures from lower-cost surface coal in the Powder River Basin and from other energy sources, both domestic and foreign, could be relieved somewhat if the Federal royalty rate were reduced. Electric utility company respondents felt the 8 percent rate was unfair to ratepayers because the production royalty costs were merely passed through to them, and at the same time hurt the efforts of the companies to market surplus power through the national grid system.

Comments supporting a flat rate of 8 percent cited the gain in coal production in Utah in the 1980's under the existing regulations, and argued that setting the royalty rate at a lower level would have little practical effect on coal production but would instead unfairly increase the economic return enjoyed by already profitable operators in that State. They preferred case-by-case royalty rate reduction for mines that are not profitable, using the Secretary's authority to grant temporary reduction of the royalty rate under section 39 of the Mineral Leasing Act (MLA). Specific comments are addressed in the following discussion.

Meaning of 10th Circuit Court decision

One comment noted that the decision of the 10th Circuit Court of Appeals did not imply or state that a national review of the Federal underground royalty policy was required or needed, and alleged that political motives were behind the proposed rule. According to several other comments, the circuit court decision merely remanded the leases in question for a determination "if conditions warrant" a lower royalty rate. Furthermore, according to the comment, the BLM had already addressed the "if conditions warrant" test in an internal 1987 instruction memorandum. One comment urged a determination of whether the procedural guidance in this memorandum had already satisfied the 10th Circuit's remand before continuing with the rule. Another comment questioned the need for considering a change in the regulations, since the court had found 8 percent to be reasonable and the proposed rule, in the view of the correspondent, presented no meaningful evidence to the contrary. The comment noted that the last time the BLM requested public comment on whether the rate was appropriate, it received no significant response.

Response: The ruling of the Tenth Circuit Court is interpreted under the existing regulations to require individual royalty rate analyses for all underground coal leases not yet readjusted or leases currently undergoing administrative or judicial review. The 1987 instruction memorandum cited in the comment was an interim measure. The Department decided that amending its regulations to be able to apply a single royalty rate for underground Federal coal leases had merit because such a step would avoid the administrative burden and costs to the Bureau of conducting individual lease-by-lease analyses. However, it was less clear what this rate should be. While it is true, as a comment noted, that no significant response was received on the choice of an underground coal lease royalty rate the last time comments were requested, that request was made in the 1979 rule establishing the Federal coal management program. Competitiveness within the coal mining industry has grown significantly since 1979. Because of concerns expressed by outside parties with the readjustment of leases to an 8 percent royalty rate—in the form of written correspondence as well as protests and appeals of Department efforts to readjust leases—the Assistant Secretary for Land and Minerals Management requested that BLM study underground coal markets and economics as they may have evolved since the regulation governing royalty rates was adopted in 1979. Based on all these factors, the Department determined it to be appropriate to request public comment in a proposed rule on the need for, and choice of, a single royalty rate for all underground Federal coal leases.

Selection of a royalty rate

Those favoring an 8 percent royalty rate cited as factors supporting their recommendation the overall pattern in coal production from underground mines in the Western States, the general health of the industry, and the failure of the industry to prove the need for a change from the *status quo*. One comment questioned why the Department would even consider "subsidizing" a slumping coal mining industry by lowering the royalty rate. The comment stated that such an action would occur at the expense of public treasuries desperately in need of funds. Another comment stated that the proposed rule is an attempt to undermine the intent of Congress because there is no detailed economic justification for changing the current procedure of issuing underground coal leases at, and readjusting leases to, 8 percent, particularly since, according to the comment, most underground mines are now operating profitably. Furthermore, the comment continued, the June 1979 Secretarial Issued Document establishing a Federal coal management program squarely placed the burden of justifying reduced royalty rates on lessees, not on the Department. The same comment questioned how the June 1988 BLM draft study could acknowledge that "Congressional and administrative processes utilized in establishing the 8 percent underground royalty rate in 1979 were appropriate" while attempting to change this Congressional intent on a bureau level. The comment stated that the proposed rule would insert a degree of unpredictability into a coal program dependent on a stable statutory, regulatory, and contractual framework, and therefore would act to unsettle one of the major goals of the Federal coal management program.

Several comments supporting a flat rate of 8 percent argued that setting the royalty rate at 5 percent would not assist the coal industry, which has weathered difficult economic conditions since 1980. A private mineral lessor observed that these difficulties had nothing to do with Federal royalty rates. Another comment argued that a large drop in employment in the underground coal mining industry in Colorado and Utah is the result of economic factors and productivity gains, not declining production due to an "oppressive" Federal royalty structure. Several others observed that even an elimination of the Federal royalty rate for underground

coal could not neutralize the cost advantage enjoyed by less expensive surface-mined coal from the Powder River Basin, because, among other factors, in most cases the mines in each region serve different markets. Another comment, noting the growth in underground coal production in Utah in the last few years, pointed to productivity gains that have succeeded in reducing costs by as much as $40 per ton. According to this comment, "the shift from man to machine now in process is essential to survival and would not be altered if royalties were eliminated". The comment stated that since 71 percent of Utah coal production was consumed by electric utilities in the State, an across-the-board reduction would only increase utility company profits without helping any mines that are in serious trouble.

One comment stated that all but 2 percent of the production from underground leases is currently subject to the readjusted 8 percent royalty rate, yet production continues to increase, led by a 66 percent increase in Utah between 1984 and 1987. The comment added that projected Utah production for 1988 is likely to be at an all-time high, and that a gradual rise in Federal royalty rates in the Powder River Basin has not deterred production in that region from increasing its share of overall Federal production from 43.3 percent in 1976 to 57.7 percent in 1986.

A radically different perspective was provided by comments supporting a flat rate of 5 percent. One comment included lists of factors that the Department should consider in arriving at a decision on the royalty rate. It noted the need for consideration of a variety of cost factors and hardships facing the underground coal mining industry, not just factors covered by the 1988 study, "Review of Issues for Setting Royalty Rates on Underground Federal Coal Leases." According to this comment, these factors should also include: an assessment of the impacts of higher royalties on captive operations or in situations where royalties are passed through to the eventual consumer; the effects of higher royalty rates on employment and communities that depend on this employment and on State and local economies; and a consideration of fuel shifting to hydroelectric or co-generation of power, costs of regulatory demands and oversights, litigation and arbitration of coal supply contracts, the absence of new underground mines, erosion of markets to surface-mined coal, rail rates, and the impacts of State regulatory activity.

Supporters of a flat rate of 5 percent also argued that equity considerations or "fairness" issues should be key factors in setting the underground coal royalty rate. Underground operators were said to be disadvantaged because they paid a much higher royalty in absolute dollar terms compared to surface mine operators even though the Federal surface coal royalty rate was more than 50 percent higher than the underground rate (12½ versus 8 percent). A coal company cited as a further example the disparity between royalty payments for Federally-owned coal in Utah and privately-owned underground coal in the Illinois Basin in the Midwest. Federal production royalty was said to be 300 to 400 percent higher than the range of 2.0 to 3.0 cents per million Btu for operations in the Illinois Basin. A large number of comments alleged simply that the Federal underground coal royalty "extort[s] disproportionate payments from the [utility] ratepayers who . . . are bound to pay more than their fair share". One comment stated that the Federal government was receiving more than a "fair return" because the higher royalty rates make utilities' coal-generated electricity less competitive on the surplus power market. This comment characterized the imposition of an 8 percent royalty as a devaluation of the utilities' and their customers' investment in underground coal. One utility would have made a different decision regarding the source of coal for its power plants had it known in advance of the imposition of an *ad valorem* approach to royalty collection for Federal underground coal. Another comment stated that since underground coal is more expensive, it is more often utilized near the point of its production than surface-mined coal. Therefore, residents tend to pay a higher portion of the production royalties than do those living within States where surface mining of Federal coal is predominant. The comment concluded that surface royalty may be viewed as a "revenue producer" for the respective State, while the underground royalty becomes a "hidden tax". Another comment noted the depletion of coal reserves adjacent to railroad transportation, which will further burden operators and restrict development absent relief from an "excessive" royalty.

One comment cited the Mining and Materials Policy Act of 1970 as a direction to the Federal Government to foster private enterprise in the development of an economically sound and stable domestic mining industry. Comments provided by coal industry representatives, electric utilities, a regional council, industry associations, a coal industry coalition, two State governors, and several utility customers described the poor health of the underground coal mining industry in Colorado and Utah and the hardship caused by the Federal royalty structure. Several of these comments observed that for some mines the readjustment of lease royalty rates to 8 percent represented a jump of 1,500 percent compared to previous rates of 15 cents per ton, and setting the royalty rate at 5 percent could not help but stabilize or increase underground production and sales. One comment characterized this increase as having had a devastating effect on coal mining in Colorado, with the number of operating mines dropping to 19 in 1987 from a total of 51 in 1981 and coal production declining to 15.3 million tons in 1987 from 18.9 million tons in 1981. Another comment from Colorado described a decline in sales by one producer from 1 million tons in 1982 to less than 500,000 tons annually at the present time.

One comment contrasted a 1978 projection by the Colorado Geological Survey forecasting that Colorado coal production would reach 50.8 million tons by 1985 with the reality that less than 20 million tons of coal was actually produced and sold in that year, while projections for surface mine production in Wyoming's Powder River Basin, on the other hand, proved to be 20 million tons per year below the actual figure for 1985. Comments stated that employment in the Colorado mining industry dropped 50 percent since 1981 and that over 42 percent of the underground coal miners in the 3 major coal producing counties in Utah have been displaced. A study submitted by another correspondent projected 1,000 lost jobs in Utah and $27 million in lost personal income, accompanied by fuel cost increases to utilities burning western coal of $385 million per year by 2005, if the policy of readjusting Federal royalty rates to 8 percent were to continue. One comment cited the precarious competitive position of a mine operating on Federal underground coal reserves and expressed concern that closure of the mine would lead to closure of a steel plant employing a large work force.

Several comments stated that very little coal mined from underground Federal coal leases in Utah and Colorado is currently under long-term contract allowing for escalation of the purchase price to recoup increases in Federal royalty rates. One comment sought to link this directly with the adoption of the 8 percent royalty rate on

new and readjusted leases, and stated that long-term contracts would provide needed stability for a portion of production not marketed through the more volatile mechanism of spot-market sales. Another stated that no entirely new underground coal mine development has commenced in Utah since 1982, a reflection of the troubled state of the industry. Market share is being lost to Powder River Basin surface mine producers, according to another comment. While acknowledging that the trend cannot be blamed entirely on the Federal royalty rate of 8 percent, the comment argued that a flat rate of 5 percent would make underground-mined Federal coal more competitive. A comment stated that the imposition of an 8 percent rate on underground coal used to generate electric power in Utah has hurt power sales on the surplus market. Utah customers were characterized as "forced to bear a far greater share of the Federal royalty burden than any other group in the country." A utility comment cited a specific example of a $7 million increase in Federal royalties by 1989 which retail electric customers must absorb.

One comment from Utah stated that all production from a large private utility's underground coal mine is dedicated to the utility's generating stations. Therefore, the utility has no coal revenues as such that can be separated from electricity revenues, nor can return on coal investment be measured apart from the return on the entire utility plant. The utility therefore cannot measure whether these captive mines are uneconomic because of the 8 percent royalty rate. One comment included specific revenue and cost figures that suggested that savings generated by a change in the Federal royalty from 8 to 5 percent would enable a small underground coal mining company in Colorado to stay in business.

A number of comments stated that a 5 percent royalty rate would improve the competitive position of underground coal regionally and even internationally versus surface-mined coal, foreign-produced coal, and alternative fuels. Several comments argued the benefits of a reduction of electric rates in the Utah service area, and one noted that competing firms enjoyed an edge because they were served by cheaper hydroelectric power. Another comment acknowledged gains in productivity for underground coal mines, but observed that surface mining operations have improved their productivity even more. One comment remarked that a fuel adjustment cost is itemized on utility bills. If the utility's costs fall below a certain base level, the utility's ratepayers would benefit by reduced rates. Other comments echoed the theme that lower electricity costs would significantly improve the competitive position of industrial power consumers. One comment estimated that setting the royalty rate at 5 percent would translate indirectly to a $700,000 per year cost reduction by one electric utility that purchases Federal underground-mined reserves. This savings would be passed on to the utility's customers. A purchaser of electric power anticipated a drop in generated electricity costs of 2.2 percent. Overall savings to customers from setting the underground royalty rate at 5 percent are estimated by investor-owned electric utilities in California, Colorado, Idaho, Nevada, and Utah to total $9 million, according to this comment.

Another comment observed that while underground coal mining accounts for only about 10 percent of total western coal production, these operations have traditionally employed 30 percent of the western coal mining work force. On the other hand, comments supporting a flat rate of 8 percent cited a January 1988 BLM study which concluded that setting the rate at less than 8 percent would not discernibly increase coal production or halt the loss of jobs in the industry.

One comment cited the Federal government's market dominance in western coal and its economic power in influencing private and State rates within a coal producing region. Utah State coal leases, for example, provide that the lessee shall pay the State the higher of 15 cents per ton or the rate prevailing on Federal leases "of similar character". Another comment warned, however, that even the Federal government's near-monopolistic control over coal in the western United States cannot prevent Federal coal from losing market share to non-Federal coal production, especially in Colorado, if it sets its royalty rate at a level that distorts the market for coal.

Response: Selecting a royalty rate for Federal underground coal leases is an exercise of policy discretion authorized under section 7(a) of the Mineral Leasing Act. The economic and other justifications required under section 39 of that Act to reduce royalties below the statutory minimum do not apply to the decision on a regulation governing the royalty rate for underground coal leases. Because there are persuasive arguments supporting both the 5 percent and the 8 percent rate, it is within the Secretary's discretion to determine which factors shall receive the greatest consideration in arriving at a decision. The Secretary has decided to adopt 8 percent as the royalty rate for Federal underground coal, based on an analysis of all the evidence available.

Selection of either 8 percent or 5 percent would have advantages and disadvantages. There is no clear, analytically preferable choice, and the Department does not believe that the application of any mathematical model could lead to a technically "correct" decision. Other than requiring the Secretary to assure that newly issued leases receive bids not less than fair market value, Congress was content to leave the choice of an underground royalty rate to the Department.

Although the rule requested comment on the choice of a single royalty rate from within a range of 5 to 8 percent, all who expressed a view of this issue embraced either 5 percent or 8 percent. No support for a rate other than 5 or 8 percent was presented in the public comments.

Adopting a flat rate of 8 percent would essentially continue the *status quo.* Under existing regulation and policy to set the royalty rate at 8 percent for most underground Federal coal leases, coal production has fluctuated from year to year. According to Bureau of Land Management and Minerals Management Service data, Colorado Federal underground coal production was fluctuated within a range of 3.6 to 4.6 million tons annually since 1980. In Utah, Federal underground coal production since 1980 has fluctuated from a low of 6.7 million tons in fiscal year 1983 to a high of 15.4 million tons in fiscal year 1988. The comments noted that the recent high production figure was generated in the absence of new mines or long term contracts. However, BLM has recently received several lease applications in Utah and a few in Colorado.

The Department of the Interior recognizes the evolution since 1970's of highly competitive markets for both coal and electricity. Even with a royalty rate of 5 percent, there is no evidence that Federal underground coal would be able to compete successfully with surface-mined Powder River Basin coal that has bene sold for as little as $3.50 per ton in recent spot-market transactions. Also, adopting a 5 percent rate would not necessarily spur production nor necessarily have a measurable impact on mine employment. It is true that many of the underground mines operating in Colorado a decade ago are no longer in existence and that the mining work force has decreased sharply. However, the drastic changes

that have occurred in Colorado's underground coal mining industry may suggest that the problem of competitiveness is more deeply rooted and cannot be resolved by a 3 percent reduction in the royalty rate.

Recent production increases from underground Federal coal mined in both Utah and Colorado, suggest that the 8 percent rate, which is the Department's longstanding policy concerning lease readjustments, may not be the cause of any measurable decline in underground coal production. Further, the relief afforded by Section 39 of the MLA for reducing royalty rates offers individual Federal lessees more latitude from the volatility of competitive coal markets by allowing a reduction to 2 percent under certain circumstances than afforded by the adoption of a 5 percent rate.

Since coal industry conditions differ in the two States (Colorado and Utah) from which over 90 percent of the underground Federal coal production is derived, the establishment of a single royalty rate may seem to fit conditions in one State but not the other. As to arguments that a particular rate is "fair" or "unfair", the Department is required to follow a policy that protects the interests of the United States as the owner of the public's coal resources while recognizing the needs of State government, the industry, and other affected parties, as well as the intent of Congress. Therefore, bearing in mind that multiplicity of concerns regarding the establishment of a national royalty rate policy for underground Federal coal, it has been decided to set a flat royalty rate at 8 percent and to address the economic concerns of Federal lessees through the provisions of Section 39 of the MLA and established royalty rate reduction guidelines. However, should the conditions surrounding the production of underground Federal coal change and become such that a lower royalty rate is uniformly more equitable than the 8 percent rate which has historically been applied to production from underground Federal coal leases since the enactment of FCLAA, the decision will be reconsidered.

The concerns of both Federal and non-Federal coal lessees in States where Federal coal is predominant, and where the royalty rates on Federal leases influence and in some States are directly linked to the rates on State and private leases, are understandable. The Department recognizes the important economic consequences of its choice of a royalty rate for underground coal, and the influence of this decision on coal lease royalty rates outside of the Federal sector. The economic consequences on the recipients of the royalty revenues of lowering the royalty rate are apparent. In some cases where profits are high, the reduction of royalty rates would represent a loss of royalty revenues to the public. In balancing all of the various interest, the choice between a 5 percent or an 8 percent royalty rate is close. With this in mind, the royalty rate is maintained at 8 percent and individual Federal lessees are encouraged to seek royalty relief, if it is needed, through application for royalty rate reductions under Section 39 in accordance with BLM's guidelines.

In the past 2 years, BLM has received only three royalty rate reduction applications from underground Federal coal lessees in Colorado and no applications from Federal lessees in Utah. This is an indication that the 8 percent royalty rate applied to leases at the time of issuanace or readjustment is not overly burdensome.

The preponderance of the evidence suggests that a high degree of competition for coal supply contracts and for the sale of electric power generated by coal and other energy sources has evolved in the Western States since 1979. This competition has forced producers of underground coal to take steps to reduce their costs, and where these efforts have been successful production has increased. During this same period, the Federal and State royalty income from underground coal production grew as well. An 8 percent royalty rate is appropriate, and an *ad valorem* based royalty allows for automatic adjustments to price fluctuations.

In arriving at a decision to maintain an 8 percent royalty rate for underground coal leases, the Department took into consideration all of the comments and detailed analyses that were submitted for this rule. Even if it is true that increased production in Utah since 1979 does not necessarily by itself indicate the health of an industry, the Department believes that maintaining an 8 percent royalty rate while encouraging individual lessees to apply for royalty rate reductions using the BLM's guidelines is an appropriate decision, given the differences between the local coal industries. The establishment of a flat 8 percent rate allows for a fair return for the use of public resources, and using the authority under Section 39 of the MLA to grant royalty reductions allows for more extensive consideration of the unique circumstances of individual Federal lessees.

Finally, the decision will encourage lessees operating at the margin to be more active in seeking royalty rate relief by application under an appropriate category of the BLM's guidelines. This avenue allows lessees to receive temporary relief in the hope of further improvement in the market for underground coal.

Flexibility on setting the lease royalty rate

The vast majority of respondents offering comment on whether the Department should maintain flexibility in the regulations to offer a rate between 5 and 8 percent "if conditions warrant" at the time of lease issuance or readjustment favored a flat rate of 5 percent across the board. Only two comments stated a preference for retaining flexibility in the regulations, but left it to the Department to decide whether this added flexibility was practical to administer. Others supporting elimination of this regulatory flexibility either offered no rationale or recognized that the benefits of lease-by-lease review were probably outweighted by the administrative complexity of this undertaking. The statutory authority to adjust royalties downward using Section 39 of the MLA satisfied some respondents that individual hardship cases could be addressed for additional royalty relief, if needed. One comment stated that adoption of an equitable and reasonable flat rate would virtually eliminate the need for using the Section 39 authority. Of the comments supporting retention of the flexibility to adopt a rate on a case-by-case basis, one stated that the analysis could be done as part of an economic evaluation of the proposed lease tract and the other recommended that 5 percent be the norm for newly issued and readjusted leases with a rate up to 8 percent available only if it could be demonstrated that conditions warranted a higher rate.

All but one of the comments addressing the implementation of a flat royalty rate urged that the 5 percent rate be made available prospectively, upon request, to all underground coal lessees for leases that were issued or readjusted to 8 percent. Some comments called for the effective date for this rate change to coincide with the effective date of the final rule and for the new rate to apply through the next readjustment date of the individual lease. One comment specified that lessees whose readjustments to 8 percent have been protested and are currently in the appeals process should be allowed to pay a rate of 5 percent for the period of time beginning at the date of lease readjustment. Another comment stated

that making lessees wait until their next readjustment was clearly unfair and would disproportionately penalize lessees in States where private and State rates are directly linked to the Federal rate. A comment supporting adoption of a flat rate of 8 percent suggested that the administrative costs of amending the lease terms on underground coal leases be listed and analyzed if a flat rate below 8 percent is adopted, and that this analysis should be available for comment.

Response: Application of a flat rate to new leases and to existing leases is administratively simpler than the lease-by-lease analysis required under current regulations. Also, removing the provision requiring an "if conditions warrant" analysis elminates the redundancy of requiring lease-by-lease analyses in two separate procedures: lease issuance or readjustment, and Section 39 royalty rate reduction. The decision to adopt a flat rate of 8 percent will be applied to all existing Federal underground coal leases at the time of the next scheduled readjustment, as well as to new lease issuances. The 8 percent rule applies only to new leases issued after the effective date of the rule and to those leases whose readjustment anniversary dates occur after the effective date of this rule.

Compliance with provisions of the Administrative Procedure Act

Two comments suggested that directly issuing a final rule both to set a fixed royalty rate and to explain to which leases it will apply would constitute a violation of the Administrative Procedure Act because the notice of proposed rulemaking did not publicize the substantive contents of the regulations to be issued. The preamble to the proposed rule quotes from the draft study that consideration of a royalty rate less than 8 percent "should be based on an evaluation of the objectives of the Federal Coal Management Program * * * and the effect of the royalty rate on these objectives * * *." If these objectives—or some other criteria—are to be the basis for the royalty rate decision, then they should have been listed in the preamble or, in the words of one of the comments, "the public is left to shoot at a shifting target, in the dark." The comment went on to suggest that the Department should have provided some indication of which rate it favors or at least submitted facts and argument in support of alternative rates. If the Department intends to set the rate at less than 8 percent, it should re-propose the rule and justify the new rate with supporting evidence, and then consider and respond to public comment before final action. One comment specifically requested that a public hearing be held in Denver, Colorado, prior to any final decision.

Response: The proposed rule specifically requested public comment on whether the royalty rate should be 8 percent, 5 percent, or some value in between. This was fully consistent with the notice of proposed rule requirements established in section 4(b) of the Administrative Procedure Act, which provides that a rule shall be preceded by a published notice of "either the terms or the substance of the proposed rule or a description of the subjects and issues involved." Therefore, the choice of a rate of 8 percent clearly is consistent with that Act and with the proposed rule. Because the Department has adopted a final underground coal royalty rate that lies within the range of rates set forth in the notice of proposed rule, the Office of the Solicitor has determined that the Department has fully complied with the statutory rulemaking requirements. The Department and the BLM have for some time been aware of opposition to the 8 percent royalty, particularly from coal lessees protesting their lease readjustments from a cents-per-ton basis to an *ad valorem* rate that by the coal lessees account effectively increased royalty payments, over 1,000 percent for some. The Department and BLM have been equally aware of support for the 8 percent royalty rate, particularly from holders of overriding royalties whose interest is in maximizing revenue, and others who believe that development of Federal minerals should be accomplished while maximizing revenue to the Government. Extensive analytical support for adoption of a flat royalty rate has also been provided in the comments on the proposed rule, and the Department has more than enough information to proceed directly to a decision on the final rule without requesting further public comment or holding a public hearing.

Adequacy of environmental analysis in support of rule

A few comments accused the Department of failing to conduct sufficient analysis to consider the environmental impacts of the proposed rule. Two stated that any change in the underground coal royalty rate regulation is required to be accompanied by detailed revisions of the Federal Coal Management Program Environmental Impact Statement (EIS) Supplement. Several reasons were given for this comment: the BLM's June 1988 draft study's finding that current market conditions had changed "significantly" and warranted a lower rate "for all underground leases"; the statement in the draft report that "any policy change should be reviewed in terms of its environmental impact"; that an underground royalty rate of 8 percent formed an integral part of the EIS Supplement; and that the possible mining of new areas and the substantial reduction of mitigation and other payments derived from the Federal and State shares of royalty collections may significantly affect the quality of the human environment. It was further suggested that the proposed rule significantly altered the basis for the 1980 Secretarial Issue Document on Fair Market Value and Minimum Acceptable Bids for Federal Coal Leases, and thereby necessitated revision of that as well. One comment pointed out that coal mining has adverse impacts on the environment no matter how carefully it is conducted and that the burning of coal contributes disproportionately to the greenhouse effect. Government policies should be adopted that will *reduce*, not encourage, the use of coal, this comment asserted.

Response: The citation for the June 1988 drafted study referred not to the 1985 EIS Supplement but to the 1979 Federal Coal Management Program EIS. Nevertheless, the 1985 Federal Coal Management Program EIS Supplement forecast between 27 and 30 million tons of coal production by 1990 for the Uinta-Southwestern Utah region which includes Utah and western Colorado underground mines. The most recent BLM forecasts show this previous estimate to be overly optimistic. Actual fiscal year 1988 production for this region was 16.7 million tons, and it is now anticipated that 1990 production from the region will not exceed 20 million tons, and might be less than 18 million tons. The decision to set the underground royalty at a flat rate of 8 percent, which is not a reduction, does not significantly alter the impacts on the human environment that have been determined in the 1985 EIS Supplement, and there is no need to conduct additional environmental analysis for this rule. The environmental assessment prepared for this rule concluded that there would be no significant impacts on the human environment if the rule were adopted.

While Congress in the Federal Coal Leasing Amendments Act declared that State shares of mineral leasing revenues should be used for mitigation of the impacts of Federal mineral development, State governments

actually decide to what purpose they put these funds. Funds available for mitigation efforts in those States will be greater if the royalty rate is set at 8 percent.

The 1979 Secretarial Issue Document on Fair Market Value and Minimum Acceptable Bids for Federal Coal leases needs no revision because it has been amended since that time by Secretarial decision and changes to the coal management regulations. Even if a reduction in the royalty rate for underground Federal coal had been adopted in this rule, this reduction probably would not result in an increase in coal production beyond levels projected in the Federal Coal Management Program Final Environmental Impact Statement Supplement, October, 1985.

Allegations that the rulemaking process was not objective

A number of comments questioned the objectivity of the Department's rulemaking process by which the proposal was prepared. One noted that coal industry pressures to adopt the lowest legal royalty rate would color any objective analysis. Another alleged that inappropriate influence may have been exercised by a Department official and the Governor of Utah to orchestrate the drafting of the proposal. This and another comment specifically accused the Department of abuse of administrative discretion by taking a predetermined position as an advocate and industry spokesman, contrary to the accepted role of an objective public official. If this were true, according to the comment, then the call for comments on the proposed rule could be interpreted as a "perfunctory compliance with form". In support of this contention, the comment pointed out that the official frequently visited the State of Utah and met with representatives of the Governor's office, a prominent Federal coal lessee, and a large Utah electric utility company over a period of several months preceding the proposed rule, held similar meetings in Washington, D.C., where he allegedly received advice from the Governor of Utah and promised in return to set the royalty rate at 5 percent; and may have attempted to suppress a January 1988 BLM study that found no basis for changing the practice of setting the royalty on new and readjusted leases to 8 percent.

Response: Abuse of the administrative process is a serious charge that the Department of the Interior does not dismiss lightly. However, these comments have grossly mischaracterized discussions among Departmental officials, coal lessees, and State officials. Moreover, the originator of one of these comments was included in at least one discussion covering all the issues.

The Department began an internal review of the regulation concerning the underground royalty rate following the decision by the U.S. Court of Appeals for the Tenth Circuit in *Coastal States Energy Co.* v. *Hodel*, 818 F.2d 502 (10th Cir. 1987). By the end of 1987, BLM was preparing a study of the effect of the royalty rate on coal production. During this period, several underground coal lessees and government officials from the State of Utah contacted the Department and recommended lowering the standard royalty rate for underground coal rather than reviewing it on a case-by-case basis. In January 1988, a draft study was discussed with the Assistant Secretary, Land and Minerals Management. As discussed elsewhere in this preamble, the draft study concluded that coal production would not be affected to any noticeable extent by setting the royalty rate below 8 percent. The draft study was distributed outside the Department to affected parties, although there was no formal announcement of its availability. Following Department review of the draft study, and of comments received on the draft study, the Assistant Secretary directed BLM to continue its study of the royalty rate in the context of the overall vitality of the western underground coal industry.

In June 1988, a second draft study was prepared. The study suggested that the market for western underground coal was not as robust as it was when the existing regulations were promulgated in 1979. Based on this study, the Assistant Secretary directed BLM to prepare a proposed rule requesting public comment on whether a single rate for underground coal leases should be set by regulation at a value of 8 percent, 5 percent or some rate in between. At no time did the Department make any commitment concerning the royalty rate that is the subject of this final rule.

Availability of all studies and analyses used in rule

One comment requested that the Department make available the studies used to support the analytical framework of the proposed rule and conduct additional analyses where needed prior to a final decision. Specifically, it was requested that a State-by-State analysis of revenue impacts be completed before the proposed rule is finalized. Concerns were also voiced about the statement in the June 1988 BLM draft study that the Department had received comments from industry, State governments, and members of Congress. A comment requested copies of all written communications and transcripts of verbal communications on the appropriateness of the royalty rate given current market conditions, and questioned whether some of these comments may have been provided *ex parte*.

A comment supporting a flat 8 percent royalty rate incorporated by reference a January 1988 draft BLM study whose primary conclusion was that market factors played a far more important role in determining coal economics, mineability, and marketability for Federal underground leases in Colorado and Utah than the Department's royalty structure. One comment noted that the proposed rule constituted a "radical departure from the earlier [January 1988] Department perspective."

Response: The administrative record for this rule contains several studies either completed for the Department or submitted with comments. These studies have been available to the public in accordance with Department procedures and the Administrative Procedure Act. The purpose of the June 1988 draft study was not to justify a particular underground royalty rate. Rather, this study demonstrated that conditions in the coal industry, especially the segment of the industry mining Federal coal by underground methods, indicated a need to review the Department's underground royalty rate regulations.

Taken as a whole, the studies and other analyses in the administrative record for this rule offer a series of viewpoints on the impacts of the Federal coal underground royalty rate on coal production, local economies, and revenue receipts. It is the Department's position that sufficient analysis exists upon which to base a decision. No discussions were held with interested parties in violation of *ex parte* guidelines. All communications received after publication of the proposed rule are available to the public as part of the administrative record, along with any other correspondence and reports germane to the rule.

Value-based vs. alternative basis of determining royalty

One comment stated that an *ad valorem* royalty rate (a percentage charged against value of the coal mined, as opposed to an absolute rate that does not fluctuate with market prices) is not explicitly required by Federal law. This comment recommended using cents-per-ton royalties for underground coal as

had been done on most leases before passage of the Federal Coal Leasing Amendments Act. Another comment noted that because an *ad valorem*-based royalty increases in dollar value as cost of production (as reflected in the coal selling price) rises, there is a disincentive to produce the more expensive deeper reserves. One comment stated that the coal industry has repeatedly recommended that the coal royalties be levied on a cents-per-million Btu basis to eliminate disproportionate variances between surface and underground royalty in dollar terms. In opposition to these comments, another argued that royalties should continue to be calculated on a percentage basis of value because coal prices adjust to market forces of supply and demand, and this method of calculation captures a share of value for the public that is more faithful to market conditions than a rate in cents-per-ton or cents-per-million Btu.

Responses: A change from the currently utilized *ad valorem* basis of charging royalties on production to a royalty basis that would use cents-per-ton or to a normalized formula using cents-per-million Btu would have to be applied to surface as well as underground coal in order to be truly equitable. Further, because Congress prescribed an *ad valorem*-based rate of 12½ percent of the value of surface-mined coal in enacting the Federal Coal Leasing Amendments Act, and because Congressional intent was quite clear in regard to use of a value-based rate for underground coal, the law would have to be changed first before the Department could consider this suggestion.

Effects of royalty change on Indian-owned coal

One comment urged the Secretary of Interior to assess carefully the consequences of adopting a rate less than 8 percent on the interests of all Indian tribes before taking such action. Specifically, the comment stated that the Secretary is required to protect Indian resources from loss of value as a result of changes to the Federal coal management program. Other objectives to the coal management program, such as those set forth in the BLM's June 1988 draft study, "*must be subordinated* to the Indian tribes as beneficiaries of the Secretary's trust responsibility" (emphasis added). Also, the Secretary "is constrained by his fiduciary responsibilities and must not show deference to the desires of industry to reduce royalty payments." Finally, the letter cited a ruling by the Tenth Circuit Court of Appeals in the case of *Jicarilla Apache Tribe* v. *Supron Energy Company*, 782 F.2d 855, (10th Cir. 1986), that this fiduciary duty required the Secretary to choose an action better promoting the tribes' interest when he is presented with alternative interpretations or alternative actions. The comment insisted that the Department demonstrate that the final decision on the coal underground royalty rate: (1) will not make Indian coal less competitive than Federal coal, and (2) will have a revenue-neutral impact on Indian mineral owners. The letter questioned whether the Department could demonstrate such revenue-neutrality.

Response: The relationship between Federal underground coal royalties and revenues derived from the sale of Indian-owned coal has been assessed. Prior to enactment of the Federal Coal Leasing Amendments Act, Indian leases as well as most Federal leases carried royalty terms expressed in cents per ton of coal mined. The Department's action to issue new leases and readjust existing leases using a percentage royalty of generally 8 percent of the value of underground coal and 12½ percent of the value for surface coal has had a beneficial effect on the revenues generated for Indian tribes: since 1976, Indian coal lease royalty rates have risen to reflect the higher rates on Federal leases.

There are no underground coal mines operating on Indian lands. From a practical standpoint, surface mines in New Mexico and Arizona are producing the only coal from Indian lands that might be considered to be even in indirect competition with Federal underground coal. Even if the royalty rate were lowered, as suggested in many comments, the delivered cost of Federal underground-mined coal from Colorado and Utah to power plants utilizing Indian-owned coal would remain above the delivered cost of the Indian coal to these same facilities. Therefore, underground coal from either Utah or Colorado coal will not compete with Indian-owned coal, at the site of coal utilization, under this final rule. The delivered cost at relevant power plants and the break-even cost at the supplying mines bears this out. Power plants currently using Indian coal rely on those mines for their fuel source. Regardless of the degree to which a 5 percent royalty rate would possibly affect the competitiveness of Indian-owned coal, the Department has decided to set a flat rate of 8 percent for underground Federal coal reserves.

Revenue impacts of changing the underground coal royalty rate

Several comments addressed the issue of revenue implications involved in setting the Federal underground coal royalty rate at less than 8 percent. One comment criticized the proposed rule for failing to discuss the impact of a 5 percent rate on royalty collections and for failing to structure the rule so that comments could be solicited on raising the royalty rate *above* 8 percent. Another comment noted the Department's strenuous efforts in court to collect royalties on readjusted leases and felt the rule now intimated an inclination to "capitulate" and to "give away a portion of the underground royalty which has been so steadfastly and successfully defended." The same comment cited an analysis prepared by the Utah Energy Office in November 1987 that indicated a lowering of the royalty would almost certainly lead to reduced State royalty revenues. Another comment cited the January 1988 BLM study, which predicted a reduction in Federal and State revenues of between $18.2 and $20.2 million from the current level if the royalty rate were set at 5 percent. Another comment observed that while production in Colorado had declined sharply between 1981 and 1986, Federal and State royalty revenues increased from $13.1 to $20 million between 1984 and 1986 as lease readjustments raised royalty rates significantly. The Governor of Wyoming objected to the implication in the proposed rule that administrative cost savings to the BLM of adopting a flat rate of 5 percent could somehow offset losses in Federal and State royalty income of this magnitude.

The Governors of Utah and Colorado commented that higher royalty income should not be a goal if this is accomplished at the expense of the underground mining economies in their States. They provided calculations supporting their contention that a flat rate of 5 percent would have broader long-term benefit than a higher rate. Colorado expressed a willingness to absorb a reduction in Federal coal royalty revenues of what would amount to $3.5 million in order to alleviate the current depressed status of the State's coal industry. The Governor provided analysis supporting his contention that a reduction in the royalty rate across the board to 5 percent for all underground Federal coal leases would actually have a positive impact on total tax revenues for his State. The Governor of Utah noted that Utah ratepayers indirectly pay 56 percent of the mineral lease

moneys that the State receives for Federal coal, and that his State has recently reduced its oil and gas royalty rate from 16⅔ percent to 12½ percent or, in some circumstances, 8⅓ percent. The Governor of Colorado commented that the State's general assembly has reduced the State's severance tax 40 percent for a 6 year period.

A comment in the letter from one congressional delegation downplayed the revenue effects of a drop in the royalty because only 8 percent of all Federal coal produced in the United States comes from underground mines. An industry comment cited a study by the Western Coal Traffic League which demonstrated that high royalty rates are having an adverse impact on both State and Federal revenues and socioeconomic development for most western coal producing States, contributing to reductions in coal production, Federal royalty revenues, and local taxes. Another comment supported this view, and went on to say that basing royalty rate decisions solely on revenue considerations is at odds with the Secretary's public lands stewardship responsibilities, but rather is similar to the role of a private land owner whose intent is more likely to be to maximize profits.

A study accompanying one comment warned that for 5 of the 6 major Federal coal producing States, increasing Federal royalties to the full readjusted rates of 8 percent for underground coal and 12½ percent for surface coal will lead to production losses in the 1 to 4 million ton range, generating State revenue losses that will offset any gains generated by higher royalty rates. According to the study, these losses will occur in regions that are already marginal producers and will be aggravated by users switching to alternative fuels, including low-sulfur non-Federal coal from some Central Appalachian seams, coal imported from Colombia and Australia, oil and natural gas, hydroelectric power, and nuclear power.

Response: The proposed rule did not request comment on a royalty rate above 8 percent for the same reason that it did not request comment on a rate below 5 percent. The 5 to 8 percent range prescribed in the proposal is in the range prescribed by the 1979 regulation. The objective was to request comment on the relative advantages of eliminating the need to evaluate all leases on a case-by-case basis at the time of lease readjustment and to set the rate at an appropriate single level from within the existing range. The public, however, was not precluded from advising the Department on the merits of a value outside this range.

Maintaining public revenues while guarding the economic walfare of Federal coal lessees is best accomplished by establishing a flat rate of 8 percent for underground Federal coal leases and encouraging in appropriate circumstances the use of the royalty rate reduction procedures. This decision will also eliminate the redundancy of the current regulations which require a case-by-case analysis for royalty rate determination to be conducted for all underground leases and allow for separate royalty reduction procedures.

Requirements for fair market value

One comment observed that the royalty rate provisions of the Federal Coal Leasing Amendments Act sought to assure that the public would receive fair market value for its coal resources in the future and reflected Congressional concerns about excessively low receipts from Federal coal development in the past. Another argued that an across-the-board reduction of the royalty should only be accomplished after a re-evaluation of the fair market value implications and payment by lessees of a compensatory cash bonus to the government.

Response: The Federal Coal Leasing Amendments Act (FCLAA) states: "No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease" (30 U.S.C. 201(a)(1)). Although the Department generally considers royalty revenues to be part of the total "value" of a lease, the legal requirement of "fair market value" applies only to leases sold at lease auction after enactment of FCLAA. For coal lease tracts sold after enactment of FCLAA, high bids are evaluated by the Department and only those that were determined to meet the test for fair market value are accepted. The production royalty rate announced in the Notice of Sale and set forth in each individual lease's terms and conditions is a contractual term that can be changed if the lessee and the lessor (the Federal Government) agree to make such changes in accordance with the MLA. Therefore, fair market value is not a conclusive factor in selecting royalty rates, and in any event this final rule maintains the rate at the current 8 percent.

Interference with U.S. Senate consideration of royalty issues

A letter signed by 4 members of the U.S. Senate Energy and Natural Resources Committee stated that it is premature for the Department to be changing the long-established royalty rate prior to Congressional action because the Congress is currently addressing this issue.

Response: The Department acknowledges Congress's interest and concern regarding the royalty rate for underground Federal coal leases and is aware that Congress is planning to address the issue. In the interim, the Department has decided to set a flat 8 percent royalty rate for underground Federal coal leases and to continue to encourage Federal lessees who are experiencing economic hardships to seek relief through use of BLM's royalty rate reduction procedures.

Connection between surface and underground coal royalty rate

A comment supporting a flat rate of 8 percent accused the Department of seeking to lower the underground coal royalty rate in the face of rising underground Federal coal production as a first step toward establishing a strong case in equity for surface mine royalty reduction. The comment alleged that Department officials have acknowledged that lower surface rates may naturally result from a reduction of the underground rate. The Governor of Colorado and several industry comments expressed hope that a reduction in the underground rate would set a precedent for Congressional action to reduce the surface rate, especially in Colorado where operators face high costs. One comment doubted that a parallel reduction in the surface coal royalty rate would have much of an adverse impact on underground production because markets, locations, and Btu contents vary radically for surface and underground deposits.

Comments reached different conclusions regarding the impacts of the choice of an underground royalty rate on competition with surface-mined Powder River Basin coal. Some supporters of a flat rate of 5 percent for underground Federal coal stated that the Department's use of an 8 percent royalty rate for new and readjusted underground coal leases had penalized underground coal producers in their competition with lower-cost surface coal in the Powder River Basin. Comments supporting a flat rate of 8 percent used different assumptions of coal prices to bolster their case that the opposite was true. They argued that setting a flat rate of 5 percent for underground coal would give underground producers a disproportionate advantage.

Response: This rule is limited in scope to underground mining operations. Regardless of the Department's view on

an appropriate rate for surface coal production, no adjustment of the statutory royalty rate on Federal surface coal leases can be made without an Act of Congress.

In attempting to determine how a royalty rate lower than 8 percent for Federal underground coal would affect competition between underground and surface mine operations, BLM studies have shown that the outcome would depend to a great degree on the choice of coal price assumptions used in the analysis. Those providing comments with differing opinions on whether the rate for underground Federal coal leases should be 5 percent or 8 percent chose price assumptions favorable to their point of view. From an objective viewpoint, underground coal producers have not been "penalized" by the current regulations, which allow for a lower rate than the 12½ percent royalty rate established by statute. However, if some Federal underground coal lessees have suffered economic hardship due to the changing industry conditions, the Department encourages these lessees to apply for relief under the royalty rate reduction guidelines.

Authority granted under MLA Section 39 to reduce royalties

About half the comments responding to this rule discussed the relationship between the rule and the availability of Secretarial authority to reduce royalty rates under section 39 of the Mineral Leasing Act (30 U.S.C. 209). Many of the comments supporting a flat 8 percent rate, noting the profitability of individual underground coal mining operations in the western States and the growth in production and productivity, argued that there was no need to reduce the regulatory royalty rate because specific instances of hardship could be addressed through the instrument of the BLM's royalty reduction guidelines. These comments, including those of members of the Senate Committee on Energy and Natural Resources, the Governor of Wyoming, and others, urged the Department to make use of the flexibility granted under section 39 to provide temporary relief through royalty rate reduction on a case-by-case basis. The governor's comments dismissed traditional industry objections to the cost and administrative burden of complying with BLM guidelines for royalty rate reduction, asserting that the clear economic benefits of a temporary rate reduction more than compensated for the time needed to prepare the required documentation.

Several other comments disagreed, maintaining that section 39 does not provide an acceptable substitute for the adoption of appropriate royalties at the time of new lease issuance and lease readjustment. These comments argued that a new regulatory royalty rate should apply across the board, especially because they are dissatisfied with the way in which the Department has chosen to exercise Secretarial discretion under section 39. One comment specifically criticized the BLM's royalty rate reduction guidelines because they exclude even marginally profitable operations from qualifying for a rate reduction. The comment's position is that the proposed rule offered the only available means for setting a lease royalty rate which is generally appropriate for its circumstances. Another argued that the rule was necessary because the royalty reduction guidelines do not consider hardship to electric utility ratepayers who bear the burden of the underground coal production royalty that is passed through to them. A third comment disparaged the guidelines as "so stringent and limited to such a short period of time that they cannot remedy or justify the BLM's failure to select a reasonable royalty rate in the first instance." One comment complained that the guidelines specifically exclude interest costs and overriding royalties from royalty rate reduction calculations, thereby preventing small producers from qualifying for a royalty rate reduction. Another comment protested that the Department has taken far too narrow a view of its authority under section 39, and urged that royalty reduction be made available at the time of lease readjustment.

Response: Although this rule is not an exercise in royalty rate reduction under section 39, a brief clarification of the royalty rate reduction guidelines may be in order. The BLM royalty rate reduction guidelines were designed to provide temporary relief for operations that could not be successfully operated under the lease royalty rate; to promote development of a resource; and to promote conservation and the greatest ultimate recovery of resources that would be left unmined unless the rate were lowered for a short period of time. Marginally profitable operations are not excluded from seeking royalty rate relief under certain categories of the guidelines. For instance, category 1 of the guidelines allows for a temporary reduction if Federal coal reserves are in danger of being bypassed due to the existence of adverse engineering and geologic conditions. Also, the period of time over which a reduction applies varies depending upon the category under which the lessee applied. Furthermore, the guidelines allow for consecutive reapplications provided the lessee can demonstrate that the adverse conditions still prevail.

Royalty rate reduction under section 39 will continue to be available after the effective date of this rule under the criteria established in the BLM royalty rate reduction guidelines. However, this rule is designed to implement the Secretary's authority under section 7(a) of the Mineral Leasing Act to establish a royalty rate for coal mined by underground methods.

Conservation of the resource

A number of comments supporting a flat rate of 5 percent advanced rationale suggesting that such an action would encourage the greatest ultimate recovery of coal and in the process prevent the loss of revenues and jobs over the long term. A Western State governor commented that the current 8 percent royalty caused a "disproportionately higher royalty burden on underground coal" and therefore "does not promote orderly and timely development of underground coal." Another comment stated that the 8 percent rate could mean that the reserves remaining at depth will not be mined, due to unfavorable economics. Another comment stated that the loss of 1,500 jobs since 1981 in Colorado's mining industry has been costly to the U.S. Treasury in terms of lower royalty revenues and Federal income taxes, and a deepening of the recession that began in 1981 in coal mining areas. One comment added that the existing royalty rate structure discourages the development and production of Federal underground coal to the extent that utilities may be forced to use alternative fuel sources.

Response: The Department of the Interior believes that using the royalty rate reduction procedures will assist marginal producers to stay competitive and to survive in the expectation of improved market conditions, as well as encourage the greatest ultimate recovery of the resource.

Comments on June 1988 Study

Many comments were received on the June 1988 draft BLM study cited and excerpted in the July 29, 1989, proposed rule. While several industry comments felt the draft study provided a valid basis for establishing an underground coal royalty rate at less than 8 percent, other comments were highly critical of its methodology and conclusions. One comment provided a detailed line-by-line critique, whose central focus was that the draft study (1) contained many

unsupported contentions, (2) failed to explain the policy underpinnings of the Federal coal program, (3) implied that the coal industry was entitled to a greater share of profits than necessary to stay in business, (4) contained numerous inconsistencies and factual errors, and (5) exhibited a cavalier disregard for the importance of royalty collection in times of large Federal budget deficits. The comment strongly advised that the shortcomings in the June draft be resolved in a final analytical report, particularly if the decision is made to establish a flat rate below 8 percent. Another comment contended that the study did not recognize that factors independent of the royalty rate and beyond the government's control are the driving force in the demand for coal from Federal coal leases in the Western United States. The primary factors that determine the demand for Utah coal, such as construction of additional electrical generation and other heavy industry facilities, are not responsive to Federal royalty rate changes contemplated for underground coal. Furthermore, according to the comment, the study failed to account for the growth, rather than decline, in Utah coal production over the past 10 years while effective royalty rates have increased. The comment concluded that production increases have occurred as a result of factors beyond the influence of royalty rates.

Other critical comments called the draft study a "subtle advocacy for a reduction in the current royalty rate", not an objective study as would be appropriate for an issue of this importance. The discussion in that report was also described as meaningless because it failed to focus on the small underground segment of the industry but instead addressed the coal industry as a whole. Another comment faulted the study for failing to note that new technology, such as longwall mining, is increasing underground mining efficiency and decreasing costs. Several comments criticized the failure to cite the BLM's January 1988 study and an earlier Department of Energy study, both of which concluded that there would be no increase in coal production if the Federal royalty rate were lowered. One comment called this omission "intellectually dishonest" and requested that the two studies be made part of the administrative record for the rule.

Response: The Department received and considered several reports and on its own reviewed a variety of other information in the preparation of this final rule, including studies provided with comments, the BLM's own earlier studies, and a report by the Department of Energy. The June 1988 BLM draft study and an earlier January 1988 BLM study on the choice of an underground coal royalty rate as it relates to coal production both provided information used in the final decision on a royalty rate, although neither reached definite conclusions on the question of which royalty rate should apply to underground Federal coal leases. The purpose of citing the June 1988 study in the proposed rule was to articulate a view of the current conditions for underground coal sales in the Western States and thereby to stimulate public comment on the issues relating to the selection of a royalty rate.

The June 1988 study "Review of Issues for Setting Royalty Rates on Federal Underground Coal Leases" (Review) was, as the title implies, a review of issues, not a comprehensive or conclusive study making definitive findings or recommendations. The Review evaluated changes that have occurred in market conditions and expectations for underground Federal coal since the 1979 rule establishing the royalty rate. Specifically, the study examined how changes may have affected the following:

(1) The underground coal industry and its expectations regarding continuation, contraction, or expansion of current mining levels;

(2) The balancing of policy objectives including possible changes in their relative ranking; and

(3) The equitable sharing of rents (profits) between the public and the Federal underground coal lessees.

The line-by-line critique of the June draft study appears to have been premised on a series of misconceptions as to the purpose of the study, the authority under which the Department establishes the underground royalty rate, and the economic principles underlying the mining industry. Specifically, the comment does not recognize that a final decision on an underground royalty rate is ultimately an exercise of policy discretion as provided by law, as it was in 1979 when the existing regulation governing the underground coal royalty rate was promulgated. The comment also seems to be based on several incorrect assumptions concerning the need for the study to provide definite findings, conclusions, and recommendations.

The June 1988 draft study was never intended to serve as the sole basis and rationale for adopting a revision to the current regulation. This report and studies incorporated in the administrative record for this rule address different but valid viewpoints concerning the issues that are determinant in setting an underground coal royalty rate. The decision to set a rate of 8 percent for Federal underground coal leases was made considering the full record including these studies.

The principal author of this final rule is Phillip Perlewitz, Mining Engineer, Division of Solid Mineral Operations, Bureau of Land Management, Washington, DC, with the assistance of the staff of the Division of Solid Mineral Leasing, Bureau of Land Management, the Office of the Solicitor, Department of the Interior, and the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 3470

Coal management provisions and limitations, Lessee qualification requirements, Fees, rentals, and royalties, Bonds, Lease terms.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), part 3470, group 3400, subchapter C, chapter II of title 43

of the Code of Federal Regulations is amended as set forth below:

PART 3470—[AMENDED]

1. The authority citation for part 3470 continues to read:

Authority: 30 U.S.C. 181 et seq., and 30 U.S.C. 351–359 and 99 Stat. 1266.

2. Section 3473.3–2 is amended by removing paragraph (a)(1), by redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(1) through (a)(3), and by revising redesignated paragraph (a)(2) to read as follows, and by redesignating paragraphs (b) through (d) as (c) through (e) and adding new paragraph (b) to read as follows:

3473.3–2 Royalties.

(a) * * *

(2) A lease shall require payment of a royalty of 8 percent of the value of coal removed from an underground mine.

* * * * *

(b) The royalty rates specified in paragraph (a) of this section shall be applied to new leases at the time of issuance and to previously issued leases at the time of the next scheduled readjustment of the lease.

* * * * *

Dated: December 21, 1989.

James M. Hughes,

Acting Assistant Secretary of the Interior.

[FR Doc. 90–1835 Filed 1–25–90; 8:45 am]

BILLING CODE 3410–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–75; RM–6556, RM–6629]

Radio Broadcasting Services; Casa Grande, Claypool, and Kearny, Arizona

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C2 for Channel 288A at Casa Grande, and modifies the permit for Station KFAS(FM) to specify operation on the higher powered channel. Also, Channel 287C2 is substituted for Channel 286A at Kearny, Arizona, and the license of Station KCDX(FM) is modified to specify operation on the higher powered channel. In addition, Channel 291A is substituted for Channel 288A at Claypool, Arizona. Coordinates for Channel 288C2 at Casa Grande are 33–00–00 and 111–57–30, and for Channel 287C2 at Kearny, 32–48–59 and 110–34–30. Reference coordinates at the application sites for Claypool are 33–22–51 and 110–45–25 (880613MH), and 33–24–23 and 110–48–18 (880711MQ). *See* 54 FR 14252, April 10, 1989. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Ordee D. Pearson, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–75, adopted December 21, 1989, and released January 11, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Arizona by removing Channel 288A and adding Channel 288C2 at Casa Grande, removing Channel 286A and adding Channel 287C2 at Kearny, and removing Channel 288A and adding Channel 291A at Claypool.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 90–1767 Filed 1–25–90; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 55, No. 18
Friday, January 26, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-42; Notice No. SC-90-1-NM]

Special Conditions, McDonnell Douglas MD-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the McDonnell Douglas Model MD-11 series airplanes. These series airplanes will have a novel or unusual design feature associated with the installation of a windshear detection-initiated autothrottle activation system, for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. The design adds a special function to the existing autothrottle requirements. This notice contains the additional safety standards which the Administrator considers necessary, because of the added design feature, to establish a level of safety equivalent to that established by the airworthiness standards of part 25.

DATES: Comments must be received on or before March 12, 1990.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket, ANM-7, Docket No. NM-42, 17900 Pacific Highway South, C-68966; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-42. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Art Scholes, FAA, Airframe & Propulsion Branch, ANM-112, Transport Airplane Directorate, Aircraft Certification Service, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2117.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-42." The postcard will be date/time stamped, and returned to the commenter.

Background

On October 9, 1985, the Douglas Aircraft Company, 3855 Lakewood Boulevard, Long Beach, California 90846, applied to the FAA for a change in the type design for the MD-11 series airplanes to incorporate a new windshear alert and guidance system (WAGS).

The windshear alert and guidance system (WAGS) installation is designed to assist the flightcrew in the detection, warning, and escape of windshear conditions during the takeoff roll, takeoff, approach, and "go-around" phases of airplane operation. The automatic flight system integrates data from on-board airplane sensors with windshear-detection and control-law logic in the computer to provide a windshear visual annunciation, audible alert, and windshear guidance using the primary flight display for pitch axis guidance. In addition, the computer provides a command to the autothrottle and resets, as appropriate, the engine pressure ratio (EPR) or engine fan rotor speed (N1) bugs to the takeoff go-around (TOGA) setting.

The windshear system is designed in accordance with the criteria defined in Advisory Circular (AC) 25-12, Airworthiness Criteria for the Approval of Airborne Windshear Warning Systems in Transport Category Airplanes. That AC states that the system should: (1) Demonstrate adequate reliability, (2) provide annunciation and checkability, which includes indication of failure/fault of the system and sensors and computers, and (3) follow the identified flight profiles for operation to 1,000 feet above ground level (AGL) for the takeoff case, and from 1,000 feet AGL to 50 feet AGL for the approach to landing case (as defined in the AC).

Section 25.111(c) of the FAR requires that the airplane configuration, which includes the throttle position, remain fixed during a critical portion of the takeoff. This and other regulations (§§ 25.901 and 25.903) did not envision a system that would automatically advance the throttles during takeoff under specific conditions, and they did not identify the required reliability requirements for such a system. These regulations are therefore considered inadequate to provide an acceptable level of safety for the unusual or novel design features of the proposed WAGS. The additional requirements presented in these proposed special conditions are for the installation of that part of the WAGS which automatically signals the autothrottle to increase engine thrust whenever a windshear condition is detected during takeoff. The system constitutes that portion of the WAGS which, for "reduced thrust" takeoff operations, will unclamp the locked autothrottle, upon a signal from the computer, and command the autothrottle to increase engine thrust to the maximum go-around thrust allowed for the ambient conditions. If the takeoff is initiated with the autothrottle "off," the windshear initiated command will activate the autothrottle and increase the thrust to the maximum go-around thrust level. The system involved includes those portions of all devices, both mechanical and electrical, that

allow the flightcrew to determine the status of the system that increases the thrust on windshear command.

The proposed special conditions, beyond requiring that the windshear system must meet all applicable requirements of Part 25, would require that an appropriate level of system reliability be shown. It must be demonstrated that no hazardous airplane or engine characteristics will exist during or from the operation of this system, that manual override provisions be provided, and that suitable operation and system enunciation be provided. Compliance with these special conditions would ensure that the operation of the proposed WAGS will achieve a level of safety at least equal to that otherwise required by Part 25.

Under the provisions of § 21.101 of the FAR, an applicant for a change to a type certificate must comply with either the regulations incorporated by reference in the type certificate (i.e., the original type certification basis), or with the applicable regulations in effect on the date of the application for change. In addition, if the proposed change consists of a new design or a substantially complete redesign of a component, equipment installation, or system installation, and the regulations incorporated by reference do not provide adequate standards with respect to the proposed change, the applicant must comply with regulations in effect on the date of the application for the change, and special conditions established under the provisions of § 21.16, as necessary to provide a level of safety equivalent to that established by the regulations incorporated by reference.

The type certification basis for the McDonnell Douglas MD-11 series airplanes is Part 25 of the FAR effective February 1, 1965, as amended by Amendments 25-1 through 25-61, with certain exceptions and additions which are not pertinent to the subject of these special conditions. These exceptions and additions will be identified in the Model MD-11 Type Certificate Data Sheet No. A22WE.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Feature

The type design of the Model MD-11 series airplanes, with the WAGS installed, will incorporate a novel or unusual design feature associated with the installation of a windshear detection-initiated autothrottle activation system.

The windshear system proposed by McDonnell Douglas would, for a reduced thrust takeoff, provide automatic autothrottle advance to "go-around" thrust on detection of a windshear condition.

Since the original type certification basis does not have adequate or appropriate safety standards for this unique and novel design feature, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

The FAA considers the automatic advance of the autothrottle on detection of a windshear condition during takeoff to be a special emergency operation which would enhance safety in windshear conditions during takeoff.

During takeoff, the only options available to the pilot, once windshear is encountered, are to rapidly advance and set engine thrust and trade aircraft kinetic energy, as necessary, to maintain a positive climb gradient. Normally the optimum strategy is to delay reducing airspeed until at least level flight is no longer possible at the existing pitch attitude and airspeed with maximum rated thrust applied. This procedure saves the available kinetic energy as long as possible in the event the windshear becomes more severe.

Automatic advance of the engine power levers by the autothrottle system to increase thrust would permit the pilot to concentrate on the critical airplane parameters of airspeed and pitch angle. This would be especially essential in reducing the workload in the two-man crew cockpit environment of the MD-11 airplanes. The windshear condition might persist for a relatively long period, and the intensity of this condition would require extensive pilot concentration. With this system (automatic power advancement), the pilot would still retain the option to manually override the autothrottle in the event of either its failure to respond, or an inappropriate autothrottle response.

The special conditions proposed would apply only to the takeoff phase of the airplane operation and only to those functions and components that (with an initiated command) would increase engine thrust, using the autothrottle, to the maximum go-around thrust level.

Conclusion

This action affects only certain unusual or novel design features on the McDonnell Douglas MD-11 series airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of those features on the airplane.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the McDonnell Douglas MD-11 series airplanes incorporating a windshear-triggered autothrottle system.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983).

2. All applicable requirements of part 25 and these special conditions must be met with no action by the crew to increase thrust for that portion of the windshear control system that advances engine thrust functioning normally as designed.

3. System Reliability Requirement. When the system is actuated during the takeoff interval between an airspeed of 80 knots during acceleration on the runway and an altitude of 400 feet above ground level (AGL), any reduction in thrust due to a malfunction of the system must be improbable.

4. Thrust Setting/System Operation. There must be no hazardous airplane characteristic or unsafe engine response when the system is actuated at any permissible reduced-thrust level, and with any permissible autothrottle operation to increase thrust, under any likely operating conditions.

5. Powerplant Instruments and Controls. In addition to the requirements of §§ 25.1141 and 25.1305 of the FAR, the system must be designed to:

a. Achieve the target thrust without exceeding engine operating limits and automatically reclamp throttles upon attainment of the target thrust.

b. Comply with the applicable V_{MC} requirements upon attainment of the target thrust.

c. Permit manual decrease or increase in thrust through the use of the power levers.

d. Provide a means to annunciate to the flightcrew, before reaching an airspeed of 80 knots, that the system has failed.

e. Prevent an autothrottle retard action until the airplane has reached an altitude of 400 feet AGL during takeoff, unless the action is pilot initiated.

f. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

g. Provide a means to indicate the automatic actuation of the power levers, fuel control, or any other means used to increase the thrust on all engines.

Issued in Seattle, Washington, on January 17, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1780 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-280-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require modification of the vertical stabilizer forward closure rib by the installation of a cover plate and a panel assembly over lightening and access holes. These holes provide an air flow path to the vertical stabilizer. This action is necessary to prevent overpressurization of the vertical stabilizer, which could cause structural failure in the event of a rupture of the fuselage under the dorsal fin.

DATE: Comments must be received no later than March 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-280-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Pahuja, Airframe Branch, ANM-120S; telephone (206) 431-1997. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-280-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The vertical stabilizer forward closure rib of the Boeing Model 767 airplane has a lightening hole and an access hole for the side thrust link. These holes provide an air flow path into the vertical stabilizer. Analysis by the manufacturer indicates that, in the event of a rapid decompression of the passenger cabin due to a rupture of the fuselage in the area under the dorsal fin, the vertical stabilizer may become overpressurized, which could lead to structural failure.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-55A0007, dated June 22, 1989, which describes procedures for the modification of the vertical stabilizer forward closure rib by the installation of a cover plate and a panel assembly over the lightening and access holes.

Since this condition exists on Model 767 airplanes, line numbers 002 through 299, an AD is proposed which would require modification of the vertical stabilizer forward closure rib by the installation of a cover plate and a panel assembly over the lightening and access holes, in accordance with the service bulletin previously described.

There are approximately 298 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 114 airplanes of U.S. registry would be affected by this AD, that it would take approximately 28 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required modification kits are furnished at no charge to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $127,680.

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

For the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, line numbers 002 through 299, certificated in any category. Compliance required within the next 12 months after the effective date of this AD, unless previously accomplished.

To prevent structural failure of the vertical stabilizer from overpressurization in the event of a rupture of the fuselage under the dorsal fin, accomplish the following:

A. Install a cover plate and a panel assembly over the lightening and access holes in the vertical stabilizer forward closure rib, in accordance with Boeing Alert Service Bulletin 767-55A0007, dated June 22, 1989.

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

NOTE: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 16, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1782 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-272-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes configured as freighters, which would require the replacement of the existing supernumerary oxygen system bleed relief valves with higher operating pressure bleed relief valves, and limiting occupancy to 16 people until replacement is accomplished. This proposal is prompted by a review by the manufacturer which determined that the present configuration bleed relief valves will not allow proper operation. This condition, if not corrected, could result in insufficient emergency oxygen supply for operation with 20 occupants.

DATES: Comments must be received no later than March 21, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-272-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M Herron, Systems & Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-272-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

When the Model 747 Freighter was certified, it was equipped to provide sufficient emergency oxygen with 20 supernumerary (occupants) on the upper deck for 3.25 hours under emergency conditions at 25,000 feet. Subsequent review of the supernumerary oxygen system determined that the present configuration bleed relief valves will not allow proper operation as certified. This results in insufficient oxygen quantity during an emergency situation.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-35A2061, dated October 19, 1989, which describes the replacement of presently installed bleed relief valves with higher operating pressure bleed relief valves.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require a revision to the FAA-approved Airplane Flight Manual (AFM) to limit the occupancy to 16 people until the currently installed bleed relief valves are replaced with higher operating pressure bleed relief valves in accordance with the service bulletin previously described.

There are approximately 13 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $162 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,776.

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

For the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared

for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes listed in Boeing Alert Service Bulletin 747–35A2061, dated October 19, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure that sufficient oxygen is available to supernumerary during emergency conditions, accomplish the following:

A. Within the next 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Limit occupancy of supernumeraries to 16 people."

B. Within the next 3,000 hours time-in-service after the effective date of this AD, remove and replace the bleed relief valves with higher operating pressure bleed relief valves, in accordance with Boeing Alert Service Bulletin 747–35A2061, dated October 19, 1989. Once this is accomplished, the limitation required by paragraph A., above, may be removed from the AFM.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These doucments may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 18, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–1783 Filed 1–25–90; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 89–NM–265–AD]

Airworthiness Directives; Fairchild Industries, Inc., Model F–27 and FH–227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all Fairchild Industries, Inc., Model F–27 and FH–227 series airplanes, which currently requires a dye penetrant inspection to detect cracks in the wing outer panel upper surface stringer splice fittings, and repair, if necessary. This action would (1) allow the blending of cracked aluminum fittings if cracks detected are within certain acceptable limits, (2) require the installation of new steel fittings if the cracks found exceed the specified acceptable limits, (3) require the eventual replacement of all aluminum fittings with the new steel fittings, and (4) eliminates the reporting requirements prescribed in the existing AD. This proposal is prompted by an analysis submitted by the manufacturer which provides a temporary repair by blending cracked fittings provided the cracks are within acceptable limits. This condition, if not corrected, could result in the inability of the airplane structure to carry required loads.

DATE: Comments must be received no later than March 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–265–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Maryland Air Industries, Inc., Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Airframe Branch, ANE–172; New York Aircraft Certification Office; telephone (516) 791–6220. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–265–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 26, 1989, the FAA issued AD 89–15–01, Amendment 39–6292 (54 FR 31804; August 2, 1989), to require a dye penetrant inspection to detect cracks in the wing outer panel upper surface stringer splice fittings, and replacement, if necessary. That action was prompted

by a report of a cracked wing outer panel upper surface stringer splice fitting at Station 167. Undetected cracks could result in inability of the airplane wing structure to carry required loads.

Since issuance of that AD, Maryland Air Industries has submitted an analysis, which has been reviewed and approved by the FAA, which provides for a temporary repair by blending cracks found within certain acceptable limits. If aluminum fittings are found with cracks that exceed the acceptable limits, they are to be replaced with a 4130 or 4340 steel fitting.

The FAA has reviewed and approved Maryland Air Industries, Drawing No. D27-7723, dated July 27, 1989, which describes the fittings suitable for the blending operation. The FAA has also reviewed and approved Maryland Air Industries Drawing No. 27-133008, dated July 28, 1989, which describes the specifications to manufacture a machined steel replacement fitting.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 89-15-01 with a new AD that would allow a temporary repair of cracked aluminum fittings, if the cracks detected are within certain specified acceptable limits, in accordance with the Maryland Air Industries drawings previously described. Additionally, this action proposes to require eventual replacement of all aluminum fittings with new steel fittings. This AD would also eliminate the reporting requirement prescribed in the existing AD.

There are approximately 152 Fairchild Industries, Inc., Model F-27 and FH-227 series airplanes of the affected design in the worldwide fleet. It is estimated that 44 airplanes of U.S. registry would be affected by this AD, that it would take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost to replace the existing aluminum fittings is $14,148 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $974,512.

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

For the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 89-15-01, Amendment 39-6292 (54 FR 31804; August 2, 1989), with the following new airworthiness directive.

Fairchild Industries, Inc.: Applies to all Model F-27 and FH-227 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wing due to undetected fatigue cracks, accomplish the following:

A. Within 25 hours time-in-service after August 21, 1989 (the effective date of AD-89-15-01, Amendment 39-6292), perform a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fitting, in accordance with Fairchild Industries Services Bulletin F27-51-8, dated April 22, 1974 [reference paragraph 2A(6)(e), page 5; and Figure 14, page 24] or Fairchild Industries Service Bulletin FH227-51-4, dated January 17, 1979 [reference paragraph 2A(6)(e), page 5; and Figure 14, page 23], as appropriate, and Maryland Air Industries Alert Service Letters F27-681 and FH227-57-6, both dated June 29, 1989, as appropriate.

B. If cracks are found in the wing outer panel upper surface stringer splice fittings, prior to further flight, accomplish the following:

1. If cracks found are less than or equal to .100 inch on the Model F-27 series airplanes, or less than or equal to .075 inch on the Model FH-227 series airplanes, perform the blending operation in accordance within Maryland Air Industries Drawing No. D27-7723, dated July 27, 1989. Perform a dye penetrant inspection after the blending operation to ensure that all damaged material has been removed. Pay particular attention to the maximum torque value and gaps as shown on Maryland Industries Drawing D27-7723, dated July 27, 1989.

2. If cracks found are more than .100 inch on the Model F-27 series airplanes, or more than .075 inch on the Model FH-227 series airplanes, replace aluminum fittings with new steel fittings, in accordance with Maryland Air Industries Drawing No. 27-133008, dated July 28, 1989.

Note: For those airplanes that have removed and replaced the wing outer panel upper surface stringer splice fittings, with serviceable parts, in accordance with AD 89-15-01, Amendment 39-6292, accomplish the requirements of paragraph C., below. Included in this group of airplanes are those that were granted an alternate means of compliance to the requirement of replacement with serviceable parts.

C. Within one year time-in-service after the effective date of this AD, replace all aluminum fittings part number (P/N) 27-133008-21 with new steel fittings, (P/N) 27-133008-23, in accordance with Maryland Air Industries Drawing No. 27-133008, dated July 28, 1989.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Maryland Air Industries, Inc., Hagerstown, Maryland 21740. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York.

Issued in Seattle, Washington, on January 16, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1784 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-273-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which currently requires inspection and replacement, if necessary, of the wing outboard leading edge slat control rods. This action would require revising the AD applicability to require inspection of additional airplanes. Also, this proposal would require the replacement of the outboard leading edge slat control rod end bearings and attach bolt on certain wing outboard leading edge slat control rods. This proposal is prompted by the report of additional airplanes that could be operating with outboard wing leading edge slat control rods that are subject to cracking. There are also reports of the failure of the outboard leading edge slat control rod attach bolts caused by high friction in the bushings and control rod end bearings. This condition, if not corrected, could result in loss of ability to control the position of the affected slat, which could adversely affect the controllability of the airplane.

DATE: Comments must be received no later than March 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-273-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-273-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 20, 1989, the FAA issued AD 89-16-01, Amendment 39-6782 (54 FR 31509; July 31, 1989), to require the inspection and replacement, if necessary, of certain wing outboard leading edge slat control rods. That action was prompted by fractures of the wing outboard leading edge slat control rods. This condition, if not corrected, could result in loss of ability to control the position of the affected slat, which could adversely affect the controllability of the airplane.

Since issuance of that AD, it has been reported that additional airplanes could be operating with outboard wing leading edge slat control rods that are subject to cracking. Also, there has been one incident involving the failure of an outboard leading edge slat control rod attach bolt caused by high friction in the bushing and control rod end bearing. Additional incidents have been reported involving excessive bolt wear caused by the high friction in the bushing and control rod end bearing.

The FAA has reviewed and approved Boeing Service Bulletin 767-57-0021, Revision 1, dated September 14, 1989, which describes procedures for inspection of the control rods for cracks, and replacement of the rods, if necessary, and procedures for replacement of the control rod end bearings and attach bolt.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 89-16-01 with a new airworthiness directive that would increase the number of airplanes subject to inspection and replacement, if necessary, of the wing outboard leading edge slat control rods, and would require replacement of the wing outboard leading edge slat control rod ends and attach bolt in accordance with the service bulletin previously described.

There are approximately 271 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 193 airplanes of U.S. registry would be affected by this AD, that it would take approximately 21 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts costs are estimated to be $5,500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,223,620.

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

For the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6282 (54 FR 31509; July 31, 1989), AD 89-16-01, with the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, listed in Boeing Service Bulletin 767-57-0021, Revision 1 dated September 14, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the outboard wing leading edge slat control rods, accomplish the following:

A. For airplanes identified as Group 1: Within the next 1,200 landings or 9 months after the effective date of this AD, whichever occurs first, unless accomplished within the last 800 landings or 6 months, whichever occurs later, visually inspect the wing outboard leading edge slat control rods in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767-57-0021, dated August 25, 1988, or Revision 1, dated September 14, 1989.

1. If the date of manufacture (stamped on the control rod) is June 1983 or later, no further inspection is required.

2. If the date of manufacture is illegible or is prior to June 1983, ultrasonically inspect the control rods for cracks in accordance with Figure 1. of Boeing Service Bulletin 767-57-0021, dated August 25, 1988, or Revision 1, dated September 14, 1989. If cracks or fractures are detected, replace prior to further flight, in accordance with Figure 2. of the service bulletin. Repeat the ultrasonic inspection of the control rods manufactured prior to June 1983 at intervals not to exceed 2,000 landings or 15 months, whichever occurs first.

B. Installation of control rods manufactured June 1983, or later, constitutes terminating action for the inspection requirements of paragraph A.2., above.

C. For airplanes identified as Group 1 and Group 2: Within the next 2,500 landings or 18 months, whichever occurs first, replace the outboard leading edge slat control rod ends and attach bolt in accordance with Figure 3 of Boeing Service Bulletin 767-57-0021, Revision 1, dated September 14, 1989.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 16, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1785 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-276-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1-11 200 and 400 series airplanes, which would require repetitive visual or X-ray inspections to detect corrosion in the tailplane lower skin panel and stringers, and repair, if necessary. This proposal is prompted by reports that corrosion has developed internally and externally, affecting the machined skin to a considerable depth, with complete penetration of the skin occurring in certain localized areas. This condition, if not corrected, could lead to reduced structural integrity of the tailplane.

DATE: Comments must be received no later than March 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-276-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, PLC., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-276-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAC 1-11 200 and 400 series airplanes. A recent Aging Aircraft Task Force review of aging Model BAC 1-11

series airplanes resulted in confirmation that airplanes which have incorporated modification PM1573, which introduced machined skins as a basic modification, are subject to corrosion in the tailplane lower skin panel. The manufacturer has reported that corrosion has developed internally and externally, affecting the machined skin to a considerable depth, with complete penetration of the skin occurring in certain localized areas. In one case, corrosion had affected the stringers. This condition, if not corrected, could lead to reduced structural integrity of the tailplane.

British Aerospace has issued Alert Service Bulletin 55-A-PM5827, Issue 1, dated July 24, 1981, which describes procedures for repetitive visual or X-ray inspections to detect corrosion in the tailplane bottom skin and stringers, and repair, if necessary. The United Kindom CAA has classified this service bulletin as mandatory.

This ariplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual or X-ray inspections to detect corrosion in the tailplane bottom skin and stringers, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately 52 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $145,600.

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

For the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAC 1-11 200 and 400 series airplanes, which have incorporated modification PM1573, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the tailplane, accomplish the following:

A. Perform the following specified initial inspections to detect corrosion in the tailplane lower skin panel and stringers:

1. a. Perform an external visual inspection, in accordance with British Aerospace Alert Service Bulletin 55-A-PM-5827, Issue 1, dated July 24, 1981, prior to the latest of the following compliance times:

(1) Within 90 days after the effective date of this AD, or

(2) Within one year of the last inspection, or

(3) Within ten years of the date of manufacture of the airplane.

b. Perform an internal visual inspection, in accordance with British Aerospace Alert Service Bulletin 55-A-PM-5827, Issue 1, dated July 24, 1981, prior to the latest of the following compliance times:

(1) Within 270 days after the effective date of this AD, or

(2) Within three years since the last inspection, or

(3) Within ten years of the date of manufacture of the airplane.

2. In lieu of the external and internal visual inspections required by paragraphs A.1. and A.2., above, an X-ray inspection of the tailplane bottom skin may be performed in accordance with British Aerospace Alert Service Bulletin 55-A-PM-5827, Issue 1, dated July 24, 1981, to detect corrosion prior to the latest of the following compliance times:

a. Within 270 days after the effective date of this AD, or

b. Within 3 years, if the previously conducted inspection was an internal visual inspection, or

c. Within 2 years, if the previously conducted inspection was an X-ray or equivalent inspection.

B. Repeat the inspections required by paragraph A., above, at the following intervals:

1. External visual inspections must be repeated at intervals not to exceed one year.

2. Internal visual inspections must be repeated at intervals not to exceed three years.

3. X-ray inspections, accomplished in lieu of external and internal visual inspections, must be repeated at intervals not to exceed two years.

Note: Any combination of these repeat inspections is permissible, as long as the repetitive interval indicated for each type is not exceeded.

C. If corrosion is found as a result of the visual inspection required by paragraph A. or B., above, prior to further flight, accomplish the following, in accordance with the Accomplishment Instructions in British Aerospace Alert Service Bulletin, Issue 1, dated July 24, 1981:

1. If corrosion found is within the limits identified in the Structural Repair Manual, Chapter 55-01-0, Table 1, repair, perform dye penetrant examination to ensure complete removal of corrosion, and restore protective treatment, in accordance with paragraph 2.2.1. of the service bulletin.

2. If corrosion found is outside the limits identified in the Structural Repair Manual, Chapter 55-01-0, Table 1, but has not completely penetrated the skin, repair in a manner spproved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

3. If corrosion found is outside the limits identified in the Structural Repair Manual, Chapter 55-01-0, Table 1, and one or more areas have completely penetrated the skin, perform an internal visual inspection of the tailplane bottom skin and stringers to establish the extent and depth of corrosion, and repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. If corrosion is found as a result of the X-ray inspection required by paragraph A. or B., above, prior to further flight, perform an internal visual inspection of the tailplane bottom skin and stringers to establish the extent and depth of the corrosion, in accordance with paragraph 2.2.4. of the Accomplishment Instructions in British Aerospace Alert Service Bulletin 55-A-PM-5827, Issue 1, dated July 24, 1981, and repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 16, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1781 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 90-AAL-3]

Proposed Designation of Emmonak, AK, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to lower the base of controlled airspace in the vicinity of Emmonak, AK, Airport to 700 feet above the surface so that aircraft conducting flight under instrument flight rules (IFR) would have exclusive use of that airspace when the visibility is less than 3 miles, thereby enhancing the safety of such operations. This proposed action would change the airport status from Visual Flight Rules (VFR) to IFR.

DATES: Comments must be received on or before March 2, 1990.

ADDRESSES: Send comments on the proposed in triplicate to: Manager, Air Traffic Division, Docket No. 90-AAL-3, Federal Aviation Administration, 222 West 7th Ave., Box 14, Anchorage, AK 99513-7587.

The official docket may be examined in the FAA Rules Docket, Office of the Assistant Chief Counsel, Third Floor, Module F, Federal Building U.S. Courthouse, 222 West 7th Ave., Anchorage, Alaska.

An informal docket may also be examined during normal business hours at the Regional Air Traffic Division, Third Floor, Module B, Federal Building U.S. Courhouse, 222 West 7th Ave, Anchorage, AK.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Airspace and Procedures Specialists, (AAL-531), Air Traffic Division, Federal Aviation Administration, 222 West 7th Ave., Box 14, Anchorage, AK, 99513-7587, telephone (907) 271-5998.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AAL-3." 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 Regional Air Traffic Division, Third Floor, Module B, Federal Building U.S. Courthouse, 222 West 7th Ave., Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, Alaskan Region, 222 West 7th Ave., Box 14, Anchorage, AK 99513-7587 or by calling (907) 271-5989. 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. 11-2A 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 the base of controlled airspace at 700 feet above the surface in a rectangular area 37 statute miles by 14 statute miles over the Emmonak, AK, Airport. While this airspace designation would exclude aircraft from conducting flight under visual flight rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under IFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Emmonak, AK [New]

That airspace extending upward from 700-feet above the surface within 9.5 miles west and 4.5 miles east of the 335° radial from the Emmonak VOR (lat. 62° 47'.3"N., long. 164° 29'.7"W.) extending from the VOR to 18.5 miles north of the VOR; and within 4.5 miles east and 9.5 miles west of the 165° radial from the Emmonak VOR extending from the VOR to 18.5 miles south of the VOR.

Issued in Anchorage, Alaska on January 16, 1990.

Henry A. Elias,

Manager, Air Traffic Division.

[FR Doc. 90-1786 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-AWA-6]

Proposed Alteration and Revocation of Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 88-AWA-6, which was published in the **Federal Register** on August 3, 1989. That NPRM proposed to alter the descriptions of federal airways located in the States of North Dakota, South Dakota, Ohio and Indiana, by revoking some airway segments and renumbering other segments. Due to the large number of discrepancies between the original request from the FAA Great Lakes Regional airspace branch and the NPRM, the FAA decided to withdraw the proposal.

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

The Proposed Rule

On August 3, 1989, a Notice of Proposed Rulemaking was published in the **Federal Register** to alter the descriptions of several federal airways located in the States of North Dakota, South Dakota, Ohio, and Indiana, by revoking some airway segments and renumbering other segments (54 FR 31966).

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 88-AWA-6, as published in the **Federal Register** on August 3, 1989 (54 FR 31966) is hereby withdrawn.

(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.)

Issued in Washington, DC, on January 16, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90-1787 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program; Reduction in Staffing Level

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

ACTION: Proposed rule; withdrawal of State program amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment submitted by the Commonwealth of Pennsylvania as modification to its permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The withdrawn amendment concerns the minimum staffing level needed to administer the Pennsylvania program. By letter dated November 27, 1989, the DER withdrew the proposed amendment stating that there was no longer a need to revise the approved program staffing level.

DATE: This withdrawal is effective January 26, 1990.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Third Floor, Suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program.

II. Submission of Amendment.

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program submission including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of Amendment

By letter dated May 7, 1985, (Administrative Record No. PA 552), the Pennsylvania DER submitted an amendment to revise the Pennsylvania program. The proposal as first submitted would have reduced DER's approved staffing level from 405 and 388 person-years. OSM published a notice announcing receipt of this amendment and the opening of the public comment period in the June 18, 1985, **Federal Register** (50 FR 25265). The public comment period ended July 18, 1985.

OSM reviewed the proposed amendment and determined that additional information and clarification was necessary before deciding on whether to approve the submission. In response to OSM's request, Pennsylvania submitted on February 20, 1986, May 1, 1986, and August 3, 1987, worked analyses, staffing charts, and detailed narratives describing functions and responsibilities under the new DER organizational structure (Administrative Record No's. PA 596, PA 604, and PA 670). OSM analyzed this information and held discussions with DER on significant concerns which included staffing necessary to meet required inspection frequencies and to handle civil penalty cases. These discussions resulted in revisions to the amendment that increased the proposed minimum staffing level from 388 to 394.75 person-years (Administrative Record No. PA 604).

The June 1, 1989, **Federal Register** reopened and extended the public comment period in order to provide the public an opportunity to consider the amendments adequancy in light of the additional information submitted by DER and the changes in the Pennsylvania regulatory program since the amendment was proposed on May 7, 1985 (54 FR 23491). This extension of the public comment period closed on July 3, 1989.

By letter dated November 27, 1989, the DER withdrew the proposed amendment stating that there was no longer a need to revise the approved program staffing level (Administrative Record No. PA 789). OSM agrees. Therefore, the proposed program amendment published in the June 18, 1985, Federal Register (50 FR 25265) relating to minimum program staffing is withdrawn and part 938 Title 30 of the Code of Federal Regulations is not amended.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 19, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90-1791 Filed 1-25-90; 8:45 am]

BILLING CODE 4310-05-M

Notices

Federal Register
Vol. 55, No. 18
Friday, January 26, 1990

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.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990 Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1990 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: February 26, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 20 and December 1, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 49789 and 43103) of proposed additions to and deletions from Procurement List 1990, which was published on November 3, 1989 (54 FR 46450).

Additions

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the service at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and service listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the service procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1990:

Commodity

Kit Bag, Flyer's

8460-00-883-8673.

Service

Janitorial/Custodial,

Hoffman I Building, 2461 Eisenhower Avenue, Alexandria, Virginia.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

Accordingly, the following commodities are hereby deleted from Procurement List 1990:

Strap, Shoulder, Quick Release, Right Hand

8465-01-078-9282

(Requirements for Mechanicsburg, Pennsylvania and Richmond, Virginia Depots only).

Strap, Shoulder, Quick Release, Left Hand

8465-00-0482

(Requirements for Richmond, Virginia Depot only).

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-1801 Filed 1-25-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

Comments Must Be Received On Or Before: February 26, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Harness, Head

4240-01-223-7313

Bag, Plastic

8105-00-837-7756
8105-00-837-7757

Toothbrush, Dental Patient

8530-00-080-6341
8530-00-080-7630

Service

Janitorial/Custodial

Social Security Administration, 3116 St. Claude Avenue, New Orleans, Louisiana

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-1802 Filed 1-25-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.003C]

Developmental Bilingual Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1990.

Purpose of program: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, and improve developmental bilingual education programs.

Deadline for transmittal of applications: April 24, 1990

Deadline for intergovernmental review: June 25, 1990

Applications available: January 26, 1990

Available funds: $3 million

Estimated range of awards: $75,000–$275,000

Estimated average size of awards: $176,000

Estimated number of awards: 17

NOTE: The Department is not bound by any estimates in this notice.

Project period: 36 months

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 500 and 501.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority:

Projects providing instruction in one of the following second languages: Arabic, French, German, Hindustani, Italian, Japanese, Portuguese, Russian, Spanish, Vietnamese, or one of the various Chinese languages. The special need for instruction in these languages is due to their importance in improving future economic opportunities for English proficient children, the lack of adequate opportunities for obtaining this instruction, and the numbers of limited English proficient children from these language groups.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 points among the factors in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 points as follows:

Relative need (17 points)
Geographical distribution (8 points).

For applications or information contact: Ms. Ana Maria Garcia, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–5700.

Program authority: 20 U.S.C. 3291(a)(2).

Dated: January 17, 1990.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 90–1738 Filed 1–25–90; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming joint meeting of the Technical Methodology and the Analysis and Dissemination Subcommittees of the National Assessment Governing Boad. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: Monday, February 19, 1990.

TIME: 9 a.m. until adjournment.

PLACE: 1100 L Street, NW., Suite 7322, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC, 20005–4013, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 USC 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board is also responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Technical Methodology and the Analysis and Reporting Subcommittees of the National Assessment Governing Board will meet on Monday, February 19, 1990, 10 a.m. until the completion of business. The purpose of this meeting is to prepare a report of the progress on the following matters: (1) NAGB policy for reporting, (2) NAEP timelines, (3) opportunity to learn timelines, (4) cross-sectional analysis, and (5) alternatives to multiple choice format.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–1740 Filed 1–25–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

Regional Hearings to Solicit Views From Public Officials and Individuals With Expertise and Interest in the Development of a National Energy Strategy

AGENCY: Office of the Secretary, Department of Energy.

ACTION: Notice of a hearing to provide comments on the development of a National Energy Strategy.

SUMMARY: This hearing will be the fourteenth hearing in a series being conducted throughout the country by the Department of Energy to solicit comments from interested parties on a range of energy topics. Oral testimony at this hearing will be presented by invitation only. Written testimony can be submitted by any interested party at either the hearing site or directly to the Department of Energy, Office of Policy, Planning and Analysis, c/o Ms. Cherie Gary, 1000 Independence Avenue, SW, Room 7B–143, Washington, DC 20585. Please reference specific hearing(s) and topic(s).

This and other National Energy Strategy hearings are designed to solicit

information, data, and analysis related to the development of national energy policy objectives, strategies for achieving them, and the role that the Federal Government should play in meeting national energy, economic, and environmental needs.

The Department is interested in obtaining specific suggestions as to options and obstacles to efficient production and use of energy. Written comments may address general policies, regulations, economic incentives or disincentives, research and development needs, energy science, technology transfer, education, technical assistance, role of State and Local Government, the role of industry in energy policy development and implementation, or any other issues that would enhance the national dialogue on national energy strategy.

Date, location, and topic of the hearing is as follows: February 2, 1990—New Orleans, Louisiana; "Energy and Tax Policies" (role of tax policy in energy supply and use). This hearing will be held from 9 a.m. to 4 p.m. at The United States District Court, 500 Camp Street, Room C501—The Ceremonial Court Room, New Orleans, Louisiana.

All testimony submitted in conjunction with these hearings will be entered into the National Energy Strategy development record and made available to the public.

FOR FURTHER INFORMATION CONTACT: For further information, please write or call William H. Hatch, Office of Policy, Planning and Analysis, U.S. Department of Energy, 1000 Independence Avenue SW., PE-01, Washington, DC 20585, (202) 586-4767.

Linda G. Stuntz,

Deputy Under Secretary, Policy, Planning and Analysis.

[FR Doc. 90-1907 Filed 1-25-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Fe Docket No. 89-81-NG]

Yuma Gas Corp.; Application To Import Natural Gas From and Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Blanket Authorizations to Import Natural Gas from and Export Natural Gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 15, 1989, of an application filed by Yuma Gas Corporation (Yuma) for blanket authorization to import up to 100 Bcf of natural gas from Canada and/or Mexico and export up to 100 Bcf of natural gas to Canada and/or Mexico. The application requests that the import/export authority be approved for spot and short-term sales for a two-year period commencing on the date of first delivery. Yuma intends to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., February 26, 1990.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION:

Frank Duchaine, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8233

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The exact legal name of the applicant is Yuma Gas Corporation, a corporation duly organized under the laws of the State of Texas, with its principal place of business in Houston, Texas.

Yuma requests blanket authorization from the DOE/FE to export up to 100 Bcf of natural gas from the United States to Mexico and/or Canada over a term of two years, commencing on date of first deliveries under such export authorization. Yuma intends to function either as exporter and reseller, or as agent on behalf of United States producers, pipelines, or local distribution companies.

If authorized, Yuma states that it would purchase natural gas from a variety of United States supplies and resell such supplies to any suitable purchaser in Mexico and/or Canada. Yuma states that it also contemplates acting as a facilitator for the exportation of other natural gas suppliers, and acting as agent on behalf of both producers and purchasers.

Yuma also requests blanket authority from the DOE/FE to import up to 100 Bcf of natural gas from Mexico and/or Canada over a term of two years, commencing on date of first deliveries under such import authorization. Yuma states that it contemplates that it will function as a importer and reseller of natural gas from these countries and that, unless the gas is competitively priced and needed by the purchaser, it will not be sold.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that there is no current need for the domestic gas to be exported, that this import/export arrangement will be competitive and therefore is in the public interest. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Evironmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's

action is not a major Federal action under NEPA. Unless it appears during the proceeding on this application that the grant or denial of the authorization will significantly affect the quality of the human environment, the DOE expects that no additional environmental review will be required.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above. They must be filed no later than 4:30 p.m., e.s.t., February 26, 1990.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR 590.316.

A copy of Yuma's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. 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 17, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy

[FR Doc. 90-1824 Filed 1-25-90; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 90-05; Certification Notice—53]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners and operators of proposed new electric base load powerplants have filed self certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Selkirk Cogen Partners, L.P., Boston, MA	1-05-90	Topping Cycle	79.9	Selkirk, NY.
Cogen Technologies Linden Venture, L.P., Houston, TX	1-09-90	Topping Cycle	614	Linden, NJ.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, phone number (202) 586-6769.

Issued in Washington, DC on January 22, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-1825 Filed 1-25-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER90-54-000, *et al.*]

People's Electric Cooperative, et al.; Electric rate, Small power production, and Interlocking Directorate filings

January 18, 1990.

Take notice that the following filings have been made with the Commission:

1. People's Electric Cooperative

[Docket No. ER90-54-000]

Take notice that People's Electric Cooperative (PEC), on January 16, 1990, tendered an amendment to Rate Schedule Nos. 1 and 2 in its initial rate filing. In that amendment, PEC further describes its proposed transmission service as well as its proposed cost of service and rate of return. This amendment is filed in response to the Deficiency Letter dated December 14, 1989, from Commission Staff.

Copies of the amended filing have been served on Oklahoma Gas and Electric Company, Public Service Company of Oklahoma the Byng Public Works Authority, and the Chickasaw Tribal Utility Authority.

Comment date: February 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER90-157-000]

Take notice that PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (PacifiCorp), on January 11, 1990, tendered for filing, in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, Exhibit A (Revision No. 13, effective September 30, 1989) to February 25, 1976 Transmission Agreement (PacifiCorp/Pacific Power & Light Company Rate Schedule FPC No. 123), between PacifiCorp and Tri-State Generation and Transmission Association, Inc. (Tri-State).

Exhibit A to the Transmission Agreement is revised annually in accordance with Article 6(b) of the Transmission Agreement, and specifies the projected maximum integrated demand in kilowatts which Tri-State desires to have transmitted to defined Points of Delivery for a four year rolling period.

PacifiCorp respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of September 30, 1989 be assigned, this date being consistent with the provisions of Article 6(b) of the Transmission Agreement.

Copies of this filing were supplied to Tri-State and the Wyoming Public Service Commission.

Comment date: February 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Union Electric Company

[Docket No. ER84-560-024]

Take notice that on January 2, 1990 Union Electric Company tendered for filing its compliance report pursuant to a Commission letter dated November 21, 1989.

Comment date: February 1, 1990, in accordance with Standard Paragraph E end of this notice.

4. Montaup Electric Company

[Docket No. ER90-149-000]

Take notice that on January 9, 1990, Montaup Electric Company (Montaup) filed a letter agreement for the sale of capacity and energy to Boston Edison Company (BECO) from various generating units for the period May 1, 1989–August 31, 1989 during which BECO's Pilgrim generating unit was operating at less than full power. The sales provided BECO with needed power and energy while enabling Montaup to sell temporary surplus capacity. The sales resulted in a net energy savings to Montaup's ratepayers.

The sales of capacity and energy were made from (1) Montaup's Canal No. 2 unit at the demand charge of $57.71 per kilowatt per year on file with the FERC (Docket No. ER88-492-000, letter order dated July 27, 1988) and an energy charge consisting of actual fuel costs, (2) Montaup's share of Millstone No. 3 at a negotiated demand charge of $750 per kilowatt per year reflecting less than Montaup's embedded cost and an energy charge consisting of actual fuel costs, and (3) Qualifying Facilities in which Montaup has entitlements as a result of its "slice-of-system" purchase from Northeast Utilities at the cost of $78 per megawatt hour incurred by Montaup in reimbursing Northeast Utilities for that capacity and energy at the filed rate. The sources of generations vary within the period of the sale.

BECO's need for power and energy could not be determined in time to comply with the 60 day notice requirement. Montaup requests waiver of the notice requirements so that the letter agreement may become effective on May 1, 1989 according to its terms.

Comment date: February 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation, Green Mountain Power Company

[Docket No. ER90-151-000]

Take notice that Central Vermont Public Service Corporation (CVPS) and Green Mountain Power Company (GMP) on January 11, 1990 tendered for filing two Option Power Agreements under which they will sell wholesale power to the Vermont Department of Public Service (the VDPS) in the amount by which the power sold by the areas exceeds the VDPS's sources of power and energy dedicated to such sales under existing contracts. The power and energy to be sold at wholesale to the VDPS under the Option Power Agreements is currently sold at retail directly to the VDPS's retail customers by CVPS and GMP.

CVPS and GMP request the Commission to waive its notice of filing requirements to permit the Option Power Agreements to become effective as of July 1, 1989.

Comment date: February 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. West Penn Power Company

[Docket No. ER90-158-000]

Take notice that West Penn Power Company, on January 16, 1990, tendered for filing proposed changes in its FERC Electric Tariff. The proposed changes would increase revenues from jurisdictional sales and service by approximately $645,000, based on the twelve-month period ending December 31, 1990. The proposed effective date for the increased rates is February 1, 1990.

The changes proposed are for the purpose of recovering increased costs incurred by the Company, as well as to add new service points and to correct and revise its tariff language.

Copies of the filing were served upon the jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: February 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Duquesne Light Company

[Docket No. ER90-152-000]

Take notice that Duquesne Light Company (Duquesne) on January 12, 1990 tendered for filing a Power Supply Agreement (the Agreement) between Duquesne and Delmarva Power & Light Company (Delmarva). The Agreement, dated and effective July 14, 1989, is to continue until December 31, 2009, unless terminated earlier either by mutual agreement or by reason of the

occurrence of certain events set forth in the Agreement.

The Agreement provides for the sale of 100 MWs of electric generation capacity and the associated energy beginning April 1, 1990 and ending December 31, 2009. The prices for the capacity are as follows:

1990–1994: $76.12/KW-year;
1995–1999: $203.97/KW-year;
2000–2004: $239.94/KW-year;
2005–2009: $281.32/KW-year;

The demand charges represent special rates arrived at through negotiations. The energy charge is 1.79 cents/kwh for the calendar year 1990. After 1990, the energy charge will be adjusted each month by multiplying 1.79 cents times the ratio of actual coal costs for the most recent three month period available divided by the 1990 annual average coal costs, both excluding costs from captive mines.

Duquesne and Delmarva have requested an effective date of April 1, 1990.

Copies of the filing were served upon the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Delaware Public Service Commission and the State Corporation Commission of Virginia.

Comment date: February 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Exchange, Inc.

[Docket No. ER89-580-000]

Take notice that on January 12, 1990 Portland General Exchange, Inc., (PGX) tendered for filing an amendment to its filing of Long-term Power Sale and Exchange Agreements with the Cities of Burbank and Glendale. PGX states that the amendment is the Response of Portland General Exchange, Inc., to October 11, 1989, Deficiency Letter.

Copies of the Response have been served on the Distribution List, as included in the filing.

Comment date: February 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Rochester Gas and Electric Corporation

[Docket No. ER90-153-000]

Take notice that on January 12, 1990 Rochester Gas and Electric Corporation (RG&E) tendered for filing a Power Sales Agreement with Green Mountain Power Corporation (GMP) for the sale of up to 15 MW of capacity and associated energy. The term of the Agreement is from November 1, 1989 through May 31, 1994.

RG&E requests an effective date retroactively as of November 1, 1989 and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing were served upon GMP and the New York State Public Service Commission.

Comment date: February 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Central Louisiana Electric Company, Inc.

[Docket No. ER90-154-000]

Take notice that on January 11, 1990, Central Louisiana Electric Company, Inc. (CLECO) filed proposed revisions to its Rodemacher Unit No. 2 Transmission Service Agreement for service to Louisiana Energy and Power Authority pursuant to FERC Rate Schedule No. 53. CLECO states that the service change allows for an increase in the maximum transmission service to the Points of Delivery of LEPA-3 and LEPA-4 by 10 MW. In addition, the revision also provides for service to certain Points of Delivery with any LEPA member. The revised rate schedule is proposed to become effective on October 1, 1989.

Comment date: February 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1744 Filed 1-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8627-003]

City of Ithaca, New York; Notice of Surrender of Exemption

January 19, 1990.

Take notice that the City of Ithaca, exemptee for the Van Natta Project No. 8627 located on Six Mile Creek in Tompkins County, New York, has requested that its exemption from licensing be terminated. The exemption was issued on March 4, 1986. The exemptee states that no construction has been done on this project and that the project is not economically feasible.

The exemptee filed the request on November 22, 1989, and the exemption for Project No. 8627 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1742 Filed 1-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-26-000]

Natural Gas Pipeline Company of America; Change in Rates

January 19, 1990.

Take notice that on December 29, 1989, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective March 1, 1990.

Eighty-Eighth Revised Sheet No. 5
Fifty-Third Revised Sheet No. 5A
Thirty-First Revised Sheet No. 5B
Thirty-First Revised Sheet No. 5C
First Revised Sheet No. 5C.1
First Revised Sheet No. 5C.2

Natural states the purpose of the instant filing is to implement its Purchased Gas Adjustment (PGA) unit rate adjustment calculated pursuant to section 18 of the General Terms and Conditions of its Tariff. The rate adjustments herein relate to the ongoing gas cost component of Natural's rate and reflect projected gas costs and sales for the three months beginning March 1, 1990. While a change has been reflected in Natural's demand surcharge rate to be effective for the twelve month period commencing March 1, 1990, the commodity surcharge rate is requested to be continued at its current level.

The base rate levels reflected on the enclosed tariff sheets are those established at Docket No. RP88-209-000. The GRI and ACA charge are at the levels previously filed.

The overall effect on Natural's ongoing purchased gas cost is to decrease Natural's DMQ-1 commodity charge by 30.37¢, and to increase Natural's DMQ-1 demand and entitlement charges by $.07 and .15¢, respectively. No change has been made to Natural's currently effective DMQ-1 commodity surcharge rate of 14.82¢ and Natural's DMQ-1 demand surcharge rate is $.02. Appropriate adjustments have been made with respect to Natural's other sales rate schedules.

A copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

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 §§ 385.214 and 385.211. All such motions or protests must be filed on or before February 2, 1990. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1743 Filed 1-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-468-000, et al.]

Tennessee Gas Pipeline Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP90-468-000]

January 12, 1990.

Take notice that on January 3, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-468-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for PSI, Inc. (PSI), a gas marketer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that, pursuant to a transportation agreement dated December 1, 1989, it proposes to transport up to 20,000 Dt. per day of natural gas for PSI. Tennessee further states that the agreement provides for it to receive the gas from various existing receipt points located in Texas, and to redeliver the gas to an existing point of delivery located in West Virginia. PSI has informed Tennessee that it expects to have the full 20,000 Dt. transported on an average day and, based thereon, estimates that 7,300,000 Dt. would be transported annually. Tennessee advises that, the service commenced December 1, 1989, as reported in Docket No. ST90-1191-000 (filed October 27, 1989), pursuant to Section 284.223 of the Commission's Regulations.

Comment date: February 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP90-503-000]

January 12, 1990.

Take notice that on January 11, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-503-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Cabot Energy Marketing Corporation (Cabot), a broker, under the blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation agreement dated June 14, 1989, under its Rate Schedule T-1, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas for Cabot. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points at the borderline betweeen the States of Arizona and California near Topock, Arizona, and Blythe, California, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.233(a) commenced November 24, 1989, as reported in Docket No. ST90-1061. El Paso further advises that it would transport 103,000 MMBtu on an average day and 37,595, 000 MMBtu annually.

Comment date: February 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. El Paso Natural Gas Co.

[Docket No. CP90-501-000]

January 12, 1990.

Take notice that on January 11, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-501-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Trigen Resources Corporation (Trigen), a broker, under the blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation agreement dated October 30, 1989, under its Rate Schedule T-1, it proposes to transport up to 2,575 MMBtu per day equivalent of natural gas for Trigen. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to a delivery point in Arizona, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced November 15, 1989, as reported in Docket No. ST90-1033. El Paso further advises that it would transport 206 MMBtu on an average day and 74,190 MMBtu annually.

Comment date: February 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. El Paso Natural Gas Co.

[Docket No. CP90-460-000]

January 12, 1990.

Take notice that on January 2, 1990, El Paso Gas Company (El Paso) P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-460-000 a request, as supplemented January 9, 1990, pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by conveyance to Magma Copper Company (Magma) 0.55 mile of 8⅝ inch sales lateral pipeline in Pinal County, Arizona, under the authorization issued in Docket No. CP82-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that pursuant to an order issued December 4, 1953 at Docket No. G-2266, 13 FPC 787, El Paso was authorized to construct and operate 7

miles of 8⅝ inch sales lateral pipeline (Line No. 2111), known as the San Manuel Crossover Line, to provide natural gas service to San Manuel Copper Corporation (San Manuel) at its proposed townsite and the San Manuel Smelter Facility. It is alleged that this sales lateral presently transports gas from El Paso's 30 inch Waha-Ehrenberg pipeline for delivery to Southwest Gas Corporation for resale to the City of San Manuel and for direct sale by El Paso to Magma at the San Manuel Smelter, all in Pinal County, Arizona.

As a result of El Paso's evaluation involving encroachment, increased activity within the San Manuel plant yard which subjects the line to potential damage, and difficulty of maintenance attributed to a short segment (0.55 mile) of the 8⅝ inch San Manuel Crossover Line residing in the San Manuel plant yard, El Paso has concluded that this short segment of the Crossover Line should no longer be owned, maintained and operated by El Paso. It is alleged that Magma agrees with El Paso's evaluation and has expressed an interest in acquiring the 0.55 mile segment of 8⅝ inch pipeline as part of its plant pipeline. It is stated that El Paso and Magma have executed a letter agreement dated March 3, 1989, which represents El Paso's desire to sell the 0.55 mile segment of the San Manuel Crossover Line to Magma and Magma's interest in purchasing that section of pipeline from El Paso.

It is alleged that Magma is the only customer served by the 0.55 mile segment of the 8⅝ inch pipeline and that the March 3, 1989, letter agreement indicates Magma's consent to the abandonment. Magma indicates that it would integrate the segment of pipeline as a part of its plant yard pipelines.

It is alleged that the original cost of the facilities to be abandoned was $64,204. El Paso indicates that there is no salvage value attributable to the facilities to be abandoned. It is asserted that the proposed abandonment by conveyance would not result in either a book or taxable gain to El Paso. It is stated that the abandonment of 0.55 mile segment of pipeline by El Paso to Magma would be accomplished by conveyance at no cost to Magma. It is alleged that no sale of facilities is involved in the subject application.

Comment date: February 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90-499-000]

January 16, 1990.

Take notice that on January 9, 1990, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-499-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of certain minor gas supply and field compression facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that, in its filing in Docket No. RP90-8-000, it proposed a general rate increase which reflected the refunctional of certain facilities, previously classified on its books under production and gathering plant accounts, to transmission facilities and included such facilities in the appropriate transmission plant accounts. By order issued November 9, 1989, in Docket No. RP90-8-000 the Commission accepted the proposed tariff sheets, suspended the rates and allowed such to become effective subject to refund. The Commission further required that Transco file an application for certificate authorization for any of such refunctionalized facilities not previously certificated.

Transco states that the instant application was filed in compliance with such order and requests authorization to operate certain facilities as part of its transmission plant. Such facilities consist of field compressors, gas supply lines, related structures and rights-of-way in Texas, Louisiana and offshore Louisiana, it is stated.

Transco submits that the "primary function" of such facilities has, in the recent past, changed as a result of a shift in the focus of its system operations—from that of merchant to transporter. Transco states that this shaft was brought about by the Commission's elimination of minimum take and minimum bill obligations on the part of pipeline customers, the regulatory policy changes made by the Commission in Order Nos. 436, 436-A, and 500 to implement "open access" transportation, Transco's acceptance of a blanket transportation certificate in Docket No. CP88-328-000 and the resulting increase in competition for gas sales and the concomitant increase in demand for transportation services, due to the change in the function of the facilities. Transco asserts that they are properly reclassified as transmission facilities.

Comment date: February 6, 1990, in accordance with Standard Paragraph F at the end of this notice.

6. El Paso Natural Gas Co.

[Docket No. CP90-467-000]

January 16, 1990.

Take notice that on January 3, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-467-000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain certificated sale for resale service rendered to Rimrock Gas Company (Rimrock) and for authorization to sell natural gas to the Town of Texola, Oklahoma (Texola) for resale and distribution, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that by order issued June 28, 1968 in Docket No. CP68-224, the Commission authorized it, among other things, to construct and operate certain facilities for the sale and delivery of natural gas to Rimrock for resale and general distribution in the rural Dozier, Texas area of Collingsworth County, Texas. It is said that by order issued August 21, 1969 in Docket No. CP69-23, El Paso received authorization, among other things, to continue the operation of certain natural gas tap and metering facilities, with appurtenances, and the sale and delivery of natural gas to twenty-seven (27) distributor customers for resale among which were two (2) field sales to Rimrock for resale and distribution to consumers situated in the rural areas of Gray, Wheeler, Donley and Collingsworth Counties, Texas.

El Paso states further that subsequent to the implementation of a March 11, 1981 service agreement between El Paso and Rimrock, El Paso learned Texola was interested in acquiring certain assets and properties owned and operated by Rimrock, including all of the natural gas distribution system serving the Town of Texola. It is said that Rimrock assigned all of its rights and obligations under the March 11, 1981 service agreement between El Paso and Rimrock to Texola. It is further said that El Paso and individually, Rimrock and Texola entered into new service agreements each dated March 1, 1988.

El Paso is therefore seeking permission and approval to abandon the sale and delivery to Rimrock and authorization for the sale of gas to Texola utilizing the existing Texola

measuring station in Beckham County, Oklahoma.

El Paso states that the aggregate volumes of natural gas to be provided to Rimrock and Texola under the new service agreements will be identical to the volumes presently delivered to Rimrock at the presently existing points.

Comment date: February 6, 1990, in accordance with Standard Paragraph F at the end of this notice.

7. El Paso Natural Gas Co.

[Docket No. CP90-502-000]

January 16, 1990.

Take notice that on January 11, 1990, El Paso Gas Company, (El Paso) Post Office Box 1492, El Paso, Texas, 79978, filed in Docket No. CP90-502-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Cabot Energy Marketing Corporation (Cabot), under its blanket authorization issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso would perform the proposed interruptible transportation service for Cabot, a shipper of natural gas, pursuant to a transportation service agreement dated June 14, 1989 (reference no. 97C6). The term of the transportation agreement is from the date of execution and shall continue in full force and effect for an initial term of one year and thereafter from month to month until terminated by written notice given no less than 14 days in advance by either party to the other so stating. El Paso proposes to transport on a peak day up to 103,000 MMBtu; on an average day up to 103,000 MMBtu; and on an annual basis 37,595,000 MMBtu for Cabot. El Paso proposes to receive the subject gas from exiting points of receipt on its system for transportation and redelivery for Cabot's account to a delivery point located at the borderline between the states of Arizona and California. The proposed rate to be charged is contained in El Paso's currently effective T-1 rate schedule or superseding rate schedule. It is alleged that no new facilities would be constructed to provide the proposed transportation service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. El Paso commenced such self-implementing service on December 2, 1989, as reported in Docket No. ST90-1062-000.

Comment date: March 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. ANR Pipeline Co.

[Docket No. CP90-518-000]

January 17, 1990.

Take notice that on January 12, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-518-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Northwestern Mutual Life Insurance Company (Northwestern), under the blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated October 12, 1989, under its Rate Schedule ITS, it proposes to transport up to 15,000 dekatherms (dt) per day equivalent of natural gas for Northwestern. ANR states that it would transport the gas from receipt points in the states of Kansas, Louisiana, Oklahoma and Texas, and the offshore Louisiana and Texas gathering areas, and would deliver the gas for the account of Northwestern at existing interconnections located in the state of Iowa.

ANR advises that service under § 284.223(a) commenced November 7, 1989, as reported in Docket No. ST90-969-000. ANR further advises that it would transport 15,000 dt on an average day and 5,475,000 dt annually.

Comment date: March 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Sea Robin Pipeline Co.

[Docket No. CP90-494-000]

January 17, 1990.

Take notice that on January 5, 1990, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-494-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a sale of natural gas to Southern Natural Gas Company (Southern) and to United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Sea Robin proposes to abandon sales to Southern under Rate Schedules X-1 and X-7 and to United under Rate Schedules X-2 and X-8 of its FERC Gas Tariff, Original Volume No. 2. Sea Robin states that Southern and United provided Sea Robin with notice of intent to terminate their purchase contracts, respectively corresponding to Rate Schedules X-1 and X-2, at the expiration of the original terms, March 31, 1990. Sea Robin further states that Rate Schedules X-7 and X-8 expire upon the cessation of Sea Robin's purchases for resale to Southern and United and that its obligation to purchase such gas has ceased. Sea Robin asserts that both Southern and United have indicated that neither customer expects to purchase any volumes of gas from Sea Robin following the expiration of the original term of the sales contracts.

Sea Robin is not proposing the abandonment of any facilities herein.

Sea Robin further requests authorization, pursuant to Order No. 500 and to the extent necessary, for it to bill, pursuant to its alternate passthrough mechanism, costs incurred with regard to contracts litigation as reflected in its Tariff Sheet. Sea Robin also requests the right to seek to collect from its sales customers, Southern and United, such additional take-or-pay costs that may be recovered under any successor order to Order No. 500.

Comment date: February 7, 1990 in accordance with Standard Paragraph F at the end of the notice.

10. Northern Natural Gas Co., Division of Exxon Corp.

[Docket No. CP90-512-000]

January 17, 1990.

Take notice that on January 12, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77251-1188, filed in Docket No. CP90-512-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on behalf of Enron Gas Marketing Inc. (Enron), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport up to 15,000 MMBtu of natural gas on a peak day, 11,250 MMBtu on an average day, and 5,475,000 MMBtu on an annual basis for Enron. Northern states that it would perform the transportation service for

Enron under Northern's Rate Schedule IT-1. Northern indicates that it would receive and compress the gas at the suction side of Northern's Fort Buford compressor station located in McKenzie County, North Dakota, and then would deliver the gas for the account of Enron to Northern Border Pipeline Company (NBPL) at the discharge side of Northern's Fort Buford compressor station for subsequent transportation by NBPL.

It is explained that the service commenced November 24, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-1025. Northern indicates that no new facilities would be necessary to provide the subject service.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. ANR Pipline Co.

[Docket No. CP90-517-000]

January 17, 1990.

Take notice that on January 12, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-517-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Kerr-McGee Corporation (Kerr-McGee), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport up to 60,000 dekaterms (dt) of natural gas equivalent per day on an interruptible basis on behalf of Kerr-Gee pursuant to a transportation agreement dated August 14, 1989, between ANR and Kerr-McGee. ANR would receive the gas at various existing points of receipt in Louisiana, offshore Louisiana, Kansas, Oklahoma, Texas and offshore Texas and deliver equivalent volumes, less fuel used and unaccounted for line loss, at existing points of delivery in Indiana, Illinois, Ohio and Louisiana.

ANR states that the estimated daily and annual quantities would be 60,000 dt and 21,900,000 dt, respectively. Service under § 284.223(a) commenced on November 7, 1989, as reported in Docket No. ST90-967-000, it is stated.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. Lone Star Gas Co., a Division of ENSERCH Corp.

[Docket No. CP90-505-000]

January 17, 1990.

Take notice that on January 11, 1990, Lone Star Gas Company, A Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP90-505-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon certain sales taps, lateral lines and appurtenant facilities pursuant to Lone Star's blanket certificate issued in Docket No. CP83-59-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Lone Star proposes to abandon its facilities heretofore used to provide gas service to the following direct sale customers: Mobil Oil Corporation (Mobil) and W.H. Metzner (Metzner). Lone Star states that in each instance, the gas service is no longer required by the customer, no other customers are served from these facilities, and the customers are served from these facilities, and the customers have agreed in writing to the termination of service. The facilities are located in Wichita County, Texas.

The facilities to be abandoned are described as follows: a) Line A-34-3, approximately 14.79 miles of 3-inch pipeline off of Line A-34 (North) at Station 358+75 (Station 0+00 to Station 784+20(End)) and related facilities used to provide service to Mobil and Metzner; b) Line A-34-3-1, approximately 0.73 mile of 2-inch pipeline off of Line A-34-3 at Station 467+14 (Station 0+00 to Station 38+47(End). Lone Star further states that Lines A-34-3 and A-34-3-1 were certificated in Docket No. G-1889.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Panhandle Eastern Pipe Line Co.

[Docket No. CP90-488-000]

January 17, 1990.

Take notice that on January 5, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-488-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for XEBEC Gas Company (XEBEC), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Panhandle requests authorization to transport, on an interruptible basis, up to a maximum of 10,000 dt equivalent of natural gas per day for XEBEC pursuant to a transportation agreement dated October 16, 1989. Panhandle states that it would receive the gas from various existing points of receipt in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma and Texas and redeliver the gas, less fuel and unaccounted for line loss, to points of redelivery in Lucas County, Ohio. Panhandle indicates that the total volume of gas to be transported for XEBEC on a peak day would be 10,000 dt; on an average day would be 6,000 dt; and on an annual basis would be 2,190,000 dt.

Panhandle states that it commenced the transportation of natural gas for XEBEC on November 14, 1989, at Docket No. ST90-998-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. Trunkline Gas Co.

[Docket No. CP-510-000]

January 17, 1990.

Take notice that on January 11, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-510-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Amoco Production Company (Amoco), a producer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport, on an interruptible basis, up to 100,000 dt equivalent of natural gas on a peak day for Amoco, 30,000 dt equivalent on an average day, and 10,950,000 dt equivalent on an annual basis. It is stated that Trunkline would receive the gas at designated receipt points in Illinois, Tennessee, Louisiana, offshore Louisiana, Texas, and offshore Texas, and would deliver equivalent volumes, less fuel and unaccounted for line loss, to designated points in Indiana. It is asserted that the transportation service

would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced November 18, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-1085.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP90-514-000]

January 17, 1990.

Take notice that on January 12, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-514-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Graham Energy Marketing Company (Graham), a marketer of natural gas, under its blanket authorization issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Graham, pursuant to an interruptible transportation service agreement dated November 9, 1988, as amended on October 24, 1989 (Contract No. TI-21-1954). The transportation agreement is effective for a primary term of one month from the date of the agreement or such date that the parties mutually agree to terminate the agreement. The agreement shall continue for successive one month terms until terminated. United proposes to transport 123,600 MMBtu of natural gas on a peak and average day; and on an annual basis 45,114,000 MMBtu of natural gas for Graham. United proposes to receive the subject gas at existing points of interconnection located in the states of Louisiana, Mississippi and Texas. Points of delivery are located in the states of Alabama, Florida, Louisiana, and Mississippi. United avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on October 30, 1989, as reported in Docket No. ST90-1361-000.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

16. ANR Pipeline Co.

[Docket No. CP90-515-000]

January 17, 1990.

Take notice that on January 12, 1990, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP90-515-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Domtar Gypsum, Inc. (Domtar), under the authorization issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed firm transportation service for Domtar, pursuant to a transportation agreement dated August 8, 1989. The term of the transportation agreement is for an initial period of 120 days and thereafter until August 31, 1994, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice. ANR proposes to transport on a peak day up to 560 dekatherm; on an average day up to 560 dekatherm; and on an annual basis 204,400 dekatherm of natural gas for Domtar. It is stated that ANR would receive the gas at existing points of receipt located in Louisiana and the offshore Louisiana gathering area and redeliver the gas for the account of Domtar at an existing interconnection located in Michigan. It is alleged that Domtar would pay ANR the effective rate contained in ANR's Rate Schedule FTS-1 and the applicable provisions of the General Terms and Conditions of ANR's FERC Gas Tariff, Original Volume No. 1-A. ANR avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's regulations. ANR commenced such self-implementing service on November 9, 1989, as reported in Docket No. ST90-964-000.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. Colorado Interstate Gas Co.

[Docket No. CP90-519-000]

January 17, 1990.

Take notice that on January 12, 1990, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90-519-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Trigen Resources Corporation (Trigen), under the blanket certificate issued in Docket No. CP86-589-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation service agreement dated September 1, 1989, it proposes to receive up to 50,000 Mcf per day at specified points located in the states of Colorado, Wyoming, Kansas, and Oklahoma and redeliver the gas, less fuel gas and lost and unaccounted-for gas, for the account of Trigen at an existing interconnection of the facilities of CIG and El Paso Natural Gas Company located in Moore County, Texas. CIG estimates that the peak day, average day and annual volumes would be 50,000 Mcf, 25,000 Mcf and 9,125,000 Mcf, respectively. It is stated that on October 1, 1989, CIG initiated a 120-day transportation service for Trigen under 284.223(a), as reported in Docket No. ST90-325-000.

CIG further states that no facilities need be constructed to implement the service. CIG states that the primary term of the agreement would expire on September 1, 1989, but that the service would continue on a month-to-month basis until terminated by 30 days written notice by the other party. CIG proposes to charge rates and abide by the terms and conditions of its Rate Schedule TI-1.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. Trunkline Gas

[Docket No. CP90-507-000]

January 18, 1990.

Take notice that on January 11, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-507-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for ANR Gathering Company (ANR), under its blanket certificate issued in

Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline states that it proposes to transport up to 100,000 dt. of natural gas on an interruptible basis on behalf of ANR pursuant to a Transportation Agreement dated November 22, 1988, between Trunkline and ANR (Transportation Agreement). The Transportation Agreement provides for Trunkline to receive gas from various existing points of receipt in Illinois, Louisiana, Tennessee and Texas, from the Panhandle receipt at Douglas County, Illinois, offshore Louisiana and offshore Texas. Trunkline will then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Southern Natural in West Carroll Parish, Louisiana. Trunkline also states that the estimated daily and annual quantities would be 100,000 dt. and 36,500,000 dt., respectively.

Trunkline further states it commenced this service on December 1, 1989, as reported in Docket No. ST90-1066-000.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

19. Trunkline Gas Co.

[Docket No. CP90-506-000]

January 18, 1990

Take notice that on January 11, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP90-506-000 a request pursuant to 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for ANR Gathering Company (ANR), under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline states that it proposes to transport up to 100,000 dt. of natural gas on an interruptible basis on behalf of ANR pursuant to a Transportation Agreement dated November 22, 1988, between Trunkline and ANR (Transportation Agreement). The Transportation Agreement provides for Trunkline to receive gas from various existing points of receipt in Illinois, Louisiana, Tennessee and Texas, from the Panhandle receipt at Douglas County, Illinois, offshore Louisiana and offshore Texas. Trunkline will then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Texas Gas in Dyer County, Tennessee.

Trunkline also states that the estimated daily and annual quantities would be 100,000 dt. and 36,500,000 dt., respectively.

Trunkline further states it commenced this service on December 5, 1989, as reported in Docket No. ST90-1064-000.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

20. El Paso Natural Gas Co.

[Docket No. CP90-520-000]

January 18, 1990.

Take notice that on January 16, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-520-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport natural gas on an interruptible basis for Sunrise Energy Company (Sunrise). El Paso explains that the service commenced December 11, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-1315-000. El Paso proposes to transport on a peak day up to 51,500 MMBtu; on an average day up to 51,500 MMBtu; and on an annual basis up to 18,797,500 MMBtu. El Paso proposes to receive the subject gas at various points of receipt on its system and redeliver the gas at a delivery points in the States of Colorado, New Mexico, Oklahoma, and Texas.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

21. Columbia Gas Transmission Corp.

[Docket No. CP90-538-000]

January 18, 1990.

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP90-538-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Viking Resources Corporation (Viking), under the blanket certificate issued in Docket No. CP86-240-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia states that pursuant to a transportation agreement dated December 11, 1989, under its Rate Schedule ITS, it proposes to transport up to 1,775 MMBtu per day equivalent of natural gas for Viking. Columbia states that it would transport the gas from receipt points as shown in Appendix "A" of the service agreement and would deliver the gas (less fuel when applicable) to delivery points also shown in Appendix "A" of the agreement.

Columbia advises that service under Section 284.223(a) commenced November 1, 1989, as reported in Docket No. ST90-948. Columbia further advises that it would transport 1,420 MMBtu on an average day and 647,875 MMBtu annually.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

22. Columbia Gas Transmission Corp.

[Docket No. CP90-541-000]

January 18, 1990.

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP90-541-000 a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas on behalf of Ledco, Inc. (Ledco) under Columbia Gas' blanket certificate issued in Docket No. CP86-240-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gas proposes to transport on an interruptible basis up to 24,000 MMBtu of natural gas equivalent per day on behalf of Ledco pursuant to a transportation agreement dated November 1, 1989, between Columbia Gas and Ledco. Columbia Gas would receive the gas at various existing delivery points on its system and redeliver equivalent volumes, less fuel used and unaccounted for line loss, at various existing delivery points on its systems.

Columbia Gas further states that the estimated average daily and annual quantities would be 24,000 MMBtu and 10,950,000 MMBtu respectively. Service under § 284.223(a) commenced on November 1, 1989, as reported in Docket No. ST90-853-000, it is stated.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

23. Trunkline Gas Co.

[Docket No. CP90-525-000]

January 18, 1990.

Take notice that on January 16, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-525-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Pan National Gas Sales, Inc. (Pan National), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated June 5, 1989, under its Rate Schedule PT, it proposes to transport up to 150,000 dekatherms (dt) per day equivalent of natural gas for Pan National. Trunkline states that it would transport the gas from the tailgate of the Trunkline LNG Plant in Calcasieu Parish, Louisiana, and various existing receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement, and would redeliver the gas, less fuel and unaccounted for line loss, to Florida Gas in Calcasieu Parish, Louisiana.

Trunkline advises that service under § 284.223(a) commenced December 1, 1989, as reported in Docket No. ST90-1225. Trunkline further advises that it would transport 120,000 dt on an average day and 43,800,000 dt annually.

Comment date: March 5, 1990, in accordance with standard Paragraph G at the end of this notice.

24. ANA Pipeline Co.

[Docket No. CP90-516-000]

January 18, 1990.

Take notice that on January 12, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-516-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Gas Energy Development Company (Gas Energy Development), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the maximum daily, average daily and annual quantities that it would transport for Gas Energy Development would be 30,000 dt equivalent of natural gas, 30,000 dt equivalent of natural gas and 10,950,000 dt equivalent of natural gas, respectively.

ANR indicates that in a filing made with the Commission in Docket No. ST90-968-000, it reported that tranportation service on behalf of Gas Energy Development commenced on November 7, 1989, under the 120-day automatic authorization provisions of Section 284.223(a).

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

25. United Gas Pipe Line Co.

[Docket No. CP90-513-000]

January 18, 1990.

Take notice that on January 12, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-513-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service on behalf of KOGAS, INC. (KOGAS), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it would transport a maximum daily quantity of 103,000 MMBtu for KOGAS pursuant to an Interruptible Gas Transportation Agreement, dated March 17, 1989, as amended November 17, 1989, between United and KOGAS. United further states that it would receive the natural gas at an existing point of receipt in offshore Louisiana, and would redeliver the natural gas at an existing point of delivery in offshore Louisiana. United indicates that the estimated average day and annual quantities to be transported for KOGAS would be 103,000 MMBtu and 37,595,000 MMBtu, respectively.

United states that it commenced the transportation of natural gas for KOGAS on December 5, 1989, as reported in Docket No. ST90-1047-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

26. ANR Pipeline Co.

[Docket No. CP90-527-000]

January 18, 1990.

Take notice that on December 20, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-527-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Odeco Oil & Gas Company (Odeco), under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 40,000 dt equivalent on a peak day for Odeco, 40,000 dt equivalent on an average day and 14,600,000 dt equivalent on an annual basis. It is stated that ANR would receive the gas at designated points on ANR's system in Louisiana, Texas, offshore Louisiana, offshore Texas, Oklahoma, and Kansas and would deliver equivalent volumes at designated points on ANR's system in Michigan and offshore Louisiana. It is asserted that the transportation would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced November 14, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulation, as reported in Docket No. ST90-1028.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Reguations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a

proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1745 Filed 1-25-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board (ERAB).

Date & Time: February 13, 1990—8:30 a.m.-3:40 p.m.

Place: Department of Energy, 1000 Independence Avenue, SW., Room 8E-089, Washington, DC 20585, 202/586-5444.

Contact: William L. Woodward, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5767.

Purpose of the 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.

Tentative Agenda: The specific agenda items are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the date or the meeting.

February 13, 1990

8:30 a.m.: Administrative Items

9:00 a.m.: Review of the Final Report of the Panel on Accelerator Production of Tritium

12:00 Noon: Lunch

1:00 p.m.: Discussion of the Fusion Review

2:00 p.m.: Review of the Final Report of the Panel on Accelerator Production of Tritium (continued)

3:30 p.m.: Public Comment (10 minute rule)

3:30 p.m.: Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board 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.

Transcripts: The transcript of the meeting will be 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 22, 1990.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 90-1763 Filed 1-25-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3717-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 8, 1990 through January 12, 1990 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities At (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-L40172-ID, Rating EO2, South Fork Salmon River Road Reconstruction, Warm Lake Highway to the confluence of the South Fork Salmon River, Implementation, Boise and Payette NFs, Valley County, ID.

Summary: EPA has environmental objections to paving the South Fork Salmon River Road to maintain winter access because sediment from construction and indirect development may impede recovery of water quality and fish habitat for summer chinook salmon. ERP No. D-IBR-L34010-WA, Rating EC2, Columbia Basin Continued Multipurpose Project, Implementation, Grant, Adams, Lincoln, Franklin and Douglas Counties, WA.

Summary: EPA has concerns over the potential adverse water quality effects to Moses Lake as a result of the proposed activity, and we request additional information on mitigation and water quality monitoring.

ERP No. D-UAF-F11015-IL, Rating EC2, Chanute Air Force Base Closure and Realignment, Implementation, Village of Rantoul, IL.

Summary: EPA's concerns for this EIS related to the issues of hazardous waste site cleanup; removal of underground storage tanks and cleanup of any spilled or leaked product; removal and disposal of asbestos-containing materials and polychlorinated biphenyls; and the potential for degrading local water quality due to the problems associated with the continued operation of the wastewater treatment facility following the base closure. EPA is also concerned that the EIS process for this action may not provide an adequate assessment of potential options.

Final EISs

ERP No. F-FHW-F40289-MN, US TH-169/Cross Range Expressway Improvement, US TH-2 in Grand Rapids to MN TH-65 in Pengilly, 404 Permit, Funding, Itasca County, MN.

Summary: EPA has reviewed the final EIS and will continue to provide assistance with the agency's finalization of the wetland mitigation plan.

ERP No. F-FHW-L40169-WA, WA-18 Improvements, Auburn-Black Diamond Road to I-90, Funding and 404 Permit, King County, WA.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

Dated: January 22, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-1808 Filed 1-25-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3717-3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5076.

Availability of Environmental Impact Statements Filed January 15, 1990 Through January 19, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900014, Draft, FHW, OK, I-44 Reconstruction, I-44 Arkansas River Bridge to I-44/Broken Arrow Expressway (OK 51) Interchange, Funding, Section 404 Permit, Tulsa County OK, Due: March 12, 1990, Contact: David Ross (405) 231-4624.

EIS No. 900015, Draft, FAA, UT, Halls Crossing Airport Facility Replacement, Airport Layout Plan, Construction and Operation, Approval and Funding, San Juan County, UT, Due: March 29, 1990, Contact: Barbara Johnson (303) 286-5527.

EIS No. 900016, Final, COE, NV, Galena Resort Construction and Operation, Section 404 Permit and Special Use Permit, Toiyabe National Forest, Washoe County, VA, Due: February 26, 1990, Contact: Larry Vinzant (916) 551-2261.

EIS No. 900017, Draft, FRC, NH, Livermore Falls Hydroelectric Project, Construction, Operation and Maintenance, License Section 404 and Section 10 Permits, Pemigewasset River, Grafton County, NH, Due: March 12, 1990, Contact: James Haimes (202) 357-0780.

Amended Notices

EIS No. 890323, Draft, FRC, MA, CT, NH, NY, RI, TN, Iroquois and Tennessee Gas Transmission Pipelines Project, Construction and Operation, MA, CT, NH, NY, RI and TN, Due: February 16, 1990, Contact: Mark W. Jensen (202) 357-9021. Published FR 11-24-89—Review period extended.

EIS No. 890325, Draft, FRC, NJ, Mount Hope Pumped Storage Hydroelectric Project, Construction, Operation and Maintenance, License, Section 404 Permit, Morris County, NJ, Due: February 7, 1990, Contact: Mr. Paul Carrier (202) 376-9213. Published FR 11-24-89—Review period extended.

EIS No. 890351, Final, BLM, WY, Amoco Carbon Dioxide Projects, Construction and Operation, Plan Approval, Big Horn, Carbon, Fremont, Hot Springs, Lincoln, Natrona, Park, Washakie and Sweetwater Counties, WY, Due: February 26, 1990.

Contact: Glen Nebeker (307) 261-7600. Published FR 12-22-89—Review period reestablished.

Dated: January 22, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-1807 Filed 1-25-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3705-6]

Notice Proposing the Granting of an Exemption to Midwest Division of National Steel Corporation for the Continued Injection of Hazardous Waste Subject to the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 (HSWA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Grant an Exemption to the Midwest Division of National Steel Corporation of Portage, Indiana for the Continued Injection of Waste Pickle Liquor.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant an exemption from the ban on disposal of hazardous wastes through injection wells to the Midwest Division of National Steel Corporation ("Midwest"), of Portage, Indiana. Midwest may continue to inject Resource Conservation and Recovery Act (RCRA) regulated hazardous waste Code K062 (Waste Pickle Liquor) in its Well No. 2, if the exemption is granted. Midwest submitted a petition to the EPA under 40 CFR part 148, which allows any person to petition the Administrator to determine whether its continued injection of certain hazardous wastes is protective of human health and the environment. After a comprehensive review, the EPA has determined that there is a reasonable degree of certainty that Midwest's injected waste will not migrate out of the injection zone over the next 10,000 years.

DATE: The EPA is requesting public comments on today's proposed decision. Comments will be accepted until February 26, 1990. Comments received after the close of the comment period will be stamped "Late". A public hearing will be scheduled for this proposed action and notice will be given in a local paper and to all people on a mailing list developed by the Underground Injection Control (UIC) program. If you wish to be notified of the date and location of the public hearing, please contact the person listed below.

ADDRESS: Submit written comments, by mail, to: United States Environmental Protection Agency Region V, Underground Injection Control Section (5WD-TUB-9), 230 South Dearborn Street, Chicago, Illinois 60604, Attn: Edward P. Watters, Chief.

FOR FURTHER INFORMATION CONTACT: Dr. Leah A. Haworth, Lead Petition Reviewer, UIC Section, Water Division, Office Telephone Number: (312) 886-6556.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the continued land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the waste remains hazardous (Section 3004(d)(1), (e)(1), (f)(2), (g)(5) of RCRA). The statute specifically defined land disposal to include any placement of hazardous waste in an injection well (Section 3004(k) of RCRA). After the effective date of prohibition, hazardous waste can only be injected under two circumstances:

(1) When the waste has been treated in accordance with the requirements of 40 CFR part 268 pursuant to section 3004(m) of RCRA, (the EPA has adopted the same treatment standards for injected wastes in 40 CFR part 148, subpart B); or

(2) When the owner/operator has demonstrated that there will be no migration

of hazardous constituents from the injection zone for as long as the waste remains hazardous. Applicants seeking an exemption from the ban must demonstrate either:

(a) That the waste undergoes a chemical transformation so as to no longer pose a threat to human health and the environment; or

(b) That fluid flow is such that injected fluids would not migrate vertically upward out of the injection zone or to a point of discharge in a period of 10,000 years by use of mathematical models (40 CFR 148.20(a)).

EPA promulgated final regulations on July 26, 1988, (53 FR 28118) which govern the submission of petitions for exemption from the injection prohibition (40 CFR part 148). The preamble discussed the justification for basing determinations on 10,000 years. The 10,000 year demonstration strikes an appropriate balance between the need to demonstrate "no migration" with a reasonable degree of certainty and the limits of the technological means of making that demonstration. The Agency's standard does not imply that leakage will occur at some time after 10,000 years; rather, it is a showing that leakage will not occur in that time frame.

B. Facility Operation and Process

The Midwest facility in Portage, Indiana, (See Figure 1) is a steel finishing plant which produces finished steel for industrial uses. The facility generates one liquid hazardous waste, Waste Pickle Liquor, which is produced as a by-product of steel pickling operations. This waste is injected into one on-site Class I hazardous waste injection well, Well No. 2, completed in the lower Mt. Simon Sandstone. Between 1965 and 1980, Midwest injected approximately 400 million gallons of waste pickle liquor into Well No. 1 which was completed in the lower Eau Claire Formation and the Mt. Simon Sandstone. In 1980, the upper injection interval was closed off and this well was recompleted to allow injection only into the lower Mt. Simon. In 1987, the current injection well was drilled and completed. At the same time, Well No. 1 was plugged back to the Galesville Sandstone, the first aquifer above the confining zone, and converted to a monitoring well. The Galesville Sandstone has been monitored weekly for changes in water level (an indicator of pressure change) and sampled for water quality intermittently. Improvements in construction and operational improvements for this monitoring well are included in a new Groundwater Monitoring Plan, which was submitted by Midwest in support of the petition demonstration. These improvements include, but are not limited to, enhanced testing for mechanical integrity and quarterly water quality sampling. Compliance with the new Groundwater Monitoring Plan is a condition of this proposed petition decision.

C. Waste Minimization

RCRA emphasizes the preeminence of waste minimization through source reduction and recycling as a strategy for managing solid waste. Midwest has recently implemented three process changes which reduce waste. The steel pickling lines were converted from sulfuric to hydrochloric acid, and concurrent operational changes added a cascade system with counter-current flow and a system of indirect heating through heat exchangers. These changes have substantially reduced the volume of Waste Pickle Liquor produced at Midwest. During the months preceding December, 1989, Waste Pickle Liquor was produced and injected at a rate of approximately 2 million gallons per month. During December, 1989, the first month after the process changes, 140,000 gallons of waste was produced and injected. As the system equilibrates, further reductions in waste production and injection rate are expected.

D. Submission

On August 8, 1988, Midwest submitted a petition for exemption from the land disposal restrictions on hazardous waste injection under the HSWA Amendments to RCRA pursuant to the regulations set forth at 40 CFR Part 148. This submission was reviewed and revision documents are dated May 19, 1989, July 25, 1989, August 4, 1989, and November 29, 1989. Several supplemental submissions were made during this period and thereafter to resolve minor deficiencies. The total submission was reviewed by staff at the EPA and the initial submission was evaluated by consultants hired by the Agency to assist in its review.

II. Basis for Determination

A. Waste Description and Analysis

The waste being injected is Waste Pickle Liquor and is defined under 40 CFR part 261 as Waste Code K062. This waste is listed as a hazardous waste because it is corrosive (i.e., it has a pH less than or equal to 2.0) and because it contains a toxic concentration of chromium (i.e., above 0.32 mg/l). The injected waste at Midwest has an average pH of less than 1.0 and an average chromium content of approximately 15 mg/l.

B. Well Construction and Operation

The Midwest injection well was constructed in 1987 with three strings of casing (See Figure 2). Each string is cemented to the surface. Injection takes place through tubing set on a packer and waste within the injection tubing is isolated from the casing by a fluid-filled annulus which is continuously monitored. The monitoring system is designed to trigger alarms and warn an operator to shut off injection if the injection or annulus pressure exceeds the maximum permitted levels, or if the annulus pressure falls below the minimum permitted level. Midwest was issued Proposed Administrative Order #UIC-AO-88-15 from the EPA for failure to maintain the required minimum annulus pressure on various days during the period November, 1987, to February, 1988. Some of this failure could be attributed to the fact that the new well was still undergoing final adjustments. Since February, 1988, the required pressure has been maintained. During 1989, Midwest experienced recurring leaks in the annulus system of the injection well, although the mechanical integrity of the well was not compromised and no waste was released. The injection tubing, annulus pump, and above-ground fittings were replaced in order to solve this problem. This work was completed in November, 1989.

Injection pressure at Midwest is limited to 700 pounds per square inch guage (psig) at the surface, which is below the value yielded by the equation in 40 CFR 147.1153. This equation is designed to be conservative and to assure that the injection pressure provides insufficient energy to initiate or propagate fractions in the injection zone. Midwest has never exceeded the permitted injection pressure. Average injection pressure during the past two years has been 0 psig. Although the well is designed for a maximum injection rate of 84 gallons per minute (gpm), the historical average is approximately 50 gpm. The recent waste minimization efforts have further reduced the average flow rate to approximately 4 gpm.

C. Mechanical Integrity Test Information

To assure that the waste does not leak prior to reaching the injection zone, Mechanical Integrity Tests (MITs) of the well are required. Section 148.20(a)(2)(iv) requires submission of satisfactory MITs performed within one year of petition submission, including Radioactive Tracer Survey results. The Midwest injection well passed its

annual MITs in 1987 and 1988, and was most recently tested in November of 1989, following the installation of the new injection tubing. The Standard Pressure Test as described in 40 CFR 146.8, a Radioactive Tracer Survey, a Casing Inspection Log and an Oxygen Activation Log were performed. Results of these tests demonstrated that the well has mechanical integrity and confirmed the positive results recorded on continuous monitoring equipment. Test results and monitoring reports for this well are part of the Administrative Record for Midwest's injection permit on file at the EPA. From both a construction and operation standpoint, the Midwest injection well ensures, with a reasonable degree of certainty, transmission of the injected fluid to the injection zone without leakage.

D. Site Description

As part of the "no migration" demonstration under part 148, subpart C, any Class I hazardous waste injection well must identify the strata within the injection zone which will confine fluid movement above the injection interval and the strata which act as a confining zone. In evaluating the confinement properties of these strata and the geologic suitability of the site for hazardous waste injection, the Agency used the standards set forth in 40 CFR part 146.

1. Regional Geology

The Midwest facility lies on the northern flank of the Kankahee Arch, a structural high that separates the Michigan Basin to the northeast from the Illinois Basin to the southwest. At the site, glacial deposits overlie approximately 4000 feet of sedimentary rocks (e.g., sandstones, carbonates, and shales) which dip gently southeastward at 5 to 7 feet per mile. These units, in turn, overlie granitic basement rocks. The injection and confining zones for the Midwest injection well are at the bottom of the sedimentary sequence. The lowermost underground source of drinking water, or USDW (defined as less than 10,000 mg/l total dissolved solids), beneath the Midwest site, is located 720 feet below the surface. Approximately 1740 feet of alternating permeable and less permeable rock layers separate the lowermost USDW and the injection zone at the Midwest site and provide for secondary confinement and pressure reduction.

A review of the geologic literature demonstrates that all known faults are more than 30 miles distant from the Midwest facility. In terms of seismicity, the region generally is stable. Only non-damaging, small intensity seismic events have been recorded within a 75 mile radius of the site. Higher intensity events which might damage the mechanical integrity of the well or confining zone are extremely unlikely in this area. The recorded earthquake closest to the Midwest facility occurred in 1938; its epicenter was 9 miles east-southeast of the Midwest site and it had a magnitude of 4.2 on the Richter scale. The highest magnitude seismic event (4.7 on the Richter scale) recorded within 75 miles of this site occurred in 1912, 70 miles to the west. Should an earthquake of similar magnitude occur closer to Midwest in the future, it would not be expected to cause structural damage to the injection well or a release of waste from the injection zone.

The potential for earthquakes induced by injection is low due to the absence of faults at the site. A pressure study showed that even if unknown faults existed beneath the Midwest site, the critical pressure required to cause slippage is more than the conservatively estimated maximum pressure buildup due to injection. In addition, local seismic networks, which are capable of detecting small intensity earthquakes, provide no indication of seismic activity induced by injection in this area. An existing seismic network, operated by the University of Michigan, includes stations sensitive enough to detect an earthquake near the Midwest site of magnitude 2.0 on the Richter scale, or greater.

2. Injection Zone Description

The injection zone must have sufficient permeability, porosity, thickness and areal extent to prevent migration of hazardous fluids out of this zone. The injection zone at Midwest consists of the entire thickness (1788 feet) of the Mt. Simon Sandstone at a depth of 2460 to 4248 feet below surface (Figure 2). This formation extends over much of the midwestern United States and reaches the surface approximately 200 miles away, in Wisconsin. At the Midwest site, the Mt. Simon Sandstone is laterally extensive and undisturbed by faults or significant fractures, as documented by a suite or openhole logs, including a Microscanner Log, cores, and geologic literature. In northwestern Indiana, the Mt. Simon Sandstone is divided into an upper and a lower unit, each of which is capped by shale-rich strata. These shale-rich strata are also laterally extensive and have been correlated on geophysical logs in a 15 mile area surrounding Midwest.

At Midwest, the injection interval, or the interval into which waste is directly emplaced, is the lower Mt. Simon Sandstone, located at depth of 2700 to 4248 feet below ground surface, with a thickness of 1548 feet. Analysis of well logs and cores from the Midwest site shows that the main rock unit through this interval is a moderately well sorted, fine-grained to medium-grained sandstone with minor siltstone, dolomite and gypsum.[1] Both the permeability and porosity of the injection interval are suitable for waste injection. The major constituents of the injection interval are resistant to chemical degradation by the waste, and little, if any, compatibility problems are expected.

The upper injection zone, or "containment interval", includes the shale-rich strata immediately above the injection interval known as the "B" Cap, and the upper Mt. Simon Sandstone. This "containment interval" is located at a depth of 2460 to 2700 feet below ground surface and has a total thickness of 240 feet (Figure 2). The "B" Cap acts as the first barrier to the vertical flow of injected waste. Well logs and on-site core data indicate that the "B" Cap consists of thinly interbedded shales, siltstones and silty sandstones, and has a thickness of 56 feet. Confidential whole-core tests of the "B" Cap report very low permeability to waste acids and low porosity, which will substantially inhibit the movement of waste through this unit. The upper Mt. Simon Sandstone is a 184 foot thick, moderately well-sorted sandstone with minor siltstone and dolomite. It has average permeability and porosity. The upper 26 feet of the Mt. Simon Sandstone contain thinly interbedded siltstones referred to as the Mt. Simon "Cap". Confidential core analyses of this unit report low porosity and very low permeability to waste acids. Because such characteristics inhibit fluid flow, the Mt. Simon "Cap" would serve as a secondary barrier to vertical flow of injected waste if flow breached underlying units.

3. Confining Zone Description

The confining zone must be (1) laterally continuous, (2) free of transecting, transmissive faults and fractures over an area sufficient to prevent fluid movement and (3) of sufficient thickness and lithologic and stress characteristics to prevent vertical propagation of fractures. The confining zone for the Midwest injection operation if the Eau Claire Formation, which is laterally extensive and free of

[1] The detailed core analyses for the injection and confining zones, including porosity and whole-core tests of permeability to waste acids, are not part of the Administrative Record available for public comment because they were accorded Confidential Business Information status on March 28, 1988.

transmissive faults and fractures throughout the area of review, as documented by correlation of geophysical logs, a borehole Microscanner Log, and geologic literature. At Midwest, it is located at a depth below ground surface between 1934 and 2460 feet and has a thickness of 526 feet (Figure 2). Net shale thickness of the confining zone is at least 200 feet. It is separated from the lowermost USDW by more than 1200 feet of alternating permeable and less permeable strata.

Like the Mt. Simon Sandstone, the Eau Claire Formation is divided into an upper and lower unit. Well logs and confidential core data for both units show that the 290 foot thick lower Eau Claire Formation is a dolomitic sandstone with a few thin siltstone interbeds. Overall, it has moderate porosity and permeability. Any increase in permeability of this unit due to contact with acidic waste would lead to lateral dispersal of waste and pressure reduction. The 236 foot thick upper Eau Claire Formation is composed of interbedded fine-grained sandstones, siltstones and shales. Confidential core data demonstrate very low permeability to waste acids at this site. The upper Eau Claire Formation would serve as the major hydraulic barrier to vertical movement of injected waste, if it escaped the injection zone. Its location above the lower Eau Claire strata, with their pressure reduction characteristics, enhances the upper Eau Claire's adequacy as a confining unit.

Based on a review of all available information, the Agency has concluded that the Eau Claire Formation is an adequate confining zone for Midwest's injection operation. Midwest's monitoring well, completed in the first aquifer above the confining zone, provides assurance that a breach of the confining zone would be detected. Data from the monitoring well support the Agency's judgement that confinement is adequate at Midwest. Water level measurements (an indicator of pressure change) and water quality sampling have indicated no breach of the confining zone. The 1200 foot thick zone which separates the confining zone from the lowermost USDW provides additional assurance that contaminants would not reach drinking water sources.

4. Area of Review

The Area of Review (AOR) is the area within which the petitioner must identify all wells which penetrate the confining zone and demonstrate that they have been properly completed or plugged. For the Midwest facility, the EPA has designated the area shown on Figure 1, extending 8.8 miles east, and 6 miles north, south, and west of the injection well. This area is based on a cone-of-influence calculation and a lateral pressure model which show that, within this area, the pressure buildup caused by injection would be sufficient to drive fluids into a USDW. The lateral pressure model conservatively assumed that future injection would occur at maximum permitted rates and that the top of the injection interval was impermeable. There are three wells within the AOR which penetrate the confining zone. Each of these is an injection well operating under a permit from the EPA. Accordingly, no corrective action under 40 CFR 146.64 is required for this facility.

E. Model Demonstration of No Migration

The demonstration of no migration of hazardous constituents from the injection zone at Midwest involves the use of a family of predictive mathematical models known as SWIFT II (Sandia Waste-Isolation Flow and Transport Model). This family of models is used to predict the buildup of pressure and the vertical transport of waste from the injection well. Lateral transport of waste is modeled using volumetric and analytical methods. The SWIFT numerical code has been widely used and extensively verified, as reported in various federal publications. The long history of development and the successful use of SWIFT for sites similar to Midwest provide confidence that the model is appropriate for use at this site.

1. Model Calibration

The first step in the modeling was a calibration exercise designed to refine estimates of hydrogeologic parameter values for the lower Mt. Simon Sandstone. For this analysis, it was assumed that the lower Mt. Simon Sandstone was laterally infinite, and units above and below were impermeable. The calibration exercise reproduced the pressure response to a pressure falloff test run September 18, 1987, on the injection well, which indicates that the parameter values, taken as a group, adequately represent the injection interval. The parameter values for the lower Mt. Simon Sandstone included a permeability-thickness product of 4872 millidarcy-feet, a porosity of 0.15 and a skin factor of 0.4. These estimates are realistic. Reasonably conservative values were chosen for all other parameters used to model injection-induced pressure and waste transport; details of this are discussed below.

2. Model Predictions

Two simulation time periods were considered in the demonstration: an historical and 20-year future operational period and a 10,000 year post-operational period. The pressure buildup analysis considered injection into the Mt. Simon Sandstone and included five layers: lower Mt. Simon Sandstone, "B" Cap, upper Mt. Simon Sandstone, Mt. Simon "Cap", and lower Eau Claire Formation. The bottom of the Mt. Simon Sandstone and the bottom of the upper Eau Claire Formation were assumed to be impermeable to fluid flow. These are realistic assumptions.

For the operational period, a continuous injection rate of 250 gpm, a waste specific gravity of 1.3, a waste viscosity of 10 centipoise (cp), and a vertical permeability for the "B" Cap of 10^{-5} md, were used to predict vertical pressure buildup in the injection zone. The first three values conservatively exceed actual conditions; the last is realistic. The actual historical average injection rate is approximately 50 gpm, the actual waste specific gravity is 1.18 and actual viscosity is 3.5 cp. The actual current injection rate averages 4 gpm, and this rate is expected to continue or decline in the future. Thus, the model will over-predict pressure buildup. Modeling predicted that at the end of the 20-year future operational period, the maximum pressure buildup at the wellbore would be 940 psi, including pressure increments from nearby injection wells. The modeled pressure buildup is greatest near the injection wells and declines to near 0 psi at a distance of approximately 12 miles. If injection is maintained at or less than the present rate, as expected, then this distance, and the maximum pressure buildup, will be much smaller.

The predicted pressure buildup at the end of the operational period was used as a basis for modeling the vertical migration of waste. Sensitivity analyses using Theis solutions for pressurization and Darcy's Law for vertical waste transport were also included in the demonstration. Vertical transport at Midwest is most sensitive to injection rate and "B" Cap permeability. Based on an injection rate of 180 gpm and a permeability of 1.12×10^{-2} md, waste movement due to pressure driven flow and hydrodynamic dispersion during the operational period is estimated at less than 56 feet. More realistic parameter values result in a shorter distance. The 56 foot estimate is reasonably conservative and over-predicts waste transport because (1) it is based on an injection rate of 180 gpm, whereas the

actual injection rate is 4 gpm, and (2) a final-to-original concentration ratio of 10^{-6} was used to define the edge of the waste plume, whereas a concentration ratio of 2×10^{-4} marks the boundary where constituent concentrations are below health-based limits (5 ppb for Chromium).

For a short period of time following the cessation of injection, transport due to advection and mechanical dispersion will continue and may produce an estimated additional 3 feet of vertical waste movement. However, during the remainder of the post-operational period, molecular diffusion is the primary transport mechanism for the vertical migration of waste. Geologic literature and log analysis were used to determine a reasonably conservative tortuosity of 0.15 and coefficient of molecular diffusion of 2×10^{-9} square meters per second. Based on these values, and a final-to-original concentration ratio of 10^{-4}, the maximum vertical transport of the waste front during a 10,000 year post-operational period is 170 feet. At this distance, the concentration of all hazardous constituents will be at least five times less than health-based limits. Therefore, the total vertical migration at the Midwest site will be less than 230 feet above the permitted injection interval. Waste will be contained within the 56 foot thick "B" Cap during the operational period and within the 184 foot thick upper Mt. Simon Sandstone during the 10,000 year post-operational period. Therefore, the waste will be contained vertically within the Mt. Simon Sandstone, which is the permitted injection zone.

The distance of lateral migration of waste during the operational period was calculated by accounting for volumetric displacement due to the injected waste. The waste plume is assumed to migrate laterally within a 313 foot thick interval, having a porosity of 0.15 and a sweep efficiency of 18 percent. The effective thickness and porosity are determined from Radioactive Tracer Surveys on the Midwest well and other neighboring wells and from core and log analysis. Both estimates are realistic. The sweep efficiency is a conservative estimate imposed for the sensitivity analysis; it accounts for geologic heterogeneity and uncertainty in effective thickness. Model results indicate that the waste will migrate laterally approximately 2300 feet from the well during the 20-year operational period. Hydrodynamic dispersion may conservatively be expected to increase the distance to the waste plume boundary (based on a concentration ratio of 10^{-6}) to 3300 feet.

During the 10,000-year post-operational period, the waste plume will migrate due to the natural flow of groundwater in the Mt. Simon Sandstone and hydrodynamic dispersion. A groundwater flow velocity in the lower Mt. Simon Sandstone of 0.5 feet per year, based on maximum published literature estimates, would result in an additional drift of the waste plume of 5000 feet in 10,000 years. Hydrodynamic dispersion during the post-operational period may result in an additional migration of 2200 feet. This is based on a dispersivity of 160 feet and a diffusion coefficient of 2×10^{-9} square meters per second (both determined from published literature values), and a waste plume boundary concentration ratio of 10^{-6}. At this waste plume boundary, all hazardous constituents will be well below health-based limits and the waste will also not have hazardous characteristics, such as corrosivity. Therefore, using reasonably conservative values, the maximum predicted lateral migration of waste at the Midwest site is 10,500 feet, or less than 2 miles, in 10,000 years. This range is well within the Area of Review of 6 to 8.8 miles, as shown in Figure 2.

Therefore, Midwest has demonstrated, to a reasonable degree of certainty, that hazardous constituents will not migrate vertically more than 230 feet nor laterally more than 10,500 feet, in a 10,000 year period. Hazardous constituents will not migrate vertically out of the injection zone nor laterally to a point of discharge, within this time period.

F. Quality Assurance and Quality Control

Midwest and its consultants have demonstrated that adequate quality assurance and quality control plans were followed in preparing the petition. Midwest has followed appropriate protocol for locating records for penetrations in the Area of Review, for collection and analyses of geologic and hydrogeologic data, for waste characterization, and for all tasks associated with the modeling demonstration.

III. Conditions of Petition Approval

As a condition of granting this proposed exemption from the ban on injection of waste pickle liquor (K062), the EPA requires that the following conditions be met by Midwest:

(1) The monthly average injection rate must not exceed 80 gallons per minute, consistent with well design capacity;

(2) Injection shall occur only into the lower Mt. Simon Sandstone below the "B" Cap shales; and

(3) The existing monitoring well construction and monitoring procedures must be modified to include:

(a) Installation of tubing and a packer in the monitoring well, or installation of a system which i) provides equivalent mechanical integrity protection and equivalent quality assurance for fluid sampling and ii) is approved by the Agency;

(b) Demonstration of mechanical integrity by a Standard Pressure Test at least once every twelfth month if tubing and packer are installed, or prior to each sampling event, if an equivalent system is installed; and

(c) Testing of water quality samples for i) each of the constituents and characteristics listed for monthly waste stream analysis in Midwest's Waste Analysis Plan, which is found in the Administrative Record for this proposed decision, and ii) Chloride, Calcium, Total Hardness, Total Nitrogen, and Sulfide, to be consistent with previous sampling.

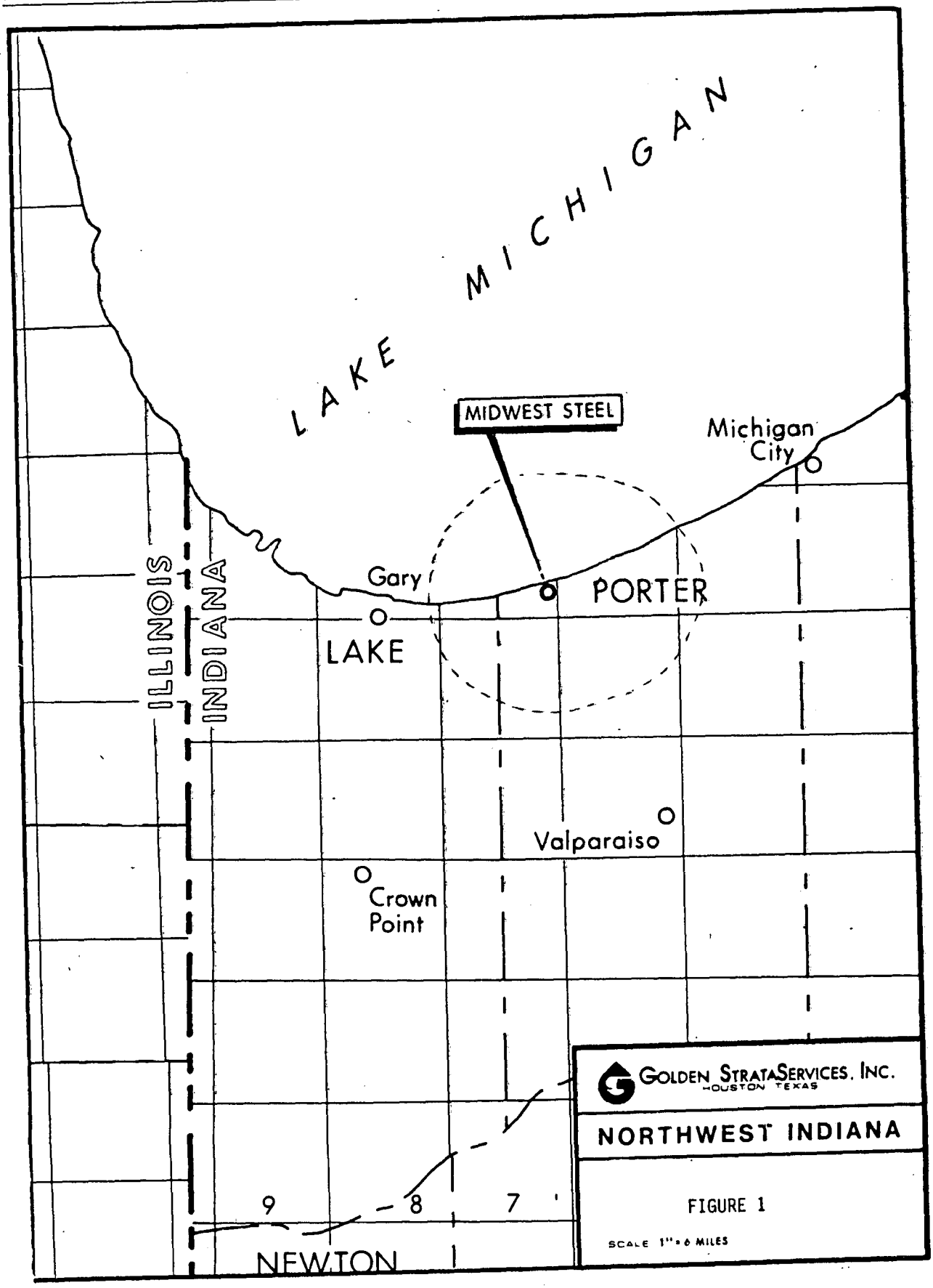
Other necessary modifications are specified in the petitioner's Ground Water Monitoring Plan, which is part of the Administrative Record for this proposed decision. The modifications must be completed for a final exemption to be effective.

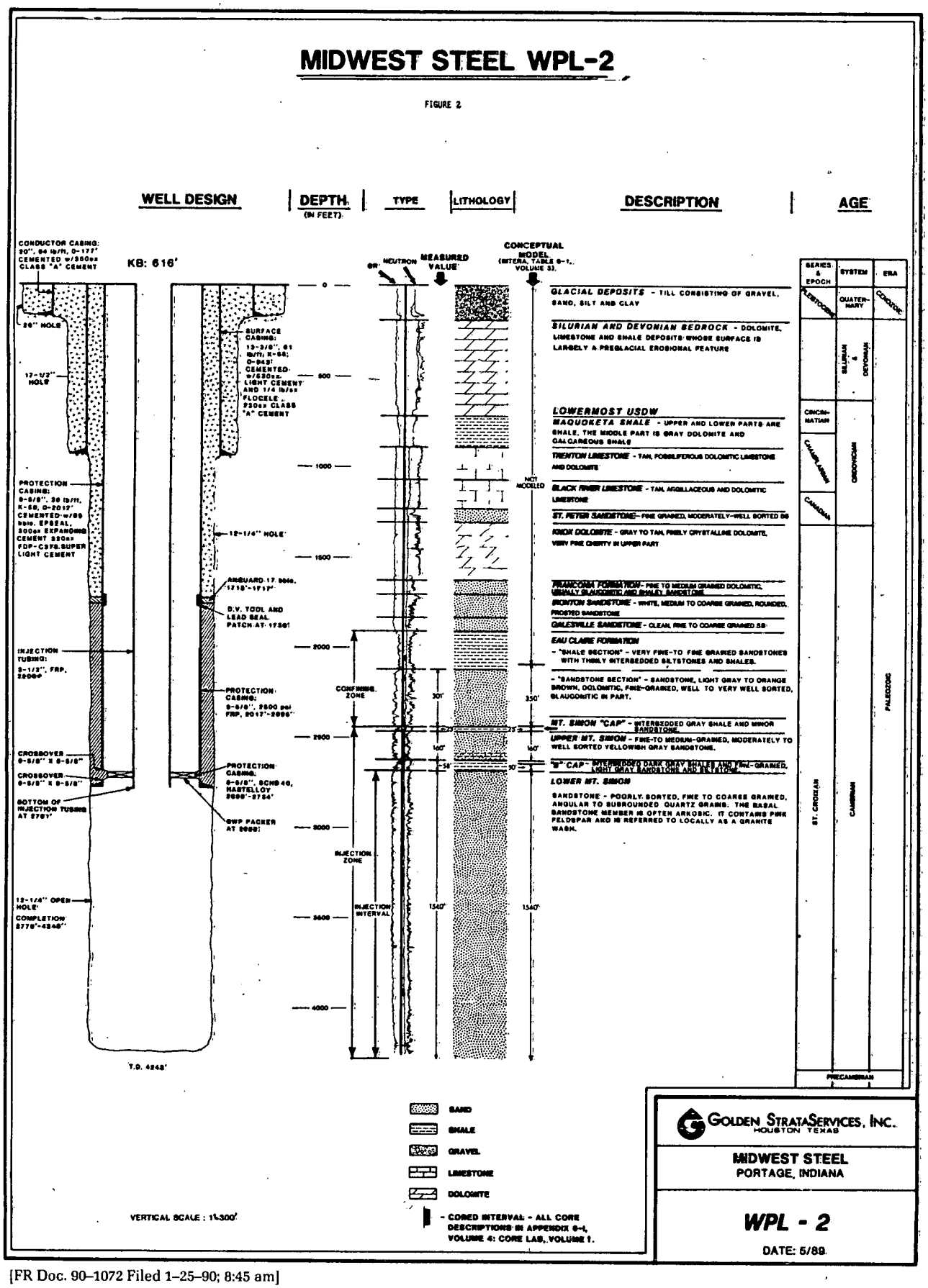
Dated: January 9, 1990

Charles H. Sutfin,

Director, Water Division, Region V, U.S. Environmental Protection Agency.

BILLING CODE 6560-50-M


LAKE MICHIGAN
MIDWEST STEEL
Michigan City
Gary
PORTER
LAKE
ILLINOIS
INDIANA
Valparaiso
Crown Point
9
8
7
NEWTON
GOLDEN STRATASERVICES, INC.
HOUSTON TEXAS
NORTHWEST INDIANA
FIGURE 1
SCALE 1" = 6 MILES



[FR Doc. 90-1072 Filed 1-25-90; 8:45 am]

BILLING CODE 6560-50-C

FEDERAL MARITIME COMMISSION

Notice of 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 10220. 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: 224–200085–002.

Title: Port of Portland Terminal Agreement.

Parties:

Port of Portland,

Pacific Commerce Line (PCL).

Synopsis: The Agreement extends the term of the basic terminal use agreement (Agreement No. 224–2000485, as amended) for one year from January 19, 1990 through January 18, 1991, and adjusts the lumber rates (Article V) to reflect changes in variable costs. The Agreement also provides for automatic termination if PCL signs an agreement with Oregon Terminal Company (operator of Terminal 4) for truck unloading, wharfage, and service and facility charges prior to the expiration of this Agreement, subject to 10 days' notification by PCL.

By the Federal Maritime Commission

Dated: January 22, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–1749 Filed 1–25–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Amcore Financial, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Amcore Financial, Inc.*, Rockford, Illinois; to engage *de novo* through its subsidiary, Amcore Trust Company, Rockford, Illinois, in accepting and executing trusts and carrying on a general trust company business pursuant to § 225.25(b)(3) of the Board's Regulation Y.

2. *Beverly Bancorporation, Inc.*, Chicago, Illinois; to engage *de novo* through its subsidiary, Beverly Leasing Corporation, Mattcaon, Illinois, in leasing personal or real property or acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grant Avenue, Kansas City, Missouri 64198:

1. *Midstate Bancorp*, Hinton, Oklahoma; to engage *de novo* in leasing real or personal property prusuant to § 225.25(b)(5); and making and servicing loans and extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–1756 Filed 1–25–90; 8:45 am]

BILLING CODE 6210–01–M

FCB 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 16, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *FCB Corporation*, Manchester, Tennessee; to acquire 51.33 percent of the voting shares of Bank of Waynesboro, Waynesboro, Tennessee.

2. *First Ascension Bancorp, Inc.*, Gonzales, Louisiana; to become a bank holding company by acquiring 99.36 percent of the voting shares of First National Bank of Gonzales, Gonzales, Louisiana.

3. *Towerbank Corporation*, Miami, Florida; to become a bank holding company by acquiring 90 percent of the voting shares of Key Biscayne Bank and Trust Company, Key Biscayne, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *Mid-Michigan Bancorp, Inc.*, Portland, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Maynard-Allen State Bank, Portland, Michigan.

Board of Governors of the Federal Reserve System, January 22, 1990.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 90-1757 Filed 1-25-90; 8:45 am]

BILLING CODE 6210-01-M

FDH Bancshares, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 2225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 1990.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *FDH Bancshares, Inc.*, Little Rock, Arkansas; to merge with Exchange Bancshares, Inc., El Dorado, Arkansas, and thereby indirectly acquire The Exchange Bank and Trust Company, El Dorado, Arkansas, and Citizens Bank of Strong, Strong, Arkansas

In connection with this application, Applicant also proposes to aquire 50 percent of the voting shares of Consolidated Data Services, Inc., El Dorado, Arkansas, and thereby engage in data processing and data transmission services to joint venturers and their subsidiaries pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 1990.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 90-1758 Filed 1-25-90; 8:45 am]

BILLING CODE 6210-01-M

The Industrial Bank of Japan, Limited, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration, of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute; summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 1990.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. **The Industrial Bank of Japan, Limited**, Tokyo, Japan; to acquire D'Accord Group, Inc., San Francisco, California, and thereby engage in acting as an agent, broker, or adviser in leasing personal or real property subject to the conditions in § 225.25(b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to acquire Central Federal Bank, FSB, Ripon, Wisconsin, formerly Central Federal Savings and Loan Association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 1990.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 90-1759 Filed 1-25-90; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for

processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 9, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Donald L. Masten,* Pennsville, New Jersey; to retain 47.19 percent of the voting shares of Penn Bancshares, Inc., Pennsville, New Jersey, as the result of a stock redemption and thereby indirectly acquire The Pennsville National Bank, Pennsville, New Jersey.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *James LaVerne Greene,* Decatur, Georgia; to acquire and additional 11.9 percent of the voting shares of BMR Financial Group, Inc., Atlanta, Georgia, and thereby indirectly acquire Citizens Bank of Americus, Americus, Georgia.

Board of Governors of the Federal Reserve System, January 22, 1990.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 90-1760 Filed 1-25-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 01-08-90 AND 01-19-90

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Leo W. Pierce, Britannia Security Group PLC, Britiannia Security Group, Inc	90-0689	01/08/90
Adia S.A., W. David and Janet Kimbrell, Hall-Kimbrell Environmental Services, Inc	90-0710	01/08/90
U.S. Bancorp, The Summit Bancorporation, National Machine Tool Finance Corporation	90-0711	01/08/90
Nippon Steel Corporation, Inland Steel Industries, Inc., Inland Steel Industries, Inc.	90-0716	01/08/90
Wembley plc, Taunton Greyhound Association, Inc., Taunton Greyhound Association, Inc	90-0745	01/08/90
Mitsubishi Estate Company, Limited, The Rockefeller Group, Inc, The Rockefeller Group, Inc	90-0753	01/08/90
Kihachiro Arai, Eugene I. Axelrod, Honolulu Club Building	90-0765	01/08/90
Banc One Corporation, Southeast Banking Corporation, Southeast Bank, N.A	90-0704	01/10/90
First Interstate Bancorp, SFFed Corp., San Francisco Federal Savings and Loan Association	90-0766	01/10/90
Sobel B.V., Iroquois Brands, Ltd., Pharmacaps, Inc	90-0774	01/10/90
Dean Foods Company, Bellingham Frozen Foods, Inc., Bellingham Frozen, Foods, Inc.	90-0736	01/11/90
Alfa-Laval AB, Charles E. Harefinger, T.W. Kutter, Inc	90-0762	01/11/90
Fisons plc, The Chas. H. Lilly Co. The Chas. H. Lilly Co	90-0776	01/11/90
Henkel KGaA, Ecolab Inc., Ecolab Inc	90-0693	01/12/90
Ashland Coal, Inc., The British Petroleum Company p.l.c., Mingo Logan Coal Company	90-0738	01/12/90
John R. Stanley, Burlington Resources, Inc, assets of El Paso Natural Gas Co., & El Paso Product, Co	90-0773	01/12/90
Carena Holdings, Inc., Dataproducts Corporation, Dataproducts Corporation	90-0806	01/12/90
Aon Corporation, Martin Boyer, Martin Boyer Company, Inc	90-0794	01/16/90
Evered plc, Merit Concrete, Inc., Merit Concrete, Inc	90-0812	01/19/90

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Federal Trade Commission, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-1821 Filed 1-25-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Survey of Physician Practices—New—A national sample of physicians will be surveyed to gather information on current characteristics of physicians' practices, recent changes, and future plans. The information will be used to provide insight on the issue of access to care when future reforms to Medicare/Medicaid policy are under development. The information collection request includes two components; the Request to Participate and the Physician Survey.

Respondents: Physicians

Burden Information: Request to Participate—

Number of Respondents: 3000

Frequency of Response: One time

Average Burden per Response: 20 minutes

Annual Burden: 1000 hours

Burden Information: Physician Survey
Number of Respondents: 1632
Frequency of Response: One time
Average Burden per Response: 20 minutes
Annual Burden: 544 hours
Total Burden: 1544 hours
OMB Desk Officer: Angela Antonelli

2. *Pilot Study:* Appropriate Use of Technology— New— This information collection will be conducted for the purpose of evaluating a pilot study of a variation of consensus development called the "technology assessment and practice guidelines forum." Forum participants will be asked to evaluate the process and product of the forum in order to enable the Department to assess the validity and utility of the forum approach. The findings will be used in planning future medical effectiveness research.

Respondents: Businesses or Other For-profit Institutions, Non-profit Institutions
Number of Respondents: 110
Frequency of Response: One time
Average Burden per Response: 15.5 minutes
Total Burden: 28 hours
OMB Desk Officer: Angela Antonelli

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 245-6511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: January 18, 1990.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 90-1689 Filed 1-25-90; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Tuberculosis Elimination Advisory Committee; Meeting

CDC Advisory Committee for Elimination of Tuberculosis: Meeting In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET).

Time and Date: 8:30 a.m.-5 p.m.—February 20, 1990; 8:30 a.m.-1 p.m.—February 21, 1990.

Place: Augusta Room, Travelodge Hotel, 2061 North Druid Hills Road, NE, Atlanta, Georgia 30329.

Status: Open.

Purpose: This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters to be Discussed: Tuberculosis control among the foreign-born and tuberculosis control in nursing homes. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road, NE, Mailstop E-10, Atlanta, Georgia 30333, Telephones: FTS: 236-2501; Commercial: 404/639-2501.

Dated: January 22, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 90-1810 Filed 1-25-90; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 87F-0197]

Polysar Ltd.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Polysar Ltd. to provide for the safe use of brominated isobutylene-isoprene copolymer as a component of closures with sealing gaskets for food containers and rubber articles for repeated food-contact use. Additionally, FDA is announcing that Polysar Ltd.'s petition also proposes that the food additive regulations be amended to provide for the safe use of mixed octylated diphenylamine as a component in brominated and chlorinated isobutylene-isoprene copolymers intended for use as components of closures with sealing gaskets for food containers.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 10, 1987 (52 FR 26088), FDA announced that a petition (FAP 7B4000) had been filed by Polysar Ltd., c/o 1150 17th St. NW., Washington, DC 20036, proposing that § 177.1420 *Isobutylene polymers* (21 CFR 177.1420) be amended to provide for the safe use of brominated isobutylene-isoprene copolymer as a component of articles in contact with food. Further review of the petition, however, revealed that Polysar Ltd. intended to propose that § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) and § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) be amended to provide for the safe use of brominated isobutylene-isoprene copolymers. Additionally, subsequent to the July 10, 1987 **Federal Register** notice, Polysar Ltd. also amended the petition to propose that § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) be amended to provide for the safe use of mixed octylated diphenylamine as a component in brominated and chlorinated isobutylene-isoprene copolymers.

This notice makes clear that Polysar Ltd. has filed a petition (FAP 7B4000), proposing that § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) and § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) be amended to provide for the safe use of brominated isobutylene-isoprene. This notice also makes clear that the petition proposes that § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) be amended to provide for the safe use of mixed octylated diphenylamine as a component in the manufacture of chlorinated or brominated isobutylene-isoprene copolymers.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agnecy's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 18, 1990.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-1733 Filed 1-25-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0037]

Drug Export; Asacol (5-Aminosalicylic Acid) 400 Mg Tablet

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Norwich Eaton has filed an application requesting approval for the export of the human drug Asacol (5-aminosalicylic acid) 400 mg Tablet to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Patricia M. Beers Block, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide the FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of the application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Norwich Eaton, P.O. Box 191, Norwich, NY 13815, has filed an application requesting approval for the export of the drug Asacol (5-aminosalicylic acid) 400 mg Tablet to Canada. This drug is to be used for the treatment of ulcerative colitis. The application was received and filed in the Center for Drug Evaluation and Research on January 2, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 5, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 11, 1990.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-1771 Filed 1-25-90; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: New Orleans District Office, chaired by Robert O. Bartz, District Director. The topic to be discussed is food labeling.

DATES: Thursday, February 8, 1990, 1 p.m.

ADDRESSES: New Orleans District Office, 4298 Elysian Fields Ave., New Orleans, LA 70122.

FOR FURTHER INFORMATION CONTACT: Eileen P. Angelico, Consumer Affairs Officer, Food and Drug Administration, 4298 Elysian Fields Ave., New Orleans, LA 70122, 504-589-2420.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 19, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-1772 Filed 1-25-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Tennessee State Plan Amendment (SPA)

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on March 7, 1990 in Room 512, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Tennessee State Plan Amendment 89-02.

DATES: Closing date: Requests to participate in the hearing as a party must be received by the Docket Clerk by February 12, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Tennessee State plan amendment number 89-02.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Tennessee State Plan Amendment (SPA) 89–02 seeks protection for the period July 1987 to February 1989 under the moratorium provisions of the Deficit Reduction Act of 1984 (DEFRA) for use of more liberal deeming policies; i.e., not deeming parental income in determining eligibility for pregnant women eligible under section 1902(1) of the Act.

The issues in this matter are whether: (1) Tennessee SPA 89–2 violates section 1902(a)(4) of the Act and Federal regulations at 42 CFR 430.20 because the proposed effective date (July 1, 1987) is earlier than the first day of the quarter in which the amendment was submitted; (2) the amendment qualifies for protection under the DEFRA moratorium; and (3) section 1902(r)(2) of the Act provides retroactive protection for the State's amendment since the State claims the policy embodied in its amendment was in effect during the proposed retroactive period for which the State seeks approval.

HCFA disapproved SPA 89–02 under the authority of section 1902(a)(4) of the Act because the proposed effective date (July 1, 1987) is earlier than the first day of the quarter in which the amendment was submitted. HCFA believes the proposed amendment violates regulations at 42 CFR 430.20 which state that proposed amendments which would expand eligibility cannot be effective earlier than the first day of the calendar quarter in which the amendment is submitted.

HCFA determined that the amendment did not qualify for moratorium protection because pregnant women described at section 1902(1) of the Act were not an eligibility group eligible for moratorium protection. Section 2373(c) of DEFRA provided that the Secretary could take no disallowance, compliance, penalty or other regulatory action against States . . . because a plan (or its operation) employed financial eligibility standards and methods the Secretary found to be more liberal than required for groups described in sections 1902(a)(10)(A)(ii)(IV), (V), or (VI) or section 1902(a)(10)(C)(i)(III) of the Act.

The notice to Tennessee announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. J.W. Luna,
Commissioner, Department of Health and Environment, State of Tennessee, Cordell Hull Building, Nashville, Tennessee 37219–5402

Dear Mr. Luna: I am advising you that your request for reconsideration of the decision to disapprove Tennessee State plan amendment (SPA) 89–02 was received on December 18, 1989. Tennessee SPA 89–02 seeks protection for the period July 1987 to February 1989 under the moratorium provisions of liberal deeming policies; i.e., not deeming parental income in determining eligibility for pregnant women eligible under seciton 1902(1) of the Social Security Act (the Act).

The issues in this matter are whether: (1) Tennessee SPA 89–2 violates section 1902(a)(4) of the Act and Federal regulations at 42 CFR 430.20 because the proposed effective date is earlier than the first day of the quarter in which the amendment was submitted, (2) the amendment qualifies for protection under the Deficit Reduction Act of 1984 (DEFRA) moratorium, and (3) section 1902(r)(2) of the Act provides retroactive protection for the State's amendment since the State claims the policy embodied in its amendment was in effect during the proposed retroactive period for which the State seeks approval.

I am scheduling a hearing on your request to be held on March 7, 1990, at 10:00 a.m. in Room 512, 101 Marietta Street, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4471.

Sincerely,

Louis B. Hays,
Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 17, 1990.

Louis B. Hays,
Acting Administrator, Health Care Financing Administration.

[FR Doc. 90–1805 Filed 1–25–90; 8:45 am]

BILLING CODE 4120–03–M

Hearing: Reconsideration of Disapproval of Washington State Plan Amendment (SPA)

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on March 6, 1990 at 10:00 a.m. in Room 202, 2201 Sixth Avenue, Seattle, Washington to reconsider our decision to disapprove Washington State Plan Amendment 88–14.

DATES: Closing date: Requests to participate in the hearing as a party must be received by the Docket Clerk by February 12, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966–4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Washington State plan amendment number (SPA) 88–14.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Washington SPA 88–14 would eliminate retroactively a requirement in the State plan which makes institutionalized individuals who transfer a home for less than fair market value ineligible for Medicaid. Washington proposes removing this eligibility prohibition retroactive to February 1, 1985, which coincides with the effective date of the original State plan amendment 85–10.

The issue in this matter is whether Washington's proposed effective date of February 1, 1985 for SPA 88–14 violates Federal regulations at 42 CFR 430.20(b) and its predecessors, 45 CFR 201.3(g) and 205.5(b), and section 1902(a)(4) of the Act and the Departmental appropriations statutes. These provisions allow for an effective date for an SPA of this type only back to the beginning of the calendar quarter in which the amendment was submitted.

The effective date of new plans, and for State plan amendments which make

groups eligible for services provided under the plan, may not be earlier than the first day of the quarter in which an approvable plan is submitted. Additionally, with respect to expenditures for medical assistance, the effective date may not be earlier than the first day on which the plan is in operation on a State-wide basis. For other plan amendments, the effective date may be a date requested by the State if HCFA approves it. The SPA falls into the category of making an additional group eligible. The group would be those institutionalized individuals who would be made eligible by elimination of this restriction. Thus, the effective date of the plan amendment could not be earlier than the first day of the quarter of its submission. For this provision, the earliest effective date the State could use would be October 1, 1988.

State discretion with regard to transfer of resources provisions was eliminated by section 303(b) of the Medicare Catastrophic Coverage Act of 1988, Public Law 100-360. Accordingly, except for inter-spousal transfers, effective July 1, 1988, State plans must provide for a period of ineligibility for institutionalized individuals applying for medical assistance who transfer resources for less than fair market value. There is also a delayed effective date for this requirement if State legislation was required to implement it.

Washington indicates that the box under number two of the original transmittal 85-10, Supplement 9 to Attachment 2.6-A, pages 3 and 4, was inadvertently checked although there was no intention or authority for the State to implement the provision. The State further indicates that the State statutes, regulations and procedures which would have been required to implement the provision were never considered, proposed or initiated. By checking the box under number two of transmittal 85-10, Supplement 9 to Attachment 2.6-A, pages 3 and 4, Washington assured HCFA that, in accordance with section 1917(c)(2)(B)(i) of the Act, a period of ineligibility would be applied to inpatients in a skilled nursing facility, intermediate care facility or other medical institution who transferred a home for less than fair market value.

The notice to Washington announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Ron W. Kero,
Director, Division of Medical Assistance HB-41, State of Washington Department of Social and Health Services, Olympia, Washington 98504-0095

Dear Mr. Kero: I am advising you that your request for reconsideration of the decision to disapprove Washington State plan amendment (SPA) 88-14 was received on December 18, 1989. Washington SPA 88-14 would eliminate retroactively a requirement in the State plan which makes institutionalized individuals who transfer a home for less than fair market value ineligible for Medicaid.

The issue in this matter is whether Washington's proposed effective date of February 1, 1985 for SPA 88-14 violates Federal regulations at 42 CFR 430.20(b) and its predecessors, 45 CFR 201.3(g) and 205.5(b), section 1902(a)(4) of the Social Security Act (the Act) and the Departmental appropriations statutes. These provisions allow for an effective date for a SPA of this type only back to the beginning of the calendar quarter in which the amendment was submitted.

I am scheduling a hearing on your request to be held on March 6, 1990, at 10:00 a.m. in Room 202, 2201 Sixth Avenue, Seattle, Washington. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4471.

Sincerely,
Louis B. Hays,
Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 17, 1990.

Louis B. Hays,
Acting Administrator, Health Care Financing Administration.

[FR Doc. 90-1806 Filed 1-25-90; 8:45 am]
BILLING CODE 4120-03-M

[IOA-023-N]

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

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

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Council on Social Security.

DATE: The meeting will be held on February 12, 1990, from 9 a.m. to 5:30 p.m. Eastern Standard Time (e.s.t.), and on February 13, 1990, from 9 a.m. to 4 p.m. e.s.t. The meeting will be open to the public. NOTE: Interpreter services for hearing impaired persons may be provided upon request, if the request is made at least 15 days prior to the meeting.

ADDRESS: The meeting will be held at the DuPont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION, CONTACT: Darleen DiGirolamo, Administrative Officer, Advisory Council on Social Security, (202) 245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act, the Secretary of Health and Human Services appoints an Advisory Council on Social Security every four years. The Advisory Council examines issues affecting the Social Security retirement, disability and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Social Security Act.

In addition, Secretary Sullivan has asked the Advisory Council specifically to address the following:

—The Adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

—Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and

—Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller; and the Chair, Deborah Steelman. The Council is to report to the Secretary and Congress by January 1, 1991.

II. Agenda

On February 12, the Council will discuss health care financing problems of the nonelderly population, incuding issues related to the disabled and other special populations, and reform options. The February 13 agenda will include an update on Social Security OASDI and retirement income issues, followed by discussion of health care financing reform options for the elderly.

Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistanced Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance)

Dated: January 17, 1990.

Deborah J. Chollet,

Executive Director, Advisory Council on Social Security.

[FR Doc. 90-1799 Filed 1-25-90; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Committee to Review Current Procedures for Approval of New Drugs for Cancer and AIDS, National Cancer Institute, February 22, 1990, at the National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10, 6th Floor, Bethesda, MD 20892.

This entire meeting will be open to the public from 9:00 a.m. to 4:00 p.m. Attendance by the public will be limited to space available.

Dr. Elliott Stonehill, Assistant Director, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 11A29, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the committee members and substantive program information upon request.

Dated: January 16, 1990.

Betty J. Beveridge,

Committee Management Office, NIH.

[FR Doc. 90-1753 Filed 1-25-90; 8:45 am]

BILLING CODE 4140-01-M

Establishment of AIDS and Related Research Study Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6)), the Acting Director, National Institutes of Health (NIH), announces the establishment, effective February 1, 1990, of the following committees:

AIDS and Related Research Study Section 1
AIDS and Related Research Study Section 2
AIDS and Related Research Study Section 3
AIDS and Related Research Study Section 4
AIDS and Related Research Study Section 5
AIDS and Related Research Study Section 6
AIDS and Related Research Study Section 7
Board of Scientific Counselors, National Institute of Arthritis and Musculoskeletal and Skin Diseases

The AIDS and Related Research Study Sections shall advise the Director, NIH, regarding applications for grants-in-aid for research and research training activities and proposals relating to all aspects of AIDS and related areas, including the molecular biology and microbiology of the causative agent (human immunodeficiency virus [HIV], epidemiology, diagnosis, treatment, health care, neurological, psychosocial, and behavioral aspects, and opportunistic infections and other sequelae.

The Board of Scientific Counselors, National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), shall advise the Director, NIH, and the Director, NIAMS, concerning the Institute's intramural research programs.

The members of these committees shall consist of outstanding authorities in the various scientific fields which come within the jurisdiction of the particular committee to which they are assigned.

Duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: January 18, 1990.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 90-1754 Filed 1-25-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environment and Energy

[Docket No. I-90-154]

Intended Environmental Impact Statement: Melrose Target Area, Dade County, FL

The Department of Housing and Urban Development gives notice that Dade County, Florida intends to prepare an Environmental Impact Statement (EIS) for the Melrose Target Area at Dade County, Florida as described in the appendix to this notice. This notice is in accordance with regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and data which the EIS should consider, and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This notice shall be effective for 1 year. If 1 year after the publication of the notice in the **Federal Register** a Draft EIS has not been filed on a project, then the notice for that project shall be cancelled. If a Draft EIS is expected more than 1 year after the publication of the notice in the **Federal Register** then a new and updated notice of intent will be published.

Dated: January 22, 1990.

Richard H. Broun,

Director, Office of Environment and Energy.

Appendix

Metro-Dade County intends to prepare an Environmental Impact Statement (EIS) on a project described below and hereby solicits comments and information for consideration in the EIS from affected Federal, State and local agencies; any affected Indian tribe; and any other interested person.

Description: The project consists of activities for housing, economic development, capital improvements and public services used to revitalize a distressed neighborhood. Federal assistance is to be provided by the following five programs: Community Development Block Grant (CDBG); Housing Development Grant; section 312 Rehabilitation Loans; and HUD and VA Mortgage Insurance. This project is an ongoing process of assistance to a distressed neighborhood. The targeted assistance is to be continued until the problems causing distress in the

neighborhood are eliminated or until the financial resources are no longer available. The Melrose Target Area is a largely developed area of 0.85 square miles located just east of Miami International Airport (MIA) and 4 miles northwest of downtown Miami. The boundaries of the target area are the Airport Expressway (SR 112), The Miami Canal, NW 27 Avenue and the city limits of Hialeah.

Need: The EIS is being prepared because two activities, which are sensitive to noise, are proposed to occur within the 75 Ldn noise contour of runway 9L/27R at MIA. These activities are: (1) Redevelopment in South Melrose and (2) improvement of a neighborhood park. Redevelopment activities would occur in area bounded by NW 24 Street, NW 27 Avenue, NW 29 Street, and Okeechobee Road. An environmental assessment of this target area (prepared in 1987) identified noise as the only significant existing environmental issue.

Alternatives: The anticipated alternatives for the proposal of redevelopment will involve providing mitigation, lowering the intensity or eliminating the activity. The only anticipated options for improving the park as proposed would be to provide mitigation or to take no action on implementing improvements.

Scoping: This notice initiates the process to determine the scope of the EIS. Responses will be used to help with the following: (1) Determine significant environmental issues; (2) identify pertinent data; and (3) identify cooperating agencies. A plan of study and copies of the 1987 Environmental Assessment of the Melrose Target Area and the 1989 amendment to it will be circulated to any agency requesting this material. A scoping meeting for comments from residents will be held at 6:30 p.m. on February 13, 1990, in the auditorium of the Melrose Elementary School at 3050 NW 35 Street, Miami, Florida. A scoping meeting for public agencies and interested persons will be held in the Planning Department at 2 p.m. on February 15, 1990.

Contact Person: Patrick F. Moore, AICP, Metro-Dade Planning Department, Metro-Dade Center, suite 1220, 111 NW First Street, Miami, Florida 33128-1972, Phone (305) 375-2805.

[FR Doc. 90-1798 Filed 1-25-90; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-56]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: January 25, 1990.

ADDRESS: For further information, contact James Forsberg, Department of Housing and Urban Development, Room 7228, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6300; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: January 19, 1990.

Stephen A. Glaude,

Deputy Assistant Secretary for Program Management.

[FR Doc. 90-1736 Filed 1-25-90; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-90-2060; FR-2762-N-01]

Significant Coinsurance Program Updates; Increased Monitoring Activities for All Existing Coinsuring Lenders

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

ACTION: Notice.

SUMMARY: On January 16, 1990, the Assistant Secretary for Housing—Federal Housing Commissioner notified all Coinsuring Lenders of increased HUD monitoring activities to be undertaken with reference to the processing of pending and new applications for coinsurance. This document publishes the text of that notice (Coinsuring Lender Letter No. 90-1) in full. The purpose of this notice is to assure prompt public notice of this change in HUD program administration.

DATES: Effective date: January 16, 1990.

FOR FURTHER INFORMATION CONTACT: Matthew C. Andrea, Jr., Acting Chief, Coinsurance Programs Branch, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-4956. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: To assure prompt public notice of a significant change in HUD's administration of the Multifamily Coinsurance programs under 24 CFR parts 251, 252 and 255, this document reprints in full the content of Coinsuring Lender Letter No. 90-1, issued and effective on January 16, 1990.

The Coinsuring Lender Letter reads as follows:

January 16, 1990.

Coinsuring Lender Letter No. 90-1

To All Coinsuring Lenders

Subject: Significant Coinsurance Program Updates—Increased Monitoring and Review Activities For All Existing Coinsuring Lenders.

Effective immediately, and until further notice, the Department has decided to increase its current monitoring activities in all multifamily coinsurance programs, and to require HUD reviews of all coinsurance mortgage applications prior to the issurance of any binding commitments. This action is applicable to all coinsurance loans other than those for which legally binding commitments were issued on or before the date of this notice.

When a coinsuring lender has completed its processing of an application for coinsurance, but prior to issuing any legally binding conditional or firm commitment, the lender shall furnish to HUD Headquarters and to the HUD field office with jurisdiction for the proposed project all documentation comprising the application. The Department *will not endorse* any mortgage loan for coinsurance until it has reviewed and found to be acceptable the underwriting and related loan commitment determinations made by the lender. The coinsuring lender may only issue a commitment upon receiving written notification from the Department that the loan processing is approved. The pre-commitment procedure employed here is not to be construed as imposing a sanction upon, or otherwise altering the status of, lenders participating in the coinsurance programs.

On May 5, 1989 the Department issued Coinsuring Lender Letter No. 89-4, which letter indicated its initiation of an evaluation of the coinsurance programs. Since that time, program enforcement and monitoring and tracking efforts have been stepped up. As a consequence of these activities and other relevant information available to the Department, the action now being taken is deemed prudent to protect the General Insurance Fund.

Very sincerely yours,

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

[End of text of Coinsuring Lender Letter]

Date: January 20, 1990.

Peter Monroe,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-1735 Filed 1-25-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, (*et seq.*):

PRT 704930

Applicant: U.S. Fish and Wildlife Service, Regional Dir., Region 6, Denver, CO.

The applicant requests amendment to their current permit to include the take of Virgin River chub (*Gila robusta seminuda*) and the western prairie fringed orchid (*Plantanthera praeclara*) for scientific purposes and the enhancement of propagation or survival in accordance with Recovery Plans or other Service work for these species.

PRT 745660

Applicant: Thomas Snowden, Mattoon, IL.

The applicant requests a permit to purchase in interstate commerce one pair of captive-hatched Hawaiian (=nene) geese [*Nesochen* (=*Branta*) *sandvicensis*] from Mr. Garrie Landry of Franklin, Louisiana, for the purpose of captive-propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, VA 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: January 23, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-1809 Filed 1-25-90; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AZ-020-00-4212-13; AZA-24131]

Realty Action; Exchange of Public Land; Mohave, Pima, and Santa Cruz Counties, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange.

SUMMARY: All or part of the following described federal lands have been determined suitable for disposal via exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Base and Meridian, Mohave County, Arizona

Township 21 North, Range 18 West

**Sec. 8, lot 1, W½NE¼NE¼, SE¼NE¼NE¼, W½NW¼.

Township 22 North, Range 19 West

Sec. 12, all;
Sec. 14, all;
Sec. 20, all;
Sec. 22, all;
Sec. 28, all;
Sec. 30, lot 1, NE¼, NE¼NW¼, E½SE¼NW¼, NE¼NE¼SW¼.

Township 19 North, Range 21 West

Sec. 30, E½SE¼NW¼, E½NE¼SW¼, S½NW¼NE¼SW¼, SW¼NE¼SW¼, SE¼SW¼.

Comprising 3,694.1 acres, more or less.

**Lands identified in section 8 are subject to appropriation by Mohave County under the Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.) the Recreation and Public Purposes Act.

In exchange for the above described public lands, the United States will acquire all or part of the below-described sections of private lands from PFL Enterprises, and Arizona General Partnership, or their nominee.

Gila and Salt River Base and Meridian, Pima & Santa Cruz Counties, Arizona

Township 17 South, Range 17 East

Sec. 33.

Township 18 South, Range 17 East

Secs. 1, 3, 4, 8, 9, 17, 18, 19.

Township 18 South, Range 18 East

Sec. 5, 6.

Township 20 South, Range 17 East

Sec. 3, SW¼;
Sec. 4, S½;
Sec. 8, E½NE¼;
Sec. 9, all;
Sec. 10, NW¼, W½SW¼.

Comprising 3,255 acres, more or less.

The exchange proposal involves all of the exchange proponent's interest in the surface and subsurface of the private lands and the surface and subsurface estate of the public lands. The exchange is consistent with the Bureau's land use planning objectives.

Lands being conveyed from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Rights-of-way AZA-19990, AZA-11509, AZA-16414, AZA-21363, AZAR-032609, AZAR-033291, AZA-23283, AZA-8449, and state highway 68.

3. All valid existing rights.

The lands transferred out of federal ownership will affect the Mud Springs grazing allotment number 2059.

The lands to be acquired by the United States from PFL Enterprises shall be subject to certain easements, permits and other encumbrances detailed in the subject title reports prepared by Lawyers Title Insurance Company.

Upon completion of the official appraisal, acreage adjustments will be made to equalize the values of the offered and selected lands.

In accordance with the regulations of 43 CFR 2201.1, publication of this Notice will segregate the affected public land from appropriation under the public land laws, except exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect shall also exclude appropriation of the subject public land under the mining laws, subject to valid existing rights.

The segregation of the above-described land shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the

expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: January 17, 1990.

Charles R. Frost,

Acting District Manager.

[FR Doc. 90-1800 Filed 1-25-90; 8:45 am]

BILLING CODE 4310-32-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-452 (Preliminary)]

Pressure-Sensitive PVC Battery Covers From West Germany

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-452 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from West Germany of pressure-sensitive PVC battery covers, provided for in subheading 8506.90.00 of the Harmonized Tariff Schedule of the United States [1] (previously reported under item 682.95 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by March 5, 1990.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-252-1180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on January 19, 1990, by The National Label Company, Lafayette Hill, PA.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with sections 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application for protective order be made not later than (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on February 9, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202-252-1180) not later than February 7, 1990 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before February 13, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR §§ 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to section 207.7(a) of the Commission's rules (19 CFR 202.7(a)) may comment on such information in

[1] This HTS subheading encompasses parts of primary cells and primary batteries.

thieir written brief, and may also file additonal written comments on such information no later than February 16, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

Issued: January 22, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-1747 Filed 1-25-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: January 23, 1990.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the priority of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

A. (1) Dairymen, Inc.
(2) 10140 Linn Station Road, Louisville, KY 40223
(3) Dairymen, Inc.-Georgia Division, Recreation Road, Box 910, Eatonton, GA 31024
Dairymen, Inc.-Kyana Division, P.O. Box
(4) Beverly L. Williams, 10140 Linn Station Road, Louisville, KY 40223

B. (1) Harvest States Cooperatives
(2) P.O. Box 64594, St. Paul, MN 55164
(3) 1667 N. Snelling Avenue, St. Paul, MN 55108
(4) Russell J. Eichman, P.O. Box 64594, St. Paul, MN 55164

Noreta R. McGee,

Secretary.

[FR Doc. 90-1813 Filed 1-25-90; 8:45 am]

BILLING CODE 7035-01-M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Corporation and address of principal office: Direct Oil Company, 1428 Bellinger Street, P.O. Box 207, Eau Claire, Wisconsin 54702-0207
2. Wholly-owned subsidiaries which will participate:
(a) Brumberg Oil Co., Inc., 2511 Pine Tree Lane, P.O. Box 3033, Eau Claire, Wisconsin 54702-3033
State of incorporation: Wisconsin
(b) Local Oil Co., Inc., 1428 Bellinger Street, P.O. Box 207, Eau Claire, Wisconsin 54702-0207
State of incorporation: Wisconsin

B. 1. Parent corporation and address of principal office: The Caraway Company, P.O. Box 459, Route 3, Box 453, Sophia, NC 27350
2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:
(a) Washington Furniture Manufacturing Company, Inc., Mississippi
(b) Liberty Manufacturing Company, Inc., Mississippi

C. 1. Parent corporation and address of principal office: Savannah Foods & Industries, Inc., Post Office Box 339, Savannah, GA 31402
2. Wholly-owned subsidiaries which will participate in the operations, address of their principal office, and state of incorporation:

	State of incorporation
(a) Everglades Sugar Refinery, Inc., Post Office Box 278, Clewiston, FL 33440.	Florida
(b) Transales Corp., Post Office Box 9177, Savannah, GA 31402-0339.	Delaware
(c) Food Carrier, Inc., Post Office Box 2287, Savannah, GA 31402-2287.	Georgia
(d) Savannah Foodservice of Florida, Inc., Post Office Box 427, Hialeah, FL 33011-0427.	Delaware
	State of incorporation
(e) Michigan Sugar Company, Post Office Box 1348, Saginaw, MI 48605.	Michigan
(f) Savannah Foodservice, Inc., 2218 Enterprise Avenue, Jackson, MI 49201.	Michigan
(g) Great Lakes Sugar Co., Post Office Box 89, Findlay, OH 45840.	Ohio
(h) Colonial Sugars, 107 St. Francis Street, Ste. 1600, Mobile, AL 36602.	Delaware
(i) International Automated Machines, Inc., 30600 Oregon Road, Perrysburg, OH 43551.	Delaware
(j) Phoenix Packaging Corp., State Road 32 West, Union City, IN 47390.	Delaware

Noreta R. McGee,

Secretary.

[FR Doc. 90-1814 Filed 1-25-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 2, 1989, Radian Corporation, 8501 Mo-pac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of bulk dextropropoxyphene (non-dosage forms) (9273), a basic class of controlled substance in Schedule II. The firm plans to import deuterated material not currently available in the U.S. for manufacturing an exempt product.

Any manufacturer holding, or applying for, registration as a bulk

manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisifed.

Dated: November 27, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90–1792 Filed 1–25–90; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS #1248-90]

New Employment Authorization Document

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice to Employers, Recruiters and Referrers for a Fee (hereinafter collectively referred to as "employer").

SUMMARY: This notice is to inform employers of a new employment authorization document, that the Immigration and Naturalization Service (INS) will be issuing to aliens authorized for employment in the United States. This notice, as well as other public information material, is being published in order to advise employers of the new document which will assist them in complying with the provisions of Public Law 99–603, the Immigration Reform and Control Act of 1986 (IRCA).

SUPPLEMENTARY INFORMATION: On November 6, 1986, the President signed into law IRCA, Public Law 99–603, which amended the Immigration and Nationality Act by adding provisions relating to the control of employment of aliens in the United States. These provisions make it unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States, aliens knowing that they are not authorized to work in the United States. It is also unlawful for employers to continue to employ persons hired after November 6, 1986, knowing that they are or have become unauthorized to work. Employers must hire only United States citizens and aliens who are authorized to work in the United States. These provisions also provide for an employment verification system designed to prevent the employment of unauthorized aliens. The verification system requires employers to verify the identity and employment eligibility of anyone, including United States citizens, hired after November 6, 1986 by completing and retaining the Employment Eligibility Verification Form (Form I–9). In addition, under this law, employers may not discriminate against any individual (other than an unauthorized alien) in hiring, discharging, or recruiting or referring for a fee because of the individual's national origin or, in the case of a citizen or intending citizen, because of his or her citizenship status. The Office of Special Counsel, United States Department of Justice, enforces the anti-discrimination provision of the Act. As a result of the Act, the Service added part 274a to title 8, Code of Federal Regulations, by redesignating part 109 with amendments as part 274a, Subpart B, by: (1) Defining terms to clarify the regulations; (2) adding new sections to establish procedures for the verification of employment eligibility for workers in the United States; (3) delineating new sections to establish enforcement and process procedures for violations; (4) redesignating part 109 (Employment Authorization) as subpart B of part 274a to consolidate into one part what would otherwise be dispersed regulations.

The INS developed a *Handbook for Employers* (M–274) in order to assist employers in the understanding and implementation of the legal requirements of IRCA. (Any employers that have not received the *Handbook for Employers* should contact the nearest INS office). This Notice serves as an addendum to the *Handbook for Employers*, as it informs employers of a new employment authorization document that INS will be issuing to aliens authorized for employment in the United States. A description of the document and the class of aliens to whom it is issued appears below.

I. Employment Authorization Document

In order to provide uniformity in the employment authorization documentation issued to qualified aliens, the INS will be issuing the Employment Authorization Document (EAD). Effective November 1989, INS began issuing the interim EAD, I–688B, pending phasing in of the permanent EAD, I–766, in early 1990. The EAD (both the I–688B and the I–766) is a List A document (page 11 of *Handbook for Employers*) because it establishes both identity and employment eligibility. The face of the EAD will contain a photograph, signature, and fingerprint of the bearer as well as other identifying information such as name, and date of birth. Both the I–688B and the I–766 will be issued by INS to certain classes of aliens who are permitted to work in the United States, subject to the conditions, if any, specified on the front side of the EAD. A person bearing either the I–688B or the I–766 is authorized to engage in employment in the United States subject to any time limitations and/or employment restrictions cited on the EAD.

Please Note: Other unexpired employment authorization documents previously issued by the INS will continue to be honored. In fact, employers *cannot* specify which documents they will accept from an employee for employment eligibility verification. They must accept any document or combination of documents listed on page 11 of the *Handbook for Employers*.

FOR FURTHER INFORMATION CONTACT: Kathryn E. Sheehan, Deputy Assistant Commissioner, Employer and Labor Relations, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–2471, Room Number: 7025.

Dated: December 12, 1989.

Clarence M. Coster,

Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 90–1741 Filed 1–25–90; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-23, 465]

Car-Mal Sportswear, Incorporated, South Boston, MA; Negative Determination Regarding Application for Reconsideration

By an application dated December 28, 1989, the Boston Joint Board of the International Ladies' Garment Workers' Union (ILGWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 30, 1989 and published in the **Federal Register** on December 15, 1989 (54 FR 51512).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union names one of Car-Mal's manufacturers as importing women's sportswear in the survey period and as having workers certified for adjustment assistance.

Investigation findings show that Car-Mal was a women's sportswear contractor.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 was not met. The "contributed importantly" test is generally demonstrated by a survey of the workers' firm's customers. The Department conducted a survey of the major manufacturers of the subject firm for their contract and import purchases of women's sportswear in 1988 compared to 1987 and in the first eight months of 1989 compared to the same period in 1988. The survey showed that none of the respondents reported using foreign contractors or imported women's sportswear in the survey periods.

Other findings show that the workers of the manufacturer named by the union were certified for adjustment assistance (TA-W-20, 665) on increased company imports of women's sportswear in 1987 compared to 1986. That manufacturer ceased production in April 1988 and closed in July 1988. Accordingly, the manufacturer's imports would not form a basis for the certification of the Car-Mal workers since it closed before the period relevant to Car-Mal's petition and provided only a minor percentage of Car-Mal's sportswear orders for 1988.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of January 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-1826 Filed 1-25-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,382 and TA-W-23,528]

Deutz of America Corp., Richmond, IN and Hawkins Oil and Gas, Inc., Tulsa, OK

Dismissal of Applications for Reconsideration Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of trade Adjustment Assistance for workers at the Deutz of America Corporation, Richmond, Indiana and Hawkins Oil and Gas, Incorporated, Tulsa, Oklahoma. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissal of the applications were issued.

TA-W-23,382; Deutz of America Corporation, Richmond, Indiana (January 16, 1990)

TA-W-23,528; Hawkins Oil and Gas, Incorporated, Tulsa, Oklahoma (January 17, 1990)

Signed at Washington, DC, this 19th day of January 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-1827 Filed 1-25-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,427]

Sensus Technologies, Inc., Uniontown, PA; Negative Determination Regarding Application for Reconsideration

By an application dated December 31, 1989 Local # 13836 of the United Steelworkers of America (USW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 22, 1989 and published in the **Federal Register** on December 5, 1989 (54 FR 50286).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that their firm's competition uses foreign components in its water meters.

Investigation findings show that the Sensus workers produce small water meters used in homes, apartments and light industry.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated by a survey of the workers' firm's customers., The Department's surveyed the major customers of Sensus Technologies as well as bids on projects that were lost by Sensus in 1987, 1988 and 1989. The respondents indicated that they did not purchase imported water meters. Also, the bid survey revealed that the corporations or agencies awarding bids lost by Sensus used other domestic firms to supply their requirements for water meters.

With respect to the issue of foreign components raised by the union, under the Trade Act of 1974 only increased imports of articles like or directly competitive with the articles produced by the workers' firm or appropriate subdivision can be considered. Water meter components are not like or directly competitive with water meters. This issue was addressed in *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d 174, (D.C. Cir. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, water meter components incorporated in the finished article (water meters) cannot be considered like or directly competitive with water meters.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or

misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of January 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-1828 Filed 1-25-90; 8:45 am]

BILLING CODE 4510-30-M

Texaco U.S.A.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of: Texaco U.S.A., West Region, Producing Department, TA-W-23,280, Casper District, Headquartered in Casper, Wyoming, and TA-W-23,280A, operating at other locations in Wyoming and operating at various locations in the following states: TA-W-23,280B Colorado, TA-W-23,280C Montana, TA-W-23,280D New Mexico [excluding the Hobbs District (TA-W-23,281B)], TA-W-23,280E North Dakota, TA-W-23,280F Utah, TA-W-23,281, Midland Division headquartered in Midland, Texas and TA-W-23,281A, operating at other locations in Texas and TA-W-23,281B, operating at various locations in New Mexico (including the Hobbs District) and TA-W-23,281C—operating at various locations in Oklahoma; TA-W-23,281D—operating at various locations in Illinois; TA-W-23,281E—operating at various locations in Nebraska; TA-W-23,281F—operating at various locations in Kansas.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 18, 1989, applicable to all workers of Texaco U.S.A. West Region Producing Departments in the Casper District and Midland Division and their operations at various locations in the above mentioned states.

The notice of certification was published in the **Federal Register** on October 31, 1989 (54 FR 45813).

Based on new information from the company, additional workers were separated from other locations in Oklahoma, Illinois, Nebraska and Kansas of the Midland Division. The amended notice applicable to TA-W-23,280 and TA-W-23,281 is hereby issued as follows:

All workers of Texaco USA's, West Region, Producing Department, Casper District, headquartered in Casper, Wyoming (TA-W-23,280) and operating at other locations in Wyoming (TA-W-23,280A) and various locations in the following cited states who became totally or partially separated from employment on or after August 2, 1988, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974: TA-W-23,280B Colorado, TA-W-23,280E North Dakota; TA-W-23,280C Montana, TA-W-23,280F Utah; TA-W-23,280D New Mexico [excluding the Hobbs District (TA-W-23,281B)].

All workers of Texaco USA's, West Region, Producing Department, Midland Division, headquartered in Midland, Texas (TA-W-23,281) and operating at other locations in Texas (TA-W-23,281A) and in various locations in Oklahoma, Illinois, Nebraska and Kansas who became totally or partially separated from employment on or after January 23, 1989, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

All workers of Texaco USA's, West Region, Producing Department, Midland Division, operating at various locations in New Mexico, including the Hobbs District, (TA-W-23,281B) who became totally or partially separated from employment on or after August 1, 1988, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of January 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-1829 Filed 1-25-90; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Puerto Rico

This notice announces the beginning of a new Extended Benefit Period in Puerto Rico, effective on December 31, 1989, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit Period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on December 16, 1989, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on December 31, 1989. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law.

The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on January 18, 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 90-1830 Filed 1-25-90; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federally Assisted Construction; General Wage Determination Decision

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky:
KY90-4 (Jan. 5, 1990) ..... p. 303, p. 304.
Kentucky:
KY90-29 (Jan. 5, 1990) ..... p. 381, pp. 381, 383-pp. 384, 392-pp. 393.
Massachusetts:
MA90-1 (Jan. 5, 1990) ..... p. 399, pp. 401, 407, p. 408.
Pennsylvania:
PA90-7 (Jan. 5, 1990) ..... p. 951, p. 952, p. 977, p. 978.
Pennsylvania:
PA90-9 (Jan. 5, 1990) ..... p. 997, p. 998.
Pennsylvania:
PA90-23 (Jan. 5, 1990) ..... p. 1079, p. 1081.

Volume II

Missouri:
MO90-1 (Jan. 5, 1990) ..... p. 627, pp. 629, 631-pp. 634, 642.-p. 644.
Ohio:
OH90-1 (Jan. 5, 1990) ..... p. 777, pp. 778-790.
Ohio:
OH90-2 (Jan. 5, 1990) ..... p. 791, pp. 793-795, pp. 807-808.
Ohio:
OH90-29 (Jan. 5, 1990) ..... p. 873, pp. 875-876, pp. 878-879, pp. 881-882.
Ohio:
OH90-34 (Jan. 5, 1990) ..... p. 918a, p. 918b.

Volume III

Alaska:
AK90-1 (Jan. 5, 1990) ..... p. 1, pp. 2-3.
California:
CA90-6 (Jan. 5, 1990) ..... p. 106a.
Montana:
MT90-5 (Jan. 4, 1990) ..... p. 225, p. 226.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available to each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 22nd Day of January 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-1710 Filed 1-25-90; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-89-190-C]

Black Nuggett Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Black Nuggett Mining, Inc., Route 2, Box 44-A, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 1 Mine (I.D. No. 44-04559) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined on a weekly basis.

2. Due to rock falls, poor roof conditions, bottom hooving and water all areas leading into and around the old second left section seals are extremely hazardous, and to require certified personnel to perform weekly checks would result in a diminution of safety.

3. As an alternate method, petitioner proposes to establish air monitoring stations where the quality and quantity of air passing by the seals would be monitored. In support of this request petitioner states that—

(a) Examinations for air quality and quantity would be conducted by a certified person on a weekly basis and a log would be kept at each station;

(b) Variations that are noted would be investigated and appropriate corrective action would be taken; and

(c) Methane has never been detected in the mine.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 26, 1990. Copies of the petition are available for inspection at that address.

Dated: January 19, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-1832 Filed 1-25-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-28-M]

Manville Sales Corp.; Petition for Modification of Application of Mandatory Safety Standard

Manville Sales Corporation, P.O. Box 338, Antonito, Colorado 81120 has filed a petition to modify the application of 30 CFR 56.13020 to its No Auga Mine (I.D. No. 29-00248) located in Taos County, New Mexico. 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 compressed air not be directed toward a person. When compressed air is used, all necessary precautions must be taken to protect persons from injury.

2. Petitioner processes a mineral that is dusty and abrasive. Dust clings to clothing and is difficult to remove.

3. As an alternate method, petitioner proposes that employees be allowed to use a blow-off nozzle regulated at 2-3 pounds per square inch to blow dust from their clothing.

4. In support of this request, petitioner states that—

(a) Signs would be posted at all locations using the blow-off nozzle; and

(b) Safety rules would be enforced by supervisors.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Heatlh Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 26, 1990. Copies of the petition are available for inspection at that address.

Dated: January 19, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-1831 Filed 1-25-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-29-M]

United States Gypsum Co.; Petition for Modification of Application of Mandatory Safety Standard

United States Gypsum Company, Sperry, Iowa 52650-0187 has filed a petition to modify the application of 30 CFR 49.2(f) (availability of mine rescue teams) to its Sperry Mine (I.D. No. 13-00434) located in Des Moines County, Iowa. 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 except where alternative compliance is permitted under 30 CFR 49.3 or 30 CFR 49.4, no mine served by a mine rescue team be located more than two hours ground travel time from the mine rescue station with which the rescue team is associated.

2. The mine currently has the personnel and rescue equipment for one six-man rescue team.

3. As an alternate method, petitioner requests a modification of the standard to extend the ground travel time to three hours to provide a back-up team from outside the time.

4. In support of this request, petitioner states that the Illinois Department of Mines and Minerals has a mine rescue team and all related mine rescue equipment in Springfield, Illinois and has verbally committed to act as the back-up team for the mine.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 26, 1990. Copies of the petition are available for inspection at that address.

Dated: January 19, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-1833 Filed 1-25-90; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Public Information Collection Requirement; Approved by OMB

ACTION: Notice.

Pursuant to a request from the Office of Management and Budget (OMB), the Department of Labor resubmitted to OMB for clearance under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) the information collection requirements relating to the reporting of realized and unrealized gains and losses in line item 35b (iv) and (v) of the Form 5500 Annual Return/Report of Employee Benefit Plans,[1] which is required to be filed by administrators of employee welfare and pension benefit plans (with 100 or more participants) under the Employee Retirement Income Security Act of 1974, as amended (ERISA). A Notice of this resubmission to OMB was published in the **Federal Register** on October 5, 1989 (54 FR 41884). Pursuant to the Notice recommendations and comments on the resubmitted information collection requirements were requested to be filed with OMB by December 4, 1989. OMB has, upon review of the resubmitted information collection requirements, approved the collection of this information under the Paperwork Reduction Act. This collection of information, as well as the form of which it is a part, is assigned Control Number 1210–0016.

Discussion

In a May 18, 1989 letter to the Department of Labor, the American Bankers Association (ABA) indicated that many banks and other employee benefit plan service providers have been utilizing historical cost in the calculation of a portfolio's total return for a period and, accordingly, have maintained recordkeeping systems and provided reports utilizing the historical cost approach in determining realized and unrealized gains and losses for employee benefit plan clients. Noting that the instructions relating to item 35b (iv) and (v) provide that realized and unrealized gains and losses are to be determined against the revalued cost (i.e., the current value of the assets as of the beginning of the plan year, as carried forward from the end of the prior plan year), the ABA expressed concern that, as a result of the significant programming changes necessary to provide the data required by the 1988 Form with respect to realized and unrealized gains and losses and the date by which the annual reports must be filed, banks and other employee benefit service providers who maintained records utilizing historical cost will be unable to provide plan administrators with the information necessary to complete item 35b (iv) and (v) in accordance with the instructions for the 1988 and 1989 plan years. In this regard, the ABA expressed concern that a failure or inability on the part of plan administrators to file the Form 5500 in accordance with the instructions to item 35b (iv) and (v) will result in the issuance of deficiency notices and possibly result in the assessment of a penalty of up to $1,000 a day by the Department, pursuant to section 502(c)(2) of ERISA and the regulations issued thereunder (29 CFR 2560.502c–2). For these reasons, the ABA requested that the Department not issue deficiency notices with respect to the 1988 Annual Reports which calculate realized and unrealized gains and losses on the basis of historical cost and that, for purposes of the 1989 Form 5500 and subsequent years, the historical cost approach to determining realized and unrealized gains and losses be permitted.

In a July 3, 1989 letter to the ABA, a summary of which was republished in the **Federal Register** on November 13, 1989 (54 FR 47277), the Department indicated that it had long been its view that, consistent with the current value reporting requirements of the Form 5500, realized and unrealized gains and losses are required to be determined against the current value of the assets as of the beginning of the plan year. Further, the Department indicated that it continues to believe that the reporting of realized and unrealized gains and losses on a current value basis provides more accurate information concerning the investment performance of the plan during the plan year. In support of its position, the Department noted that the Financial Accounting Standards Board (FASB), in Statement of Financial Accounting Standards No. 35, Accounting and Reporting by Defined Benefit Pension Plans (March 1980), concluded that plan investments should be measured at fair value and specifically rejected the utilization of historical cost in measuring investment performance.

In discussing the utilization of historical cost in measuring investment performance, FASB's Statement No. 35 provides, at paragraph 105 of appendix B, the following statement:

> The Board rejected using historical cost because prices in past exchanges do not provide the most relevant information about the present ability of the plan's assets to provide participants' benefits. Further, the Board does not believe that historical cost is the most appropriate measure for use in assessing how stewardship responsibility for plan assets has been discharged. Plan administrators or other fiduciaries who manage plan assets are accountable not only for the custody and safekeeping of those assets *but also for their efficient profitable use in producing additional assets for use in paying benefits. Investment performance is an essential element of stewardship. Measuring changes in fair value provides information necessary for assessing annual investment performance and stewardship responsibility.* (Emphasis supplied)

For these reasons, the Department indicated that it did not intend to modify the current value reporting requirements applicable to item 35b (iv) and (v) of the Form 5500. However, on the basis of the information provided by the ABA and others concerning the apparent confusion on the appropriate methodology required for determining and reporting realized and unrealized gains and losses, the Department indicated that it would not reject annual report filings for the 1988 and 1989 plan years solely because the administrator of a plan determines realized and unrealized gains and losses for those plan years utilizing a historical cost approach consistent with that utilized for the 1987 plan year annual report. The Department further indicated that for plan years beginning on or after January 1, 1990, all plan administrators filing the Form 5500 will be expected to comply with the instructions to Form 5500 relating to the utilization of current value.

In response to the October 5, 1989 **Federal Register** Notice of the resubmitted information collection requirements (54 FR 41884), OMB received three letters, one from the ABA and two from individual banks. Each of the submissions questioned the need for current value reporting and indicated that having to modify current recordkeeping systems to comply with the current value reporting required by the Form 5500, as well as having to maintain the current value data, will result in significant costs to banks.

While the Department recognizes that, in order to furnish their employee benefit plan clients information necessary to comply with the annual reporting requirements, certain banks may have to modify their current

[1] The 1988 Form 5500 Item 35b(iv) requires the reporting of: Net gain (loss) on sale of assets, (A) Aggregate proceeds, and (B) Aggregate costs. Item 35b(v) requires reporting of unrealized appreciation (depreciation) of assets. For purposes of this document, these reporting requirements are generally referred to in the aggregate as the reporting of "realized and unrealized gains and losses".

recordkeeping systems and, thereby, incur additional costs, the Department does not believe such costs justify abandoning current value reporting. First, the Department continues to believe that current value reporting provides plan sponsors, administrators, participants and beneficiaries, and the Department with the most relevant information for assessing the assets available for benefits, the plan's investment performance and the stewardship responsibilities of plan fiduciaries. Second, the Department continues to believe that current value reporting is not only consistent with ERISA's annual reporting scheme, but is mandated by FASB's Statement No. 35.

With regard to the foregoing, the Department notes that ERISA section 103(b)(3) specifically requires the reporting of assets and liabilities at current value. While current value reporting may not be specifically referenced with regard to the income and expense statements, the integrity and value of any financial statement is wholly contingent on the application of consistent principles in the preparation of such statement. As indicated in FASB's Statement No. 35, at paragraph 246 of Appendix B, "[A]ll financial information presented in a single financial statement is generally understood to be determined as of the same date or for the same period." [2] For this reason, the Department believes that a current value approach to the financial statements as a whole is a necessary requirement of ERISA's annual reporting scheme.

With regard to recordkeeping, the Department notes that the recordkeeping provisions of ERISA section 107 require that "[E]very person subject to a requirement to file any description or report (e.g., Form 5500) or to certify any information therefor under this title (e.g., a bank) shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness * * * and shall keep such records available for examination for a period of not less than six years * * *." Accordingly, while certain banks may not be able to readily retrieve the current value data required to be reported with respect to realized and unrealized gains and losses, banks generally would, in accordance with the recordkeeping requirements of ERISA section 107, be required to retain, for not less than a six year period, that information relative to such gains and losses, which would include certain current value determinations. Such information would also be required to be retained in order to verify, explain, clarify or check for accuracy and completeness beginning and end of year asset values reported in item 34 of the Form 5500 (assets and liabilities), as well as the schedules relating to assets held for investment.

Finally, the Department notes that FASB's Statement No. 35 setting forth the fair value standards of accounting and reporting applicable to employee benefit plan financial statements were effective for plan years beginning on after December 15, 1980. Accordingly, while certain banks may not have been maintaining current value-based records for annual reporting purposes, the accountants retained by employee benefit plans to conduct audits and render opinions for purposes of the financial statements included as part of the annual report have been required to comply with the fair value accounting and reporting standards of FASB for over several years.

OMB Approval

As noted above, OMB has approved the resubmitted information collection requirements relating to the reporting of realized and unrealized gains and losses in item 35b (iv) and (v) of the Form 5500. This information collection, as well as the form of which it is a part, is assigned Control Number 1210–0016.

Inasmuch as utilization of the current value method has, in the view of the Department, always been required with respect to the reporting of realized and unrealized gains and losses, retention of this requirement should not result in any increased costs or burdens to plans filing the Form 5500. To the extent that certain banks may incur costs to modify their recordkeeping systems to accommodate the reporting needs of their employee benefit plan clients, some of such costs may be passed on to the client plans. However, the Department believes that any such costs should be negligible with respect to any given plan. Moreover, the direct effect of any such costs to any given plan should be substantially minimized as result of the Department's decision not to reject the annual reports of plans for the 1988 and 1989 plan years solely due to an inability on the part of the plan administrator to report realized and unrealized gains and losses in accordance with the instructions to the forms.

In a further effort to address the concerns raised by commentators on the October 5, 1989 **Federal Register** notice, however, the Department has decided that, with respect to those employee benefit plans which are dependent upon banks for the certification of that information necessary to report realized and unrealized gains and losses on the Form 5500 Annual Return/Report, it will not reject the annual report of the plan for the 1990 plan year solely because the administrator of the plan determines realized and unrealized gains and losses utilizing a historical cost approach consistent with that utilized for the prior plan years, if the plan's Form 5500 Annual Return/Report for the 1990 plan year is accompanied by:

(1) A statement from the plan administrator indicating the inability of the administrator to report realized and unrealized gains and losses in accordance with the current value requirements of the instructions to the Form 5500 due the inability of the bank on which the plan is dependent for such data to make the recordkeeping changes necessary to accommodate the required reporting; and

(2) A statement from the bank, on which the plan is dependent for such data, which provides sufficient information and data to demonstrate that: (i) The bank has made reasonable efforts to make the necessary recordkeeping changes in a timely fashion, and (ii) despite such efforts, the bank is unable to make such changes to provide the necessary information to their clients for the 1990 plan year.

Any bank which is unable to provide its employee benefit plan clients the data necessary to accommodate the required reporting of realized and unrealized gains and losses in items 35b (iv) and (v) of the Form 5500 should so notify the Department on or before June 30, 1990. Such notifications should be addressed to: Office of the Chief Accountant, ATTN: Item 35b Compliance, Room N5510, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Michael E. Auerback or Marcus J. Aron, Office of the Chief Accountant, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC, (202) 523–8794.

[2] *See*: Paragraph 15 of FASB's Statement No. 35, in which reference is made, in the context of disclosures relating to changes in net assets available for benefits, to net appreciation (depreciation) in fair value, including realized gains and losses.

Signed at Washington, DC, this 22nd day of January 1990.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration.

[FR Doc. 90-1834 Filed 1-25-90; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Working Group on Social/Human Issues.

Date and Time:
February 15, 1990, 10:00 a.m.-6:00 p.m.
February 16, 1990, 9:00 a.m.-6:00 p.m.

Place: Westin Hotel Copley Place, 10 Huntington Avenue, Boston, Massachusetts 02116.

Type of Meeting: Open

For further information contact: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., Suite 815, Washington, DC 20006 (202) 254-5125

Agenda: On February 15 and 16, 1990 the Working Group on Social/Human Issues will hold a series of roundtable discussions on issues relating to HIV testing.

Maureen Byrnes,

Executive Director.

[FR Doc. 90-1837 Filed 1-25-90; 8:45 am]

BILLING CODE 6820-CN-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-461]

Illinois Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company (IP), and Soyland Power Cooperative, Inc. (the licensees) for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

Environmental Assessment

Identification of Proposed Action

In general, the proposed license amendment would revise the Technical Specifications (TS) related to accident monitoring instrumentation and time-limit values specified for timers.

Specifically, the licenses requested the proposed changes to Technical Specification Table 3.3.7.5-1 in order to insert exceptions to Specification 3.0.4 into the Action statements and to correct a typographical error; these proposed changes have been approved. Five additional proposed changes have been found to be unacceptable on the basis that they are not in conformance with the Standard Technical Specifications and the license has not submitted sufficient technical justification to show that these changes are acceptable. Three of these changes concern the time-limit values specified for timers in Table 3.3.2-2, one change concerns an inconsistency existing between Action 81 associated with Table 3.3.7.5-1 and the general Action and Limiting Condition for Operation specified under Specification 3.3.7.5, and one change concerns the deletion of the safety/relief valve acoustic monitors from the accident Monitoring Instrumentation.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated October 30, 1987.

The Need for the Proposed Action

Pursuant to 10 CFR 50.90, the licensees have proposed an amendment to Facility Operating License No. NPF-62 which consists of seven changes to the TS concerning accident monitoring instrumentation and time-limit values specified for timers.

The first approved change consists of revisions to Table 3.3.7.5-1 in order to insert exceptions to Specifications 3.0.4 into associated Action statements. These exceptions would permit entry into Operational Conditions 1, 2 and 3 with an accident monitoring instrumentation channel(s) inoperable, as provided in the individual Action statements. Although the instrumentation is required to be Operable Conditions 1, 2 and 3, the instrumentation is designed and intended to be used to "assess plant and environs conditions during and following an accident" (Ref. Regulatory Guide 1.97). Thus, entry into Conditions 1, 2 and 3 does not necessarily correspond to entry into the conditions for which the accident monitoring instrumentation will be needed. Conditions 1, 2 and 3 do correspond to the Operational Conditions in which a design basis accident is most likely to be initiated. Thus, entry into Conditions 1, 2 and 3 should be permited with the number of Operable channels less than the Required Number of Channels requirement, but not with the number of Operable channels less than the Minimum Channels Operable requirement (except when the Action provides compensatory measures). Exceptions to Specification 3.0.4 would therefore be inserted into Actions 80, 81 and 82.

The second approved change consists of a revision to Table 3.3.7.5-1 in order to correct a typographical error. The "." note for the suppression pool water temperature sensors refers to Specification 3.5.3.1 instead of 3.6.3.1 where requirements for the other suppression pool temperature sensors are specified.

Environmental Impacts of the Proposed Action

The proposed changes to Technical Specification Table 3.3.7.5-1 would add notations to remove the applicability of the provisions of Technical Specification 3.0.4 for accident monitoring instrumentation. This change would permit entry into Operational Conditions 1, 2, or 3 with inoperable channels and while in appropriate action statements. This change is consistent with staff's policy for instrumentation which does not initiate automatic mitigation functions and with current standard technical specifications.

The proposed change to note "." under Table Notations for Technical Specification Table 3.3.7.5-1 would revise the reference to Technical Specification Table 3.6.3.1 rather than 3.5.3.1. This change is editorial to correct a typographical error and is acceptable.

The Commission has determined that the proposed changes have no adverse effect on the probability of any accident. The proposed changes would not result in any increase in the potential radiological releases during normal operations, transients, and for accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite and there is no significant increase in the allowable individual or comulative occupational radiation exposure. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the staff also

concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982 regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action.

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Nuclear Regulatory Commission's Final Environmental Statement for the Clinton Power Station, Unit 1, dated May 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request of October 30, 1987 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement of the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 16, 1988 (53 FR 4475) and February 18, 1988 (53 FR 4919). No request for hearing or petiton for leave to intervene was filed following this notice.

For further details with respect to this action, see the request for amendment dated October 30, 1987, and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 19th day of January 1990.

For the Nuclear Regulatory Commission.

John W. Craig,

Director, Project Directorate III-2, Division of Reactor Projects—II, IV, V and Special Projects.

[FR Doc. 90-1793 Filed 1-25-90; 8:45 am]

BILLING CODE 7590-01-M

Application for License To Export Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export the special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of appl., date received, application No.	Material type	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., 1/4/90, 1/8/90, XSNM02495.	93.45 percent enriched uranium.	25.226	23.574	Fuel for BR-2 reactor	Belgium

Dated this 11th day of January 1990 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

C. N. (Mike) Smith,

Assistant Director for International Security, Exports and Materials Safety, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 90-1795 Filed 1-25-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 8-10, 1990, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on December 29, 1989.

Thursday, February 8, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will comment on items of current interest.

8:45 a.m.-10:15 a.m.: NRC Employee Training and Qualification Programs (Open)—A briefing and discussion will be held regarding the training courses and facilities provided for NRC employees at the NRC Training Center at Chattanooga, Tennessee.

10:30 a.m.-11:30 a.m.: Analysis and Evaluation of Operational Data (Open)—The Committee will complete a briefing and discussion of items of mutual interest regarding the activities of the Office for Analysis and Evaluation of Operations Data (AEOD), including the distribution of resources among AEOD program elements and the distinction between AIT and IIT designations.

11:30 a.m.-12:15 p.m.: Future ACRS Activities (Open)—The Committee will

discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:15 p.m.–2:45 p.m.: Generic Issue–56, Diesel Reliability and Associated Regulatory Guide 1.9, Rev. 3 (Open)—The Committee will review and report on the NRC staff's proposed resolution of this generic issue. NRC staff members will participate in this session.

3:00 p.m.–4:00 p.m.: Coherence in the NRC Regulatory Process (Open)—The Committee will continue the discussion of a proposed ACRS report to NRC regarding the need for improved coherence in the NRC regulatory process.

4:00 p.m.–4:45 p.m.: NRC Reactor Safety Research (Open)—The Committee will discuss the proposed annual ACRS report to the U.S. Congress regarding the NRC's safety research program and budget.

4:45 p.m.–5:30 p.m.: Activities of ACRS Subcommittees and Members (Open)—The Committee will hear reports and discuss the status of the ACRS subcommittee activities in designated areas such as implementation and use of NUREG–1150, Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants, as well as information gathering for the Committee by individual members such as operational activities at the Millstone Nuclear Power Plant.

5:30 p.m.–6:30 p.m.: Appointment of ACRS Members (Open/Closed)—The Committee will discuss the qualifications of candidates proposed for consideration for appointment to the ACRS juxtaposed to the needs of the Committee and the Commission.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Friday, February 9, 1990

8:30 a.m.–11:30 a.m.: Evolutionary Light Water Reactor Certification Issues (Open)—The Committee will review the NRC Staff's recommendations concerning proposed departures from current regulations for evolutionary light water reactors.

11:30 a.m.–12:15 p.m.: Indian Point Nuclear Plant Unit 2 (Open)—The Committee will discuss and comment as appropriate regarding a proposed power level increase for this nuclear unit.

1:15 p.m.–2:15 p.m.: Coherence in the NRC Regulatory Process (Open)—The Committee will continue the discussion of a proposed ACRS report regarding the need for improved coherence in the NRC regulatory process.

2:15 p.m.–3:15 p.m.: ACRS Activities (Open)—The Committee will discuss guidance provided by NRC regarding scope and nature of ACRS activities.

3:15 p.m.–5:30 p.m.: Preparation of ACRS Report (Open)—The Committee will discuss proposed ACRS reports to the NRC and to the U.S. Congress regarding items considered during this meeting.

Saturday, February 10, 1990

8:30 a.m.–11:00 a.m.—Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports to the NRC and the U.S. Congress.

11:00 a.m.–1:00 p.m.—Miscellaneous (Open)—The Committee will discuss proposed split of responsibilities between the ACRS and the ACNW.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, 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 Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 7:30 a.m. and 4:15 p.m.

Dated: January 22, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–1797 Filed 1–25–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 15000033–SC/CivP; ASLBP No. 90–601–01 SC/CivP; E.A.88–265]

Atomic Safety and Licensing Board; Hearing

Dated: January 22, 1990.

In the matter of Basin Testing Laboratory, Inc., dba Basin Services, Inc.; General Licensee (10 CFR 150–20) Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. James H. Carpenter, Dr. Richard F. Cole.

Notice is hereby given that, by Memorandum and Order dated January 22, 1990, the Atomic Safety and Licensing Board for these proceedings has granted the request of Basin Testing Laboratory, Inc., dba Basin Services, Inc. (Licensee) for a hearing in the above-titled enforcement proceedings. The hearing concerns the Order Imposing Civil Monetary Penalty, issued by the NRC Staff on December 6, 1989 (54 FR 51270, December 13, 1989), and the Order To Show Cause Why License Should Not Be Suspended, also issued by the NRC Staff on December 6, 1989 (54 FR 51272, December 13, 1989). The parties to each of the proceedings are the Licensee and the NRC Staff. The issues to be considered at the hearing are (1) whether, on the basis of the violations as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, the Order Imposing Civil Monetary Penalty should be sustained, and (2) whether, on the basis of the matters set forth in the Order To Show Cause, the Licensee's general license under 10 CFR 150.20 should be suspended.

For further information concerning these proceedings, see the Order Imposing Civil Monetary Penalty and Order To Show Cause, each cited above; and the Notice of Violation and Proposed Imposition of Civil Penalty, dated January 19, 1989. Materials concerning these proceedings are on file at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Commission's Region IV Office, Parkway Central Plaza Building, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

During the course of these proceedings, the Licensing Board will conduct one or more prehearing conferences and, as necessary, evidentiary hearing sessions. The time and place of these sessions will be announced in later Licensing Board orders. Members of the public will be entitled to attend these sessions.

Persons who are not parties to the proceedings are invited to submit limited appearance statements, either in writing or orally, with regard to the Order Imposing Civil Penalty and the Order To Show Cause, as permitted by 10 CFR 2.715(a). These statements do not constitute testimony or evidence in these proceedings, but may help the Board and/or parties in their deliberations as to the proper boundaries of the issues to be considered. During certain prehearing conference and/or evidentiary hearing sessions, such persons will be afforded the opportunity to make oral limited appearance statements. Written statements, or requests to make oral statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555, Attention: Docketing and Service Branch. A copy of such statement or request should also be served on the Chairman of this Atomic Safety and Licensing Board, EWW/439, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated: Bethesda, Maryland, January 22, 1990.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer

Chairman, Administrative Judge.

[FR Doc. 90-1796 Filed 1-25-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, issued to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2 and 3, located in Oconee County, South Carolina.

By application dated January 22, 1988, the licensee requested amendments to the Technical Specifications to update the LOCA-Limited Maximum Allowable Linear Heat Rate (Figure 3.5.2-16) to reflect the B&W Owners Group Topical Report BAW-2001P, "Low Pre-Pressure Fuel Rod Program." Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 1, 1988 (53 FR 20196). Subsequently, on October 9, 1989, the licensee supplemented its January 22, 1988 application to eliminate the 1000-2600 MWd/mtU burnup parameter. A revised TS Figure 3.5.2-16 was submitted to reflect this change.

Prior to issuance of the proposed license amendments, 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 26, 1990, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. 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 must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the

notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director, Project Directorate II-3: 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 J. Michael McGarry, III, Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 22, 1988, as supplemented October 9, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 18th day of January 1990.

For the Nuclear Regulatory Commission.

David B. Matthews,

Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-1794 Filed 1-25-90; 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 February 7, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, February 7, 1990—8:30 a.m. until 3:00 p.m.*

The Subcommittee will discuss the ongoing and proposed NRC safety research program and budget, impact of the budget reductions on the continuing and proposed NRC research program elements, and other related matters.

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 open to the public, 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 representative of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 301/492-9522) between 7:30 a.m. and 4:15 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.

Dated: January 18, 1990.

Gary R. Quittschreiber,

Chief Project Review Branch No. 2.

[FR Doc. 90-1731 Filed 1-25-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co., Davis-Besse Nuclear Power Station, Unit No. 1; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR part 50 in response to a request filed by the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from a requirement of section III.D.1.(a) of Appendix J to 10 CFR part 50, which requires in part that the third test in each set of three tests intended to measure the primary reactor containment overall integrated leakage rate (Type A tests) shall be conducted when the plant is shutdown for the 10-year plant inservice inspections.

The proposed action is in accordance with the licensee's request for exemption dated November 20, 1987.

The Need for the Proposed Action

The proposed exemption is needed because the present requirement cited above would force the licensee to perform an additional integrated leak rate test (ILRT) during the forthcoming refueling outage presently scheduled to start in February 1990 within a relatively short time interval after performing the previous ILRT at the last refueling outage at a significant cost but without any significant increase in public health and safety.

Environmental Impacts of the Proposed Action

The proposed exemption would not affect the integrity of the plant's primary containment with respect to potential radiological releases to the environment in the event of a severe transient or an accident up to and including the design basis accident (DBA). Under the assumed conditions of the DBA, the licensee must demonstrate that the calculated offsite radiological doses at the plant's exclusion boundary and low population zone outer boundary meet the guidelines in 10 CFR part 100. Part of the licensee's demonstration is accomplished by the periodic ILRTs conducted about every 40 months to verify that the primary containment

leakage rate is equal to or less than the design basis leakage rate used in its calculations demonstrating compliance with the guidelines in 10 CFR part 100.

The licensee has successfully conducted a number of these ILRTs to date. The most recent ILRT was completed in September 1988 during the last refueling outage and was the third of the required Type A tests. The next ILRT will most probably be conducted in January 1992 but no later than November 1992. The 10-year ISI is scheduled to start during the forthcoming sixth refueling outage presently scheduled to start in February 1990. This schedule for the 10-year ISI is in compliance with the provisions of section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a.

The proposed exemption request to decouple the schedule of the third Type A test (i.e., an ILRT) from that of the 10-year ISI will not in any way compromise the leak-tight integrity of the primary containment required by Appendix J to 10 CFR part 50 since the leak-tightness of the containment will continue to be demonstrated by the periodic ILRTs. Additionally, the proposed exemption will not affect the existing requirement in section III.D.1(a) of Appendix J that three ILRTs be performed during each 10-year service period. Further, the proposed uncoupling does not affect the structural integrity of the structures, systems and components subject to the requirements of 10 CFR 50.55a. Accordingly, there will be no increase in either the probability or the amount of radiological release from the Davis-Besse plant in the event of a severe transient or accident. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance and testing requirements.

It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives have either no or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility but would result in the expenditure of resources and increase radiation exposures without any compensating benefit.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Davis-Besse Nuclear Power Station, Unit 1, dated March 1973 and its supplement dated October 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated November 20, 1987 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 17th day of January 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director Project Directorate III-3 Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 90-1729 Filed 1-25-90; 8:45 am]

BILLING CODE 7590-01-M

Safety Light Corporation, et al.; Reconstitution of Board

[Docket Nos. 030-05980-OM, 030-05981-OM, 030-05982-OM, 030-08335-OM, 030-08444-OM, and 030-05980-OM-2, 030-05981-OM-2, 030-05982-OM-2, 030-08335-OM-2, 030-08444-OM-2, ASLBP Nos. 89-590-01-OM and 90-598-01-OM-2]

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Safety Light Corporation, et al.* (Byproduct Material Licenses), with the above-identified Docket Nos., is hereby reconstituted by appointing Administrative Judge Marshall E. Miller as Chairman of this Licensing Board in place of Administrative Judge Helen F. Hoyt who presently is unable to continue to serve in this proceeding.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge James H. Carpenter to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

As reconstituted, the Board is comprised of the following Administrative Judges:

Marshall E. Miller, Chairman
Oscar H. Paris, Member
Frederick J. Shon, Member
James H. Carpenter, Special Assistant

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the special assistant is: Administrative Judge James H. Carpenter, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 18th day of January 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-1730 Filed 1-25-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27635; File No. SR-ISCC-89-02]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Clearing Fund Deposits

January 18, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended,[1] notice is hereby given that on January 2, 1990, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by ISCC. 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 text of the proposed rule change is attached hereto as Exhibit A.

[1] 15 U.S.C. 78s(b)(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, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC 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

(a) The purpose of the rule change is to reduce the amount of time that members have to satisfy an increase in their Clearing Fund Required Deposit from ten business days to five business days.

The intent of the revision is to get increased Clearing Fund deposits into ISCC's possession as soon as possible, in order to reduce ISCC's risk exposure and therefore, ISCC is shortening the time for that member to make its deposit from ten business days to five business days.

(b) Because the proposed rule change relates to ISCC's capacity to safeguard securities and funds in its custody or control, and protect the public interest, it is consistent with the requirements of section 17A of the 1934 Act, as amended and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ISCC. All submissions should refer to file number SR-ISCC-89-02 and should be submitted by February 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Amend ISCC's Rules and Procedures as follows:

Italics Indicate additions
[Brackets] Indicate deletions

Rule 4

* * * * *

Sec. 7. Except for Members or Fund Members subject to surveillance, the Corporation shall give at least [10] 5 business days prior written notice to a Member or Fund Member of any proposed increase in his Required Deposit. If a Member of Fund Member fails to give written notice to the Corporation of his election to terminate his business with the Corporation within [10] *5* business days after notice of the increase was given to him, he shall deposit in the Clearing Fund that which is necessary to satisfy the increase in his Required Deposit; in such event the Member's or Fund Member's obligation to so deposit shall not be affected by his subsequent cessation of membership, whether voluntary or involuntary. At the time the increase becomes effective, the Member's or Fund Member's obligations to the Corporation shall be determined in accordance with the increased required Deposit whether or not the increase in his Required Deposit has been made.

* * * * *

[FR Doc. 90-1816 Filed 1-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27638; File No. SR-NASD-89-9]

Self-Regulatory Organizations; Notice of Proposed Rule Change and Amendment by National Association of Securities Dealers, Inc. Relating To Limit Order Capabilities for the Small Order Execution System

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 February 23, and December 15, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and amendment as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The propsed rule change requests permanent approval of the limit order processing capability for the NASD's Small Order Execution System ("SOES"), and the amendment to the proposed rule change describes enhancements to the system that would permit, in certain circumstances, matching and execution of limit orders of matching price and size.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD's Small Order Execution System is designed to improve the efficiency of executing transactions in NASDAQ securities through the use of data processing and communications techniques. The addition of limit order processing capability serves the purpose of providing members, and in particular members not having proprietary systems with such capability, with the ability to enter and store limit orders. The system does not impose priorities for execution of customer limit orders vis a vis members' proprietary transactions. Members are, therefore, responsible for ensuring that customer limit orders are handled in a manner consistent with members' obligations to their customers. The NASD believes that those obligations are as set forth in Notice of Members 85-12 dated February 15, 1985, and in the opinion and order of the Commission: In Re E.F. Hutton, Co., Inc. Securities Exchange Act Release No. 25887 (July 6, 1988).

In response to concerns articulated by the Commission in its order approving the limit order file on a pilot basis,[3] the Association is proposing several modifications to current processing. Foremost among the proposed modifications is the ability to permit, in certain circumstances, matching and execution of customer limit orders at prices which are between the highest bid or lowest offer reflected in the NASDAQ system.[4]

The new limit order file capability would provide market makers with notice that matching orders have been entered into the system and allow them an opportunity to execute one or both sides of a matched order within a prescribed time frame. If neither order is executed, the system thereafter would execute them against each other. Enhancements to the SOES Limit Order File would include: alerts regarding the presence of matching limit orders, a take-out procedure to allow market makers to execute limit orders within the inside without changing their quote, and the matching/execution function.

1. Alert

The proposed alert will bring to the SOES market maker's attention those limit orders that are priced within the inside (i.e., within the best bid and offer available at that moment) and that potentially match another order already pending on the Limit Order File. For example, if an order is entered which cannot be executed (because it is away from the inside), but whose price is equal to the price of a previously entered order on the other side, that order will be displayed on the market maker's screen with special flags to indicate a potential match.

2. Take-out

The Limit Order File take-out function will be a new feature added to SOES which will allow the market maker to execute limit orders which are at a price better then the current inside without changing its quote. Any active SOES market maker who has an open quote and available exposure in an issue may take out shares in that issue.

The market maker will enter the side of the market (Buy/Sell), the number of shares to be taken out, the issue, and the price at which the market maker is willing to execute. The system will receive the take-out, screen it for accuracy, and execute orders from the file at the take-out price. Orders will be executed on a price/time priority-first in/first, out, at the take-out price.

Take-outs will not interfere with the regular processing of SOES limit orders. Orders will continue to be executed against the inside, as long as there is available stock in the market maker's exposure limit, while the take-out is being processed.

3. Matching

If, after five minutes, neither the original order nor the potential match has been executed, either as a result of a change to the inside, or because a market maker has entered a take-out, the orders on the file will be matched and executed. In the initial implementation of the matching function, there will be no partial execution of orders. In a future phase, however, the Association will modify the system to allow for partial executions of orders that match or improve price, but do not match in size. Trades that are the result of a system order match will have a special identifier on both order entry firms' Executed Order Scans, and the indicator will also be incorporated in the execution report in the NASDAQ screen.

The Association believes that the proposed enhancements to the SOES Limit Order File will improve the system's ability to execute effectively customer limit orders by permitting matching of orders entered between the spread, with an opportunity for market maker interaction.

The statutory basis for the amendment to the proposed rule change is found in sections 11A(a)(1) (B) and (C)(i), 15A(b)(6) and 17A(a)(1) (B) and (C) of the Securities Exchange Act of 1934. Sections 11A(a)(1) (B) and (C)(i) set forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communication techniques. Section 15A(b)(6) requires that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." Sections 17A(a)(1) (B) and (C) set forth the Congressional goal of reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the modifications to SOES will further these ends by providing enhanced mechanisms for efficient and economic execution and clearance of limit orders in NASDAQ securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended. Indeed, the proposed enhancements should increase competition by allowing potentially matching orders to interact, and by improving overall the scope and operations of the SOES Limit Order File.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[3] See Release 34-26476, dated January 19, 1989.

[4] Other proposed enhancements to the limit order file include stop loss and stop/limit order capability, execution report identifiers and dividend processing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 20, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 19, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1817 Filed 1-25-90; 8:45 am]

BILLING CODE 8010-11-M

[Release No. 34-27636; File No. NSCC-89-02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Clearing Fund Deposits

January 18, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended,[1] notice is hereby given that on January 2, 1990, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. 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 text of the proposed rule change is attached hereto as Exhibit A.

[1] 15 U.S.C. 78s(b)(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, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC 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

(a) The purpose of the rule change is to reduce the amount of time that members have to satisfy an increase in their Clearing Fund Required Deposit from ten business days to five business days.

The intent of the revision is to get increased Clearing Fund deposits into NSCC's possession as soon as possible, in order to reduce NSCC's risk exposure and therefore, NSCC is shortening the time for that member to make its deposit from ten business days to five business days.

(b) Because the proposed rule change relates to NSCC's capacity to safeguard securities and funds in its custody or control, and protect the public interest, it is consistent with the requirements of section 17A of the 1934 Act, as amended and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to file number SR-NSCC-89-02 and should be submitted by February 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Johathan G. Katz,

Secretary.

Exhibit A

Amend NSCC's Rules and Procedures as follows: Italics indicate additions; [Brackets] indicate deletions.

Rule 4

* * * * *

Sec. 7. Except for Members or Fund Members subject to surveillance, the Corporation shall give at least [10] *5* business days prior written notice to a Member or Fund Member of any proposed increase in his Required Deposit. If a Member or Fund Member fails to give written notice to the Corporation of his election to terminate his business with the Corporation within [10] *5* business days after notice of the increase was given to him, he shall deposit in the Clearing Fund that which is necessary to satisfy the increase in his Required Deposit; in such event the Member's or Fund Member's obligation to so deposit shall not be affected by his

subsequent cessation of membership, whether voluntray or involuntary. At the time the increase becomes effective, the Member's or Fund Member's obligations to the Corporation shall be determined in accordance with the increased Required Deposit whether or not the increase in his Required Deposit has been made.

* * * * *

[FR Doc. 90-1818 Filed 1-25-90; 8:45 am]

BILLING CODE 8010-01

[Release No. 34-27639; File No. SR-NYSE-89-42]

Self-Regulatory Organizations; Notice of Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Use of Standardized Floor Stationery by Members and Member Organizations on the Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 NYSE has filed a proposed rule change which consists of amendments to Exchange Rule 123A.23 to require the use of standardized Floor stationery, in such a format as the Exchange may from time to time prescribe, by members and member organizations on the Floor.

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 and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

1. *Purpose*—The purpose of the proposed rule change, which will mandate the use of standardized order and report forms by members and member organizations on the Floor, is to facilitate compliance with Exchange Rule 132 requirements concerning the capture of accurate audit trail data.

At the present time, the Exchange recommends, but does not require, the forms used by members and member organizations on the Floor. These forms do not have prescribed areas for entering data such as executing broker badge numbers, contra broker badge numbers, clearing firms, and execution times. The proposed standardized order and report forms, in contrast, have clearly defined areas for this information. The use of this consistent format should improve the quality of data processed by member organizations to trade comparison facilities, thereby improving audit trail accuracy. Any substantive changes to the forms would be filed with the Commission pursuant to the requirements of section 19(b) of the Act and Rule 19b-4.

The Exchange currently proposes several standardized reporting forms. The broker report form, required for member firm house and two-dollar brokers, standardizes the clearing number, broker and/or member firm name, floor location, executing broker badge fields, as well as quantity, price, give-up, contra badge number, and execution time fields. The format also allows for multiple reporting of executions on one form.

The various specialist reporting forms standardize the clearing number, specialist and post location, and the executing broker badge fields.

The order forms for members and member organizations standardize clearing number, firm name and locations, and executing broker badge fields. The members and members organizations have the option of using the reverse side of the order form where standardized fields for shares, price, give-up, contra broker badge number, execution time, and shares left may be indicated.

The forms for machine orders standardize the fields for clearing numbers, firm, and executing broker location.

2. *Statutory Basis*—The statutory basis for this proposed rule change is section 6(b)(5) of the Act which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The amendments to Rule 123A.23 are consistent with these objectives in that they enhance the Exchange's ability to reconstruct market activity as it occurred on the trading floor by fostering a greater accuracy in audit trail data submitted by members and member organizations which, in turn, improves NYSE surveillance programs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any persons, 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-42 and should be submitted by February 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 19, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1819 Filed 1-25-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Multi-Purpose Capital Corp.; Surrender of License

[License No. 02/02-0232]

Notice is hereby given that, pursuant to Section 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1989)), Multi-Purpose Capital Corporation, 5 West Main Street, Elmsford, New York 10523, incorporated under the laws of the State of New York has surrendered its License No. 02/02-0232 issued by the SBA on March 3, 1963.

Multi-Purpose Capital Corporation has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Multi-Purpose Capital Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 22, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-1822 Filed 1-25-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review, Texarkana Regional Airport, Texarkana, AR

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Texarkana Airport Authority for Texarkana Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Texarkana Regional Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before July 4, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is January 5, 1990. The public comment period ends March 6, 1990.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193-0612, (817) 624-5609. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Texarkana Regional Airport are in compliance with applicable requirements of part 150, effective January 5, 1990. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 4, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Texarkana Airport Authority submitted to the FAA on October 22, 1988, noise exposure maps, descriptions and other documentation which were produced during the FAR part 150 Noise Exposure and Land Use Compatibility Program. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Texarkana Airport Authority. The specific maps under consideration are Figure 16, Existing Noise Exposure Map with Existing Land Use, 1987 (page 43) and Figure 24, Future Noise Exposure Map, 1993, with Existing Land Use (page 75) in the submission.

The FAA has determined that these maps for Texarkana Regional Airport are in compliance with applicable requirements. This determination is effective on January 5, 1990. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatability program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties

with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilites of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours into the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Texarkana Regional Airport, also effective on January 5, 1990. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 4, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatability program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW. Room 617, Washington, DC 20591

Federal Aviation Administration, Airports Division, ASW-600, Fort Worth, Texas 76193-0600

Texarkana Regional Airport, P.O. Box 1941, Texarkana, Arkansas 75504

Questions may be directed to the individual named above under the heading,

FOR FURTHER INFORMATION CONTACT:

Issued in Forth Worth, Texas, January 5, 1990.

Wm. Jack Sasser,

Manager, Airports Division.

[FR Doc. 90-1788 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

Environmental Impact Statement: Standiford Field Louisville Airport Improvement Program Louisville, Jefferson County, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration intends to prepare an Environmental Impact Statement to address environmental and related impacts expected to be associated with the implementation of the Louisville Airport Improvement Program.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Planner, FAA Airports District Office, 3973 Knight Arnold Rd., Suite 105, Memphis, TN 38118-3004. Telephone Number (901) 544-3495.

SUPPLEMENTARY INFORMATION: The proposed project will involve: construction of two new parallel runways with full parallel taxiways and conversion of the existing Runway 1/19 to a taxiway; Category I and III instrument landing systems for each runway including approach lighting systems; a new aircraft rescue and firefighting facility; and relocation of the Air Cargo Traffic Control Tower, U.S. Postal Service, National Weather Service, Air Cargo Operations, Kentucky Air National Guard and other miscellaneous enterprises. Crittenden Drive (KY 1631) would be relocated to the west, but reconstruction would be delayed at least 10 years.

A 404 permit from the U.S. Army Corps of Engineers would be required. The primary alternative to the proposed action is no development.

The FAA plans to coordinate with Federal, State and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the proposed project. An orientation meeting was held early in the environmental process for Federal, State and local agencies. Public workshops were held and public hearings were conducted by the Regional Airport Authority on the Environmental Assessment. Substantial comments have been collected from the citizens of Louisville. All interested agencies, organizations, and persons are invited to provide input and comment for refining the scope of the Environmental Impact Statement. A formal scoping meeting is not planned. Comments should be directed to FAA Airports District Office, 3973 Knight Arnold Road, Suite 105, Memphis, TN 38118-3004. The Environmental Assessment for the Louisville Airport Improvement Program is available at the Regional Airport Authority's office, Standiford Field, Louisville, Kentucky; FAA Airports District Office, Memphis, Tennessee; and at the public libraries in Louisville and Jefferson County. Comments should be made within 30 days of the date of this notice.

Issued on January 12, 1990.

Wayne R. Miles,

Asst., Manager, Memphis ADO.

[FR Doc. 90-1790 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

Proposed Advisory Circular 21-Kits; Airworthiness Certification of U.S.-Produced Aircraft and Engine Kits Assembled Outside the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21-Kits, Airworthiness Certification of U.S.-Produced Aircraft and Engine Kits Assembled Outside the United States for review and comments. The proposed AC 21-Kits provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requiremrents of the Federal Aviation Regulations (FAR) part 21, Certification Procedures for Products and Parts.

DATE: Comments submitted must identify the proposed AC 21-Kits File Number, P8-220-0029, and be received by March 27, 1990.

ADDRESSES: Copies of the proposed AC 21-Kits can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AIR-220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Donald E. Plouffe, Production

Certification Branch, AIR-220, Aircraft Manufacturing Division, Room 333, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Phone No. (202) 267-8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21-Kits provide information and guidance concerning airworthiness certification requirements for aircrat or aircraft engines, assembled from kits by aircraft or aircraft engine manufacturers located in other countries.

Comments Invited

Interested persons are invited to comment on the proposed AC 21-Kits listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21-Kits may be examined, before and after the comment closing date in room 333, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC on January 9, 1990.

Ronald T. Wojnar,

Manager, Aircraft Manufacturing Division.

[FR Doc. 90-1789 Filed 1-25-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 22, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0112.
Form Number: 1099-INT.
Type of Review: Revision.
Title: Statement for Recipients of Interest Income.
Description: This form is used for reporting interest income paid, as required by sections 6049 and 6041 of the Internal Revenue Code. It is used to verify that payees are correctly reporting their income.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 747,973.
Estimated Burden Hours Per Response: 12 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 60,001,561 hours.

OMB Number: 1545-0837.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Germany.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 65.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 16 hours.

OMB Number: 1545-0844.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Greece.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13 hours.

OMB Number: 1545-0846.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Switzerland.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13 hours.

OMB Number: 1545-0848.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Denmark.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 25 hours.

OMB Number: 1545-0849.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Pakistan.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 5 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service,

Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-1774 Filed 1-25-90; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 18
Friday, January 26, 1990

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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the February 6, 1990 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Friday, February 9, 1990, starting at 10:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Katz, Acting Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

Dated: January 22, 1990.

Jeffrey P. Katz,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 90-1877 Filed 1-23-90; 4:27 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, January 30, 1990, to consider a memorandum regarding mortgage servicing rights.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: January 23, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-1917 Filed 1-24-90; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 31, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed new regulation to implement the Financial Institutions Reform, Recovery and Enforcement Act of 1989 regarding real estate appraisal standards.
2. Proposals regarding the budget of the Office of the Inspector General.
3. Proposed change in the rate of employer matching contribution to the Federal Reserve System Thrift Plan.
4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 24, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-1884 Filed 1-24-90; 9:58 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, January 31, 1990, following a recess at the conclusion of the opening meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Modernization project regarding the Federal Reserve Bank of New York.
3. Proposals regarding a Federal Reserve Bank's building requirements.
4. Two proposed purchases of computer equipment within the Federal Reserve System.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: Janauary 24, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-1885 Filed 1-24-90; 9:58 am]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 1910; 55 FR 2199.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: An open meeting will commence at 9:30 a.m. on Friday, January 26, 1990, and continue until 5:00 p.m.

CHANGES IN THE MEETING: The meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: January 24, 1990.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 90-1974 Filed 1-24-90; 3:15 pm]

BILLING CODE 7050-01-M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to provisions of the "Government in the Sunshine Act" (5 U.S.C. 552B), Notice is hereby given that the Resolution Trust Corporation's Board of Directors will meet in open session at 2:30 p.m. on Tuesday, January 30, 1990, to consider the following matters:

SUMMARY AGENDA: No Cases.

DISCUSSION AGENDA:

A. RTC Interim Statement of Policy on Resolutions of Minority-Owned Depository Institutions.

B. RTC Interim Minority and Women Outreach Program Asset Management and Disposition Contracting.

The meeting will be held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 898-3604.

Dated: January 23, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-1916 Filed 1-24-90; 1:10 p.m.]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of January 29, 1990.

A closed meeting will be held on Tuesday, January 30, 1990, at 3:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 30, 1990, at 3:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive actions.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith (202) 272-2100.

Dated: January 24, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1993 Filed 1-24-90; 4:04 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 55, No. 18
Friday, January 26, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 81015-9240]

RIN 0693-AA78

Approval of Federal Information Processing Standards Publication 21-3, COBOL

Correction

In notice document 90-817 beginning on page 1243 in the issue of Friday, January 12, 1990, make the following corrections:

1. On page 1244, in the table, the first entry, "Required Nucleus" should read "Nucleus" with the subheading *Required* appearing above it; and the ninth entry, "Optional Report Writer" should read "Report Writer" with *Optional* appearing as a subheading above it.

2. On page 1245, in the second column, under entry 12. *Waivers.*, the first sentence should read "Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS)".

BILLING CODE 1505-01-D

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for Child-Resistant Packaging; Proposed Requirements for Household Glue Removers Containing Acetonitrile and Home Cold Wave Permanent Neutralizers Containing Sodium Bromate or Potassium Bromate

Correction

In proposed rule document 90-409 beginning on page 1456 in the issue of Tuesday, January 16, 1990, make the following correction:

On page 1459, in the third column, in the first complete paragraph, in the fifth line, "18 days" should read "180 days".

BILLING CODE 1505-01-D

federal register

Friday
January 26, 1990

Part II

Supplement to the Guide to Record Retention Requirements in the CFR

Revised as of January 1, 1990

SUPPLEMENT TO THE GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR

This Supplement, published by the Office of the Federal Register, updates as of January 1, 1990, the edition of the Guide published in 1989.

The Guide to Record Retention Requirements in the CFR is a guide in digest form to the provisions of Federal regulations relating to the keeping of records by the public. It tells the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The Guide published in 1989 was revised as of January 1, 1989. This Supplement updates the Guide as of January 1, 1990. The publications should be used together.

The Supplement is derived from the regulations published by the various agencies in the **Federal Register** from January 1 through December 31, 1989. It was prepared under the direction of Richard L. Claypoole. Gladys Queen Ramey was chief editor. INQUIRIES, telephone 202-523-3187. SUGGESTIONS concerning this publication may be sent to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408.

Coverage

In preparing both the Guide and the Supplement it was necessary to establish boundaries in order to keep them within their intended purpose.

The records covered are those that address categories of activities conducted by individuals, businesses, and organizations for which retention requirements are expressly stated in the Code of Federal Regulations .

In many regulations there is an implied responsibility to keep copies of reports and other papers furnished to Federal agencies. Such implied requirements have not been included in the Guide and the Supplement.

The following types of requirements also have been excluded:

(1) Requirements involving the furnishing of reports to Government agencies, the filing of tax returns, or the submission of supporting evidence with applications or claims.

(2) Requirements involving the display of posters, notices, or other signs in places of business.

(3) Requirements contained in individual Government contracts, unless the contract provisions are incorporated in the Code of Federal Regulations.

Arrangement

The arrangement and numbering system in the Supplement follows the numbering system established for the Guide. The numbering in the Guide corresponds to the numbering in the CFR.

For example, a record retention requirement relating to agriculture will be found in the Guide under Title 7, Agriculture, and, further, under the agency which administers and enforces the regulation in which the record retention requirement appears. The number to the left of the item is the part and section number in Title 7 of the CFR in which the text of the regulation is printed. Because not all sections of the CFR contain record retention requirements, the numbering in the Guide has gaps in the numerical sequence.

Citation: Citations to the Guide and to the CFR are the same. An example is 7 CFR 17.17. The record retention requirement involved can be checked in digest form in the Guide and in full text in the CFR.

Notice: The Guide to Record Retention Requirements and this Supplement do not have the effect of law, regulation, or ruling. They comprise a guide to legal requirements that appear to be in effect as of January 1, 1990.

LIST OF AGENCIES AND CFR TITLES APPEARING IN THIS SUPPLEMENT

Title 7—Agriculture

Agriculture Department
- Agricultural Marketing Service
- Agricultural Stabilization and Conservation Service
- Animal and Plant Health Inspection Service
- Commodity Credit Corporation
- Farmers Home Administration
- Federal Crop Insurance Corporation
- Food and Nutrition Service
- Rural Electrification Administration

Title 9—Animals and Animal Products

Agriculture Department
- Animal and Plant Health Inspection Service
- Packers and Stockyards Administration

Title 10—Energy

Energy Department
Nuclear Regulatory Commission

Title 12—Banks and Banking

Federal Housing Finance Board
Federal Reserve System
Treasury Department
- Thrift Supervision Office

Title 13—Business Credit and Assistance

Small Business Administration

Title 14—Aeronautics and Space

Transportation Department
- Office of the Secretary
- Federal Aviation Administration

Title 15—Commerce and Foreign Trade

Commerce Department
- Export Administration Bureau
- International Trade Administration
- National Oceanic and Atmospheric Administration

Title 17—Commodity and Securities Exchanges

Commodity Futures Trading Commission
Securities and Exchange Commission

Title 18—Conservation of Power and Water Resources

Energy Department
- Federal Energy Regulatory Commission

Title 20—Employees' Benefits

Labor Department
- Employment and Training Administration

Title 21—Food and Drugs

Health and Human Services Department
- Food and Drug Administration

Justice Department
- Drug Enforcement Administration

Title 22—Foreign Relations

State Department

Title 24—Housing and Urban Development

Housing and Urban Development Department

Title 26—Internal Revenue

Treasury Department
- Internal Revenue Service

Title 27—Alcohol, Tobacco Products and Firearms

Treasury Department
- Alcohol, Tobacco and Firearms Bureau

Title 29—Labor

Labor Department
- Occupational Safety and Health Administration
- Pension Benefit Guaranty Corporation
- Wage and Hour Division

Title 30—Mineral Resources

Interior Department
- Minerals Management Service

Labor Department
- Mine Safety and Health Administration

Title 31—Money and Finance: Treasury

Treasury Department
- Monetary Offices

Title 34—Education

Education Department

Title 38—Pensions, Bonuses, and Veterans' Relief

Veterans Affairs Department

Title 40—Protection of Environment

Environmental Protection Agency

Title 42—Public Health

Health and Human Services Department
Health Care Financing Administration
Public Health Service

Title 43—Public Lands: Interior

Interior Department
Office of the Secretary

Title 44—Emergency Management and Assistance

Federal Emergency Management Agency

Title 45—Public Welfare

Health and Human Services Department
Child Support Enforcement Office
Family Assistance Office

Title 46—Shipping

Transportation Department
Coast Guard

Title 47—Telecommunication

Federal Communications Commission

Title 48—Federal Acquisition Regulations System

Defense Department
General Services Administration
National Aeronautics and Space Administration

Title 49—Transportation

Interstate Commerce Commission
Transportation Department
Office of the Secretary
Federal Railroad Administration
National Highway Traffic Safety Administration
Research and Special Programs Administration

Title 50—Wildlife and Fisheries

Commerce Department
National Oceanic and Atmospheric Administration
Interior Department
Fish and Wildlife Service

AGRICULTURE DEPARTMENT

Food and Nutrition Service

7 CFR

225.6 State agencies participating in the summer food service program. [Added]

(a) To maintain the written records on each hearing for families wishing to appeal a denial of an application for free meals. Such records shall include the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for the decision, and a copy of the notice sent to the family.

Retention period: 3 years following the conclusion of the hearing during which it shall be available for examination by the family or its representatives at any reasonable time and place.

(b) To maintain on file documentation of site visits and reviews in accordance with 7 CFR 225.15(d)(2) and (3).

(c) To maintain all accounts and records pertaining to the Program. Such records and accounts shall be made available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place.

Retention period: 3 years after the end of the fiscal year to which records pertain, unless audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved.

225.6 Food service management companies participating in the summer food service program. [Added]

To maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this Part 225.

Retention period: 3 years from date of receipt of final payment under the contract, except that if audit or investigation findings have not been resolved, such records shall be retained until all issues raised by the audit or investigation have been resolved.

225.8 State agencies participating in the summer food service program for children. [Added]

(a) To maintain complete and accurate current accounting records of Program operations which will adequately identify fund authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs.

Retention period: 3 years after the date of submission of the final Program Operations and Financial Status Report (SF-269), or beyond 3 years until resolution of any audit questions.

(b) To also retain a complete record of each review or appeal conducted as required under 7 CFR 225.13.

Retention period: 3 years following the date of the final determination on the review or appeal.

225.9 Service institutions participating in the summer food service program for children. [Revised]

To maintain records to support claims for reimbursement. See also 7 CFR 225.8.

225.10 State agencies participating in the summer food service program. [Revised]

To maintain records, including records of the receipt and expenditures of funds for audit and management evaluations.

Retention period: Until all issues raised by the audit and investigation have been resolved.

225.11 State agencies participating in the summer food service program. [Added]

To maintain in file all evidence relating to investigations of and actions on complaints received or irregularities noted in connection with the operation of the Program.

225.13 State agencies participating in the summer food service program for children. [Added]

To maintain records regarding each appeal review. Such records shall document compliance with applicable regulations and shall include the basis for decision.

225.15 Service institutions participating in the summer food service program. [Revised]

(a) To maintain records of participation and of preparation of ordering of meals to demonstrate positive action toward meeting objective of providing only one meal per child at each meal service.

(b) To maintain accurate records which justify all costs and meals claimed.

Retention period: Records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and state agencies for a period of three years following the date of submission of the final claim for reimbursement for the fiscal year.

225.16 Service institutions participating in the summer food service program for children. [Revised]

(a) To maintain a copy of the documentation establishing the eligibility of each child receiving meals under the Program at camps.

(b) To maintain on file statements from a recognized medical authority recommending alternative foods for participating children who are unable, because of medical or other special dietary needs, to consumed approved meals.

225.19 Participants in the summer food service program for children. [Revised; new amendment contained no record retention requirements]

250.30 Distributing agencies, subdistributing agencies, or recipient agencies entering into contracts for the processing and labeling of donated foods. [Amended]

(a) To maintain documentation in accordance with 7 CFR 250.16 when substituting donated foods with commercial foods.

(b) To retain invoices from recipient agencies when end products are sold through a discount system.

274.3 State agencies participating in the food stamp program. [Added]

To maintain and keep current a master issuance file which is a composite of issuance records of all certified food stamp households.

Retention period: 3 years from the month of origination. The period may be extended at the written request of the Food and Nutrition Service.

274.6 State agencies participating in the food stamp program. [Added]

(a) To maintain the signed household statement of nonreceipt of authorization document or coupons in the case records.

(b) To maintain, in readily identifiable form, a record of the replacements granted to the household, the reason, the month, countable as defined in 7 CFR 274.6(b)(2)(iv). The record may be a case action sheet maintained in the case file, notations on master issuance file , if readily accessible, or a document maintained solely for this purpose.

Retention period: 3 years from the month of origination. This period may be extended at the written request of the Food and Nutrition Service.

274.7 State agencies participating in the food stamp program. [Revised]

To maintain records of (a) authorization document and coupons that are undeliverable or returned; (b) specimen coupon received; and (c) to retain a copy of the request to Food and Nutrition Service for permission to destroy unusable coupons.

274.7 States participating in temporary emergency food assistance for victims of major disasters. [Removed]

274.7 States participating in temporary emergency food assistance for victims of other than major disasters. [Removed]

274.11 State agencies participating in the food stamp program. [Added]

To maintain issuance and reconciliation records which include, at a minimum, notices of change, HIR cards, inventory documents, Forms FNS–250 and substantiating documents, cashiers daily reports, receptionist daily tally sheets, master issuance files, the records for–issuance for each month, and issuance systems.

Retention period: 3 years from the month of origination. The period may be extended at the written request of the Food and Nutrition Service.

276.2 State agencies participating in the food stamp program. [Added]

To maintain monthly records which detail the computation of reimbursement amounts reported on the Form FNS–209 for audit purposes.

Animal and Plant Health Inspection Service

7 CFR

318.13-4g Papaya irradiation processors. [Added]

To maintain records that include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

Retention period: For a period of time that exceeds the shelf life of the irradiated food product by 1 year.

Federal Crop Insurance Corporation

7 CFR

401.117 Insured under FCIC (Soybean). [Amended]

For each proposed unit, to maintain written, verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.119 Insured under FCIC (Cotton). [Added]

To maintain written, verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.120 Insured under FCIC (Rice). [Added]

To maintain written verifiable, records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.121 Insured under FCIC (Extra long staple cotton). [Added]

To maintain written, verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.129 Insured under FCIC (Tobacco). [Added]

To maintain written verifiable, records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.140 Insured under FCIC (Pear). [Added]

To maintain written verifiable, records of acreage and harvested production.

Retention period: For at least the previous crop year.

Agricultural Stabilization and Conservation Service

7 CFR

725.99 Warehousemen handling burley, fire-cured, dark air-cured, Virginia sun-cured cigar-binder, cigar-filler and binder; and flue-cured tobacco. [Amended]

(a)See 724.96.

(b) To record or have the dealer record on a Form MQ–79 the total purchases and resales made during each day at the warehouse.

725.100 Dealers handling burley, fire-cured, dark air-cured, Virginia air-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Amended]

(a)See 724.97.

(b) To maintain records on a Form MQ–79 showing all purchases and resales excluding tobacco not in from normally marketed by producers as defined in 7 CFR 751.51(oo) and (oo–1).

726.93 Warehousemen handling burley, fire-cured, dark air-cured, Virginia sun-cured, cigar-binder, cigar-filler and binder; and fire-cured tobacco. [Amended]

See 725.99.

726.94 Dealers handling burley, fire-cured, dark air-cured, Virginia air-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Amended]

See 725.100.

Agricultural Marketing Service

7 CFR

955.60 Vidalia onion handlers. [Added]

To maintain records of the Vidalia onions received and disposed of as may be necessary to verify reports submitted to the committee.

Retention period: At least 2 succeeding years.

982.453 Applicants (crushers, livestock feed manufacturers, and livestock feeders) purchasing substandard filberts/hazelnuts or filbert/hazelnut waste. [Added]

To maintain a record of receipts, holdings, and use of substandard

filberts/hazelnuts available for examination by authorized representatives of the Board and the Department of Agriculture.

Retention period: 3 years after the end of the marketing year in which the recorded transactions are completed.

982.471 Filbert/hazelnut handlers. [Revised]

(a)To maintain complete and accurate records showing the receipt, shipment, and sale of all filberts/hazelnuts handled, used or otherwise disposed of.

(b) To also maintain a current record of all filberts/hazelnuts held in inventory.

Retention period: 2 years–period as prescribed in 7 CFR 982.71

998.43 Peanut handlers. [Added]

To maintain records of peanuts received, held and disposed of, as will substantiate any required reports and will show performance under marketing agreement.

Retention period: At least 2 years beyond the crop year of their applicability.

1210.350 Watermelon handlers. [Added]

To maintain a record with respect to each producer for whom watermelon were handled and produced.

Retention period: 2 years beyond the fiscal period of their applicability.

1210.351 Watermelon handlers. [Added]

To maintain such books and records as are necessary to carry out the provisions of the Research and Promotion Plan and applicable regulations, including such records as are necessary to verify any required reports.

Retention period: 2 years beyond the fiscal period of their applicability.

Commodity Credit Corporation

7 CFR

1475.13 Handlers, dealers, and warehousemen performing transactions with regard to delivery orders under the livestock feed program. [Redesignated as 1475.14]

1457.14 Handlers, dealers, and warehousemen performing transactions with regard to delivery orders under the livestock feed program. [Redesignated from 1475.13]

To maintain books and records which will permit verification of all transactions with regard to delivery orders.

Retention period: At least 3 full years following deliveries against delivery orders (or to be kept longer if requested by the Commodity Credit Corporation).

Rural Electrification Administration

7 CFR

1715.25 Borrowers of insured or guaranteed electric loans under the RE Act. [Added]

To maintain accurate records containing all investments, loans, and guarantees.

Retention period: Not specified.

Farmers Home Administration

7 CFR

Part 1944, Exhibit A Grantees conducting housing preservation programs benefiting very low-and low-income rural residents. [Removed]

1948.47 Rural development grantees. [Removed]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

9 CFR

2.35 Research facilities engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes. [Added]

To maintain Institutional Animal Care and Use Committee (IACUC) records, including minutes of the Committee meetings, records of any Committee activities and deliberations, records of proposed activities involving animals and proposed significant changes in those activities, the Committee's disposition of the proposed activity, and the Committee's reports of reviews and evaluation and any other records as specified in cited section.

Retention period: 3 years. Approved activity records–duration of the activity plus an additional 3 years after completion of the activity. All records must be available for inspection and copying by authorized APHIS or funding Federal agency representatives and must be retained pending completion of an investigation or proceeding under the Act.

2.75 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes. [Revised]

To keep (a) records with respect to the purchase, sale, transportation, identification, and previous ownership; (b) records with respect to water quality tests for marine mammal facilities; and (c) necropsy reports and records for marine mammals that die in captivity.

Retention period: (a) 1 year or longer as may be required by any Federal, State, or local law; (b) 1 year; (c) 3 years.

2.76 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes. [Revised]

See 2.75.

2.77 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes. [Revised]

See 2.75.

2.78 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes. [Revised; new amendment contained no record retention requirements]

2.81 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes. [Removed]

2.132 Dealers, exhibitors, research facilities, carriers, or intermediate handlers operating private or contract animal pounds or shelters. [Added]

To maintain accurate and complete records in accordance with 9 CFR 2.75 and 2.76, unless the animals are lost or stray. If animals are lost or stray, the pound or shelter records shall provide: (a) An accurate description of the animal; (b) how, where, from whom, and when the dog or cat was obtained; (c) how long the dog or cat was held by the pound or shelter before being transferred to the dealer; and (d) the date the dog or cat was transferred to the dealer.

Retention period: Not specified.

92.11 Operators of quarantine facilities for imported birds. [Amended]

To maintain daily log for each lot of birds, recording such information as general condition of birds each day, source of origin of each lot, total number in each lot when imported, date placed in quarantine, tests, laboratory findings, and such other information as specified in section cited.

Retention period: 1 calendar year following release of birds from quarantine.

Packers and Stockyards Administration

9 CFR

203.4 Packers, live poultry dealers or handlers, stockyard owners and market agencies, and dealers subject to the provisions of the Packers and Stockyards Act. [Amended]

To retain for the specified period of time the following records:

(a) Accounts, records and memoranda to fully and correctly disclose all transactions involved in business, including the true ownership of such business by stockholding or otherwise.

(b) Cutting tests; departmental transfers; buyers' estimates; drive sheets; scale tickets received from others; inventory and products in storage; receiving records; trial balances; departmental overhead or expense recapitulations; bank statements, reconciliations and deposit slips; production or sale tonnage report (including recapitulations and summaries of routes, branches, plants, etc.); buying or selling pricing instructions and price lists; correspondence, telegrams, teletype communications and memoranda relating to matters other than contracts, agreements, purchase or sales invoices, or claims or credit memoranda.

Retention period: (a) 2 years or longer if directed by the Administrator in writing, pending completion of any investigation or proceeding under the Act; (b) 1 year.

NUCLEAR REGULATORY COMMISSION

10 CFR

26.20 Licensees authorized to operate nuclear power industries; fitness-for-duty program. [Added]

To retain a copy of current written policy and procedures as a record.

Retention period: Until the Commission terminates each license for which the policy and procedures are superseded; superseded material must be retained for 3 years after each change.

26.29 Licensees authorized to operate nuclear power industries; fitness-for-duty program. [Added]

To maintain records (a system of files and procedures) on the protection of personal information.

Retention period: Until the Commission terminates each license for which the system was developed.

26.71 Licensees authorized to operate nuclear power industries (also each contractor and vendor implementing licensee approved program under the provision of 10 CFR 26.23); fitness-for-duty program. [Added]

(a) To retain records of inquiries conducted in accordance with 10 CFR 26.27(a) that result in the granting of unescorted access to protected areas.

Retention period: Until 5 years following examination of such access authorizations.

(b) To retain records of persons made ineligible for assignment to activities within the scope of Part 10 under the provisions of 10 CFR 26.27(b)(2), (3), (4) or (c).

Retention period: 3 years or longer or until the Commission terminates each license under which the records were created.

(c) To retain records of confirmed positive test results which are concurred in by the Medical Review Officer, and the related personnel actions.

Retention period: At least 5 years.

(d) To retain fitness-for-duty program performance data and analysis. Such data shall include random testing rate; drugs tested for and cut-off levels, including results of tests using lower cut-off levels and tests for other drugs; workforce populations tested; numbers of tests and results by populations; and such other information as specified in cited section.

Retention period: 3 years.

26.80 Licensees authorized to operate nuclear power industries; fitness-for-duty program. [Added]

To maintain documentation of the resolution findings and corrective actions on audit of the effectiveness of the program.

Retention period: 3 years.

70.32 Licensees acquiring, delivering, receiving, possessing, using, transferring or receiving title to own special nuclear material. [Amended]

To keep (a) such records of ownership, receipt, possession, use, and transfer of special nuclear material as may be incorporated as a condition or requirement in any license; (b) records of changes to the material control and accounting program made without prior Commission approval; (c) records of changes to the physical security plan made without prior Commission approval; (d) records of changes to licensee safeguards contingency plan made without prior Commission approval; (e) records of receipt, acquisition, or physical inventory of special nuclear material; (f) records of transfer of special nuclear material to other persons; (g) records of disposal of special nuclear material; (h) records of date and time of application of tamper-safing devices to containers or vaults; (i) material balance records for each material balance showing the quantity of element and fissile isotope in each component of the material balance; (j) a record summarizing the quantities of element and fissile isotope for ending inventory of material in process and additions and removals of material in process during material balance interval; (k) a record summarizing the quantities of element and fissile isotope in unopened receipts and ultimate products maintained under tamper-safing or in the form of sealed sources; (l) records needed to meet fundamental nuclear material controls requirements contained in 10 CFR 70.58, including (i) records which will provide information sufficient to locate special nuclear material and to close a measured material area and the total plant as specified in 10 CFR 70.51, (ii) records of results of review and audit of the nuclear material control system, and (iii) records of shipper-receiver difference evaluations, investigations, and corrective actions concerning special nuclear material received and shipped; (m) all data, information, reports, and documents generated by the measurement control program, including summary of error data utilized in limit of error calculations performed for each material balance period; and (n) records pertaining to training and qualification of personnel who perform measurement activities pursuant to 10 CFR 70.57(b)(7).

Retention period: (a) If not otherwise specified by regulation or license condition, until disposal is authorized by the Commission; (b) 3 years after they are superseded; (c) 3 years from date of change; (d) 3 years from date of change; (e) as long as licensee retains possession of special nuclear material and for 3 years following transfer of special nuclear material; (f) until disposal is authorized by the Commission, or for 3 years for records required by 10 CFR 70.51(e)(1)(v) to document transfers of special nuclear material between material balance areas; (g) until disposal is authorized by the Commission; (h) if not otherwise specified by regulation or license condition, until disposal is authorized by the Commission; (i) 3 years; (j) 3 years; (k) 3 years; (l) and (l)(i) if not otherwise specified by regulation or license condition, until disposal is authorized by

the Commission; (l)(ii) 3 years; (l)(iii) 3 years; (m) 3 years; (n) 3 years.

ENERGY DEPARTMENT

10 CFR

430.62 Manufacturers of covered products subject to energy conversation standards. [Added]

To maintain records of the underlying test data for all certification testing. Such records should include the supporting test data associated with tests performed on and any test units to satisfy applicable requirements.

Retention period: 2 years from the date that production of the applicable model has ceased.

430.71 Manufacturers of covered products subject to energy conservation standards. [Added]

To maintain records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce to make noncompliance basic model comply with applicable performance standards.

Retention period: Not specified.

FEDERAL RESERVE SYSTEM

12 CFR

202.12 Federal Home Loan Bank members. [Amended]

In regards to business credit applications:

(a) To maintain in original form or a copy thereof: (1) Any written or recorded information concerning the adverse action and (2) any written statement submitted by the applicant alleging a violation of the Equal Opportunity Act.

(b) To retain records in accordance with the new law on credit applications involving businesses with gross revenue of $1 million or less.

Retention period: For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of action taken on an application.

(c) To maintain at each association "decision center" loan application registers containing at a minimum certain data specified in the regulation.

Retention period: 25 months after date that a creditor notifies an applicant of action taken on the application.

TREASURY DEPARTMENT

Thrift Supervision Office

12 CFR

Note: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, abolished the Federal Home Loan Bank Board. At 54 FR 35453, August 28, 1989, the heading for 12 CFR Ch. V was revised.

571.19 Insured institutions. [Added]

To maintain records of securities in accordance with generally accepted accounting practices and to support via documentation the appropriate classification of and accounting for securities in accordance with generally accepted accounting principles. To also document investment policy and strategies.

FEDERAL HOUSING FINANCE BOARD

12 CFR

Note: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, abolished the Federal Home Loan Bank Board. At 54 FR 36758, Sept. 5, 1989, 12 CFR Ch. IX was established and certain regulations from 12 CFR Ch. V was redesignated to 12 CFR Ch. IX.

933.16 Federal Home Loan Bank members. [Redesignated from 523.13]

To maintain such records as may be required to verify compliance with liquidity requirements.

Retention period: Not specified.

933.31 Federal Home Loan Bank members other than FDIC savings banks. [Redesignated from 523.29]

To maintain, in connection with all loans secured by improved real estate or a mobile home, sufficient records to indicate the method used to determine whether such loans require flood insurance.

Retention period: Not specified.

937.7 Federal Home Loan Bank members participating in the housing opportunity allowance program. [Redesignated from 527.7]

To retain a copy of each allowance application and the originals of all other closing documents.

Retention period: Not specified.

938.8 Federal Home Loan Bank members. [Redesignated from 528.6]

See 202.12.

939.6 Federal Home Loan Bank members receiving Federal financial assistance from the Federal Home Loan Bank Board. [Redesignated from 529.6]

To keep such records as the Bank Board may determine to be necessary to enable it to ascertain whether the recipient is complying with the regulation.

Retention period: Not specified.

SMALL BUSINESS ADMINISTRATION

13 CFR

115.7 Preferred Surety Bond Program (PSB) sureties. [Added]

To maintain all information and certifications required by SBA including a contemporaneous record of the date of issuance of each bond, in its file, for inspection by SBA or its agents and for submission to SBA in connection with claims made under SBA's guarantee.

Retention period: For the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery and for an additional 3 years thereafter.

115.17 Surety attorneys, contractors and subcontractors participating in the Surety Bond Guarantee (SBG) program. [Removed; record retention requirements now in 115.40]

115.18 Preferred Surety Bond Program (PSB) sureties. [Added]

To maintain all documents, files, books, records, tapes, disks, and other material relevant to the surety bond guarantee, commitments to guarantee a surety bond, or agreements to indemnify the surety and other information as specified in cited section.

Retention period: For the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery and for an additional three years thereafter.

115.40 Surety attorneys, contractors and subcontractors participating in the Surety Bond Guarantee (SBC) program. [Added]

To maintain (a) the bond agreements; (b) all documentation submitted by the principal in applying for the bond; (c) all information gathered by the surety in reviewing the principal's application; (d) all documentation of any breach by the principal; (e) all records of any transactions for which surety makes payment pursuant to the bond, including but not limited to, copies of all claims, bills, judgments, settlement agreements, and courts or arbitration decisions, contracts and receipts; (f) all documentation relating to efforts to mitigate losses; and (g) records of any accounts to which fees and funds obtained in mitigation of losses have been paid, and from which payments have been made pursuant to the bond.

Retention period: 3 years beyond the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery.

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

14 CFR

91.54 Lessees and conditional buyers of U.S. registered large civil aircraft other than a foreign air carrier or certificate holder under 14 CFR Parts 121, 123, 127, 135, or 141. [Removed]

91.173 Registered owners or operators of civil aircraft. [Revised; new amendment contained no record retention requirements; record retention requirements now in 91.417]

91.191 Operators of civil aircrafts of United States registry in Category II operation. [Added]

To keep a current copy of the approved manual at principal base of operations.

Retention period: See 14 CFR 91.417.

91.417 Registered owners or operators of civil aircraft. [Added]

To keep (a) records of maintenance, preventive and alterations, 100-hour, annual, and progressive inspections, and other required or approved inspections for each aircraft, and for each airframe, engine, propeller, rotor, and appliance of an aircraft including a description of the work performed, the date the work was completed, and signature and certificate number of the persons approving the aircraft for return to service and (b) records of total time in service of airframe; current status of life limited parts of each airframe, engine, propeller, rotor, and appliance; time since last overhaul of all items required to be overhauled on a specified time basis; identification of current inspection status of aircraft, including time since last inspection required by inspection program under which aircraft and its appliances are maintained, current status of applicable airworthiness directives, including method of compliance; and a list of current major alterations to each air frame, engine, propeller, rotor, and appliance.

Retention period: (a) Until the work is repeated or superseded by other work or for 1 year after the work is performed; (b) transferred with the aircraft at the time the aircraft is sold.

91.419 Owners or operators who sell U.S. registered aircrafts. [Added]

To maintain records specified in 14 CFR 91.417(a)(1) and (a)(2).

Office of the Secretary

14 CFR

221.260 Air carriers, foreign air carriers or tariff publishing agents. [Added]

To maintain all fares filed with the Department and all Departmental approvals, disapprovals, and other actions, as well as all Departmental notations concerning such approvals, disapprovals, or other actions, in the on-line-tariff database.

Retention period: For a period of 2 years after the fare becomes inactive.

COMMERCE DEPARTMENT

International Trade Administration

15 CFR

350.91 Individuals, corporations, partnerships, associations, or any other organized groups of persons participating in any transactions covered by the Defense Priorities and Allocation System. [Redesignated as 700.91]

Export Administration Bureau

15 CFR

700.91 Individuals, corporations, partnerships, associations, or any other organized groups of persons participating in any transactions covered by the Defense Priorities and Allocation System. [Redesignated from 350.91]

To maintain accurate and complete records of any transactions covered by this regulation (OMB No. 0625-0107) or an official action in sufficient detail to permit the determination, upon examination, or whether each transaction complies with the provisions of this regulation or any official action.

Retention period: At least three years.

National Oceanic and Atmospheric Administration

15 CFR

971.801 Licensees and permittees engaged in commercial recovery of deep seabed hard minerals. [Added]

To maintain records consistent with standard accounting principles as specified by the Administrator in the license or permit. Such records shall include information which will fully disclose expenditures for exploration for, or commercial recovery of hard mineral resources in the area under license or permit, and any other information which will facilitate an effective audit of these expenditures.

COMMODITY FUTURES TRADING COMMISSION

17 CFR

31.7 Leverage transaction merchants. [Added]

See 17 CFR 31.14.

SECURITIES AND EXCHANGE COMMISSION

17 CFR

240.15a-6 Registered brokers or dealers through which transactions with the U.S. institutional investors or major U.S. institutional investors are effected. [Added]

(a) To maintain required books and records relating to the transactions, including those required by Rules 17a-3 and 17a-4 under the Act (17 CFR 240.17a-3 and 240.17a-4).

(b) To maintain written records of the information and consents required and all records in connection with trading activities of the U.S. institutional investor or the major U.S. institutional investor involving the foreign broker or dealer.

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

18 CFR

161.3 Interstate pipelines. [Added]

To maintain and make available for copying on a daily basis a written log of waivers that the pipeline grants with respect to tariff provisions that provide for such discretionary waivers.

Retention period: From Sept. 12, 1989 until Dec. 31, 1991.

250.16 Interstate pipelines with marketing affiliates. [Amended]

To maintain a log on all requests for transportation service made by affiliated marketers or in which an affiliated marketer is involved.

Retention period: From the time the information required in cited section is received until Dec. 31, 1990.

LABOR DEPARTMENT

Employment and Training Administration

20 CFR

629.21 Recipients, SDA grant recipients, and other subrecipients under Titles I, II, and III of the Job Training Partnership Act. [Revised]

To maintain, in accordance with instructions from the Governor, documentation supporting the locally developed formula or procedure for

needs-based payments, including maintenance of an individual record of the determination of the need for, and the amount of, any participant's needs-based payment.

Retention period: Not specified.

629.35 Recipients, SDA grant recipients, and other subrecipients under Titles I, II, and III of the Job Training Partnership Act. [Revised]

(a) To maintain records of each participant's enrollment in a JTPA program in sufficient detail to demonstrate compliance with the relevant eligibility criteria attending a particular activity and with the provision and duration of services and specific activities authorized by the Act.

(b) To also maintain records of such participant's information as may be necessary to develop and measure the achievement of performance standards established by the Secretary.

Retention period: 2 years from date of obligations of funds. Nonexpendable property–3 years after final disposition of the property. Records must be retained until litigation, audit, or claim has been resolved.

629.41 Recipients, SDA grant recipients and other subrecipients under Titles I, II, and III of the Job Training Partnership Act. [Revised]

To maintain, subject to the Secretary of Labor's rights to such property, accountability for personal and real property procured with JTPA funds or transferred from programs under the Comprehensive Employment and Training Act in accordance with State procedures and the records retention requirements of §629.35.

Retention period: 3 years from date of obligation of funds. Nonexpendable property—3 years after final disposition of the property. If litigation or audit is begun, records will be retained until litigation, audit or claim has been finally resolved.

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

21 CFR

107.280 Manufacturers of infant formula. [Added]

To establish and maintain records on distribution of the infant formula through any establishment owned or operated by the manufacturer as may be necessary to effect and monitor recalls of the formula.

Retention period: 1 year after the expiration of the shelf life of the infant formula.

291.505 Hospitals and other authorized dispensers of methadone. [Revised]

To maintain clinical record for each patient showing dates, quantity, and batch or code mark of drug dispensed.

Retention period: 3 years.

291.505 Manufacturers of methadone. [Revised]

To maintain signed invoices of methadone delivered to licensed practitioner.

Retention period: Not specified.

291.505 Sponsors of methadone maintenance programs. [Revised]

To maintain for each patient an admission evaluation and records consisting of personal and medical history, physical examination, and such other information as necessary.

Retention period: Not specified.

JUSTICE DEPARTMENT

Drug Enforcement Administration

21 CFR

1310.03 Regulated persons engaging in regulated transactions involving listed chemicals, tableting machines and encapsulating machines. [Added]

To maintain records and file reports of the transactions as specified in 21 CFR 1310.04 and 1310.06.

Retention period: (a) Records on listed precursor chemical, tableting machine, and encapsulating machine–4 years after the date of transaction.

(b) Records on listed essential chemicals–2 years after transaction.

1310.04 Regulated persons engaging in regulated transactions involving listed chemical, tableting machines, and encapsulating machines. [Added]

(a) Records required to be kept for a listed precursor chemical, a tableting machine, or an encapsulating machine–4 years after the date of the transaction.

(b) Records required to be kept for a listed essential chemical– 2 years after the date of the transaction.

1310.06 Regulated persons engaging in regulated transactions involving listed chemicals, tableting machines, and encapsulating machines. [Added]

To keep records containing the following information: (a) The name and address of each party to the regulated transaction; (b) the date of the regulated transaction; (c) the name, quantity and form of packaging of the listed chemical or a description of the tableting machine or encapsulating machine (including make, model and serial number); (d) the method of transfer (company truck, picked up by customer, etc.); and (e) the type of identification used by the purchaser and any unique number on that identification.

Retention period: See 21 CFR 1310.03.

STATE DEPARTMENT

22 CFR

122.5 Persons required to register as manufacturers or exporters of United States Munitions List articles. [Amended]

To maintain, subject to the inspection of the Secretary of State, or any persons designated by him, records on the exportation of articles enumerated in the United States Munitions List. Records shall contain all information pertinent to the transaction.

Retention period: 6 years, except that the Secretary may prescribe a longer or shorter period in individual cases as he deems necessary.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary

24 CFR

111.109 Agencies receiving support under the Fair Housing Assistance Program. [Added]

To maintain records determined appropriate by the Assistance Secretary.

111.121 Recipients under the Fair Housing Assistance Program. [Added]

To maintain records specified by the Assistant Secretary that clearly document performance under the award. Documents relevant to a recipient's program must be made available at the recipient's office during normal working hours for public review upon request, except that documents with respect to on–going fair housing complaint investigations will be exempt from public review. The Secretary, the Inspector General of HUD, and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, reports, files, and opther papers of the recipients with respect to FHAP payments for surveys, audits, examinations, excerpts, and transcripts.

125.104 Recipients of funds under the Fair Housing Initiatives Program. [Added]

To maintain records determined appropriate by the Assistant Secretary.

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR

200.182 Assisted housing owners or mortgagees under the National Housing Act. [Removed]

201.2 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.4 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.6 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.8 Lending agencies—title 1. [Removed]

201.8 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.10 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.11 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.22 Lenders of Title I Property Improvement and Manufactured Home Loans. [Added]

To maintain in the loan file all documentation supporting determination of solvency of borrower and any co-maker or co-signer and relating to review of the credit of the borrower and of any co-maker and co-signer and any other information regarding credit application of the borrower.

201.23 Lenders of Title I Property Improvement and Manufactured Home Loans. [Added]

To maintain in the loan file, documentation of any required down payment.

201.26 Lenders of Title I Property Improvement and Manufactured Home Loans. [Added]

To maintain in the loan file documentation of the site-of-placement inspection results.

201.27 Lenders of Title I Property Improvement and Manufactured Home Loans. [Added]

To maintain on each approved dealer a file which contains the executed dealer approval form and supporting information together with documentation of the lender's experience with Title I loans involving the dealer. Such documentation shall include information about borrower defaults on such loans over time, records of completion or site-of-placement inspections conducted by the lender or its agent, copies of letters concerning borrowers' complaints and their resolution, and records of the lender's periodic review visits to dealer premises.

201.50 Lenders of Title I Property Improvement and Manufactured Home Loans. [Removed]

201.171 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.520 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.525 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.545 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.570 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.575 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.595 Lending agencies—title 1. [Removed]

201.605 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.610 Lending agencies with respect to property improvement and mobile home loans. [Removed]

201.665 Lending agencies with respect to property improvement and mobile home loans. [Removed]

Office of Assistant Secretary for Community Planning and Development

24 CFR

576.87 Grantees under the Emergency Shelter Grants Program: Stewart B. McKinney Homeless Assistance Act. [Revised]

To maintain records that are necessary to document compliance with applicable regulations.

Retention period: 3 years period.

577.305 Recipients of assistance under the Transitional Housing Program. [Added]

To keep any records that HUD may require.

577.335 Recipients of assistance under the Transitional Housing Programs. [Added]

To keep a copy of each lead-based paint inspection report.

Retention period: At least 3 years.

578.305 Recipients of assistance under the Permanent Housing for Handicapped Homeless Persons Program. [Added]

To keep any records that HUD may require.

579.305 Recipients of the supplemental assistance for facilities to assist the homeless. [Added]

To maintain any records that HUD may require.

579.325 Recipients of the supplemental assistance for facilities to assist the homeless. [Added]

(a) To keep a copy of each lead-based paint inspection report.

Retention period: At least 3 years.

(b) To keep the test results and, if applicable, the certification of treatment indefinitely if a unit requires testing, or treatment of chewable surfaces based on the testing.

590.25 Local urban homesteading agencies. [Revised]

To maintain adequate financial records, property disposition documents, supporting documents, statistical records and all other records pertinent to the local urban homesteading program until fee simple title has been conveyed to all homesteaders, generally a five-year period. To also maintain current and accurate data on the race and ethnicity of program beneficiaries.

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR

885.740 Borrowers; Section 202 Projects for Nonelderly Handicapped Families and Individuals-Section 162 Assistance. [Added]

(a) To keep a copy of each lead-based paint surface inspection report.

Retention period: 3 years.

(b) To keep a record of the test results if a unit requires testing or treatment of chewable surfaces based on the testing, and if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated.

885.950 Borrowers: Section 202 Projects for Nonelderly Handicapped Families and Individuals-Section 162 Assistance. [Added]

To maintain records on applicants and approved eligible families which provide racial, ethnic, gender, and place of previous residency data required by HUD.

Retention period: 3 years.

885.972 Borrowers; Section 202 Projects for Nonelderly Handicapped Families and Individuals–Section 162 Assistance. [Added]

To maintain records of the amount in a segregated interest–bearing account that is attributable to each family in residence in the project.

Office of the Assistant Secretary for Public and Indian Housing

24 CFR

968.110 Public Health Agencies (PHAs) receiving assistance under the Comprehensive Improvement Assistance Program (CIAP). [Added]

To maintain books, documents, papers, or other records that are pertinent to program activities in order to make audit examinations, excerpts, and transcripts.

Retention period: Not specified.

968.226 Public Health Agencies (PHAs) receiving assistance under the Comprehensive Improvement Assistance Program (CIAP). [Added]

To retain in its file for inspection by HUD the signed agreement from each participating homebuyer family that it will amend its homebuyer upon approval of the application.

Retention period: Not specified.

Office of Assistant Secretary for Housing—Federal Housing Commission

24 CFR

1710.15 Developers of multiple site divisions (fewer than 100 lots). [Added]

To maintain a copy of the written Lot Information Statement Acknowledgement.

Retention period: 3 years.

TREASURY DEPARTMENT

Internal Revenue Service

26 CFR

1.936–10T Qualified recipients and financial intermediaries investing in Qualified Caribbean Basin Countries. [Added]

To maintain all necessary books and records that are sufficient to verify that the funds were used for investment in active business assets or development projects in conformity with the terms of the loan agreement.

5h.6 Electing owners, issuers, purchasers, and all successors in interest to the electing owners or purchasers; Technical Miscellaneous Revenue Act of 1988. [Added]

(a) To retain the original election document or a copy thereof in its records.

Retention period: Until 6 years after the later of the date the last bond that is part of the issue is retired or the date such owner, purchaser or successor in interest ceases to own the facilities.

(b) To retain a copy of the election.

Retention period: Until 6 years after the date the last bond that is part of the issue is retired.

35a.3406–1 Payors to backup withhold due to notification of an incorrect taxpayer identification number. [Added]

To maintain sufficient records to determine whether the payor has received notification of two incorrect taxpayer identification numbers within a 3–year period.

TREASURY DEPARTMENT

Bureau of Alcohol, Tobacco and Firearms

27 CFR

270.183 Manufacturers of tobacco products. [Amended]

See 270.181.

296.177 Persons holding pipe tobacco for sale, including those holding pipe tobacco exempt from the $1000 floor stock tax. [Added]

To maintain inventory records of the pipe tobacco floor stocks tax liability required to be shown on the floor stocks tax return.

Retention period: As prescribed in 27 CFR 296.178.

296.178 Persons liable for floor stocks tax. [Added]

To keep a copy of the floor stocks tax return and inventory record at the place of business covered thereby. In the case of a consolidated return, or when one return is filed on behalf of a controlled group, the return shall be kept at the taxpayer's principal place of business with a copy of each inventory record supporting the tax return, and a copy of the inventory record shall also be kept at the specific place of business to which the inventory pertains.

Retention period: At least 3 years after the date of filing of the floor stocks tax return, and shall be available for inspection by ATF officers. The Regional Director (Compliance) may require an additional 3 years if retention is deemed to be necessary or desirable.

LABOR DEPARTMENT

Wage and Hour Division

29 CFR

524.10 Employers subject to Fair Labor Standards Act employing handicapped workers. [Removed]

525.13 Sheltered workshops (as defined in 29 CFR 525.2(b)). [Revised; record retention requirements now in 525.16]

525.16 Employers, referring agencies or facilities of workers employed under special minimum wage certificates. [Added]

To maintain records indicating (a) verification of the workers' disabilities; (b) evidence of the productivity of each worker with a disability gathered in a continuing basis or at periodic intervals (not to exceed six months in the case of employees paid hourly wage rates); (c) the prevailing wages paid workers not disabled for the job performed who are employed in industry in the vicinity for essentially the same type of work using similar methods and equipment as that used by each worker with disabilities employed under a special minimum wage certificate; (d) the production standards and supporting documentation for nondisabled workers for each job being performed by workers with disabilities employed under special certificates; and (e) certain records required under all of the applicable provisions of 29 CFR Part 526.

Retention period: See 29 CFR Part 516.

Occupational Safety and Health Administration

29 CFR

1910.66 Building owners of all powered platform installations. [Added]

To maintain certification record which contains the date the work was performed, the signature of the person who performed the work, and an identifier for the equipment or installation which was tested or inspected. Records shall be kept readily available for review by the Assistant Secretary's representatives and by the employee.

1910.120 Employers engaged in the hazardous waste operations and emergency response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC 9601 et. seq.). [Revised; effective March 6, 1990]

To maintain records of the medical surveillance of (a) all employees who are or may be exposed to hazardous substances or health hazards at or above the established permissible

exposure limits for these substances, without regard to the use of respirators, for 30 days or more a year; (b) all employees who wear a respirator; and (c) HAZMAT employees engaged in hazardous waste operations.

Retention period: As specified in 29 CFR 1910.20.

1926.550 Employers subject to crane and derrick standards. [Amended]

To maintain on file the most recent certification records which include date the crane items were inspected; the signature of the person who inspected the crane items; and a serial number or other identifier, for the crane inspected.

Retention period: Until a new certification is prepared.

1926.652 Employers subject to the excavation occupational safety and health standards. [Added]

To maintain at the jobsite one copy of the tabulated data which identifies the registered professional engineer who approved the data and at least one copy of the design.

Retention period: During the construction of the protective system and after that time the data and design may be stored off the jobsite, but a copy shall be made available to the Secretary upon request.

1926.800 Employers subject to underground construction standards. [Revised]

(a) To maintain record of all air quality tests above ground at the workshop and make available these records to the Secretary upon request. The records shall include the location, date, time, substance and amount monitored.

Retention period: Until completion of the project.

(b) To maintain records of exposures to toxic substances in accordance with 29 CFR 1910.20.

PENSION BENEFIT GUARANTY CORPORATION

29 CFR

2610.11 Pension plan administrators (with respect to plan years beginning on or after Jan. 1, 1988). [Revised]

To retain certain documentation (all plan records including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Code, by the insurer from which the insurance contracts are purchased) needed to support or to validate premium payments. Records must include but not be limited to records that establish the number of plan participants, that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based, and for plans that assert entitlement to the reduction in the cap on the variable rate portion of the premium that demonstrate the methods and assumptions used by the plan during the base period with respect to calculating its maximum deductible contribution pursuant to section 404 of the Code.

Retention period: For a period of 6 years after the premium due date.

LABOR DEPARTMENT

Mine Safety and Health Administration

30 CFR

25.10 Applicants authorize to use multiple-shot blasting units in coal mines. [Removed; effective Jan. 22, 1991]

INTERIOR DEPARTMENT

Minerals Management Service

30 CFR

206.253 Lessees of Federal coal leases and Indian (Tribal and allotted) coal leases (except leases on the Osage Indian Reservation, Osage Co., Okla.). [Added]

To maintain accurate records to determine to which individual Federal or Indian lease coal in the waste pit or slurry pond should be allocated.

Retention period: Not specified.

212.200 Lessees, operators, revenue payors, or other persons holding offshore and onshore Federal and Indian oil and gas leases. [Amended]

See 212.51.

282.29 Lessees performing operations in the Outer Continental Shelf for minerals, other than oil, gas, and sulphur. [Added]

(a) To maintain records that include logs of all strata penetrated and conditions encountered, such as minerals, water, gas, or unusual conditions, and copies of analysis of all samples analyzed.

(b) To maintain records in which will be kept an accurate account of all ore and rock mined; all mineral products sold, transferred, used, or otherwise disposed of and to whom sold or transferred, and the inventory weight, assay value, moisture content, base sales price, dates, penalties, and price received.

TREASURY DEPARTMENT

Monetary Offices

31 CFR

103.33 All financial institutions. [Amended]

To maintain either the original or a copy of records of (a) extensions of credit exceeding $10,000, except those secured by real property; and (b) advice, request, or instruction, received or given to another financial institution or person, regarding a transaction resulting in the transfer of more than $10,000 to a person, account, or place outside the United States.

Retention period: 5 years.

103.36 Casinos subject to the Bank Secrecy Act. [Amended]

To maintain a record of social security number of the person involved when funds are deposited; account is opened or credit is extended; and other such records as specified in section cited.

Retention period: 5 years.

103.38 All financial institutions.[Amended]

To keep records as specified in 31 CFR Part 103.

Retention period: 5 years.

129.3 Persons subject to the portfolio investment survey regulations. [Revised]

To maintain all information required by the International Investment and Trade in Services Survey Act (22 USC 3104(b)(1).

Retention period: 3 years from the date of submission of any reports or other information required pursuant to the Act, or for such shorter period as may be specified in the reporting form and/or accompanying instructions.

EDUCATION DEPARTMENT

34 CFR

200.43 State educational agencies and other agencies receiving funds to meet the special educational needs of educationally deprived children (Part A, Chapter 1). [Added]

To maintain annual records documenting compliance with the comparability of services requirements.

200.71 State educational agencies and other agencies receiving funds to meet the special educational needs of educationally deprived children (Part A, Chapter 1). [Added]

To maintain contemporaneous time distribution records reflecting the actual amount of time the employee spends on the program.

204.10 State educational agencies and other agencies receiving funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981. [Amended]

(a) To maintain records of the amount and disposition of all Chapter 1 funds, including records that show the share of the cost provided from non-Chapter 1 sources.

(b) To maintain other records that are needed to facilitate an effective audit of Chapter 1 project and that show compliance with Chapter 1 requirements; and

(c) To maintain evaluation data collected under Chapter 1.

Retention period: 5 years, or until all audit findings have been resolved.

VETERANS AFFAIRS DEPARTMENT

38 CFR

17.51] Privately or publicly-owned community residential care facilities. [Added]

To maintain records on each resident in a secure place. Such records must include (a) a copy of all signed agreements with the resident; (b) emergency notification procedures; and (c) a copy of the statement of needed care.

Retention period: Not specified.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR

35.6250 Recipients of CERCLA-funded cooperative agreements and Superfund State Contracts. [Added]

(a) To maintain a recordkeeping system that consists of complete site-specific files containing documentation of costs incurred.

(b) To maintain records to comply with the requirements of 40 CFR 35.6700, 35.6705, and 35.6710 and requirements of source documentation described in 40 CFR 31.20(b)(6).

Retention period: 10 years following submission of the final Financial Status Report for the site, or until resolution of all issues arising from litigation, claim, negotiation, audit, cost recovery, or other actions, whichever is later. Written approval must be obtained from the EPA award official before destroying any records.

35.6700 Recipients of CERCLA-funded cooperative agreements and Superfund State Contracts. [Added]

(a) To maintain project records by site and activity.

(b) To maintain property, financial and procurement records.

(c) To maintain time and attendance records and supporting documentation; documentation of compliance with statutes and regulations that apply to the project; and the number of site-specific technical hours spent to complete each pre-remedial product.

Retention period: 10 years following submission of the final Financial Status Report for the site. or until resolution of all issues arising from litigation, claim, negotiation, audit, cost recovery or other actions, whichever is later. Written approval must be obtained from the EPA award official before destroying any records.

35.6705 Recipients of CERCLA-funded cooperative agreements and Superfund State Contracts. [Added]

To maintain all financial and programmatic records, supporting documents, statistical records, and other records which are required by 40 CFR 35.6700, program regulations, or the cooperative agreement, or are otherwise reasonably considered as pertinent to program regulations or the cooperative agreement.

Retention period: 10 years following submission of the final Financial Status Report for the site, or until resolution of all issues arising from litigation, claim, negotiation, audit, cost recovery, or other actions, whichever is later. Written approval must be obtained from EPA award official before destroying any records.

60.49b Owners or operators of industrial-commercial-institutional steam generating facilities. [Amended]

(a) If monitoring of steam generating unit operating condition plan is approved, to maintain records of predicted nitrogen oxide emission rates and the monitored operating conditions, including steam generating unit load, identified in the plan

(b) To maintain records of the amounts of all fuels fired during each day and calculate the annual capacity factor individually for coal, distillate oil, residual oil, natural gas, wood, and municipal-type solid waste for each calendar year.

(c) To maintain records of the nitrogen content of the oil residual combusted in the affected facility and calculate the average fuel nitrogen content on a per calendar quarter basis.

(d) To maintain records of opacity for facilities subject to the opacity standard under 40 CFR 60.43b.

(e) To maintain records on the calendar date, the average hourly nitrogen oxides emission rates measured or predicted and other information as specified in section cited for each steam generating unit operating day for facilities subject to nitrogen oxide standards under 40 CFR 60.44(b).

Retention period: 2 years following date of record.

(f) To maintain records of the following information for each steam generating unit operating day: (1) Calendar date; (2) the number of hours of operation; and (3) a record of the hourly steam load.

60.545 Owners or operators of tread end cementing operation and green tire spraying operation using water-based cements or sprays containing less than 1.0 percent by weight of VOC. [Added]

To maintain records of formulation data or the results of Method 24 analysis conducted to verify the VOC contents of the spray.

Retention period: Not specified.

60.744 Owners or operators of new, modified and reconstructed facilities that perform polymeric coating of supporting substrates. [Added]

To maintain records of the measurements and calculations required in 40 CFR 60.743 and 60.744.

Retention period: For at least 2 years following the date of the measurements anbd calculations.

60.747 Owners or operators of new, modified and reconstructed facilities that perform polymeric coating of supporting substrates. [Added]

To maintain records documenting compliance by the methods described in 40 CFR 60.743(a)(1), (a)(2), (a)(4), (b), or (c).

Retention period: At least 2 years.

61.25 Owners or operators of underground uranium mines. [Added]

To maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard.

Retention period: 5 years and records must be made available for inspection by the Administrator or his authorized representative.

61.26 Owners or operators of underground uranium mines. [Revised; record retention requirements now in 61.25]

61.123 Owners and operators of calciners and nodulizing kilns at elemental phosphorous plants. [Revised; record retention requirements now in 61.124]

61.124 Owners or operators of calciners and nodulizing kilns at elemental phosphorus plants. [Added]

See 40 CFR 61.25.

61.138 Owners or operators of coke by-product recovery plants. [Added]

(a) To maintain records pertaining to the design of control equipment installed to comply with 40 CFR 61.132 through 6.134.

(b) To maintain records pertaining to sources subject to 40 CFR 61.132 and 61.133. Such records shall contain the date of the inspection and the name of the inspector; a brief description of each visible defect in the source or control equipment and the method and date of repair of the defect; the date of attempted and actual repair and method of repair of the leak; and a brief description of any system abnormalities found during the annual maintenance inspection, the annual maintenance inspection, the repairs made, the date of attempted repair, and the date of actual repair.

Retention period: 2 years following each semiannual (and other) inspection and each annual maintenance inspection.

61.204 Owners and operators of the phosphogypsum that is produced as a result of phosphorus fertilizer production and all that is contained in existing phosphogypsum stacks. [Added]

See 40 CFR 61.25.

61.224 Owners and operators of all sites that are used for the disposal of uranium mill tailings. [Added]

See 40 CFR 61.25.

61.246 Owners or operators of sources intended to operate in volatile hazardous air pollutant (VHAP) service. [Added]

(a) To keep records in a log of each leak as specified in 40 CFR 61.242-2, 61.242-3, and 61.242-7.

Retention period: 2 years.

(b) To maintain records, in a log, pertaining to all equipment subject to the requirements in 40 CFR 61.242-1 to 40 CFR 61.242-11 and all other records as specified in cited section.

61.255 Owners or operators of facilities byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings. [Added]

See 40 CFR 61.25

61.276 Owners or operators with a storage vessel subject to the national emission standard for benezene emissions. [Added]

(a) To keep readily accessible records showing the dimensions of the storage vessel and an analysis showing the capacity of the storage vessel.

Retention period: As long as the storage vessel is in operation.

(b) To keep records pertaining to closed vent system and control devices in a readily accessible location.

Retention period: 2 years.

80.27 Distributors, resellers, carriers, retailers, and wholesale purchaser-consumers of gasoline and alcohol blends volatility. [Added]

To maintain each invoice, loading ticket, bill lading, delivery ticket and other documents which accompany the shipment of such gasoline. Such documents shall be available for inspection by the Administrator or authorized representative during such period.

Retention period: 1 year.

82.13 Importers of certain chlorofluorocarbons (CFC's) and brominated compounds (halons) to reduce the risk of stratospheric ozone depletion. [Amended]

To maintain records on (a) the quantity of each controlled substances imported, either alone or in mixtures; (b) the quantity of each controlled substances were imported; (c) the port of entry through which the controlled substances passed; (d) the country from which the imported controlled substances were imported; the port of exit; and other information as specified in cited section.

Retention period: 3 years.

86.090-14 Small-volume manufacturers of light-duty vehicles, light-duty trucks, and heavy-duty engines subject to air pollution controls. [Added]

To maintain records of all the information required by 40 CFR 86-090-21.

86.090-24 Manufacturers of new motor vehicles and new motor vehicle engines subject to air pollution controls. [Added]

To maintain and make available to EPA Administrator upon request, the engineering evaluation, including any test data used to support the deletion of optional equipment from the test vehicles.

86.090-26 Manufacturers of light-duty vehicles subject to air pollution controls. [Added]

(a) To maintain and provide to EPA Administrator, a record of the rationale used in making for engine family, the mileage at which the engine-steam combination is stabilized for emission-data testing determination.

(b) To retain records of all information concerning all emission tests and maintenance, including vehicle alterations to represent other vehicle selections whenever a manufacturer intends to operate and test a vehicle which may be used for emission or durability data.

86.107-90 Manufacturers of petroleum-fueled and methanol-fuel light-duty vehicles and light-duty trucks. [Added]

(a) To maintain permanent records of results at the initiation and termination of each diurnal or hot soak in measuring hydrocarbon (hydrocarbons plus methanol as appropriate).

(b) For the methanol sample to maintain permanent records of the following: (1) The volumes of deionized water introduced into each impinger; (2) the rate and time of sample collection; (3) the volumes of each sample introduced into the gas chromatograph; (4) the flow rate of carrier gas through the carrier; and (5) the chromatogram of the analyzed sample.

86.142-90 Manufacturers of 1977 and later motor year new light-duty vehicles and new light-duty trucks subject to emission test procedures. [Added]

To maintain for each test: (a) Test number; (b) system or device tested (brief description); (c) date and time of day for each part of the test schedules; (d) instrument operated; (e) driver or operator; (f) vehicle ID number, manufacturer, model year, standard, engine family, evaporative emissions family, basic engine description; and such other information as cited in section.

86.605 Manufacturers of new gasoline-fueled and diesel light-duty vehicles and new gasoline-fueled and diesel light-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations. [Amended]

To maintain general and individual records relating to vehicle emission tests performed pursuant to test orders as specified in the section cited.

Retention period: 1 year after completion of tests.

86.608-88 Manufacturers of new gasoline-fueled and diesel light-duty vehicles and new gasoline-fueled and dieseled light-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations. [Added]

To maintain equivalency documentation if using an equivalent method when measuring the

temperature of the test fuel at other than the approximate mid-volume of the fuel tank and when draining the test fuel from other than the lowest point of the tank.

Retention period: 1 year after completion of all testing in response to a test order.

86.1005-84 Manufacturers of new gasoline-fueled and diesel heavy-duty vehicles and new gasoline-fueled and diesel heavy-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations. [Redesignated as 86.1005-88 and amended]

To maintain general and individual records relating to vehicle emission tests performed pursuant to test orders as specified in the section cited.

Retention period: 1 year after completion of tests.

86.1005-90 Manufacturers of new petroleum-fueled or methanol-fueled heavy duty or engine or light-duty trucks. [Added]

To maintain testing and auditing records as specified in section cited.

Retention period: 1 year after completion of all testing in response to a test order.

86.1008-88 Manufacturers of new gasoline-fueled and diesel heavy-duty vehicles and new gasoline-fueled and diesel heavy-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations. [Added]

See 40 CFR 86.608-88.

86.1008-90 Manufacturers of new petroleum-fueled or methanol-fueled heavy-duty engines or light-duty trucks. [Revised]

To maintain and make available to the EPA Administrator upon request, equivalency test documentation.

86.1242-90 Manufacturers of new gasoline-fueled and methanol-fueled heavy duty vehicles. [Added]

See 40 CFR 86.142-90.

122.21 Persons holding or applying for permits to discharge wastes pursuant to the national pollutant discharge elimination program. [Amended]

To maintain records of all information resulting from monitoring activities and relating to all sludge-related application data and other such information as indicated in section cited.

Retention period: 5 years (or longer as required by 40 CFR Part 403), except for records of monitoring information- 3 years.

142.14 State agencies having primary enforcement responsibilities over public water. [Revised]

To maintain records of tests, measurement, analyses, decisions, and determinations performed on each public water system to determine compliance with applicable provisions of State primary drinking water regulations.

Retention period: (a) Records of turbidity measurements-for less than 1 year; (b) records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness and applicable reporting requirements-not less than 1 year; (c) records of decisions-40 years or until 1 year after the decision is reversed or revised; (d) records of any determination that a public water system supplied by a surface water source or a ground water source under the direct influence of surface water is not required to provide filtration treatment-40 years or until withdrawn; (e) records of analyses for contaminants other than microbiological contaminants (including total coliform, fecal coliform, and hetertrophic plate concentration, other parameters necessary to determine disinfection effectiveness (including temperature and pH measurements) and turbidity- 40 years; (f) records of microbiological analyses of repeat or special samples-1 year in the form of actual laboratory reports or in an appropriate summary form; and (g) records of decisions made pursuant to the total coliform provisions of 40 CFR Part 141-5 years.

160.29 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA. [Revised]

To maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

Retention period: 5 years.

160.63 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA. [Revised]

To maintain written records of all inspection, maintenance, testing, calibrating, and/or standardizing operations. Also to maintain written records of nonroutine repairs performed on equipment as a result of failure and malfunction.

Retention period: 2 years.

160.81 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA. [Added]

To maintain historical file of standard operating procedures and all revisions thereof, including the dates of such revisions.

Retention period: In accordance with 40 CFR 160.195.

160.120 Testing facilities conducting studies that support applications for a research or marketing permits for pesticides regulated by EPA. [Added]

To maintain with the protocol records of all changes in or revisions of an approved protocol and the reasons therefore.

Retention period: In accordance with 40 CFR 160.195.

160.195 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA. [Added]

(a) To maintain documentation records, raw data, and specimens pertaining to a study and required to be retained.

Retention period: (1) In the case of a study used to support an application for a research or marketing permit approved by EPA, the period during which the sponsor holds any research or marketing permit to which the study is pertinent.(2) A period of at least 5 years following the date on which the results of the study are submitted to the EPA in support of an application for research marketing year. (3) In other situations (e.g. where the study does not result in the submission of the study in support of an application for a research or marketing permit), a period of at least 2 years following the date on which the study is completed, terminated, or discontinued.

(b) Wet specimens, samples of test, control, or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability land quality during storage shall be retained only as long as the quality of the preparation affords evaluation.

(c) To maintain the master schedule sheet, copies of protocols and records of quality assurance inspections in accordance with 40 CFR 160.195(b).

(d) To maintain summaries of training and experience and job description in accordance with 40 CFR 160.195(b).

259.54 Generators of medical waste, including generators of less than 50 pounds per months. [Added]

(a) To keep a copy of each tracking form signed in accordance with 40 CFR 259.52

Retention period: For at least 3 years from the date the waste was accepted by the initial transporter.

(b) To retain a copy of all exception reports required to be submitted under 40 CFR 259.55.

(c) To maintain a shipment log at the original generation point.

Retention period: For a period of 3 years from the date the waste was shipped.

(d) To maintain a shipment log at each central collection point and other such records as specified in cited section.

Retention period: For a period of 3 years from the date that regulated medical waste was accepted from each original generation point.

259.76 Transporters of medical waste. [Added]

To retain a copy of each tracking form in accordance with 40 CFR 259.77.

259.77 Transporters of regulated medical waste. [Added]

(a) To keep a copy of the tracking form signed by the generator, himself, the previous transporter (if applicable), and the next party, which may be one of the following: Another transporter or the owner or operator of an intermediate handling facility, or destination facility.

Retention period: For a period of 3 years from the date the waste was accepted by the next party.

(b) For regulated medical waste that is not accompanied by a generator—initiated tracking form, to retain a copy of all transporter-initiated tracking forms and consolidation logs.

Retention period: For a period of 3 years from the date the waste was accepted by the transporter.

(c) For any regulated medical waste that was received by the transporter accompanied by a tracking form and consolidated by a tracking form and consolidated or remanifested by the transporter to another tracking form, to retain (1) a copy of the generator-initiated tracking form signed by the transporter; (2) a copy of the transporter-initiated tracking form signed by the intermediate handler or destination facility.

Retention period: (1) 3 years from the date the waste was accepted by the transporter; and (2) 3 years from the date the waste was accepted by the intermediate handler or destination facility.

(d) To retain a copy of each transporter report required by 40 CFR 259.78.

Retention period: 3 years after the date of submission.

259.81 Owners or operators of facilities including destination and intermediate facilities receiving regulated medical waste generated in a Covered State.[Added]

(a) To retain a copy of each tracking form in accordance with 40 CFR 259.83

(b) To retain a copy of the tracking form or shipping papers if signed in lieu of the tracking form.

Retention period: For at least 3 years from the date of acceptance of the regulated medical waste.

259.83 Owners or operators of destination facilities or intermediate handlers receiving regulated medical waste generated in a Covered State.[Added]

(a) To maintain (1) copies of all tracking forms and logs; (2) the name and State permit or identification number of each generator who delivered waste to the destination facility or intermediate handler, if the State does not issue permit or identification numbers then the generator's address; and (3) copies of all discrepancy reports.

(b) To maintain the following information for each shipment of regulated medical waste accepted: (1) The date the waste was accepted; (2) the name and State permit or identification number of the generator who originated shipment. If the State does not issue permit or identification numbers, then the generator's address; (3) the total weight of the regulated medical waste accepted from the originating generator; and (4) the signature of the individual accepting the waste.

Retention period: 3 years from the date the waste was accepted.

259.90 Persons engaged in rail transportation of regulated medical waste generated in a Covered State. [Added]

To retain a copy of the tracking forms and rail shipping papers in accordance with 40 CFR 259.77.

501.15 Applicants for the State sludge management program. [Added]

To maintain records of all data used to complete permit applications and any supplemental information.

Retention period: 5 years from the date the application is signed or as required by 40 CFR Part 503.

501.15 Persons holding permits under the State Sludge Management Program. [Added]

To retain records of all monitoring information, copies of all reports required by the permit, and records of all data used to complete the application for the permit.

Retention period: At least 5 years from the date of the sample, measurement, report or application, or longer as required by 40 CFR Part 503. This period may be extended by request of the Director at any time.

721.17 Manufacturers, importers, and processors of chemical substances which EPA has determined are significant new uses under certain provisions of the Toxic Substances Control Act. [Added]

To maintain documentation of information contained in that person's significant new use notice.

Retention period: For a period of 5 years from the date of the submission of the significant new use notice.

721.72 Manufacturers, importers, and processors of substances; significant new use rules. [Added]

To maintain records documenting establishment and implementation of a hazard communication program. The hazard communication program will, at a minimum, describe how the requirements of this section for labels, MSDs, and other forms of warning material will be satisfied.

Retention period: 5 years from the date of creation.

721.125 Manufacturers, importers, and processors of substances; significant new use rules. [Added]

(a) To maintain records documenting the manufacture and importation volume of the substance and the corresponding dates of manufacture and import.

(b) To maintain records documenting volumes of the substance purchased in the United States by processors of the substance, names, and addresses of suppliers, and corresponding dates of purchases.

(c) To maintain records documenting establishing and implementation of a program for the use of any applicable personal protective equipment required under 40 CFR 721.63.

Retention period: 5 years from the date of their creation.

721.557 Manufacturers, importers, and processors of mixture of 1, 3-benzenediamine, 2-methyl-4,6-bis (methylthio)- and 1,3- benzenediamine, 4-methyl-2,6-bis (methylthio); significant new uses; Toxic Substances Control Act. [Added]

In addition to the requirements of 40 CFR 721.17, to maintain the following records: (a) Any determination that gloves are impervious to the substance; (b) names of persons who have attended safety meetings; the dates of such meetings, and copies of any written information provided; copies of any MSDs used, names and addresses of all persons to whom the PMN substance is sold or transferred including shipment destination address if different, the date

of each sale or transfer, and the quantity of substance sold or transferred on such date; copies of any labels used; and other information as specified in cited section.

Retention period: 5 years after the date the records are created.

761.180 Owners or operators of facilities used to dispose of PCBs. [Amended]

To maintain annual records on disposal, storage, chemical waste landfills, incineration, high efficiency broilers, and other documentation as specified in section.

Retention period: 3 years; chemical waste landfill data 20 years.

761.209 Transporters of PCB waste. [Added]

To maintain a copy of the manifest signed by the generator, transporter, and the next designated transporter, if applicable, or the owner or operator of the designated commercial storage or disposal facility.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

761.209 Generators of PCB waste. [Added]

To keep a copy of each manifest signed until a signed copy from the designated commercial storage or disposal facility which received the PCB waste is received.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

761.209 Water (bulk shipment) transporters of PCB waste. [Added]

To retain a copy of the shipping papers for shipments of PCB waste delivered to designated commercial storage or disposal facility by water (bulk shipment).

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

761.209 Initial rail transporters of PCB waste. [Added]

To maintain a copy of the manifest and the shipping paper required to accompany the PCB waste.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended during the course of any outstanding enforcement action regarding the regulated activity.

761.209 Final rail transporters of PCB waste. [Added]

To keep a copy of the signed manifest, or the required shipping paper if signed by the designated facility in lieu of the manifest.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

760.218 Disposal facilities, generators and commercial storers of PCB waste. [Added]

To keep a copy of each Certificate of Disposal.

Retention period: See 40 CFR 761.180.

763.178 Persons producing an asbestos-containing product that is subject to a labeling requirements. [Added]

To maintain a copy of the label used in compliance.

Retention period: 3 years after the effective date of the ban on distribution in commerce for the product which the labeling requirements apply.

763.178 Persons producing an asbestos-containing product that is subject to a manufacture, importation and/or processing ban. [Added]

To maintain the results of the inventory for the banned product.

Retention period: 3 years after the effective date of the ban on manufacture, importation, and processing.

763.178 Persons whose asbestos-producing activities are subject to the manufacture, importation, processing and distribution in commerce bans. [Added]

To maintain all commercial transactions regarding the product including the date of purchases and sale and the quantities purchased or sold.

Retention period: 3 years after the effective date of the ban on distribution in commerce for a product.

792.29 Toxic substances control testing facilities. [Revised]

To maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

Retention period: 10 years.

792.31 Toxic substances control testing facility management. [Revised]

To document and maintain such action as raw data, records on the replacement of the study director if it becomes necessary to do so during the conduct of a study.

Retention period: 10 years.

792.33 Toxic substances control testing facilities study directors.[Revised]

To maintain and verify (a) all experimental data, including observations of unanticipated responses of test systems; (b) notes on unforseen circumstances that may affect the quality and integrity of the study when they occur; and (c) documentation of the corrective action taken.

Retention period: In accordance with 40 CFR 792.195.

792.35 Toxic substances control testing facility quality assurance units. [Revised]

To maintain a copy of a master schedule sheet of all studies conducted at the testing facility; copies of all protocols pertaining to all studies for which the unit is responsible; and copies of written and properly signed records of each periodic inspection.

Retention period: Indefinitely.

792.63 Toxic substances control testing facility quality assurance units. [Revised]

To maintain records of all inspection, maintenance, testing, calibrating, standardizing operations, and nonroutine repairs performed on equipment as a result of failure and malfunction.

Retention period: 10 years.

792.81 Toxic substances control testing facilities. [Revised]

To maintain a historical file of standard operating procedures and all revisions thereof, including the dates of such revisions.

Retention period: In accordance with 40 CFR 792.195.

792.90 Toxic substances control testing facilities. [Revised]

To maintain as raw data documentation of the analyses of feed and water used for the animals to ensure that contaminants known to be capable of interfering with the study and reasonably expected to be present in such feed or water are not present at levels above those specified in protocol and to maintain documentation of any use of pest control materials.

Retention period: In accordance with 40 CFR 792.195.

792.105 Toxic substances control testing facilities. [Revised]

(a) For each batch, to maintain documentation on the indentity, strength, purity, and composition or other characteristics which will appropriately define the test or control substance.

(b) To maintain documentation on the methods, fabrication, or derivation of the test and control substances.

(c) For studies of more than 4 weeks' duration, to reserve samples from each batch of test-control substances.

Retention period: In accordance with 40 CFR 792.195.

792.185 Sponsors and toxic substances control testing facilities.[Revised]

For each study, to maintain a copy of the final report and of any amendments to it.

Retention period: In accordance with 40 CFR 792.195.

792.190 Toxic substances control testing facilities. [Added]

(a) To maintain all raw data, documentation, records, protocols, specimens, and final reports generated as a result of a study.

(b) To maintain correspondence and other documents relating to interpretation and evaluation of data, other than those documents contained in the final report.

Retention period: See 40 CFR 792.195.

792.195 Toxic substances control testing facilities-retention period. [Added]

(a) Documentation records, raw data, and specimens pertaining to a study and required to be retained by 40 CFR Part 792 shall be retained in the archive(s) for a period of at least 10 years following the effective date of the applicable final test rule.

(b) In the case of negotiated testing agreement, documentation records, raw data, and specimens pertaining to a study and required to be retained by 40 CFR Part 792 shall be retained in the archive(s) for a period of at least 10 years following the publication date of the acceptance of a negotiated test agreement.

(c) In the case of testing submitted under section 5, documentation records, raw data, and specimens pertaining to a study and required to be retained under 40 CFR Part 792 shall be retained in the archive(s) for a period of at least 5 years following the date on which the results of the study are submitted to the agency.

(d) Wet specimens, samples of test, control or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability and quality during storage shall be retained only as long as the quality of the preparation affords evaluation. Specimens obtained from mutagenicity tests, specimens of soil, water-plants, and wet specimens of blood, urine, feces, biological fluids, do not need be retained after quality assurance verification.

(e) Master schedule sheet, copies of protocols, records of quality assurance inspections, summaries of training, experience and job description, and records and reports of the maintenance and calibration shall be retained for the length of time specified in 40 CFR 792.195(b).

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

42 CFR

50.013 PHS awardees and applicant institutions for dealing with and reporting possible misconduct in science. [Added]

To maintain sufficiently detailed documentation of inquiries to permit a later assessment of the reasons for determining that an investigation was not warranted.

Retention period: For a period of at least 3 years after the termination of the inquiry and shall, upon request, be provided to authorized HHS personnel.

Health Care Financing Administration

42 CFR

405.1101-405.1137 Skilled nursing facilities which have filed agreements to participate in the health insurance for the aged and disabled program. [Removed]

405.1201-405.1230 Home health agencies which have filed agreements to participate in the health insurance for the aged and disabled program. [Redesignated as Part 484]

433.322 State Medicaid agencies. [Added]

To maintain separate records of all overpayment activities for each provider in a manner that satisfies the retention and access requirements of 45 CFR Part 74, Subpart D.

435.945 State agencies participating in Medicaid program. [Added]

To retain a record of all information items received, including those not followed up. Such records shall be made available for quality control review purposes.

Part 442, Subparts F Institutions providing skilled nursing and intermediate care facility services under a State plan for medical assistance. [Removed]

483.10 Long term care facilities participating in Medicare and Medicaid. [Added]

To maintain records that assure full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

Retention period: See 42 CFR 483.75.

483.12 Long term care facilities participating in Medicare and Medicaid. [Added]

To maintain in the resident's clinical records, documentation of the transfer or discharge of the resident.

Retention period: See 42 CFR 483.75.

483.60 Long term care facilities participating in Medicare and Medicaid. [Added]

To maintain records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation.

Retention period: See 42 CFR 483.75.

483.65 Long term care facilities participating in Medicare and Medicaid. [Added]

To maintain records of incident and corrective actions related to infections.

Retention period: See 42 CFR 483.75.

483.75 Long term care facilities participating in Medicare and Medicaid. [Added]

To maintain clinical records that contain (a) sufficient information to identify the resident; (b) resident's assessments; (c) the plan of care and services provided; (d) the results of a preadmission screening conducted by the State; and (e) progress notes.

Retention period: The period of time required by State laws; or 5 years from the date of discharge when there is no requirement in State law; or for a minor, 3 years after a resident reaches legal age under State law.

484.10 Home health agencies; medical programs. [Added]

To maintain documentation showing compliance with patient rights requirements.

484.36 Home health agencies; medicare program. [Added]

To maintain documentation which demonstrates that the competency evaluation standards are met.

484.48 Home health agencies; medical records. [Added]

To maintain for every patient receiving home health services, clinical records containing past and current findings in accordance with accepted professional standards. In addition to the plan of care, the records contain appropriate identifying information; name of physician; drug, dietary, treatment and activity orders; signed and dated clinical and progress notes; copies of summary reports sent to the attending physician; and a discharge summary.

Retention period: 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. Policies provide for retention even if the HHA discontinues operations. If a patient is transferred to another health facility, a copy of the record or abstract is sent with the patient.

INTERIOR DEPARTMENT

Office of the Secretary

43 CFR

17.323 Recipients of Federal financial assistance from DOI. [Added]

To keep records in a form and containing information which Department of the Interior determines may be necessary to ascertain whether compliance of the Act has been met.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR

206.16 Persons requesting funds under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. [Added]

To maintain all books, documents, papers, and records relating to any activity undertaken or funded under the Stafford Act.

220.18 States implementing temporary relocation assistance under the Superfund Program. [Added]

To maintain adequate documentation to enable analysis of the program in accordance with regulations, manuals, handbooks, and guidance.

Retention period: Not specified.

HEALTH AND HUMAN SERVICES DEPARTMENT

Office of Family Assistance

45 CFR

250.76 State IV-A agencies participating in the Job Opportunities and Basic Skills Training Program. [Added]

To maintain financial records and accounts.

Retention period: Not specified.

250.82 State IV-A agencies participating in the Job Opportunities and Basic Skills Training Program. [Added]

To maintain an individual case record for each JOB participant.

Office of Child Support Enforcement

45 CFR

303.11 Child support enforcement (IV-D) agencies. [Added]

To retain all records for cases closed.

Retention period: For a minimum of 3 years in accordance with 45 CFR Part 74, Subpart D.

TRANSPORTATION DEPARTMENT

Coast Guard

46 CFR

160.176-17 Manufacturers of inflatable lifejackets. [Added]

To keep records required by 46 CFR 159.007-13. Such records must also include (a) for each test, the serial number of the test instrument used if there is more than one available; (b) for each test and inspection, the identification of the samples used, the lot number, the approved number, and the number of lifejackets in the lot; (c) for each lot rejected, the cause for rejection, any corrective action taken, and the final disposition of the lot; (d) records of all materials used in production and other such information as specified in cited section.

Retention period: 120 months after preparation.

160.176-19 Inflatable lifejacket servicing facilities. [Added]

To maintain records of all completed servicing. Such records must include at least the following: (a) Date of servicing, number of lifejackets serviced, lot identification of the person conducting the servicing; (c) identity of the vessel receiving the serviced lifejackets; and (d) date of return to the vessel.

Retention period: For at least 5 years after records are made and records must be made available to any Coast Guard representative and independent laboratory inspection upon request.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR

2.954 Importers or manufacturers of radio frequency equipment subject to verification. [Added]

To maintain adequate identification records to facilitate positive identification for each verified device.

Retention period: Not specified.

2.955 Manufacturers (or importers of radio frequency equipment subject to verification). [Amended]

To maintain records of the original design drawings and specifications and of the procedures used for production, inspection, and testing. To also maintain a record of the measurements made on appropriate test site that demonstrates compliance with applicable records. The record shall identify the measurement procedure that was used and shall include all the data required to show compliance with the appropriate regulations, and other records as specified in cited section.

Retention period: 2 years.

2.975 Manufacturers (or importers) of radio frequency equipment subject to verification. [Added]

To maintain records of measurement datas, measurement procedures, photographs, circuit diagrams, etc. for the device to which the application applies.

Retention period: 2 years after the manufacturer of said equipment has been permanently discontinued, or until the conclusion of an investigation or proceeding if the holder of the grant of equipment authorization is officially notified that an investigation or any other administrative proceeding involving the equipment has been instituted.

15.201 Holders of grants of certifications for perimeter protection systems operatingf in the frequency bands allocated to television broadcast stations. [Added]

To maintain a list of all installations and records of measurements.

Retention period: Not specified.

15.312 Holders of grants of authorization of perimeter protection systems. [Removed; record retention requirements now in 15.201]

97.5 Licensees of amateur radio stations. [Added]

To maintain at the station the original written authorization document or photocopy which authorizes the use in accordance with the FCC rules of all transmitting apparatus under the physical control of the station licensee

at points where the amateur service is regulated by the FCC.

97.28 Persons administering examinations for amateur station operator licensees. [Removed]

97.36 Volunteer examiner coordinators and volunteer examiners preparing, processing or administering examinations for amateur station operator licenses.[Removed; record retention requirements now in 97.527]

97.71 Licensees of amateur radio service. [Removed; record retention requirements now in 97.311]

97.82 Licensees of amateur radio stations. [Removed]

97.83 Licensees of amateur radio stations. [Removed]

97.88 Licensees of amateur radio stations. [Removed]

97.90 Licensees of amateur radio stations. [Removed]

97.103 Licensees of amateur radio stations. [Added]

When deemed necessary by an Engineer in Charge (EIC) to assure compliance with the FCC rules, to maintain a record of station operations containing such items of information as the EIC may require in accordance with 47 CFR 0.314(x) of the FCC rules.

97.311 Licensees of amateur radio stations. [Added]

To maintain records documenting all SS emission transmissions. Such records must include sufficient information to enable the FCC using the information contained therein, to demodulate all transmissions.

Retention period: 1 year following the last entry.

97.527 Volunteer examiners and volunteer examiner coordinators preparing, processing, or administering examinations for amateur station operator licenses. [Added]

To maintain records of out-of-pocket expenses and reimbursement for each examination session.

Retention period: 3 years.

GENERAL SERVICES ADMINISTRATION

48 CFR

52.215-2 Contractors having cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contracts. [Amended]

(a) To maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract.

(b) To maintain books, records, documents and other data (including computations and projections) related to negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data.

Retention period: 3 years after final payment or for any shorter period as specified in 48 CFR Subpart 4.7, or for any longer period required by statute or by other clauses of the contract. If the contract is completely or partially terminated, the records relating to the work terminated shall be retained for 3 years after any resulting final termination settlement; and records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the claims shall be retained until such appeals, litigation, or claims are disposed of.

52.222-41 Contractors and subcontractors performing work subject to the Service Contract Act of 1965, as amended. [Added]

To maintain the following records for each employee subject to the Act: (a) Name and address and social security number; (b) correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensaitons; (c) daily and weekly hours worked by each employee; (d) any deductions, rebates, or refunds from the total daily or weekly compensation of each employee; and other such information as specified in cited section.

Retention period: 3 years from the completion of the work. Such records shall be made available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration.

52.222-43 Contractors subject to the Fair Labor Standards Act and Service Contract Act-price adjustment (multiple year and option contracts). [Added]

To maintain any directly pertinent books, documents, papers, and records.

Retention period: Until the expiration of 3 years after final payment under the contract.

DEFENSE DEPARTMENT

48 CFR

252.222.7000 Contractors with fixed price contracts containing potential application of the Service Contract Act, as amended clause. [Removed]

GENERAL SERVICES ADMINISTRATION

48 CFR

552.222-85 Contractors having fixed-price service contracts containing the Fair Labor Standards Act and Service Contract Act—price adjustment clause. [Removed]

552.222-86 Contractors having fixed-price contracts containing the Fair Labor Standards Act and Service Contract Act—price adjustment (multi-year and option contracts) clause. [Removed]

552.246-73 Contractors having contracts for supplies when such contracts contain source inspection clause. [Revised; record retention requirements now in 552.246-72]

552.246-72 Contractors having contracts for supplies when such contracts contain source inspection clause. [Redesignated from 552.246-43 and revised]

To maintain at the point for source inspection, records showing for each order received under the contract: (a) Order number; (b) date order received; (c) quantity ordered; (d) date scheduled into production; (e) batch or lot number, if applicable; (f) date inspected and/or tested; (g) date available for shipment; and (h) date shipped or date service completed; and (i) National Stock Number (NSN), or if none is provided in the contract, the applicable item number of oother contractual identification.

Retention period: At least 12 months after contract performance is completed.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR

1852.222-41 Contractors and subcontractors performing work subject to the Service Contract Act of 1965, as amended (April 1984). [Added]

To maintain records containing the following information for each employee subject tot he Act: (a) Name and address and social security number of each employee; (b) correct work classification or declassifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee; (c) number of daily and weekly hours so worked by each employee; (d) any deductions, rebates, or funds from the total daily or weekly

compensation of each employee; and (e) a list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representatives.

Retention period: 3 years from the completion of the work.

1352.222-43 Contractors having contracts containing the Fair Labor Standards Act and Service Contract Act-Price Adjustment (April 1984) clause. [Added]

To maintain any directly books, documents, papers, and records.

Retention period: 3 years after final payment under the contract.

1352.245-71 Contractors having contracts containing installation—provided Government property (March 1989) clause. [Revised]

To maintain records of all items of installation-provided Government property including copies of all transaction documents used to describe changes to the record. The record and transaction documentation shall be maintained in such a condition that at any stage of completion of work under the contract, the status of the property including location, utilization, consumption rate, and identification can be readily ascertained.

Retention period: Not specified.

TRANSPORTATION DEPARTMENT

Office of the Secretary

49 CFR

24.9 State and local agencies participating in the uniform relocation assistance and real property acquisition Federal and federally assisted programs. [Amended]

To maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with applicable regulations.

Retention period: For at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

40.29 Drug testing laboratories.[Revised]

To maintain all records pertaining to a given urine specimen. Such records shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records; performance testing; performance on certification inspection; and hard copies of computer-generated data.

Retention period: 2 years-may be extended upon written notification by a DOT agency or by any employer for which laboratory services are being provided. Documents for any specimen known to be under legal challenge shall be maintained for an indefinite period. Records shall be maintained in confidence.

Research and Special Programs Administration

49 CFR

107.504 Registrants engaging, manufacturing, assembling, certifying, inspecting or repairing cargo tanks or cargo tank motor vehicles. [Added]

To maintain a current copy of the registration information submitted to the Department and a current copy of the registration number identification received from the Department.

Retention period: During such time the person is registered with the Department and for 2 years thereafter.

171.16 Motor carriers transporting hazardous materials. [Added]

To maintain a copy of the detailed hazardous materials incident reports.

Retention period: 2 years at the carriers' principal place of business, or at other places as authorized and approved in writing by an agency of the Department of Transportation.

177.814 Owners of cargo tank motor vehicles and motor carriers. [Revised]

To maintain cargo tank motor vehicle manufacturer's certificate and other records.

Retention period: See 40 CFR 180.417.

178.320 Manufacturers of DOT specifications cargo tank motor vehicles. [Added]

To retain the design certificate at principal place of business.

Retention period: As long as the manufacturer manufactures DOT specification cargo tanks.

180.405 Owners of MC 331 cargo tanks. [Added]

To maintain at principal place of business a copy of the last exemption in effect that authorizes the transportation of ethane, refrigerated liquid, or ethane-propane mixture, refrigerated liquid, or hydrogen chloride, refrigerated liquid.

Retention period: During the period the cargo tank is in service.

180.405 Owners of DOT specification cargo tank motor vehicles. [Added]

To maintain the certificate that is withdrawn because the cargo tank is not in conformance with the applicable specification requirements.

Retention period: At least 1 year after withdrawal of the certification.

180.409 Inspectors and testers.[Added]

To maintain a copy of the tester's qualifications with the documents required by 49 CFR 180.417(b).

180.413 Owners of cargo tanks. [Added]

To maintain at place of business all records of repairs or modifications made to each tank.

Retention period: During the time the tank is in service and for 1 year thereafter.

180.417 Owners and motor carriers of cargo tanks. [Added]

To retain a copy of the test and inspection reports.

Retention period: Until the next test inspection of the same type is successfully completed.

180.417 Motor carriers using specification cargo tanks. [Added]

To retain the certificate that determines that the cargo tank conforms with the applicable specifications.

Retention period: As long as the cargo tank is used and for 1 year thereafter.

180.417 Owners of cargo tanks. [Added]

To maintain the manufacturer's data report or certificate and related papers certifying that the cargo tank identified in the documents was manufactured and tested in accordance with the applicable specification.

Retention period: Throughout ownership of the cargo tank and for 1 year thereafter. In the event of change of ownership, the prior owner shall retain non-fading photocopies of these documents for at least 1 year.

180.417 Motor carriers who are not owners of cargo tanks. [Added]

To retain a copy of the vehicle identification report at principal place of business.

Retention period: For as long as the cargo tank motor vehicle is used by that carrier and for 1 year.

199.7 Operators of pipeline facilities, other than master meter systems, used for the transportation of natural gas or hazardous liquids and operators of liquefied natural gas (LNG) facilities. [Revised]

To maintain and follow a written anti-drug plan that conforms to applicable requirements and the DOT Procedures.

Federal Railroad Administration

49 CFR

219.503 Railroad companies. [Revised]

To retain record of pre-employment drug screening tests.

Retention period: 2 years from date of testing.

219.607 Railroad companies. [Removed; record retention requirements now in 219.713]

219.713 Railroad companies. [Added]

(a) To retain records of each test conducted that is reported as positive by the Medical Review Officer, including drug testing custody and control forms, laboratory reports, and certification statements.

Retention period: 2 years from date of sample collection; records of negative reports- 1 year.

(b) To maintain summary records of employee records of employee alcohol and drug test results conducted and rehabilitation (including primary treatment, aftercare, and follow-up alcohol/drug testing) for each covered employee.

Retention period: 5 years.

National Highway Traffic Safety Administration

49 CFR

580.8 Dealers, distributors, and lessors of motor vehicles subject to the Truth in Mileage Act of 1988. [Amended]

(a) Dealers and distributors: To maintain a photostat, carbon, or other facsimile copy of each odometer mileage statement issued and received. To also retain a photostat, carbon, or other facsimile copy of each power of attorney that they receive.

(b) Dealers and distributors who are granted a power of attorney by their transferor: To retain all powers of attorney at their primary place of business in order that is appropriate to business requirements and thatr permits systematic retrieval.

Retention period: 5 years.

(c) Lessors: To retain each odometer disclosure statement which they receive from a lessee.

Retention period: 5 years following the date they transfer ownership of the leased vehicle.

592.6 Registered importers of vehicles not originally manufactured to conform to the Federal Motor Vehicle Safety Standards. [Added]

To establish and maintain organized records, correspondence, and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator.

Retention period: 8 years from the date of entry of any nonconforming vehicle for which it furnishes a certificate of conformity.

INTERSTATE COMMERCE COMMISSION

49 CFR

1152.32 Railroad companies. [Added]

To maintain records of the number of hours that each type of locomotive incurred in serving the segment during the subsidy period.

INTERIOR DEPARTMENT

Fish and Wildlife Service

50 CFR

21.12 State wildlife agencies, municipal parks, and public scientific or educational institutions possessing migratory birds. [Amended]

To maintain accurate records showing the numbers and kinds of such birds acquired, possessed, and disposed of; the names and addresses of persons from whom received or to whom delivered, and the dates of such transactions.

Retention period: 5 years following the end of the calendar year covered by the records.

21.27 Holders of special purpose permit issued for activities related to migratory birds, their parts, nests, or eggs. [Added]

To maintain adequate records describing the conduct of the permitted activity, the number and species of migratory birds acquired and disposed of under the permit, and inventorying and identifying all migratory birds held on December 31 of each calendar year. Records shall be maintained at the address listed on the permit; shall be in, or reproducible in English; and shall be available for inspection by Service personnel during regular business hours.

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

50 CFR

229.6 Exemption Certificate holders; commercial fishing operations. [Added]

To maintain on board the fishing vessel, a daily log of fishing effort and incidental takes of marine mammals in such form as prescribed by the Assistant Administrator for Fisheries.

301.14 Operators of vessels five (5) net tons or greater engaged in halibut fishing. [Revised]

To maintain an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and the total weight of halibut taken daily in each locality.

Retention period: 2 years.

301.15 Operators of vessels engaged in commercial fishing for halibut. [Revised]

To maintain a record of each such purchase or receipt of halibut on State fish tickets or Canadian Federal catch report, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut when halibut are delivered to other than a commercial fish processor or primary fish buyer.

Retention period: 2 years from the date the fish tickets are made.

301.15 Persons purchasing or receiving halibut. [Added]

To maintain records of each such purchase or receipt on State fish tickets or Canadian Federal catch report, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

Retention period: 2 years from the date the fish tickets were made.

380.6 Operators of vessels having harvesting or individual permits to import Antarctic marine living resources into the United States. [Added]

To accurately maintain on board the vessel, a fishing logbook and all other reports and records requested by the permit.

Retention period: Not specified.

380.8 Owners and operators of harvesting vessel; Antartic Marine Living Resources Convention Act of 1984. [Added]

To maintain all records and documents pertaining to the harvesting activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

Retention period: Not specified.

672.5 Operators of domestic fishing vessels and managers of shoreside processing facilities. [Added]

To maintain timely and accurate records, reports, and logbooks in a legible manner and in English and based on Alaska Local Time (ALT).

Retention period: Original copy of all logbooks must be retained on board the vessel or within the processing facility until the end of the fishing year and for as long after the end of the fishing year as fish or fish products recorded in the logbook are retained on board that vessel or at the processing facility.

675.5 Operators of vessels and managers of shoreside processing facilities. [Added]

See 50 CFR 672.5

BILLING CODE 1505-02-T

federal register

Friday
January 26, 1990

Part III

Department of Commerce

Foreign-Trade Zones Board

15 CFR Part 400
Foreign-Trade Zones in the United States; Proposed Rule

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Docket No. 21222-9299]

RIN 0625-AA04

Foreign-Trade Zones in the United States

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: The Foreign-Trade Zones Board (the Board) invites public comment on proposed amendments to its regulations. These amendments include further revisions to those proposed during 1983 (48 FR 7188, February 18, 1983; 48 FR 16502, April 18, 1983) based upon the comments received in response to the notice then given and a review of reports on foreign-trade zones issued since then by the General Accounting Office and International Trade Commission to the House Committee on Ways and Means (GAO/GGD-84-52, March 2, 1984; GAO/NSIAD-89-85, February 7, 1989; USITC Publication 1496, February 1984; USITC Publication 2059, February 1988). Also, included is a change based upon Sec. 231 of the Trade and Tariff Act of 1984 (Pub. L. 98-573, 98th Cong., October 30 1984, 98 Stat. 2991).

The changes are comprehensive and the proposed action constitutes a complete revision, replacing the present version of 15 CFR part 400. A new numbering system is used based upon the current guidelines on style of the Office of the Federal Register.

The revision involves some new rules, but most of the changes reflect practice which has evolved through interpretations and decisions by the Board and the Customs Service under their respective regulations. The more significant changes include the listing of definitive criteria and procedures for manufacturing activity and subzones. Also, the format for applications for zones and subzones has been revised to collect information required for analysis in fewer exhibits, and the procedure for filing and processing such applications has been simplified.

DATE: Comments on the proposed rule must be received on or before March 12, 1990.

ADDRESS: Comments (original and 6 copies) are to be addressed to John J. Da Ponte, Jr., Executive Secretary, Foreign-Trade Zones Board, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Room 2835, Washington, DC 20230. (202) 377-2862.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Assistant General Counsel for Import Administration, Room 3622, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. (202) 377-8916.

SUPPLEMENTARY INFORMATION:

Background

Foreign-Trade Zones (zones) are restricted-access sites in or near ports of entry, which are licensed by the Board and operated under the supervision of the Customs Service (See, 19 CFR part 146). Activated zone areas are considered outside of U.S. Customs territory for purposes of Customs entry procedures. Authority for establishing these facilities is granted to qualified corporations. Applications submitted to the Board for grants of authority must show the need for zone services and a workable plan that includes suitable facilities and financing.

Zones are operated under public utility principles. Grantees usually contract with private firms to operate facilities and provide services to zone users. Zones have as their public policy objective the creation and maintenance of employment through the encouragement of operations in the United States which, for Customs reasons, might otherwise have been carried on abroad. The objective is furthered particularly when zones assist exporters and reexporters, and usually when goods arrive from abroad in an unfinished condition for processing here rather than overseas.

Foreign and domestic merchandise may be moved into zones for operations not otherwise prohibited by law involving storage, exhibition, assembly, manufacture or other processing. The usual formal Customs entry procedure and payment of duties is not required on the foreign merchandise unless and until it enters Customs territory for domestic consumption, in which case the importer ordinarily has a choice of paying duties either on the original foreign material or the finished product. Quota restrictions do not normally apply to foreign goods stored in zones, but the Board can limit or deny zone use in specific cases on public interest grounds. Domestic goods moved into a zone for export may be considered exported upon entering the zone for purposes of excise tax rebates and drawback. "Subzones" are a special-purpose type of ancillary zone authorized by the Board, through grantees of public zones, for operations by individual firms that cannot be accommodated within an existing zone, when it can be demonstrated that the activity, usually manufacturing, is in the public interest. Goods which are in a zone for a *bona fide* Customs reason are exempt from State and local *ad valorem* taxes.

Since 1970 the number of ports of entry with zone projects has increased from 10 to 158, and the value of goods entering zones and subzones has increased from just over $100 million to over $50 billion, about 85 percent of which involves manufacturing activity. About 75 percent of the goods currently entering zones is of domestic origin and some $7 billion of the goods shipped from zones is exported.

The heightened interest in zones, both on the part of communities providing zone services as part of their economic development efforts, and firms using zone procedures to help improve their international competitiveness, is related to the increasing importance of international trade and investment to the domestic economy. While there has been little public controversy concerning the establishment of general-purpose zones, some proposals involving manufacturing have been opposed by domestic industry.

Firms interested in using zones for manufacturing have expressed a desire for greater access and flexibility in zone procedures to help them compete against imports of finished goods and increase their exports. Those opposing zone manufacturing operations have argued that zone procedures should be more restrictive for non-export operations.

In recent years, the Board and the Customs Service have tended to interpret their requirements to cooperate with communities in their economic development efforts. At the same time, the Board has been responsive to the concerns of domestic industry by adopting manufacturing review procedures and imposing restrictions when negative economic consequences are found.

Proposed changes are described in the following summary:

1. *Section 400.1.* This section on the "scope" of the regulations contains a summary statement on zone benefits to users.

2. *Section 400.2.* Definitions currently in §§ 400.100-400.110 have been consolidated under this single section, and there are some new terms. The definition of "zone" is revised to incorporate the concept that "approved" zone space remains a part of Customs territory until it is "activated" with

Customs approval. "Manufacturing" is defined for the first time.

3. *Section 400.11.* This section contains a statement of the Board's authority, the roles of the Chairman and Alternates, and the procedure for decision making (determinations). The new procedure does away with the Committee of Alternates, recognizing that the Alternates act for their principals under Departmental delegations of authority. This section replaces current §§ 400.200; 400.1300; 400.1302–400.1304; and 400.1306.

4. *Section 400.12.* This section on the Executive Secretary's role is expanded to include references to new delegations of authority regarding: "zone-restricted" merchandise (§ 400.44), retail trade (§ 400.45(b)(2)), subzone sponsorship (§ 400.22(d)(2)), and user-fee complaints (§ 400.42(b)(5)).

5. *Section 400.21.* This section describes port of entry "entitlement" to zones based upon the Act and the requirements for additional projects to those approved under the "entitlement" provision replacing current § 400.300–400.303. It also contains new interpretative rules as to port of entry "adjacency" requirements (§ 400.21(b)).

6. *Section 400.22.* This section contains state enabling legislation requirements for corporations applying for grants of authority, replacing current §§ 400.500–400.503. The subsection regarding the sponsorship of subzones (§ 400.22(d)) is new. It retains the preference for sponsorship by the closest zone, but offers a new option for possible sponsorship by state agencies based upon public interest considerations.

7. *Section 400.23.* This section outlines the criteria for approving zones and subzones, replacing §§ 400.400 through 400.403. While the subsection regarding subzone criteria is new it reflects practice in effect in recent years (§ 400.23(b)).

8. *Section 400.24.* This section revises the format for applications for establishing zones. The number of exhibits is reduced from 13 to 5, through consolidation. While some exhibits are described in more detail, the section is based mainly upon current practice, as the existing provisions have required guidance to make them relate to specific projects. The type of information required is clarified. It replaces current §§ 400.600–400.604, and 400.606.

9. *Section 400.25.* This is a new section regarding the application format for subzones, containing an outline of the special information required. The Executive Secretary would supplement the outline with guidelines detailing the information required for Board analysis.

10. *Section 400.26.* This new section describes the format for applications and requests for expansions and other modifications to zone projects. The format is simpler for minor changes that do not significantly modify the project approved by the Board.

11. *Section 400.27.* This section delineates procedures for reviewing and processing applications covered in §§ 400.24–400.26 for the establishment and major modifications of zone projects. Certain procedures are modified. The examiners committee currently appointed to investigate applications is being replaced by a single examiner with Customs and Army Engineer officials acting as advisors, submitting technical reports as appropriate. The section replaces current §§ 400.1307–400.1311.

12. *Section 400.28.* This new section lists standard conditions relating to grants of authority, and is intended to replace language that is contained in grants of authority. In furtherance of the Board's policy that zone projects should be activated within a reasonable time, a "sunset" provision would be adopted requiring they be activated within five years. Authority to erect buildings is covered, replacing current § 400.815. This condition recognizes that construction in zones is subject to the requirements of other federal, state and local agencies; and, that the Board's concern is not with construction *per se*, but rather with the type of activity carried on in new facilities. The condition prohibiting sale of the grant is more definitive, replacing current § 400.701.

13. *Section 400.29.* This section consolidates the procedure for revocation of grants of authority by the Board for cause currently in §§ 400.1201–400.1203. The procedure for revoking subzone grants is new. The provision on fines currently in § 400.1200 has been eliminated because it simply repeats the statutory provision (19 U.S.C. 81s).

14. *Section 400.31.* This is a new provision that delineates the factors considered by the Board in its "public interest" evaluation of manufacturing in zones as part of its review of applications or of ongoing activity. It organizes the factors into two categories according to their evidentiary importance in the decision process.

First listed are threshold factors which could result in the full or partial denial of an application, or the restriction or termination of ongoing activity. The "threshold provision" ((b)(1)) establishes a preliminary qualifying test for manufacturing reviews, which would precede consideration of the other more general economic factors of (b)(2).

The threshold provision would bar activity that is not consistent with public policy and U.S. trade programs, and also calls for a determination that the zone activity in question does not result in a net increase of imports of items whose duty rates would be reduced under zone procedures as a result of such a reduction (inverted tariff situations).

If the determinations as to the three threshold factors are positive, the review would proceed to determine the net economic effect ((c)(1)). While no specific levels or measurements are given, the listing of factors, combined with the proposed revisions regarding application format (§§ 400.24, 400.25), places a greater evidentiary burden on applicants for information and evidence to support their proposals.

Subsection (c)(4) addresses situations that involve the shift of manufacturing operations to the United States from abroad, frequently with high initial levels of foreign sourcing. The provision places a greater evidentiary burden on applicants for such transplant manufacturing operations. It will assist the Board in evaluating economic effect and in monitoring expected shifts to domestic sourcing.

Subsection (c)(5) codifies the Board's practice of giving evidentiary weight to the effects of small zone savings whose public interest significance is in contributing to overall cost reduction efforts.

Subsection (c)(6) places a greater evidentiary burden on subzone applicants by requiring them to carry the burden of proof as to the public interest with substantial evidence.

Subsection (d) adopts a new rule calling for periodic reviews of ongoing activity under the stated public interest criteria. A negative finding would give the Board grounds to restrict manufacturing authority and revoke subzone grants.

15. *Section 400.32.* This new section describes the procedures for reviewing requests for manufacturing authority, including situations arising after zones or subzones have been approved in which the Commerce Department's Assistant Secretary for Import Administration may make determinations.

16. *Section 400.33.* This new section refers to the Board's authority to adopt restrictions to manufacturing pursuant to the Act's "public interest" provisions, and delegates some authority to the Commerce Department's Assistant Secretary for Import Administration. A

specific restriction (§ 400.33(b)) provides that the effects of antidumping and countervailing duty orders may not be avoided by product transformation in zones.

17. *Section 400.42.* This section replaces current §§ 400.1000–400.1013, consolidating provisions on internal zone regulations, and schedules for fees applicable to zone and subzone users pursuant to the Act's public utility provisions. Paragraph (b)(5) deals with complaints relating to the reasonableness of zone rates, which are ordinarily filed without Board review in the absence of complaints. The Board's procedures are premised on the basis that published, uniform rates provide a reference for comparisons by zone users. Complaints to the Board are made when appropriate. The factors considered in reviewing the reasonableness of rates are described, including those applicable to subzones.

18. *Section 400.43.* This provision outlines the review procedure for "public interest" issues that do not involve manufacturing.

19. *Section 400.44.* This new section states the criteria and procedure for reviewing requests for permission to return "zone restricted" merchandise into Customs territory. The 4th proviso of § 3 of the Act (19 U.S.C. 81c) provides the basis for the recovery of excise taxes and drawback duties on goods held in zones for eventual export. Customs regulations (19 CFR part 146) provided a "zone restricted" status for such goods, which may be returned to Customs territory upon payment of any duties or taxes recovered, if the Board finds such a return to be in the public interest.

20. *Section 400.45.* This provision replaces current § 400.808, continuing the Act's prohibition of retail sales except as approved by the Board, but authorizing the District Director to approve certain limited sales and delegating certain authority to the Executive Secretary.

21. *Section 400.47.* This provision provides for appeals to the Board from decisions of the Commerce Department's Assistant Secretary for Import Administration made under delegated authority.

22. *Section 400.51.* This section consolidates the procedures applicable to hearings, replacing such sections as §§ 400.1309–400.1311; 400.1315–400.1320.

23. *Section 400.52.* This new section contains provisions on the location and maintenance of the official record kept on Board proceedings.

24. *Section 400.53.* This section consolidates and replaces the current provisions on public and proprietary information of §§ 400.1400–400.1406.

A number of sections on Customs operational matters have been eliminated (§§ 400.800–400.806; 400.808–400.814) because they are covered in the regulations of Customs Service 19 CFR part 146.

Authority

This revision is proposed under the authority of section 8 of the Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 1000; 19 U.S.C. 81h).

Comments

The period for the submission of comments will close March 12, 1990. All comments received during this period will be considered by the Board in developing the final regulations. Submissions (original and six copies) shall be in writing and shall not contain information of a proprietary nature, as they will be made available for public inspection and copying, with the exception of those submitted by other Federal agencies.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Written public comments on file at the facility may be inspected and copied in accordance with 15 CFR part 4.

Information about the inspection and copying of records at the facility may be obtained from Patricia L. Sears, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that an initial regulatory flexibility analysis is not required and has not been prepared because these regulations will not have a significant economic impact on a substantial number of small entities pursuant to sections 603 and 604 of title 5, United States Code, added by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There are some 150 zone grantees and 50 firms operating all or parts of zone facilities for grantees. Of some 2,100 firms using zones, about 600 use them on a full time basis. It is estimated that fewer than 100 small entities are included among the total firms using zones. The overall impact of the proposed rules should, in any case, be favorable because they will reduce the present regulatory burden on these parties by clarifying and simplifying procedures.

Executive Order 12291

This proposed rulemaking is not a major rule as defined in section 1(b) of E.O. 12291, because it involves changes to existing regulations that are likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

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

Paperwork Reduction Act

This rule contains information collection activities subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). It will impose no additional reporting or record keeping burden on the public. Existing requirements for zone applicants, grantees, operators, and users, are simplified and there is an overall reduction of the burden on these parties, which are the ones mainly affected (OMB Control Nos. 0625–0139 and 0625–0109).

List of Subjects in 15 CFR Part 400

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Foreign-trade zones, Harbors, Imports, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to revise 15 CFR part 400 as follows:

PART 400—REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD

Subpart A—Scope and Definitions

Sec.
400.1 Scope.
400.2 Definitions.

Subpart B—Foreign-Trade Zones Board

400.11 Authority of the Board.
400.12 Authority of the Executive Secretary.
400.13 Board headquarters.

Subpart C—Establishment and Modification of Zone Projects

400.21 Number and location of zones and subzones.
400.22 Eligible applicants.
400.23 Criteria for grants of authority for zones and subzones.
400.24 Application for zone.
400.25 Application for subzone.
400.26 Application for expansion or other modification to zone project.
400.27 Procedure for reviewing and processing application.
400.28 Conditions, prohibitions and restrictions applicable to grants of authority.
400.29 Revocation of grants of authority.

Subpart D—Criteria for Reviewing Manufacturing

400.31 Manufacturing operations; criteria.
400.32 Procedure for submission and review of request for approval of manufacturing.
400.33 Restrictions on manufacturing activity.

Subpart E—Zone Operations and Administrative Requirements

400.41 Zone operations; general.
400.42 Requirements for commencement of operations in zone project.
400.43 Restriction and prohibition of certain zone operations.
400.44 Zone-restricted merchandise.
400.45 Retail trade.
400.46 Accounts, records and reports.
400.47 Appeals to the Board from decisions of the Assistant Secretary for Import Administration and the Executive Secretary.

Subpart F—Hearings, Record and Information

400.51 Hearings.
400.52 Official record; public access.
400.53 Information.

Authority: Foreign-Trade Zones Act of June 18, 1934 (Pub. L. 397, 73rd Congress; 48 Stat. 998–1003; 19 U.S.C. 81a–81u), as amended by Pub. L. 566, 81st Congress, approved June 17, 1950 (64 Stat. 246); Pub. L. 791, 85th Congress, approved August 28, 1958 (72 Stat. 945); Pub. L. 98–573, 98th Cong., Sec. 231, approved October 30, 1984 (98 Stat. 2991); and, Pub. L. 99–386, 99th Congress, approved August 22, 1986.

Subpart A—Scope and Definitions

§ 400.1 Scope.

(a) This part sets forth the regulations and rules of practice and procedure of the Foreign-Trade Zones Board with regard to foreign-trade zones in the United States pursuant to the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–u).

(b) Part 146 of the regulations of the United States Customs Service (19 CFR part 146) governs zone operations, including the admission of merchandise into a zone, its storage, manipulation, manufacture, or exhibition in a zone, and its exportation or transfer from a zone.

(c) To the extent "activated" under Customs procedures in 19 CFR part 146, zone projects are considered outside the Customs territory of the United States. Under zone procedures, foreign and domestic merchandise may be admitted into zones for operations such as storage, exhibition, assembly, manufacture and processing, without being subject to formal Customs entry procedures and payment of duties, unless and until the foreign merchandise enters Customs territory for domestic consumption. At that time, the importer ordinarily has a choice of paying duties either at the rate applicable to the foreign material in its condition as admitted into a zone, or if used in manufacture or processed, to the finished product. Quota restrictions do not normally apply to foreign goods in zones, but the Board can limit or deny zone use in specific cases on public interest grounds. Merchandise moved into zones for export (zone-restricted status) may be considered exported for purposes such as federal excise tax rebates and drawback upon admission to the zone. Foreign merchandise (tangible personal property) and merchandise in zone-restricted status, in activated zone space for *bona fide* customs reasons, are exempt from state and local *ad valorem* taxes.

§ 400.2 Definitions.

(a) *Act* means the Foreign-Trade Zones Act of 1934, as amended.

(b) *Board* means the Foreign-Trade Zones Board, which consists of the Secretary of the Department of Commerce (chairman), the Secretary of the Treasury, and the Secretary of the Army, or their designated alternates.

(c) *Customs Service* means the United States Customs Service of the Department of the Treasury.

(d) *District Director* is the director of Customs for the Customs district in which a zone or proposed zone is located.

(e) *District Engineer* is the engineer of the Department of the Army in whose district a zone or proposed zone is located.

(f) *Executive Secretary* is the Executive Secretary of the Foreign-Trade Zones Board.

(g) *Foreign-trade zone* is a restricted-access site, in or adjacent to a Customs port of entry, operated pursuant to public utility principles under the sponsorship of a corporation granted authority by the Board and under supervision of the Customs Service. Only those portions of a zone that are "activated" under Customs procedures are considered to be outside the Customs territory of the United States.

(h) *Grant of Authority* is a document issued by the Board which authorizes a zone grantee to establish, operate and maintain a zone project, consistent with limitations and conditions specified in this part and in 19 CFR part 146. The authority to establish a zone includes the authority to operate and the responsibility to maintain it.

(i) *Manufacturing*, as used in this part, means any activity involving foreign merchandise admitted into a zone which results in a change in its Customs classification or in its eligibility for entry for consumption.

(j) *Port of entry* means a port of entry in the United States, as defined by part 101 of the regulations of the Customs Service (19 CFR part 101), or a user fee airport authorized under 19 U.S.C. 58b and listed in part 122 of the regulations of the Customs Service (19 CFR part 122).

(k) *Private corporation* means any corporation, other than a public corporation, which is organized for the purpose of establishing a zone project and which is chartered for this purpose under a law of the state in which the zone is located.

(l) *Public corporation* means a state, a political subdivision (including a municipality) or public agency thereof, or a corporate municipal instrumentality of one or more states.

(m) *Regional Commissioner* is the Regional Commissioner of Customs for the Customs region in which the zone is located.

(n) *State* includes any state of the United States, the District of Columbia, and Puerto Rico.

(o) *Subzone* means a special-purpose zone established as an adjunct to a zone project for a limited purpose.

(p) *Zone* means a foreign-trade zone established under the provisions of the Act and these regulations. Where used in this part, the term also includes subzones, unless the context indicates otherwise.

(q) *Zone grantee* is the corporate recipient of a grant of authority for a zone project. Where used in this part, the term "grantee" means "zone grantee" unless otherwise indicated.

(r) *Zone operator* is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee or an intermediary entity, with the concurrence of the District Director.

(s) *Zone project* means the zone plan, including all of the zone and subzone sites that the Board authorizes a single grantee to establish.

(t) *Zone site* means the physical location of a zone or subzone.

(u) *Zone user* is a party using a zone under agreement with the zone grantee or operator.

Subpart B—Foreign-Trade Zones Board

§ 400.11 Authority of the Board.

(a) *In general.* In accordance with the Act and procedures of this part, the Board has authority to:

(1) Prescribe rules and regulations concerning zones;

(2) Issue grants of authority for zones and subzones, and approve modifications to the original zone project;

(3) Approve manufacturing activity in zones and subzones as described in subpart D of this part;

(4) Make determinations on matters requiring Board decisions under this part;

(5) Decide appeals of decisions of the Executive Secretary;

(6) Inspect the premises, operations and accounts of zone grantees and operators;

(7) Require zone grantees to report on zone operations and finances;

(8) Report annually to the Congress on zone operations;

(9) Restrict or prohibit zone operations;

(10) Impose fines for violations of the Act and the regulations;

(11) Revoke grants of authority for cause; and,

(12) Determine, as appropriate, whether specific zone operations are or would be detrimental to the public interest.

(b) *Authority of the Chairman of the Board.* The Chairman of the Board (Secretary of the Department of Commerce) has the authority to:

(1) Appoint the Executive Secretary of the Board;

(2) Call meetings of the Board, with reasonable notice given to each member; and

(3) Submit to the Congress the Board's annual report as prepared by the Executive Secretary.

(c) *Alternates.* Each member of the Board will designate an alternate with authority to act in an official capacity for that member.

(d) *Determinations of the Board.* (1) The determinations of the Board will be based on the majority vote of the members (or alternate members) of the Board, provided that a quorum, composed of the Secretaries of the Departments of Commerce and Treasury (or their alternates), is voting.

(2) All votes will be recorded.

(3) The Board will issue its determination in proceedings under the regulations in the form of a Board order.

§ 400.12 Authority of the Executive Secretary.

The Executive Secretary has authority to:

(a) Represent the Board in administrative, regulatory, operational, and public affairs matters;

(b) Serve as director of the Commerce Department's Foreign-Trade Zones staff;

(c) Execute and implement orders of the Board;

(d) Arrange meetings and circulation of action documents for the Board;

(e) Maintain custody of the seal, records, files and correspondence of the Board, with disposition subject to the regulations of the Department of Commerce;

(f) Authorize the return of "zone-restricted merchandise" valued at less than 100,000 dollars for entry into Customs territory under § 400.44;

(g) Authorize minor modifications to zone projects under § 400.27(c);

(h) Prohibit or restrict activity found to be detrimental to the public interest under § 400.43;

(i) Authorize certain duty-paid retail trade as provided in § 400.45;

(j) Determine subzone sponsorship questions as provided in § 400.22(d);

(k) Accept rate schedules and determine their reasonableness as provided in § 400.42(b);

(l) Determine the format for the annual reports of zone grantees to the Board;

(m) Prepare an annual report for the Board's submission to the Congress based upon the reports of zone grantees;

(n) Arrange with other sections of the Department of Commerce, Board agencies and other governmental agencies for studies and comments on zone issues and proposals; and

(o) Designate an acting Executive Secretary.

§ 400.13 Board Headquarters.

The headquarters of the Board is located within the U.S. Department of Commerce (Herbert C. Hoover Building), Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, as part of the office of the Foreign-Trade Zones staff.

Subpart C—Establishment and Modification of Zone Projects

§ 400.21 Number and location of zones and subzones.

(a) *Number of zone projects—Port of entry entitlement.* (1) Provided that the other requirements of this subpart are met:

(i) Each port of entry is entitled to at least one zone project;

(ii) If a port of entry is located in more than one state, each of the states in which the port of entry is located is entitled to a zone project; and,

(iii) If a port of entry is defined to include more than one city separated by a navigable waterway, each of the cities is entitled to a zone project.

(2) Zone projects in addition to those approved under the entitlement provision of paragraph (a)(1) of this section may be authorized by the Board if it determines that existing project(s) will not adequately serve the public interest (convenience of commerce).

(b) *Location of zones and subzones—port of entry adjacency requirements.* (1) The Act provides that the Board may approve "zones in or adjacent to ports of entry" (19 U.S.C. 81b).

(2) The "adjacency" requirement is satisfied if:

(i) A zone or subzone is located within 35 statute miles from the outer limits of a port of entry; or,

(ii) A zone or subzone can be reached within one hour's driving time from the nearest Customs office.

§ 400.22 Eligible applicants.

(a) *In general.* Subject to the other provisions of this section, public or private corporations may apply for a grant of authority to establish a zone project. The Board will give preference to public corporations.

(b) *Public and non-profit corporations.* The eligibility of public and non-profit corporations to apply for a grant of authority shall be supported by enabling legislation of the legislature of the state in which the zone is to be located, indicating that the corporation, individually or as part of a class, is authorized to so apply.

(c) *Private for-profit corporations.* The eligibility of private for-profit corporations to apply for a grant of authority shall be supported by a special act of the state legislature naming the applicant corporation and by evidence indicating that the corporation is chartered for the purpose of establishing a zone.

(d) *Applicants for subzones*—(1) *Eligibility.* The following corporations are eligible to apply for a grant of authority to establish a subzone:

(i) The zone grantee of the closest zone project in the same state;

(ii) The zone grantee of another zone in the same state, which is a public corporation, if the Board, or the Executive Secretary, finds that such sponsorship better serves the public interest; or,

(iii) A state agency specifically authorized to submit such an application by an act of the state legislature.

(2) *Complaints.* If an application is submitted under paragraph (d)(1)(ii) or (d)(1)(iii) of this section, the Executive Secretary will:

(i) Notify, in writing, the grantee specified in paragraph (d)(1)(i) of this section, who may, within 30 days, object to such sponsorship, in writing, with supporting information as to why the public interest would be better served by its acting as sponsor.

(ii) Review such objections prior to filing the application to determine whether the proposed sponsorship is in the public interest, taking into account:

(A) The complaining zone's structure and operation;

(B) The views of state and local public agencies; and,

(C) The views of the proposed subzone operator.

(iii) Notify the applicant and complainants in writing of the Executive Secretary's determination.

(iv) The application will be filed if the Executive Secretary determines that the proposed sponsorship is in the public interest.

§ 400.23 Criteria for grants of authority for zones and subzones.

(a) *Zones.* The Board will consider the following factors in determining whether to issue a grant of authority for a zone project:

(1) The need for zone services in the port of entry area, taking into account existing as well as projected international trade related activities and employment impact;

(2) The adequacy of the operational and financial plans and the suitability of the proposed sites and facilities, with justification for duplicative sites;

(3) The extent of state and local government support, as indicated by the compatibility of the zone project with the community's master plan or stated goals for economic development and the views of state and local public officials involved in economic development. Such officials shall avoid commitments that anticipate outcome of Board decisions;

(4) The views of persons and firms likely to be affected by proposed zone activity; and,

(5) If the proposal involves manufacturing, the criteria in § 400.31(b).

(b) *Subzones.* In reviewing proposals for subzones the Board will also consider:

(1) Whether the operation could be located in or otherwise accommodated by the multi-purpose facilities of the zone project serving the area;

(2) The specific zone benefits sought, and whether other more appropriate means or remedies are available; and,

(3) Whether the proposed activity is in the public interest, taking into account the criteria in § 400.31(b).

§ 400.24 Application for zone.

(a) *In general.* An application for a grant of authority to establish a zone project shall consist of a transmittal letter, an executive summary and five exhibits.

(b) *Letter of transmittal.* The transmittal letter shall be currently dated and signed by an authorized officer of the corporation and bear the corporate seal.

(c) *Executive summary.* The executive summary shall describe:

(1) The corporation's legal authority to apply;

(2) The type of authority requested from the Board;

(3) The proposed zone site and facilities and the larger project of which the zone is a part;

(4) The project background, including surveys and studies;

(5) The relationship of the project to the community's and state's overall economic development plans and objectives;

(6) The plans for operating and financing the project; and,

(7) Any additional pertinent information needed for a complete summary description of the proposal.

(d) *Exhibits.*

(1) Exhibit One (Legal Authority for the Application) shall consist of:

(i) A certified copy of the state enabling legislation described in § 400.22;

(ii) A copy of pertinent sections of the applicant's charter or organization papers; and,

(iii) A certified copy of the resolution of the governing body of the corporation authorizing the official signing the application.

(2) Exhibit Two (Site Description) shall consist of:

(i) A detailed description of the zone site, including size, location, address, and a legal description of the area proposed for approval; a table with site designations shall be included when more than one site is involved;

(ii) A summary description of the larger project of which the zone is a part, including type, size, location and address;

(iii) A statement as to whether the zone is within or adjacent to a customs port of entry;

(iv) A description of zone facilities and services, including dimensions and types of existing and proposed structures;

(v) A description of existing or proposed site qualifications including: land-use zoning, relationship to flood-plain, infrastructure, utilities, security, and access to transportation services;

(vi) A description of current activities carried on in or contiguous to the project;

(vii) If part of a port facility, a summary of port and transportation services and facilities; if not, a description of transportation systems indicating connections from local and regional points of arrival to the zone; and,

(viii) A statement as to the possibilities and plans for zone expansion.

(3) Exhibit Three (Operation and Financing) shall consist of:

(i) A statement as to site ownership; if not owned by the applicant or proposed operator, evidence as to their legal right to use the site;

(ii) A discussion of the operational plan; if the zone or a portion thereof is to be operated by other than the grantee, a summary of the selection process used or to be used, the type of operation agreement and, if available, the name and qualifications of the proposed operator;

(iii) A brief explanation of the plans for providing facilities, physical security, and for satisfying the requirements for Customs automated systems;

(iv) A summary of the plans for financing capital and operating costs, including a statement as to the source and use of funds;

(v) The estimated time schedule for construction and activation; and,

(vi) A summary of anticipated cash flow projections on an annual basis for the first three years of operation.

(4) Exhibit Four (Economic Justification) shall include:

(i) A statement of the community's overall economic goals and strategies in relation to those of the region and state;

(ii) A reference to the plan or plans on which the goals are based and how they relate to the zone project;

(iii) An economic profile of the community including identification and discussion of dominant sectors in terms of percentage of employment or income, area resources and problems, economic imbalances, unemployment rates, area foreign trade statistics, and area port facilities and transportation networks;

(iv) A statement as to the role and objective of the zone project, and a

justification for each of the proposed sites;

(v) A discussion of the anticipated economic impact, direct and indirect, of the zone project, including references to public costs and benefits, employment, the U.S. balance of trade, and environmental impact;

(vi) A statement as to the need for zone services in the community, with information on surveys of business, and specific expressions of interest from proposed zone users, with letters of intent from those firms that are considered prime prospects; and,

(vii) A description of proposed manufacturing and processing operations, if applicable, with information covering the factors described in § 400.31(b), including the nature and scope of the operation and production process, materials and components used, items to be foreign sourced with relevant tariff information, zone benefits anticipated and how they will affect the firm's plans, and the economic impact of the operation on the community and on affected domestic industries.

(5) Exhibit Five (Maps) shall consist of:

(i) State and county maps showing the general location of the zone in terms of the area's transportation network;

(ii) A U.S. Geodetic Survey map or the equivalent showing in red the location of the proposed zone; and,

(iii) A detailed blueprint of the zone or subzone area showing zone boundaries in red, with dimensions and metes and bounds, or other legal description, and showing existing and proposed structures.

(e) *Additional information.* The Board or the Executive Secretary may require additional information needed to adequately evaluate a proposal.

(f) *Amendment of application.* The Board or the Executive Secretary may allow amendment of the application.

(g) *Drafts.* Applicants may submit a draft application to the Executive Secretary for review.

(h) *Format and number of copies.* Unless the Executive Secretary alters the requirements of this paragraph, submit an original and 12 copies of the application on 8"×11" paper. Exhibit Five of the original application shall contain full-sized maps, and copies shall contain letter-sized reductions.

(i) *Where to file.* Address and mail the application to the Secretary of Commerce, Attention: Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

(Approved by the Office of Management and Budget under control number 0625-0139)

§ 400.25 Application for subzone.

(a) *In general.* An application to establish a subzone as part of a proposed or existing zone shall be submitted in accordance with the format in § 400.24, except that the focus of the information provided in Exhibit Four shall be on the specific activity involved and its net economic effect. The information submitted in Exhibit Four shall include:

(1) A summary as to the reasons for the subzone and an explanation of its anticipated economic effects;

(2) Identity of the subzone user and its corporate affiliation;

(3) Description of the proposed activity, including:

(i) Products;

(ii) Materials and Components;

(iii) Sourcing plans (domestic/foreign);

(iv) Tariff rates and other import requirements or restrictions;

(v) Information to assist the Board in making a determination under § 400.31(b)(1)(iii);

(vi)Benefits to subzone user;

(vii) Which other procedures or means have been considered to obtain the benefits sought;

(viii) Information as to industry involved and extent of international competition; and,

(ix) Economic impact of the operation on the area.

(4) Reason operation cannot be conducted within a general-purpose zone;

(5) Statement as to environmental impact; and,

(6) Additional information requested by the Board or the Executive Secretary if needed to conduct the review. Executive Secretary may issue guidelines to assist applicants in providing foregoing information.

(b) *Burden of proof.* An applicant for a subzone must demonstrate to the Board that the proposed operation satisfies the criteria in § 400.23(b).

(Approved by the Office of Management and Budget under control number 0625-0139)

§ 400.26 Application for expansion or other modification to zone project.

(a) *In general.* (1) A grantee may apply to the Board for authority to expand or otherwise modify its zone project.

(2) The Executive Secretary, in consultation with the District Director, will determine whether the proposed modification involves a major change in the zone plan and is thus subject to paragraph (b) of this section, or is minor and subject to paragraph (C) of this section. In making this determination the Executive Secretary will consider the extent to which the proposed modification would:

(i) Substantially modify the plan originally approved by the Board; and,

(ii) Expand the physical dimensions of the approved zone area as related to the scope of operations envisioned in the original plan.

(b) *Major modification to zone project.* An application for a major modification to an approved zone project shall be submitted in accordance with the format in § 400.24, except that:

(1) Reference may be made to current information in an application from the same applicant on file with the Board; and,

(2) The content of Exhibit Four shall relate specifically to the proposed change.

(c) *Minor modification to zone project.* Other applications or requests under this subpart, including those for minor revisions of zone boundaries, grant of authority transfers, or time extensions, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary, who shall determine whether the proposed change is a minor one subject to this paragraph (c) rather than paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 0625-0139)

§ 400.27 Procedure for reviewing and processing application.

(a) *Sufficiency of application.* The Executive Secretary will determine whether an application submitted under §§ 400.24–400.26 satisfies the requirements of those sections.

(1) If the application is deficient, the Executive Secretary will inform the applicant.

(2) If the application is sufficient, the Executive Secretary will:

(i) File the application, thus initiating a proceeding or review;

(ii) Assign a case docket number in cases requiring a Board order; and,

(iii) Notify the applicant.

(b) *Procedure—in general.* Upon initiating a proceeding based on an application under §§ 400.24–400.26(b) the Executive Secretary will:

(1) Designate an examiner to conduct a review and prepare a report with recommendations for the Board;

(2) Publish in the **Federal Register** a notice of the application which includes the name of the applicant, a description of the zone project, and an invitation for public comment, including a time limit for the public to submit factual information and written arguments;

(3) Send a copy of the notice and application to:

(i) The Regional Commissioner (Customs), or a designee; and,

(ii) The District Engineer (Army).

(4) Arrange, as appropriate, a public hearing in the community in which the zone project is located and any other public or closed hearing that the Board deems appropriate. Comments from interested parties may include requests for a public hearing if one has not been scheduled;

(5) Transmit the reports and recommendations of the examiner and of the officials identified in paragraph (b)(3) of this section to the Board for appropriate action; and,

(6) Notify the applicant in writing and publish notice in the **Federal Register** of the Board's determination.

(c) *Customs and army engineer review.* The Regional Commissioner (Customs), or designee, and the District Engineer (Army) shall submit their reports to the Executive Secretary within 45 days of the conclusion of the period described in paragraph (b)(2) of this section.

(d) *Procedure—Application for minor modification of zone project.* (1) The Executive Secretary will make a determination in cases under § 400.26(c) involving minor changes to zone projects that do not require a Board order, such as boundary modifications, including certain relocations, and will notify the applicant in writing of the decision.

(2) The concurrence of the District Director is required for approvals under paragraph (d)(1) of this section.

§ 400.28 Conditions, prohibitions and restrictions applicable to grants of authority.

(a) *In general.* Grants of authority issued by the Board for the establishment of zones or subzones, including those already issued, are subject to the Act and this part and the following general conditions or limitations:

(1) Approvals from the grantee and the District Director, pursuant to 19 CFR Part 146, are required prior to the activation of any portion of an approved zone project.

(2) Approval of the Board or the Commerce Department's Assistant Secretary for Import Administration pursuant to subpart D of this part is required prior to the commencement of manufacturing operations not approved as part of the application, and before approved zone manufacturing activity is changed to include new foreign articles subject to tariffs higher than those on the product in which they are incorporated.

(3) Prior to activation of a zone, the zone grantee or operator shall obtain all necessary permits from federal, state and local authorities, and except as otherwise specified in the Act or this part, shall comply with the requirements of those authorities.

(4) A grant of authority shall lapse unless the zone project is activated, pursuant to 19 CFR Part 146, and in operation not later than five year from:

(i) A Board order issued after the effective date of this final rule; or,

(ii) The effective date of this final rule.

(5) A grant of authority approved under this subpart includes authority for the grantee to permit the erection of buildings necessary to carry out the approved zone project subject to concurrence of the District Director.

(6) Zone grantee, operators, and users shall permit federal government officials acting in an official capacity to have access to the zone project and records during normal business hours and under other reasonable circumstances.

(7) A grant of authority may not be sold, conveyed, transferred, set over, or assigned. Private ownership of zone land and facilities is permitted provided the zone grantee retains the control necessary to implement the approved zone project. Should title to land or facilities be transferred after a grant of authority is issued, the zone grantee must retain, by agreement with the new owner, a level of control which allows the grantee to carry out its responsibilities as grantee. The sale of a zone site or facility for more than its fair market value without zone status shall be considered a transfer in violation of the Act.

(8) A grant of authority will not be construed to make the zone grantee automatically liable for violations by operators, users, or other parties.

(b) *Additional conditions, prohibitions and restrictions.* Other requirements, conditions or restrictions under federal, state or local law may apply to the grant of authority.

§ 400.29 Revocation of grants of authority.

(a) *In general.* As provided in this section, the Board can revoke in whole or in part a grant of authority for a general-purpose zone whenever it determines that the zone grantee has violated, repeatedly and willfully, the provisions of the Act.

(b) *Procedure.* When the Board has reason to believe that the conditions for revocation, as described in paragraph (a) of this section, are met, the Board will:

(1) Notify the zone grantee in writing stating the nature of the alleged violations, and provide the zone grantee an opportunity to request a hearing on the proposed revocation;

(2) Conduct a hearing, if requested or otherwise if appropriate;

(3) Make a determination on the record of the proceeding not earlier than 4 months after providing notice to the zone grantee under paragraph (b)(1) of this section; and,

(4) If the Board's determination is affirmative, publish notice of revocation of the grant of authority in the **Federal Register**.

(c) As provided in section 18 of the Act (19 U.S.C. 81r(c)), the zone grantee may appeal an order of the Board revoking the grant of authority.

(d) *Subzones.* The Board can revoke in whole or in part the grant of authority for a subzone upon finding that any special condition of the grant, or the Board order issued on the grant, has not been met. The grantee will be given 30 days notice and an opportunity to submit evidence and comments prior to a final decision by the Board in these cases.

Subpart D—Criteria for Reviewing Manufacturing

§ 400.31 Manufacturing operations; criteria.

(a) *In general.* Pursuant to section 15(c) of the Act (19 U.S.C. 81o(c)), the Board has authority to restrict or prohibit zone activity "that in its judgment is detrimental to the public interest." In evaluating zone and subzone manufacturing activity, either as proposed in an application or as part of a review of an ongoing operation, the Board shall determine whether the activity in question is in the public interest by reviewing the evaluation criteria contained in paragraph (b) of this section. Such a review involves consideration of whether the activity is consistent with trade policy and programs, and whether its net economic effect is positive.

(b) *Evaluation criteria*—(1) *Threshold factors.* It is the policy of the Board to authorize zone activity only when it is consistent with public policy and does not encourage imports. Thus, before authorizing proposed manufacturing activity or in its review of ongoing manufacturing, the Board shall determine that there is no significant evidence that:

(i) The activity is not consistent with U.S. trade and tariff policy;

(ii) The use of zone procedures would likely diminish the effectiveness of a U.S. international trade program; and,

(iii) If the activity involves items subject to inverted tariffs, that there is or will be a net increase of imports of items on which the duty rate would be reduced under zone procedures as a result of such a reduction.

(2) *Economic factors.* After its review of threshold factors, if there is a basis for further consideration, the Board shall consider the following economic factors:

(i) Overall employment impact;

(ii) Exports and reexports;

(iii) Retention or creation of manufacturing activity;

(iv) Extent of increased value-added activity on imports;

(v) Overall effect on import levels of relevant products;

(vi) Extent and nature of foreign competition in relevant products;

(vii) Impact on related domestic industry; and,

(viii) Other relevant information relating to net economic impact.

(c) *Methodology and evidence—(1) Two-tier review.* Reviews generally entail a two-step process.

(i) *Threshold phase.* The first phase (§ 400.31(b)(1)) involves consideration of threshold factors. If an examiner makes a negative finding on any of the factors in § 400.31(b)(1) in the course of a review, the applicant shall be informed and have an opportunity to amend its application within 30 days. If the Board determines any of the § 400.31(b)(1) factors in the negative, it shall deny or restrict authority for the proposed or ongoing activity.

(ii) *Economic effect/perspective.* In reviewing the economic factors during the second phase, the Board considers the net economic effect from both a local/regional and national/global perspective, that includes consideration of the overall effect on related domestic industries (finished products, components, materials) and U.S. employment.

(2) *Inverted tariffs.* In reviewing factors involving items subject to inverted tariffs a major consideration is whether the choice of lower tariff rates would likely prolong or increase imports of components (§ 400.31(b)(1)(iii)); and, if such a casual effect is found, the Board shall prohibit or restrict the proposed activity accordingly.

(3) *Transplant manufacturing.* When proposed activity involves a shift of production from abroad to the United States, the review shall consider sourcing plans for components and materials, to include short- and long-term projections on all components subject to inverted tariffs.

(4) *Contributory effect.* In assessing the significance of zone operations, the Board shall consider the contributory effect zone savings have as an incremental part of cost effectiveness programs adopted by companies to improve their international competitiveness.

(5) *Burden of proof.* Applicants for subzones and for clearance for manufacturing activity not having a precedent in Board decisions shall have the burden of proof of establishing with substantial evidence that the operation is in the public interest under this section. All interested parties are encouraged to submit substantive evidence relating to any of the threshold factors, particularly in regard to § 400.31(b)(1)(iii).

(d) *Monitoring and post-approval reviews.* (1) Approved manufacturing activity remains subject to review under this section at any time.

(2) Reviews may be initiated by the Board, or they may be undertaken in response to requests from interested parties showing good cause.

(3) Upon review, if the Board finds that zone activity is no longer in the public interest under this section, it may suspend subzone status, or terminate or restrict the activity in question.

§ 400.32 Procedure for submission and review of request for approval of manufacturing.

(a) *Request as part of application for grant of authority.* A request for approval of a proposed manufacturing operation may be submitted as part of an application under §§ 400.24–400.26(a). The Board will review the request taking into account the criteria in § 400.31(b).

(b) *Request for manufacturing in approved zone or subzone.* Prior to the commencement of a manufacturing operation not approved as part of the application for the zone or subzone in which the activity is to be located, zone grantees or operators shall request the approvals described in § 400.31(a) by submitting a request in writing to the Executive Secretary. Requests for such approval shall contain the information required by § 400.24(d)(4)(vii).

(1) The Commerce Department's Assistant Secretary for Import Administration may make determinations under § 400.31(a) based upon a review by the FTZ staff, when:

(i) The proposed activity is similar to activity recently approved by the Board in terms of merchandise and circumstances; or,

(ii) The activity is for export only; or,

(iii) The zone benefits sought are limited to duty deferral.

(2) When the informal procedure in paragraph (b)(1) of this section is not appropriate,

(i) The Executive Secretary will:

(A) Assign a case docket number and give notice in the **Federal Register** inviting public comment;

(B) Arrange a public hearing, if appropriate;

(C) Appoint an examiner, if appropriate, to conduct a review and prepare a report with recommendations for the Board; and,

(D) Prepare and transmit a report with recommendations, or transmit the examiners report, to the Board for appropriate action; and,

(ii) The Board will make a determination on the requests, and the Executive Secretary will notify the grantee in writing of the Board's determination, and will publish notice of the determination in the **Federal Register**.

§ 400.33 Restrictions on manufacturing activity.

(a) *In general.* In approving manufacturing activity for a zone or subzone the Board may adopt restrictions to protect the public interest, health, or safety. The Commerce Department's Assistant Secretary for Import Administration may similarly adopt restrictions in exercising authority under § 400.32(b)(1).

(b) *Restrictions on items subject to antidumping and countervailing duty actions—(1) Board policy.* Zone procedures shall not be used to circumvent antidumping (AD) and countervailing duty (CVD) actions under 19 CFR Parts 353 and 355.

(2) *Admission of items subject to AD/CVD actions.* Items subject to AD/CVD orders or suspension of liquidation under AD/CVD procedures shall be placed in privileged foreign status (19 CFR § 146.41) upon admission to a zone or subzone.

(3) *Entry for consumption.* Any such items entered for consumption into the Customs territory of the United States (either in their original or in an altered condition) shall be subject to duties under AD/CVD orders or to suspensions of liquidation if applicable under 19 CFR parts 353 and 355 at the time of such entry.

Subpart E—Zone Operations and Administrative Requirements

§ 400.41 Zone operations; general.

Zones shall be operated by or under the contractual oversight of zone grantees, subject to the requirements of the Act and this part, as well as those of

other federal, state and local agencies having jurisdiction over the site and operation. Zone grantees shall ensure that the reasonable zone needs of the business community are served by their zone projects. The District Director represents the Board with regard to the zone projects in the district and is responsible for enforcement, including physical security and access requirements, as provided in 19 CFR part 146.

§ 400.42 Requirements for commencement of operations in zone project.

(a) *In general.* The following actions are required before operations in a zone may commence:

(1) Approval by the District Director of an application for activation is required as provided in 19 CFR part 146; and,

(2) The Executive Secretary will review proposed manufacturing, pursuant to § 400.32, and zone schedule as provided in this section.

(b) *Zone schedule.* (1) The zone grantee shall submit to the Executive Secretary and to the District Director a zone schedule which sets forth:

(i) Internal rules and regulations for the zone; and,

(ii) A statement of the rates and charges (fees) applicable to zone users.

(2) A zone schedule shall consist of typed, loose-leaf, numbered, letter-sized pages, enclosed in covers, and shall contain:

(i) A title page, with information to include:

(A) The name of the zone grantee and operator(s);

(B) Schedule identification;

(C) Site description;

(D) Date of original schedule; and,

(E) Name of the preparer;

(ii) A table of contents;

(iii) Administrative information;

(iv) A statement of zone operating policy, rules and regulations, including uniform procedures regarding the construction of buildings and facilities; and,

(v) A section listing rates and charges for zones and subzones with information sufficient for the Board or the Executive Secretary to determine whether the rates and charges are reasonable based on other like operations in the port of entry area, and whether there is uniform treatment under like circumstances among zone users.

(3) The Executive Secretary will review the schedule to determine whether it contains sufficient information for users concerning the operation of the facility and a statement of rates and charges as provided in paragraph (b)(2) of this section. If the Executive Secretary determines that the schedule satisfies these requirements, the Executive Secretary will notify the zone grantee, unless there is a basis for review under paragraph (b)(5) of this section. A copy of the schedule shall be available for public inspection at the offices of the zone grantee and operator. The zone grantee shall send a copy of the District Director, who may submit comments to the Executive Secretary.

(4) Amendments to the schedule shall be prepared and submitted in the manner described in paragraphs (b)(1) through (b)(3) of this section, and listed in the concluding section of the schedule, with dates.

(5) A zone user or prospective user having a *bona fide* interest in using a zone may object to the zone or subzone fee on the basis that it is not reasonable, fair and uniform, by submitting to the Executive Secretary a complaint in writing with supporting information. The Executive Secretary will review the complaint and issue a report and decision, which will be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The factors considered in reviewing reasonableness and fairness, will include:

(i) The going-rates and charges for like operations in the area and the extra costs of operating a zone, including return on investment; and,

(ii) In the case of subzones, the value of actual services rendered by the zone grantee or operator, and reasonable out-of-pocket expenses.

§ 400.43 Restriction and prohibition of certain zone operations.

(a) *In general.* After review, the Board or the Executive Secretary, as appropriate, may restrict or prohibit any admission of merchandise into a zone project or operation in a zone project when it determines that such activity is detrimental to the public interest, health or safety.

(b) *Initiation of review.* The Board may conduct a proceeding, or the Executive Secretary a review, to consider a restriction or prohibition under paragraph (a) of this section either self-initiated, or on a complaint made to the Board by an adversely affected party.

§ 400.44 Zone-restricted merchandise.

(a) *In general.* Merchandise which has been given export status by Customs officials ("zone-restricted merchandise", 19 CFR part 146) may be returned to the Customs Territory of the United States only when the Board determines that the return would be in the public interest.

(b) *Criteria.* In making the determination described in paragraph (a) of this section, the Board will consider:

(1) The intent of the parties;

(2) Why the goods cannot be exported;

(3) The public benefit involved in allowing their return; and,

(4) The recommendation of the District Director.

(c) *Procedure.* (1) A request for authority to return "zone-restricted" merchandise into Customs territory shall be made to the Executive Secretary in letter form by the zone grantee or operator of the zone in which the merchandise is located, with supporting information and documentation.

(2) The Executive Secretary will investigate the request and prepare a report for the Board.

(3) The Executive Secretary may act for the Board under this section in cases involving merchandise valued at less than 100,000 dollars, provided approvals have the concurrence of the District Director.

§ 400.45 Retail trade.

(a) *In general.* Retail trade is prohibited in zones, except that sales or other commercial activity involving domestic, duty-paid, and duty-free goods may be conducted within an activated zone project under permits issued by the zone grantee and approved by the Board. The District Director will determine whether an activity is retail trade.

(b) *Procedure.* (1) The District Director or a representative is authorized to approve sales involving domestic, duty-paid or duty-free food products sold within the zone or subzone for consumption on premises by persons working therein.

(2) Other requests for Board approval under this section shall be submitted in letter form, with supporting documentation, to the Executive Secretary, who is authorized to act for the Board in these cases.

(c) *Criteria.* In evaluating requests for approval under this section the Executive Secretary will consider:

(1) Whether any public benefits would result from approval; and,

(2) The economic effect such activity would have on the retail trade outside the zone in the port of entry area.

§ 400.46 Accounts, records and reports.

(a) *Zone accounts.* Zone accounts shall be maintained in accordance with generally accepted standards of

accounting, and in compliance with the requirements of federal, state or local agencies having jurisdiction over the site or operation.

(b) *Records and forms.* Zone records and forms shall be prepared and maintained in accordance with the requirements of the Customs Service and the Board.

(c) *Maps and drawings.* Zone grantees or operators, and District Directors, shall keep current layout drawings of approved sites as described in § 400.24(d)(5), showing activated portions, and a file showing required approvals. The zone grantee shall furnish necessary maps to the District Director.

(d) *Annual reports.* (1) Zone grantees shall submit annual reports to the Board at the time and in the format prescribed by the Executive Secretary, for use by the Executive Secretary in the preparation of the Board's annual report to the Congress.

(2) The Board shall submit an annual report to the Congress. (Approved by the Office of Management and Budget under control number 0625-0109)

§ 400.47 Appeals to the Board from decisions of the Assistant Secretary for Import Administration and the Executive Secretary.

(a) *In general.* Decisions of the Assistant Secretary for Import Administration and the Executive Secretary made pursuant to §§ 400.32(b)(1), 400.33, 400.45(b)(2), and 400.22(d)(2)(ii) may be appealed to the Board by adversely affected parties.

(b) *Procedure.* Parties appealing a decision under paragraph (a) of this section shall submit a request for review to the Board in writing, stating the basis for the request, and attaching a copy of the Executive Secretary's decision, as well as supporting information and documentation. After a review, the Board will notify the complaining party of its decision in writing.

Subpart F—Hearings, Record and Information

§ 400.51 Hearings.

(a) *In general.* The Board or the Executive Secretary, as appropriate, may hold a public or closed hearing during any proceedings or reviews conducted under this part whenever necessary or appropriate.

(b) *Procedure for public hearings.* The Board will publish notice in the Federal Register of the date, time and location of the hearing. All participants shall have the opportunity to make a presentation. Applicants and their witnesses shall ordinarily appear first. The presiding officer may adopt time limits for individual presentations.

§ 400.52 Official record; public access.

(a) *Content.* The Executive Secretary will maintain at the location stated in § 400.53(d) an official record of each proceeding within the Board's jurisdiction. The Executive Secretary will include in the official record all factual information, written argument, and other material developed by, presented to, or obtained by the Board in connection with the proceeding. The official record will contain material that is public, business proprietary, privileged, and classified. While there is no requirement that a verbatim record be kept of public hearings, the proceedings of such hearings shall ordinarily be recorded and transcribed when significant opposition is involved.

(b) *Opening and closing of official record.* The official record opens on the date the Executive Secretary files an application or receives a request that satisfies the applicable requirements of this part and closes on the date of the Board's or the Executive Secretary's final determination in the proceeding or review, as applicable. If the final determination is published in the Federal Register, the record will close on the date of publication.

(c) *Protection of the official record.* Unless otherwise ordered in a particular case by the Executive Secretary, the official record will not be removed from the Department of Commerce. A certified copy of the record will be made available to any court before which any aspect of a proceeding is under review, with appropriate safeguards to prevent disclosure of proprietary or privileged information.

§ 400.53 Information.

(a) *Request for information.* The Board may request submission of any information, including business proprietary information, and written argument necessary or appropriate to the proceeding.

(b) *Public information.* Except as provided in paragraph (c) of this section, the Board will consider all information submitted in a proceeding to be public information. If the person submitting the information does not agree to its public disclosure, the Board will return the information and not consider it in the proceeding.

(c) *Business proprietary information.* Persons submitting business proprietary information shall mark the top of each page "business proprietary" if such information appears on that page and request Board protection from public disclosure.

(d) *Disclosure of submitted information.* Disclosure of information will be governed by 15 CFR part 4. Public information in the official record will be available for inspection and copying at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce Building, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

Dated: January 19, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 90-1688 Filed 1-25-90; 8:45 am]

BILLING CODE 3510-DS-M

federal register

Friday
January 26, 1990

Part IV

Department of Education

34 CFR Part 669

Language Resource Centers Program; Rule

DEPARTMENT OF EDUCATION

34 CFR Part 669

[1840-AA68]

Language Resource Centers Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary issues regulations to govern the Language Resource Centers Program. These regulations are needed to implement the new section 603 of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Public Law 99-498. The Language Resource Centers Program is intended to provide assistance to institutions of higher education, or combinations of institutions of higher education, for the purpose of establishing, strengthening, and operating centers that serve as resources for improving the nation's capacity for teaching and learning foreign languages.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte, Deputy Director, Center for International Education, U.S. Department of Education, Room 3053, ROB 3, 400 Maryland Avenue, SW., Washington, DC 20202-5248. Telephone: 202-732-3283.

SUPPLEMENTARY INFORMATION: The Language Resource Centers Program was added to the foreign language and international studies programs authorized under title VI of the Higher Education Act by the Higher Education Amendments of 1986. The goal of this program is to improve the effectiveness of language teaching and learning, through activities such as research, training, and dissemination. The Secretary is authorized to award grants to institutions of higher education, or combinations of institutions of higher education, for the specific activities set forth in § 669.3.

On February 2, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for the Language Resource Centers Program in the **Federal Register** (53 FR 2918). Except for some editorial changes, there are no significant differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, two parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes which the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 669.2—Who is eligible to receive assistance under this program?

Comment: One commenter suggested that the Language Resource Centers should be appended to existing National Resource Centers (NRCs) because the NRCs already have an array of resources and expertise for teaching, testing, and preparing materials for language instruction. However, the second commenter urged that, because the NRCs are committed to a wide range of language-related activities, including instruction in literature, these regulations should exclude applications from "fictional divisions" within NRC language departments by requiring strong institutional support for nationally oriented efforts in language pedagogy.

Discussion: The law authorizing the Language Resource Centers Program does not specify any limitations on the nature or resources of the institutions of higher education that may apply for funding under this program. Institutions with strong resources and proposals addressing real needs in the language pedagogy field may be expected to compete most effectively irrespective of the nature of the applicant's relationship to a National Resource Center.

Changes: None.

Section 669.3—What activities may the Secretary fund?

Comment: One commenter suggested the addition of the phrase "and learning" to paragraph (b), to emphasize the importance of the interactions between teacher and student in the instructional process.

Discussion: The Secretary agrees that both perspectives in the instructional process should receive attention, but notes that the introductory sentence for this section does not include both "teaching" and "learning", as does § 669.1.

Changes: None.

Comment: One commenter requested the use of "competency-based" instead of "proficiency" to describe the testing to be developed, in order to be consistent with other Title VI programs.

Discussion: The law is clear in specifying "proficiency" to describe the testing to be developed under this program.

Changes: None.

Comment: One commenter suggested that paragraph (d) of this section be reordered, to give more emphasis to the training of teachers in teaching strategies and new technologies and less emphasis to the training of teachers in proficiency testing.

Discussion: The ordering of these three aspects of teacher training is taken directly from the authorizing legislation. The Secretary does not interpret the order of the functions to indicate any special priority among them.

Changes: None.

Section 669.21—What selection criteria does the Secretary use?

Comment: To give more emphasis to the national impact expected from this program, one commenter suggested changing "in" to "throughout" the United States, in paragraph (f)(3) of this section.

Discussion: The Secretary anticipates that in a national program such as this the evaluators will be looking carefully at the potential national impact of all aspects of each application.

Changes: None.

Section 669.22—What priorities may the Secretary establish?

Comment: One commenter found nothing in the NPRM to indicate specific areas or languages on which the Language Resource Centers will concentrate.

Discussion: The Secretary points out that § 669.22, which covers possible priorities for funding, includes "specific languages" in paragraph (a)(2). Priorities, if any, for an actual competition are announced in the application notice.

Changes: None.

Comment: One commenter proposed a "trigger mechanism" which would protect the funding for current title VI programs until additional funds might be available for new programs. He also suggested that, when funds are available, Language Resource Centers should be funded for a five-year period and wondered what the annual funding for a center might be.

Discussion: The authorizing legislation does not provide the kind of "trigger mechanism" that the commenter suggests. However, the Secretary notes that when funds for current Title VI

programs are not increased, the allocation of funds for new programs is unlikely and that all of the activities specified for the Language Resource Centers are being funded on a small scale under parts 656, 658, and 660. Probable funding levels are announced in the application notice, as is the anticipated duration of grants.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 669

Colleges and universities, Education, Foreign languages, Grant program, Reporting and recordkeeping requirements, Research, Teacher training.

(Catalog of Federal Domestic Assistance Number has not been assigned)

Dated: December 22, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Chapter VI, title 34 of the Code of Federal Regulations by adding a new Part 669 to read as follows:

PART 669—LANGUAGE RESOURCE CENTERS PROGRAM

Subpart A—General

Sec.

669.1 What is the Language Resource Centers Program?
669.2 Who is eligible to receive assistance under this program?
669.3 What activities may the Secretary fund?
669.4 What regulations apply?
669.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

669.20 How does the Secretary evaluate an application?
669.21 What selection criteria does the Secretary use?
669.22 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met by a Grantee?

669.30 What are allowable equipment costs?

Authority: 20 U.S.C. 1123, unless otherwise noted.

Subpart A—General

§ 669.1 What is the Language Resource Centers Program?

The Language Resource Centers Program makes awards, through grants or contracts, for the purpose of establishing, strengthening, and operating centers that serve as resources for improving the nation's capacity for teaching and learning foreign languages effectively.

(Authority: 20 U.S.C. 1123)

§ 669.2 Who is eligible to receive assistance under this program?

An institution of higher education or a combination of institutions of higher education is eligible to receive an award under this part.

(Authority: 20 U.S.C. 1123)

§ 669.3 What activities may the Secretary fund?

Centers funded under this part must carry out activities to improve the teaching and learning of foreign languages. These activities may include—

(a) The conduct of research on new and improved methods for teaching foreign languages, including the use of advanced educational technology;

(b) The development of new materials for teaching foreign languages, to reflect the results of research on effective teaching strategies;

(c) The development and application of proficiency testing that is appropriate for use in an educational setting to be used as a standard measurement of skill levels in foreign languages;

(d) The training of teachers in the administration and interpretation of foreign language proficiency tests, the use of effective teaching strategies and the use of new technologies;

(e) The publication of instructional materials in the less commonly taught foreign languages; and

(f) The widespread dissemination of research results, teaching materials, and improved pedagogical strategies to the postsecondary education community.

(Authority: 20 U.S.C. 1123)

§ 669.4 What regulations apply?

The following regulations apply to this program:

(a) 34 CFR part 655.

(b) The regulations in this part 669

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants), 34 CFR part 75 (Direct Grant Programs), 34 CFR part 77 (Definitions that Apply to Department Regulations) and 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(Authority: 20 U.S.C. 1123)

§ 669.5 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) "Language Resource Center" means a coordinated concentration of educational research and training resources for improving the nation's capacity to teach and learn foreign languages.

(Authority: 20 U.S.C. 1123)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 669.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for an award on the basis of the criteria contained in § 669.21.

(b) The Secretary awards up to 100 possible points for these criteria. However, if the Secretary establishes one or more priorities under § 669.22, the Secretary awards up to 120 possible points.

(c) The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1123)

§ 669.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating applications under this part:

(a) *Plan of operation.* (15) (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (20) (See 34 CFR 655.31(b))

(c) *Budget and cost-effectiveness.* (10) (See 34 CFR § 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 655.31 (d))

(e) *Adequacy of resources.* (5) (See 34 CFR 655.31(e))

(f) *Need and potential impact.* (30) The Secretary reviews each application to determine—

(1) The extent to which the proposed materials or activities are needed in the foreign languages on which the project focuses;

(2) The extent to which the proposed materials may be used throughout the United States; and

(3) The extent to which the proposed work or activity may contribute significantly to strengthening, expanding, or improving programs of foreign language study in the United States.

(g) *Likelihood of achieving results.* (10) The Secretary reviews each application to determine—

(1) The quality of the outlined methods and procedures for preparing the materials; and

(2) The extent to which plans for carrying out activities are practicable and can be expected to produce the anticipated results.

(h) *Description of final form of results.* (5) The Secretary reviews each application to determine the degree of specificity and the appropriateness of the description of the expected results from the project.

(i) *Priorities.* (20) If, under the provisions of § 669.22, the application notice specifies priorities for this program, the Secretary determines the degrees to which the priorities are served.

(Approved by the Office of Management and Budget under OMB control number 1840-0608)

(Authority: 20 U.S.C. 1123)

§ 669.22 What priorities may the Secretary establish?

(a) The Secretary may each year select funding priorities from among the following:

(1) Categories of allowable activities described in § 669.3.

(2) Specific foreign languages for study or materials development.

(3) Levels of education, for example, elementary, secondary, postsecondary, or teacher education.

(b) The Secretary announces any priorities in the application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1123)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 669.30 What are allowable equipment costs?

Equipment costs may not exceed fifteen percent of the grant amount.

(Authority: 20 U.S.C. 1123)

[FR Doc. 90-1739 Filed 1-25-90; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
January 26, 1990

Part V

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Accreditation of Training Programs for Hazardous Waste Operations; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-760-B]

RIN 1218-AB27

Accreditation of Training Programs for Hazardous Waste Operations

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing a new rule containing the accreditation procedures for certain training programs required by OSHA. These proposed accreditation procedures were mandated by Congress when section 126 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499, 29 U.S.C. 655 note) was amended in December 1987. That amendment requires OSHA to develop specific procedures for the accreditation of hazardous waste operation training programs that are no less comprehensive than those procedures adopted by the Environmental Protection Agency under Title II of the Toxic Substance Control Act (TSCA) (15 U.S.C. 2646). Title II of TSCA is also known as the Asbestos Hazard Emergency Response Act of 1986 (AHERA).

The training programs required to be accredited under this proposed regulation are found in 29 CFR 1910.120, paragraphs (e) and (p). These training programs are required for employees involved in clean-up operations at uncontrolled hazardous waste sites being cleaned-up under government mandate, and for employees involved in certain hazardous waste treatment, storage, and disposal (TSD) operations. It is not proposed to accredit training programs for employees engaged in emergency response activities.

This proposed rule would supplement the existing permanent final rule for hazardous waste operations and emergency response published on March 6, 1989 (54 FR 9294) as required by Congress in SARA.

This notice of proposed rulemaking contains the criteria OSHA proposes to use to evaluate for accreditation the training programs required in § 1910.120.

This notice also proposes to amend paragraphs (e) and (p) of 29 CFR 1910.120 to make the necessary references to this proposed rule.

DATES: 1. Comments and information on this proposal must be received on or before April 26, 1990.

2. Requests for public hearings on this proposal must be received on or before March 27, 1990.

ADDRESSES: 1. Comments and information on this proposal should be sent in quadruplicate to the Docket Office, Docket No. S-760-B, Occupational Safety and Health Administration, Room N-2634, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Comments, requests for hearings and information received may be inspected and copied in the Docket Office.

2. Requests for a public hearing on this proposal should be sent in quadruplicate to Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3649, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Proposed Rule:* Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administraiton, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, 202-523-8151.

Public Hearing: Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3649, 200 Constitution Ave., NW., Washington, DC 20210, 202-523-8615.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499). As part of SARA, the Secretary of Labor (the Secretary) was directed to issue an interim final rule within 60 days after the date of enactment, which was to provide no less protection for workers engaged in covered hazardous waste operations than the protections contained in two specified documents. Those two documents were the Environmental Protection Agency's (EPA's) "Health and Safety Requirements for Employees Engaged in Field Activities" manual (EPA Order 1440.2), dated 1981, and the existing Occupational Safety and Health Administration (OSHA) standards under subpart C of 29 CFR part 1926. OSHA published an interim final rule as directed in the **Federal Register** on December 19, 1986 (51 FR 45654).

SARA also directed the Secretary to issue, within one year after the date of enactment of SARA, a final standard under section 6(b) of the Occupational Safety and Health Act for the health and safety of employees engaged in hazardous waste operations and emergency response. SARA also indicated that certain specific areas of employee protection, in particular employee training, were relevant to protect employees engaged in hazardous waste operations. OSHA issued a proposed rule on hazardous waste operations and emergency response, including provisions for training, on August 10, 1987 (52 FR 29620). Public hearings on the proposed rule were held during October 1987. As a result of that proposed rule and the public hearings held with respect to that proposal, OSHA published a permanent final rule for hazardous waste operations and emergency response on March 6, 1989 (54 FR 9294). That permanent final rule will become effective on March 6, 1990. The interim rule remains in effect until that date.

In related action, on December 22, 1987, as part of an omnibus budget reconciliation bill, the President signed several amendments to SARA. One of those amendments states:

> That section 126(d)(3) of SARA is amended by adding a new sentence at the end thereof as follows: The certification procedures shall be no less comprehensive than those adopted by the Environmental Protection Agency in its Model Accreditation Plan for Asbestos Abatement Training as required under the Asbestos Hazard Emergency Response Act of 1986.

This proposed rule is prepared in response to this amendment to the budget reconciliation bill.

EPA's Contractor Model Accreditation Plan

On Thursday, April 30, 1987, the Environmental Protection Agency (EPA) issued its Contractor Model Accreditation Plan (Model Plan) in the **Federal Register** (52 FR 15875). This is the plan referred to as the Model Accreditation Plan for Asbestos Abatement Training in the amendment to SARA. The Model Plan was published in response to section 206 of Title II of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2646).

Note.—For the purposes of this discussion, Title II of TSCA will be referred to as AHERA.

While EPA was not required to issue the Model Plan as a final regulation, they decided to make the Model Plan available in the Code of Federal Regulations (CFR) as an appendix to regulations required under AHERA.

Section 206 of AHERA, requires local education agencies (LEA's) to use "accredited persons" to perform the following asbestos-related tasks:

1. Inspecting for asbestos-containing materials (ACM) in school buildings under a local education agency's authority.

2. Preparing management plans for such schools.

3. Designing or conducting response actions with respect to ACM in such schools.

The Model Plan requires persons seeking accreditation to take an initial training course, pass an examination and participate in continuing education. LEA's have the option of hiring accredited contractors to conduct asbestos work or having in-house personnel receive accreditation. Accredited personnel are not required to be used to conduct operations and maintenance activities.

AHERA requires states to adopt a contractor accreditation Model Plan at least as stringent as the EPA Model Plan. Persons can be accredited by a state with an accreditation program at least as stringent as the EPA Model Plan. Persons may also obtain accreditation by passing an EPA-approved training course and examination that in EPA's judgment are consistent with the Model Plan. States may exercise their authority to have accreditation program requirements more stringent than the Model Plan.

The Model Contractor Accreditation Plan is divided into four units. The first unit discusses EPA's "Model Contractor Plan" for states. Unit II specifies procedures a state must follow to receive EPA Model Plan approval for the state's contractor accreditation program. OSHA is not considering the content of Units I and II because they address state plan issues, and they are being left to the states for their consideration.

The third unit of this Model Plan discusses EPA approval of courses and course examinations. EPA sponsors seeking approval of training courses must submit training materials to EPA. The training course and examination must be consistent with the Model Plan's requirements in these areas in order for approval to be granted.

The fourth unit of the Model Plan addresses the treatment of persons who have had previous training. Persons may be accredited if they have completed an EPA-approved asbestos training course in their discipline and have passed or can pass an examination in their discipline. Such persons may be accredited, on an interim basis, if in EPA's judgment the course and examination are equivalent to the Model Plan's requirements.

OSHA will be considering the concepts of Units III and IV of the EPA Model Plan during the development of this rule.

OSHA's Proposed Rulemaking

The purpose of this rulemaking is to propose the criteria which OSHA will use to evaluate applicants who apply for accreditation to conduct the training required in 29 CFR 1910.120.

Hazardous Waste Operations and Emergency Response

The proposal is based, in part, upon the information and data collected by Dr. Richard F. Andree of Safety and Health Management Consultants, Inc. during the performance of work conducted under contract to the Occupational Safety and Health Administration, Directorate of Safety Standards Programs (Contract #B9F83334). Dr. Andree collected information from sources involved with hazardous waste operation and emergency response training. These sources include selected grantees developing courses under grants issued by the National Institute of Environmental Health Sciences (NIEHS) pursuant to section 126(g) of SARA, various unions, and various hazardous waste training consultants.

The hazardous waste operations training program of 40 hours duration, which is included in paragraph (h)(1) of 29 CFR 1910.121, was compiled from a review of the 29 CFR 1910.120 requirements and a content analysis of materials submitted by several of Dr. Andree's sources. These sources included the International Union of Operating Engineers; Law Environmental; the Midwest Consortium for Hazardous Waste Training; Noodwood Clyde Black and Veatch; correspondence from Dr. Michael S. Bisesi, Subcommittee Chairman, AIHA/ACGIH Hazardous Waste Committee; and the Superfund Hazardous Waste Worker Health and Safety Training Grants Program of the NIEHS.

The hazardous waste operations training programs of 24 hours duration, which are included in paragraphs (h)(2) and (h)(3) of 29 CFR 1910.121, were compiled from a review of the 29 CFR 1910.120 requirements and a content analysis of materials submitted by other sources. These sources included Law Environmental; the Oil, Chemical, and Atomic Workers (OCAW) Hazardous Waste Project; the Midwest Consortium for Hazardous Waste Training; and Dr. Michael Bisesi of the American Industrial Hygienist Association.

In addition, information from several other sources was utilized in outlining the 40- and 24-hour model training programs as well as the following documents: "Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities"—USDHHS, PHS, CDC, NIOSH: USGPO:1985; and "Protecting Personnel at Hazardous Waste Sites"—Levin, S. P. and Martin, W. F.; Butterworth, MA; 1985.

Each individual Topic/Standard and supporting criteria has been developed using the draft accreditation procedures, materials noted previously, and basic training/education theory.

The development of the accreditation procedures was based, as required by Congress, upon the Model Plan. The procedures were designed for both the 40-hour and 24-hour initial training programs.

Where possible, the OSHA program tracked the EPA Model Accreditation Plan for Asbestos, as directed by Congress in the December 22, 1987 amendment. The program does differ in several respects due to the OSHA regulatory format and requirements; the nature of the 29 CFR 1910.120 requirements; and the lack of detailed procedures in the EPA Model Plan.

The 40-hour program, to be provided "off-site" by either a specific employer or by a training vendor, is a "generic" program providing the course sponsor with a wide range of educational topics and methods for students. This 40-hour generic program is possible because the employer must also provide a three day (or more) site specific training program (non-accredited) to further qualify an employee. The generic approach also permits the employer to develop a course that more adequately addresses the work task that employees will be performing. For example, if employees are not required to wear Level A protection during the performance of their work, they would not have to be trained in the use of that equipment.

OSHA is providing certification for training programs—not for individual trainers. The reason for that decision is the legislative history of the amendment to section 126. That history states that the amendment is "to require Federal certification procedures for Superfund worker *training programs* (emphasis added)." (Congressional Record, H. 12683, December 21, 1987). No mention is made of certifying instructors. In addition, by certifying only training programs which contain procedures for hiring competent instructors, OSHA will accomplish the goal of having competent instructors without involving the government in the enormous

administrative burden of certification of individual instructors. Attempting to do that would substantially reduce resources OSHA would have available for other occupational safety goals.

Secondly, OSHA is providing certification of training programs for hazardous waste site workers and TSD facility workers, and not for emergency response employees. The reason for this decision is that the amendment requiring certification is to paragraph (d)(3) of section 126 which covers "general site workers" and their "managers and supervisors"—not to paragraph (d)(4) of section 126 which covers "training of emergency response personnel." Further, there are many universities and organizations (e.g., the International Fire Service Training Association or the International Society of Fire Service Instructors) which provide training programs for emergency response employees and which have developed training programs to be used by employers of emergency response personnel.

Finally, there is a very large number of emergency response personnel and fire departments and it would be difficult for OSHA to attempt to accredit such a large number of programs. Such accreditation would take away substantially from resources used for other occupational safety and health goals for which OSHA has prime responsibility. OSHA requests comments on this specific decision.

OSHA is not proposing to require certified refresher training. OSHA believes that refresher training is closely tied to the requirement of the work site and that in general the employer is in the best position to arrange training to accomplish that goal most effectively. In addition it would be difficult to arrange a certified training program for an 8-hour course.

The below discussion explains OSHA's procedures for certification training programs. If there are a substantial number of applications, a backlog of accreditation paperwork is likely to occur. OSHA has partially met this problem by providing for provisional certification permitting commencement of training prior to all procedural steps being completed. An additional way of reducing the initial backlog of applications would be to include a grandfather provision for training. Such a provision might permit, for example, a training program meeting certain objective criteria to continue in progress until final certification or denial of certification by OSHA. OSHA requests comments and suggestions on this issue.

In addition government resources will be used in the certification process. OSHA requests comment on the appropriateness of charging a user's fee and, if so, on what basis the amount should be determined.

The certification process proposed has a number of steps. OSHA requests comments on whether a simpler system would be sufficient to insure a good basis for determining whether certificates should be granted. Comments are also requested on the procedures which should be included in a simpler system of accreditation.

OSHA has not, in this proposal, required that refresher training be from a certified training program. The basis for this is that such training should be more oriented to a specific job and therefore could be better provided by the employer directly. It should be noted that § 1910.120 (e)(5) requires that all persons doing training be qualified. OSHA requests comment on this issue as well.

OSHA also requests comment on the property rights of training programs accredited by the Federal government and developed with Federal monies. Who can use these programs? What, if any, cost should be associated with the use of these programs?

II. Summary and Explanation of the Standard

The proposed rule is divided into two basic sections. First, OSHA is proposing the procedures by which an interested party must submit its application for accreditation. Second, the minimum criteria and content are proposed for the training programs that OSHA will consider as acceptable for accreditation.

This notice also proposes the necessary corrections to paragraphs (e) and (p) of 29 CFR 1910.120 that would recognize the content of this proposal when it becomes a final rule. The specific paragraphs in 29 CFR 1910.120 that are affected by this proposal and that would have to be changed are (e)(1)(i), (e)(3)(i), (e)(3)(ii), (e)(3)(iii), (e)(3)(iv), (e)(4), (e)(9), (p)(7)(i), and (p)(7)(ii).

In paragraph (a) of § 1910.121, OSHA proposes the scope, application and the necessary definitions for this proposal. Paragraph (a)(1) contains the scope statement. OSHA is proposing to accredit only those training programs required in 29 CFR 1910.120, paragraphs (e) and (p). All other training programs required by 29 CFR part 1910 would not be covered by this proposal.

In paragraph (a)(2), OSHA is proposing that this rule would apply to any applicant requesting accreditation of training programs covered by the scope of this rule.

In paragraph (a)(3), OSHA proposes the definitions for terms that are used in this rule.

In paragraph (b), OSHA would establish the procedures for requesting accreditation of training programs. Paragraph (b)(1), provides that any interested party considering themselves capable of conducting any of the training programs required in 29 CFR 1910.120 may apply.

In paragraph (b)(2) OSHA is addressing the issue of multi-state accreditation. Section 18 of the OSHA Act permits any state to develop, and receive OSHA approval for, its own state occupational safety and health plan that provides worker protection "at least as effective" as that protection provided under the Federal program. The state plan states may choose to adopt a parallel state standard for the accreditation of hazardous waste training programs which relies solely on Federal OSHA accreditation of training programs or may establish their own state accreditation programs. States choosing to establish their own accreditation programs must establish a program that is "at least as effective" in structure and operation as the Federal program and must honor Federal accreditation. They must also assure that parties receiving state accreditation of their training programs understand that state accreditation applies only within that state.

OSHA is proposing paragraph (b)(2)(i) to consider any training program accredited under the OSHA accreditation program to be an acceptable accredited program in any state or territory. Thus persons seeking multi-state accreditation of their training programs must apply for Federal accreditation.

Likewise, OSHA is proposing in paragraph (b)(2)(ii) that where any training program that has received an individual state accreditation from an OSHA approved state plan, that training program must be resubmitted for accreditation, where necessary, in each state with an approved state plan unless the applicant's program has also received Federal OSHA accreditation. Thus, persons who already have a training program accredited in one state plan state and who wish to expand their program to other states must either apply for Federal accreditation of their training programs or apply individually to appropriate state plan states. Representatives of several state plan states have raised the further possibility of entering into reciprocity agreements,

whereby accreditation in one state plan state would be accepted by another such state and/or result in an expedited application procedure.

The proposals in paragraphs (b)(2)(i) and (ii) are being made to initiate discussion in the record on how OSHA should approach the issue of state plan accreditation and multi-state accreditation involving one or more state plan states.

In paragraph (b)(3) OSHA establishes the required content of applications for training program accreditation. In paragraph (b)(3)(i) OSHA proposes the specific information that must be present in the applications for Federal accreditation. OSHA would appreciate further information on the costs associated with submitting an application package containing the specific information proposed in this paragraph.

In paragraph (b)(3)(ii) OSHA is proposing the information required in applications for reciprocal Federal accreditation of state accredited training programs. Comments are specifically sought as to whether Federal applications for programs already accredited by an OSHA approved state plan should receive special consideration through an expedited procedure. Here too OSHA would appreciate any comments as to the cost of submitting the information proposed in this paragraph.

Paragraph (b)(4) would identify the locations where applications for accreditation could be filed. OSHA is presently considering the possibilities for filing locations. This paragraph contains a proposed general address in Washington, DC.

In paragraph (b)(5) OSHA is proposing the methods by which an applicant can amend or withdraw an application once it has been submitted for accreditation. Under paragraph (b)(5)(i), an applicant would be able to revise or amend an application at any time prior to the final decision by OSHA on the accreditation application.

In paragraph (b)(5)(ii) an applicant would be able to withdraw an application, without prejudice, at any time prior to the final decision on the accreditation application.

In paragraph (c) OSHA is proposing the review and decision process that the Agency will follow for processing training program accreditation applications.

In paragraph (c)(1) OSHA proposes to provide written notification of receipt by the Agency of all applications for accreditation. The Agency may also request in its notification of receipt any additional information it believes is required before the application can be considered.

In paragraph (c)(2) OSHA is proposing the requirements for accreditation that would permit a preliminary decision by the Assistant Secretary for OSHA. In paragraph (c)(2)(i) OSHA would require that the applicant demonstrate in its application the following:

1. That it has a written training program indicating that it will train employees in the topics required by 29 CFR 1910.120;
2. That it has competent staff and facilities to carry out the training program properly;
3. That it is capable of properly and effectively training employees in the topics required in 29 CFR 1910.120;
4. That it has an effective method of measuring whether the employee has been adequately trained in the areas of required training;
5. That it maintains adequate records of the program and employees who have successfully completed the program; and
6. That it continues to meet the requirements for accreditation.

In paragraph (c)(2)(ii) OSHA would provide for a preliminary decision by the Assistant Secretary for OSHA as to whether or not the applicant has met the requirements for accreditation based upon the completed application file.

In paragraphs (c)(3)(i), (ii) and (iii), the Agency would grant preliminary accreditation of the applicant's training program if the application appears to meet the requirements for accreditation and would notify the applicant of the preliminary accreditation. Upon receipt of the notification of preliminary accreditation, the applicant could begin to conduct the accredited training program.

In paragraph (c)(4) OSHA is proposing the procedures to be followed if the preliminary review of an application warrants the denial of preliminary accreditation by the Assistant Secretary of OSHA.

Under paragraph (c)(4)(i) OSHA would deny preliminary accreditation of a training program if the application does not appear to meet the requirements of this proposed rule or the training program requirements of the targeted provision in § 1910.120.

In paragraph (c)(4)(ii) OSHA proposes to notify the applicant in writing of the decision not to grant preliminary accreditation and to identify the specific requirements of the training criteria that were not met and the reasons therefor.

In paragraph (c)(4)(iii) OSHA proposes to permit applicants to resubmit the original application with a statement of reasons why the applicant believes that the original application met the requirements for accreditation, and would permit the applicant to request accreditation under paragraphs (e)(5) and (e)(6) of this section.

In paragraph (c)(4)(iv) OSHA proposes to permit applicants who receive a preliminary denial of accreditation to submit a revised application for further review by the Agency pursuant to the procedures of this section.

In paragraphs (c)(5)(i), (ii), and (iii) OSHA is proposing to have a public comment period during which any interested parties may comment on the preliminary decision by the Assistant Secretary for OSHA on a training program's accreditation application. OSHA is proposing that a 60-day comment period be provided to the public after the preliminary decision of the Assistant Secretary has been published in the **Federal Register**. All relevant documents associated with the training program application would be made available to the public for review and copying. OSHA also proposes to permit any interested party to request a public hearing, if the party can demonstrate the need for a hearing, in accordance with the requirement of 29 CFR part 1905, subpart C, on OSHA's decision.

In paragraph (c)(6) OSHA is proposing the procedures by which the Assistant Secretary for OSHA will make a final decision on applications for training program accreditation. In paragraph (c)(6)(i) OSHA proposes that the Assistant Secretary's preliminary decision will be reissued as the final decision if there are no comments objecting to the preliminary decision. Where there are comments objecting to the Assistant Secretary's preliminary decision, OSHA is proposing that the Assistant Secretary issue a written final decision on the application based upon the evidence in the record from the full applications, the supporting documentation, the staff recommendations, and the written comments and evidence submitted during the public comment period.

In paragraph (c)(6)(ii) OSHA is proposing the procedures to be followed when there is a valid request for a hearing on the Assistant Secretary's decision.

Under paragraph (c)(6)(ii)(A) the Assistant Secretary would issue a notice of hearing before an Administrative Law Judge of the Department of Labor pursuant to the rules specified in 29 CFR part 1905, subpart C.

Under paragraph (c)(6)(ii)(B) the Administrative Law Judge would issue a decision (including reasons) based on

the application, the supporting documentation, the staff recommendation, the public comments and the evidence submitted during the hearing (the record)—stating whether or not it has been demonstrated, based on a preponderance of evidence, that the applicant meets the requirements for accreditation.

Under paragraph (c)(6)(ii)(C) any party to the hearing may file exceptions within 20 days after the issuance of the decision of the Administrative Law Judge in accordance with the provisions of subpart C of 29 CFR part 1905. If exceptions are filed, the Administrative Law Judge would forward the decisions, exceptions and record to the Assistant Secretary for the final decision on the application.

Under paragraph (c)(6)(ii)(D), the Assistant Secretary would review the record, the decision by the Administrative Law Judge, and the exceptions. Based upon that review, the Assistant Secretary would issue the final decision (including reasons) of the Department of Labor stating whether the applicant has demonstrated that it meets the requirements of accreditation.

In paragraph (c)(6)(iii) OSHA proposes to publish a notice of the final decision in the **Federal Register** and to send a copy of the final decision to the applicant.

In paragraph (d) OSHA is proposing the terms and conditions of accreditation. The terms and conditions would have to be complied with in order for the applicant's training program accreditation to remain in effect.

Under paragraph (d)(1)(i) the Assistant Secretary will provide a letter of accreditation to the applicant that will serve as evidence of accreditation. The letter would provide the specific details of the scope of the OSHA accreditation as well as any conditions imposed by OSHA.

Under paragraph (d)(1)(ii) OSHA would grant accreditation for a period of three years after initial accreditation and for a period of five years for each subsequent renewal of accreditation. The dates of the period of accreditation would be stated in the accreditation letter.

Under paragraph (d)(1)(iii) the accredited applicant would be required to satisfy all of the requirements of this section and the letter of accreditation during the period of accreditation.

Under paragraph (d)(2) the accredited applicant may change elements of the accredited training program by notifying the Assistant Secretary of the change, certifying that the revised program change meets the requirements of this proposal; that the entire accredited program continues to meet the requirements of this section; and that supporting documentation is provided upon which its conclusions are based. The applicant may also make a change upon notification of OSHA. However, if on subsequent review, OSHA determines that the change is inconsistent with this section and then notifies the applicant of the inconsistency, the applicant must revert to the original elements.

Under paragraph (d)(3) an accredited applicant may renew its accreditation by filing a renewal request at the address in paragraph (b)(4) of this section not less than 180 calendar days, nor more than one year, before the expiration date of its current accreditation period. When an accredited applicant has filed such a renewal request, the current accreditation would not expire until a final decision has been made on the renewal request. The procedures of paragraphs (b) and (c) of this section.

In paragraph (d)(4) OSHA is proposing that an accredited applicant could not transfer its accreditation to any other person or organization.

In paragraph (d)(5) OSHA is proposing the procedures by which the Agency could revoke the accreditation of a training program.

Under paragraph (d)(5)(i) the Agency may revoke its accreditation of a training program if the accredited applicant has failed to continue to satisfy the requirement of this section or the Agency's letter of accreditation, or has misrepresented itself in its application.

Under paragraph (d)(5)(ii) the Agency would notify the accredited applicants prior to proposing to revoke accreditation, of the basis for the proposed revocation, and would allow rebuttal or correction of the alleged deficiencies. Any evidence in rebuttal or of correction of deficiencies would have to be received by the Agency within 60 days of notification or OSHA would initiate its revocation proceedings. If the deficiencies could not be corrected, OSHA would be able to revoke its accreditation 30 days later unless the accredited applicant requested a hearing within that time.

Under paragraph (d)(5)(iii) any hearing requested by an applicant would have to be held pursuant to the rules specified in 29 CFR part 1905, subpart C.

Under paragraph (d)(5)(iv) the parties of the hearing would be limited to OSHA and the accredited applicant. Decisions at the hearing would be made in accordance with the procedures specified in paragraph (c)(6) of this proposal, except that the burden of proof would be on OSHA to demonstrate that the accreditation should be revoked because the accredited applicant is not meeting the requirements of accreditation, the Agency's accreditation letter, or has misrepresented itself in its application.

Under paragraph (d)(5)(v) any interested party would be able to file a complaint stating that the accredited applicant is not meeting the requirements of accreditation, the Agency's accreditation letter, or has misrepresented itself in its application. Such a complaint would have to contain the specific information as to the deficiencies identified. OSHA would acknowledge such complaints in writing and provide the accredited applicant with a copy of the complaint subject to the Privacy Act limitations.

Under paragraph (d)(5)(vi) OSHA would investigate any complaints and, upon completion of any investigation, could invoke the revocation procedures described in this proposal. If the decision would be not to pursue revocations, the complainant would be notified in writing by OSHA of its investigation findings and reason why the accreditation remains valid.

In paragraph (e) OSHA is proposing the primary obligations of the accredited applicant.

Under paragraph (e)(1) the applicant would allow OSHA or its authorized representative to attend, evaluate and monitor any part of the accredited training program without charge or cost to OSHA. OSHA would not give advance notice of attendance at the training program.

Under paragraph (e)(2) the applicant would agree to modify the accredited training program if the training requirements of this section or § 1910.120 are changed, or if any other OSHA standard which is the subject of training is changed in a manner that will affect this section. Modifications in the training program would have to take place no later than 30 days after this section or other relevant standard becomes effective.

Under paragraph (e)(3) the applicant would have to agree to modify the accredited training program upon OSHA's request if the "state of the art" changes relative to any of the topics provided in the training program.

Under paragraph (e)(4) the applicant would agree to provide annually to OSHA, no later than 60 days after the accreditation anniversary date, the name and location of each program given, the date given, the number of participants in each program, and the

number of participants that were certified as having successfully completed each program.

In paragraph (f) OSHA is proposing the criteria for examinations. Examinations would cover the necessary skills and knowledge to perform expected duties. Each examination would have to cover the important topics included in the training program adequately. Comments are requested on whether the regulations should specify the type of exams in greater detail and, if so, in what way.

In paragraph (g) OSHA is proposing the criteria for certificates of completion to be given to students.

Under paragraph (g)(1) the accredited applicant would issue certificates to students who have attended and successfully completed the training program.

Under paragraph (g)(2) the certificate would have to include the accredited applicant's name, the student's name, the accredited program name, the dates of the program, a statement indicating that the participant successfully completed the program, the location where the program was given, and an identifying number unique to the student.

In paragraph (h) OSHA is proposing the specific course content for those training courses that will be offered in accredited training programs.

Under paragraph (h)(1) OSHA would establish the minimum subjects to be covered in the training course required in paragraph (e) of § 1910.120 for the 40-hour training program.

Under paragraph (h)(2) OSHA is proposing the minimum subjects that must be covered in the 24-hour training course required in paragraph (e) for employees engaged in occasional visits to uncontrolled hazardous waste sites.

Under paragraph (h)(3) OSHA is proposing the minimum subjects that must be covered for an additional sixteen hours of training for employees who have received 24-hours of accredited training for uncontrolled hazardous waste site operations, and who want to work in areas where 40-hours of training are required.

Under paragraph (h)(4) OSHA is proposing the minimum training subjects that must be covered in the training course required in paragraph (p) of § 1910.120 for the 24-hour training program.

Under paragraph (h)(5) OSHA is proposing the minimum training subjects that must be covered in the 8-hour training course for managers and supervisors.

III. Preliminary Regulatory Impact Analysis, Regulatory Flexibility Analysis and Environmental Assessment

I. Executive Summary

Regulatory History

The Occupational Safety and Health Administration (OSHA) is proposing to develop a new rule for the accreditation of training programs for hazardous waste operations as mandated in amendments made to the Superfund Amendments and Reauthorization Act of 1986 (SARA) in December 1987.

The training programs proposed to be accredited under this new regulation are required by the regulations in 29 CFR 1910.120, paragraphs (e) and (p), and apply to employees involved in clean-up operations at uncontrolled hazardous waste sites being cleaned-up under government mandate, and to employees involved in certain hazardous waste treatment, storage, and disposal (TSD) operations conducted under the Resource Conservation and Recovery Act of 1976, as amended (RCRA) (42 U.S.C. 6901 et seq). It is not proposed to accredit training programs for employees engaged in emergency response activities.

This proposed rule would supplement the existing permanent final rule for hazardous waste operations and emergency response published on March 6, 1989 as required by Congress in the Superfund Amendments and Reauthorization Act of 1986 (SARA) (PUB. 1. 99–499).

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a Regulatory Impact Analysis (RIA) be conducted for any rule having major economic consequences on the national economy, individual industries, or government. The Regulatory Flexibility Act (Pub. L. 96–353, 94 Stat 1164 [5 U.S.C. 601 et seq.]) similarly requires OSHA to consider the impact of a final rule on small entities.

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499). As part of SARA, the Secretary of Labor (Secretary) was directed to issue an interim final rule within 60 days after the date of enactment, which was to provide no less protection for workers engaged in covered hazardous waste operations than the protection contained in two specified documents. Those two documents were the U.S. Environmental Protection Agency's (EPA's) "Health and Safety Requirements for Employees Engaged in Field Activities" manual (EPA Order 1440.2), dated 1981, and the existing Occupational Safety and Health Administration (OSHA) standards under subpart C of 29 CFR part 1926. OSHA published an interim final rule as directed in the **Federal Register** on December 19, 1986 (51 FR 45654).

SARA also directed the Secretary to issue, within one year after the date of enactment, a final standard under section 6(b) of the Occupational Safety and Health Act for the health and safety of employees engaged in hazardous waste operations and emergency response. SARA also indicated that certain specific areas of employee protection, in particular employee training, were relevant to protect employees engaged in hazardous waste operations. OSHA issued a proposed rule on hazardous waste operations and emergency response, including provisions for training, on August 10, 1987 (52 FR 29620). Public hearings on the proposed rule were held during October 1987. As a result of that proposed rule and the public hearings held with respect to that proposal, OSHA published a permanent final rule for hazardous waste operations and emergency response on March 6, 1989. That permanent final rule will become effective on March 6, 1990.

In addition, on December 22, 1987, as part of the Reconciliation Bill, the President approved several amendments to SARA. One of the amendments requires the Secretary to specify the content of hazardous waste operation training, and to set up a process to accredit the training programs. The original language of SARA mandated only the number of hours of training. This proposed rule is prepared in response to this amendment.

Populations and Industries Affected

This standard potentially affects approximately 7,000 individual trainers most of whom will be employed by consulting firms in SICs 17 (Special Trade Contractors) and 891 (Engineering, Architectural, and Surveying Services). It was assumed that individual trainers are employed by small consulting firms with an average size of 5 trainers per firm. Thus, there are approximately 1,400 (7,000 divided by 5) potential applicants affected by this standard. The total population to be trained are employed in government mandated hazardous waste operations, privately initiated operations and RCRA-regulated facilities.

Cost of Compliance

The standard is expected to involve an application cost of $92.50 for each of the 1,400 potential applicants for

accreditation. OSHA expects that two thirds of these training firms will apply for reciprocal accreditation (i.e. accreditation in several states) at an additional cost of $6.00 per application. The first year cost of compliance is $135,098. The cost for the third and eighth years is also projected to be $135,098 since complete reapplication is required by the proposed standard.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (Pub. L. 96–353. 94 Stat. 1164 (5 U.S.C. et seq.)), the Assistant Secretary has assessed the impact of the standard and concluded that full compliance with the standard will not have a significant impact upon a substantial number of small entities.

The important criterion that governs a Regulatory Flexibility Analysis is whether the standard adequately considers the special compliance problems faced by small entities. "Significance" is determined by the effect upon the profits, the market share, and the financial viability of small entities. In particular, OSHA must determine whether compliance with the standard will place small entities at a competitive disadvantage to large entities.

The standard applies uniformly to all potential contracting instructors. Also, since OSHA's analysis of costs shows that the standard will impose minimal compliance costs and since many of the trainers are likely to be attached to contracting firms, OSHA has determined that there will be no differential impact on small firms.

Impact on International Trade

OSHA evaluated the potential impact that this standard will have upon international trade. Based upon the minimal potential impact of the standard on the prices of the affected products and services, OSHA believes that there will be no effective change in the level of exported or imported products.

Environmental Impact Assessment

In accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR part 1500, et seq.), and the Department of Labor's implementing regulations for NEPA compliance (29 CFR part 11), The Assistant Secretary has determined that the standard will not have a significant impact on the external environment.

Benefits

Case studies indicate that exposures to hazardous wastes cause both acute and chronic adverse health effects. Compliance with the standard will reduce employee exposures through accredited training programs and, therefore, will prevent potential employee fatalities and illnesses resulting from these exposures. Though not quantified, the primary economic benefits expected from this proposed regulation will be an improved level of training at hazardous waste operations. The main beneficiaries will be the employees and the employers at hazardous waste operations.

Technological Feasibility

The standard does not require the use of capital equipment or work practices not readily available. OSHA has, therefore, determined that the standard is technologically feasible.

II. Industries and Populations Affected

Background

The proposed Part 1910 on Hazardous Waste require that the training provision of the standard be met by programs accredited by the Occupational Safety and Health Administration. The training programs proposed to be accredited under this new regulation apply only to employees involved in clean-up operations under government mandate, clean-up at uncontrolled hazardous waste treatment, storage, and disposal (TSD) operation conducted under the Resource Conservation and Recovery Act of 1976, as amended (RCRA) (42 U.S.C. 6901 et seq.). The new regulation does not propose to accredit training programs for employees engaged in emergency response activities. This proposed rule would supplement the existing permanent final rule for hazardous operations and emergency response as required by Congress in the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

In this chapter, OSHA briefly describes these hazardous waste operations and estimates the number of sites and employees potentially affected by the standard. The number of potentially affected employees was derived from OSHA's hazardous waste Regulatory Impact Analysis (RIA).

Data Sources

OSHA's primary data sources included: The April 1987 study by the Eastern Research Group (ERG) [1], a July 29, 1987 ERG Memorandum [2], and the comments supplied in response to the Notice of Proposed Rulemaking (NPR), the comments made during the public hearings, and the post-hearing comments and submissions. The ERG report [1] were based on Environmental Protection Agency (EPA) sources, and the analyses of experts in the field of hazardous waste operations.

In OSHA's (RIA) [2] and in its Preamble to the Notice of Proposed Rulemaking (NPR), OSHA requested comments concerning the data used in its Preliminary Regulatory Impact Analysis (PRIA). Consequently OSHA believes that it has given due notice to all responsible parties and that the data used are the best available for this (PRIA).

Industries and Activities Affected by the Standard

The majority of instructors are currently employed in the industry sectors Special Trade Contractors (SIC 17) and Engineering, Architectural and Surveying Services (SIC 891). In general, these instructors are attached to firms servicing specific hazardous waste operations.

In this section, OSHA has developed estimates of the potential population of workers to be trained. This is identical to the population at risk analysis developed in the RIA for Hazardous Waste Operations and Emergency Response.

Average Potential Population to be Trained at Uncontrolled Hazardous Waste Sites. Personnel involved in hazardous waste cleanup operations may be employed by federal and state governments, Superfund program contractors and subcontractors with EPA, state cleanup contractors and subcontractors, and private-party cleanup contractors. In order to determine the number of employees needed for a cleanup operation, OSHA estimated the approximate types and numbers of personnel needed to clean up a typical small uncontrolled hazardous waste site and a typical large uncontrolled hazardous waste site. These estimates are based on ERG [1, p. 3–59].

As seen in Table 1, the number of personnel at the site varies during the cleanup procedures. With respect to the typical small site, between 4 and 6 employees work at the site taking samples and making visual observations during the preliminary investigation. During the actual cleanup activities, between 7 and 12 employees (primarily heavy equipment operators, truck drivers, and drum handlers/technicians/laborers) work at the site removing the hazardous waste. Finally, between 4 and 6 employees (primarily heavy equipment

operators and truck drivers) are required for the final grading and site reclamation work.

TABLE 1.—AVERAGE PERSONNEL REQUIREMENTS TO CLEAN UP UNCONTROLLED WASTE SITES

Type of Activity	Small site: Number of employees	Large site: Number of employees
Preliminary activities:		
State and Federal supervisors	1-2	4-8
Sampling technicians	1-2	3-6
Chemists	1	3-6
Construction supervisors/contractor managers	1	2
Security personnel	0	1
Total	4-6	13-23
Cleanup:		
State and Federal supervisors	0-1	4-6
Safety director	0	0-1
Heavy equipment operators	2	6-8
Drum handlers/technicians/laborers	2-3	30-40
Truck drivers	2-4	12-14
Other craftsmen, electricians, maintenance men	0	1-2
Construction supervisors/contractor managers	1	1-3
Security personnel	0	2-3
Decontamination officer	0-1	1
Total	7-12	57-78
Final grading and site reclamation:		
State and Federal supervisors	0-1	0-2
Heavy equipment operators	2	3-4
Truck drivers	1-2	3-4
Construction supervisors	1	2
Total	4-6	7-11

Source: ERG [1, p. 3-59].

Typically, between 13 and 23 employees work at large sites taking samples and making visual observations during the preliminary investigation. During the actual cleanup activities, between 60 and 80 employees (primarily drum handlers/technicians/laborers, truck drivers, and heavy equipment operators) work at the site removing the hazardous waste.

Finally, between 7 and 11 employees (primarily heavy equipment operations and truck drivers) are required for the final grading and site reclamation.

Total Potential Population to be Trained at Uncontrolled Hazardous Waste Sites. ERG reported (1, p. 3-62) that there are 10 large contractors (each employing about 400 workers) and 40 smaller contractors (each employing about 75 workers) involved in cleanup operations at uncontrolled hazardous waste sites. OSHA, therefore, estimates that there are about 50 firms with approximately 7,000 workers performing the cleanup of uncontrolled hazardous waste sites. In addition to these primary cleanup contractors, local subcontractors are often hired to perform various tasks during the cleanup. ERG estimated (1, p. 3-62) that there are about 1,750 subcontractor employees who work for some length of time during the year at hazardous waste sit cleanup operations. Further, there are about 17 contractor and subcontractor site managers for each of the 50 cleanup contractors giving a total of approximately 850 site supervisors who would be at risk from exposure to hazardous substances during these site cleanups. This is presented in Table 2.

The engineering/technical services employees will also need to be trained. Based on the ERG report (1, Table C-5), OSHA estimates that there are 100 engineering/technical services firms each with an average of 25 professionals and 6 managers who are at risk from exposure to hazardous substances during cleanup operations. Thus an estimated 3,100 employees and managers of waste engineering/technical services firms will be in the population at risk. OSHA estimates that the potential population to be trained at government-mandated uncontrolled hazardous waste site cleanups is 12,700 employees per year.

With respect to the total population covered at privately initiated hazardous waste site cleanups, most of these employees also work at government-mandated hazardous waste site cleanups. Nevertheless, there are some employees who work only at privately-initiated waste site cleanups. OSHA estimates that the number of workers in this latter group is 10-percent of the population to be trained at government-mandated hazardous waste site cleanups. Thus, about 1,300 employees who work only at privately-initiated hazardous waste site cleanups will need to be trained.

In sum, OSHA estimates that the total annual population-at-risk at all uncontrolled hazardous waste site cleanups is 14,000 employees.

Potential Population to be trained at RCRA-Regulated Facilities. At a manufacturer's RCRA-regulated facility, employees may face potential exposure during container handling and waste treatment processes. At a commercial land disposal facility, employees may face potential exposure during vehicle unloading, handling of containers prior to waste disposal, disposal operations, and subsequent activities (e.g., entry into disposal units which may leak, general maintenance operations, etc.).

ERG reported (1, p. 3-18) that the number of employees who work in the vicinity of the hazardous waste treatment and storage area of RCRA-regulated facilities ranges from 5 employees at small and/or highly automated facilities to 100-150 employees at very large facilities. In the Hazardous Waste RIA (2, p. II-26), OSHA had estimated that there are an average of 25 employees at land disposals, injection wells, and incinerators (hereafter referred to as land disposal facilities) and an average of 10 employees at other treatment, storage, and disposal facilities.

ERG reported (1, p. 3-19) that there are 888 active land disposal facilities of which 523 are land disposal facilities, 46 are injection well facilities, and 319 are incinerators. Multiplying the 888 active land disposal facilities times 25 employees per facility indicates that there are about 22,200 employees at risk from hazardous wastes in land disposal facilities. In addition, multiplying the estimated number of 3,050 other treatment, storage, and disposal facilities times 10 employees per facility indicates that there are about 30,500 employees at risk from hazardous wastes in these facilities. Thus, in its RIA (2, p. II-26)j, OSHA estimated that 52,700 employees work in active RCRA-regulated facilities and potentially subject to training.

No dissenting comments concerning these estimates received by OSHA, these estimates have been incorporated into this PRIA.

III. Regulatory and Non-Regulatory Environments

Regulatory Environment

OSHA has examined the existing regulatory environment and believes that the training certification provisions of Part 1910 will help to insure adequate training for workers and will not produce any adverse economic impacts.

Economic inefficiency would result if OSHA takes too much time to certify applicants and programs. The time spent by an applicant awaiting accreditation is time during which no certified training can be performed. OSHA has, however, attempted to offset this effect by allowing for "preliminary accreditation". After review of the application and any additional information, the agency will grant a preliminary accreditation if the applicant appears to meet the general

requirements stipulated by the standard. This preliminary accreditation will allow the instructor to begin his program at a facility pending a final decision. The agency will also allow for "preliminary non-accreditation" if a cursory review indicates an inadequate program. Preliminary decisions are subject to reversal.

Non-Regulatory Environment

Executive Order 12291 requires the investigation of the non-regulatory environment as a possible alternative to the regulatory environment.

OSHA believes that a non-regulatory environment would be inferior to a regulatory environment. The training certification requirements were promulgated because employers and employees are often unable to independently evaluate training programs. Essentially, the regulation is designed to insure an independent review of the content of training programs and the qualifications and experience of potential instructors. In the absence of regulation, employers may encounter situations in which they would have to bear the economic loss of replacing unqualified trainers or require that employees face increased risk. The requirement that trainers possess certain qualification is a requirement that should promote greater employee safety and also greater economic efficiency. Thus, OSHA conclused that the regulatory environment is preferred to the non-regulatory environment.

IV. Proposed Regulatory Environment

Introduction

The proposed regulation has been designed to ensure that the levels of safe work procedures indicated in 29 CFR part 1910 on hazardous wastes and materials is maintained via a training provision. In order to fulfill this purpose, this proposed regulation establishes the criteria and administrative procedures to be met in order that:

- Potential training instructors and programs may be recognized.
- Proposed training programs may be reviewed and evaluated by expert staff in order to determine whether the programs meet the appropriate standards which ensure worker safety.
- The potential trainers and training programs meeting the appropriate criteria become accredited by an OSHA certification system.

As these criteria and procedures have been described in the Preamble to this proposed regulation, they are not described in detail in this Preliminary Regulatory Impact Assessment (PRIA).

Costs of Compliance Methodology

The costs of compliance for this standard apply only to clean up operations at uncontrolled hazardous waste sites under government mandate, and to certain hazardous waste treatment and disposal operations under the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6901 *et seq.*). Training instructors and programs for employees engaging in emergency response activities are not covered.

The cost of compliance are estimated in the following manner. OSHA determined, based on the estimated population at risk from Chapter II of this PRIA, the number of employees to be trained by the standard. OSHA then calculated the number of instructors required to adequately train employees. The appropriate cost for assembling and mailing out an application package was applied to the total number of applicants to calculate the total compliance cost for the first year. Annual costs of compliance were determined by applying the appropriate number of accreditations demanded per year to the cost of an application package in conjunction with the stipulation that an initial accreditation is renewed in three years from the date of issuance and every five years thereafter.

OSHA calculated the total number of employees to be trained based on ERG's [1] estimates of numbers of firms, employees per firm, and approximate turnover rates for government mandated and RCRA-regulated facilities. Table 2 shows the total number of existing employees, turnover rates, employees retained per year, and the number of new hires per year. First year populations to be trained are developed in Table 3. Populations to be trained in subsequent years are developed in Table 4.

TABLE 2.—TOTAL NUMBERS OF EXISTING AND NEW EMPLOYEES AT GOVERNMENT MANDATED FACILITIES AND RCRA-REGULATED FACILITIES

Type of firm	Number of firms	Employees per firms	Employee type	Existing employees	Turnover rate	New employees	Employees retained per year
Government mandated facilities:							
Contracting firm	50	175	Contractor	7,000	0.25	1,750	5,250
			Subcontractor	1,750	.25	440	1,310
Contracting firm	50	17	Contractor supervisor	700	.20	140	560
			Subcontractor supervisor	150	.73	110	40
Engineering firm	100	25	Workers	2,500	.10	250	2,250
		6	Managers	600	.10	60	540
RCRA-Regulated facilities:							
Disposal facility	888	25	Workers	22,200	.20	4,400	17,800
Treatment and storage facility	3,053	10	Workers	30,530	.20	6,100	24,400

Source: ERG [1], Tables C-1, C-4. U.S. Department of Labor, Office of Regulatory Analysis. February 1989.

TABLE 3.—FIRST YEAR POPULATION TO BE TRAINED

Employee type	Existing employees			New employees			Total number to train
	Total	Current compliance	Number to train	Total	Current compliance	Number to train	
Government mandated facilities:							
Contractor	7,000	0.40	4,200	1,750	0.30	1,225	5,425
Subcontractor	1,750	.00	1,750	440	.10	400	2,150
Contractor supervisor	700	.75	175	140	.30	98	273
Subcontractor supervisor	150	.25	112	110	.10	100	212
Engineering worker	2,500	.75	625	250	.70	75	700

TABLE 3.—FIRST YEAR POPULATION TO BE TRAINED—Continued

Employee type	Existing employees			New employees			Total number to train
	Total	Current compliance	Number to train	Total	Current compliance	Number to train	
Engineering manager	600	.75	150	60	.70	18	168
RCRA regulated facilities:							
Disposal worker	22,200	.75	5,500	4,400	.50	2,200	7,700
Treatment and storage worker	30,530	.75	7,625	6,100	.25	4,575	12,200

Source: ERG [1] Tables C-1, C-4. U.S. Department of Labor, Office of Regulatory Analysis. February 1989.

TABLE 4.—ANNUAL POPULATION TO BE TRAINED

Employee type	Existing employees retained			New employees			Total number to train
	Total	Current compliance	Number to train	Total	Current compliance	Number to train	
Government mandated facilities:							
Contractor	5,250	0.90	525	1,750	0.30	1,225	1,750
Subcontractor	1,310	.00	1,310	440	.10	400	1,710
Contractor supervisor	560	.90	56	140	.30	98	154
Subcontractor supervisor	40	.50	20	110	.10	100	120
Engineering worker	2,250	.90	225	250	.70	75	300
Engineering manager	540	.90	54	60	.70	18	72
RCRA regulated facilities:							
Disposal worker	17,800	.50	8,900	4,400	.50	2,200	11,000
Treatment and storage worker	24,400	.25	18,300	6,100	.25	4,575	22,875

Source: ERC [1] Table C-1, C-4. U.S. Department of Labor, Office of Regulatory Analysis. February 1989.

Population To Be Trained. (Government Mandated Cleanups)

All supervisors and employees at hazardous waste site cleanups must either have sufficient experience or be adequately trained in the safe handling of hazardous substances. Adequate training is dependent upon the level of protective clothing required for the job, for example, employees required to wear Levels A or B or C protective clothing will need 40 hours of training plus 3 additional days of supervised work experience. The amount of training required for supervisors is also dependent upon the level of protective clothing to be worn by the employees being supervised. Supervisors are required to have 8 hours more training than that received by employees at every level of protective clothing. All employees and supervisors are to receive a written certificate upon completion of training.

ERG reported [1, C-4] that although some contractor employees have had formal classroom training, few have had 40 hours of off-site training. Many contractor employees, however, have had substantial hazardous waste site cleanup experience. OSHA determined that 40-percent of the 7,000 current contractor employees (2,800 employees) but none of the 1,750 current subcontractor employees have had sufficient training and/or work experience to fulfill this training requirement (see Table 3).

ERG reported [1, C-4] that, on average, the 1,750 newly hired contractor employees receive 30-percent and the 440 newly hired subcontractor employees receive 10-percent of the training required by the standard. Consequently, initial training will be provided to a full-time equivalent of 1,625 new employees of whom 1,225 will be new contractor employees and 400 will be new subcontractor employees.

The training provision also requires that all employees receive 8 hours of annual retraining. Based on the ERG report [1, C-4], OSHA estimates that 90-percent of contractor employees but none of the subcontractor employees receive this annual retraining. Consequently, annual retraining will be needed by 525 of the 5,250 contractor employees and all of the 1,310 subcontractor employees who have been employed by the same employer for at least a year (see Table 4).

The training provision also affects contractor and subcontractor supervisors. OSHA estimates that 175 current contractor supervisors (105 at Levels A and B protective clothing and 70 at Level C protective clothing) and 112 current subcontractor supervisors (56 at Level B protective clothing and 56 at Level C protective clothing) will need off-site initial training. In addition, OSHA estimates that 70-percent of the 140 new contractor supervisors hired annually (98 supervisors) and 90-percent of the 110 new cleanup subcontractor supervisors hired annually (100 supervisors), will need this initial training in the first year and in each year thereafter (See Table 3).

The training provision also requires that all supervisors receive 8 hours of annual retraining. Based on the ERG report [1, C-4], OSHA estimates that 90-percent of the contractor supervisors and 50-percent of the subcontractor supervisors currently receive annual retraining. Consequently, annual retraining will be needed for 56 of the 560 contractor supervisors and 20 of the 40 subcontractor supervisors who remain with the same employer for at least a year (see Table 4).

In addition to the contractors and subcontractors, the training provision will also affect engineering/technical service employees and managers who work at government-mandated cleanup sites. Consequently, 625 current employees (315 at Levels A and B protective clothing and 310 at Level C protective clothing) and 150 current managers (75 at Levels A and B protective clothing and 75 at Level C protective clothing) will need off-site initial training. In addition, ERG reported [1, Table C-4] that 30-percent of the 250 new employees hired annually (75 employees) and 30-percent of the 60 new managers hired annually (18 managers) will need this initial training in the first year and in each year thereafter (see Table 3).

The training provision also requires that all employees receive 8 hours of annual retraining. Based on the ERG

report [1, Table C-4], OSHA estimated that 90-percent of the engineering/technical services employees receive this annual retraining. Consequently, annual retraining will be needed by 225 of the 2,250 engineering/technical services employees who remain with the same employer for at least a year (see Table 4).

The training provision also requires that all managers receive 8 hours of annual retraining. Based on the ERG report [1, C-4], OSHA estimates that 90-percent of the engineering/technical services managers receive this annual retraining. Consequently, annual retraining will be needed by 54 of the 540 managers who remain with the same employer for at least a year (see Table 4).

Population To Be Trained (Privately Initiated Cleanups

OSHA assumes that the activity level of privately-initiated hazardous waste site cleanups is 10-percent of that at a government-mandated hazardous waste sites and training requirements are similarly scaled (i.e. training levels at privately initiated cleanups are 10-percent of those at government mandated cleanup sites). (See Table 3 and Table 4).

Population To Be Trained (RCRA-Regulated Facilities

Paragraph (p)(7), requires that all RCRA-regulated facility supervisors and employees must have either sufficient experience or be adequately trained in the safe handling of hazardous substances. Adequate training is defined as 24 hours of initial training and 8 hours of annual refresher training. In addition, all supervisors and employees are to receive a written certification upon completion of training. Supervisors and employees who have had sufficient work experience or training are considered to have fufilled this initial training requirement but they must receive 8 hours of retraining annually.

OSHA estimates that approximately 75-percent of current supervisors and employees working at RCRA-regulated facilities have had sufficient training and/or work experience to fulfill the initial training requirement. Thus, compliance with this provision will require the initial training of 13,125 current employees (5,500 employees at land disposal sites and 7,625 employees at treatment and storage facilities). The average RCRA-regulated facility will conduct training sessions on-site and these sessions will involve the safety and health supervisor training an average of 10 employees.

All new employees will need this initial training. Assuming a 20 percent turnover rate, RCRA-regulated facilities annually hire 10,500 new employees (4,400 at land disposal sites and 6,100 at treatment and storage facilities). ERG reported [1, Table C-1] that one-half of the 4,400 new land disposal site employees (2,200 employees) and 75-percent of the 6,100 treatment and storage facility employees (4,575 employees) currently do not receive initial training. Unlike the initial training of current employees in which a number of employees can be trained at one time, the initial training of new employees will be done on an individual basis. OSHA estimates that the initial training of new employees will involve one instructor training two new employees.

The training provisions also require that these employees receive 8 hours of annual retraining. ERG reported [1, Table C-1] that 50-percent of the 17,800 land disposal site employees (8,900 employees and 75-percent of the 24,400 treatment and storage facility employees (18,300 employees) who have been employed at the same RCRA-regulated facility for at least 1 year will need additional annual retraining. RCRA-regulated facilities can conduct annual retraining on-site and these sessions will involve a safety and health supervisor training an average of 10 employees.

Population of Instructors Demanded

From the above analysis, there are 9,820 employees involved in government mandated and privately initiated hazardous waste clean-up operations who require training in order to comply with the Hazardous Waste Operations and Emergency Response Standard. Assuming on average one instructor to train 5 employees, a total of 1,964 instructors will be required. Similarly, RCRA-regulated facilities employ 6,775 new employees who will need to be trained.

Since new employees are hired at irregular intervals, it is not feasible to train new hires at the same ratios as existing employees. Therefore, an instructor to employee ratio of 1 to 2 was assumed for new employees. In addition, 13,125 current employees will require training at an instructor to employee ratio of 1 to 5. Calculations yield 4,700 instructors for RCRA-regulated facilities. The total number of instructors required, therefore, is projected to be 6,700. Assuming that the average training team consists of five instructors, OSHA estimates that there will be roughly 1,400 applicants (each training group services about 9 RCRA and/or CERCLA facilities [see Table 5].

TABLE 5.—POPULATIONS TO BE TRAINED AND THE NUMBER OF INSTRUCTORS REQUIRED

	First year	Annual
Government Mandated Waste Operations		
Population to be trained:		
Existing and new contractor staff	7,575	3,460
Existing and new contractor supervisors	485	274
Existing and new engineering employees	700	300
Existing and new engineering managers	168	72
Subtotal	9,728	4,106
Privately initiated waste operations employees	893	411
Subtotal	9,821	4,517
Number of instructors (at 1:5 Ratio)	1,964	903
RCRA-Regulated Facilities		
Population to be trained		
Land disposal employees (new)	2,200	2,200
Treatment and storage employees (new)	4,575	4,575
Subtotal	6,775	6,775
Number of instructors (at 1:2 Ratio)	3,390	3,390
Population to be trained:		
Land disposal employee (current)	5,500	8,900
Treatment and storage employees (current)	7,625	18,300
Subtotal	13,125	27,200
Number of instructors (at 1:10 Ratio)	1,310	2,720
Total number of instructors demanded	6,700	7,000

Cost of the Standard

A standard application package is required to have the following materials included:

(i) *Application for Federal Accreditation.* The application for Federal accreditation of training programs shall provide, as a minimum, the following information.

(A) The applicant's name, address and telephone number.

(B) The name, title, address and telephone number of person who will act as liaison with OSHA.

(C) The training program curriculum.

(D) An analysis of how the training program meets the subject criteria noted in this section.

(E) Length of training in hours.

(F) Amount and type of hands-on training.

(G) Length, format, content and passing score of examinations.

(H) Topics covered in the training program.

(I) A copy of all course materials (student manuals, instructor notebooks, handouts, audio visual aids, etc.).

(J) A detailed statement about the development of the examinations used in the training program, including skill demonstration examinations.

(K) Required qualifications for each instructor position by subject area. Instructors shall have academic credentials, field experience or a combination of both and training experience for the specific subject they are teaching.

(L) The applicant's experience in providing related training programs.

(M) Description and an example of the numerically identified certificates issued to students who attend and successfully complete the training program.

(N) The materials required in paragraphs (C), (G) and (I) above shall also be provided in any language other than English if the program is to be provided in a language other than English.

(O) The maximum number of students to be accepted into a given training program course.

(P) The ratio of instructors to students for each hands-on subject.

(Q) Certification that the information submitted in the application is accurate and complete.

(ii) *Application for reciprocal accreditation.* Applicants for reciprocal accreditation shall provide as a minimum the following:

(A) The applicant's name, address and telephone number.

(B) The name, title, address and telephone of the person who will act as a liaison with OSHA.

(C) Certification that the information submitted in the application is accurate.

(D) A copy of the letter granting accreditation from any of the OSHA approved state programs.

OSHA estimates that the assembly of the application package will consume two hours of professional time at $20.00 per hour, one hour clerk typist time at $9.00 per hour and a fee of $3.50 for administrative expenses (photocopies, packaging, postage, etc.). Individual item costs are as follow: video tape copies at $5.00 a copy, one video tape of a slide show at $25.00 a copy (approximately 20 minutes of running time accounting for 200 slides at 5 seconds per slide), and $5.00 for photocopies of pamphlets and handout materials. The total cost of the application package is $92.50

Applying this cost to the number of first year applicants (1,400 potential applicants), the first year cost of applications will be $129,500. OSHA assumes that of the 1,400 first time potential applicants, two thirds will apply for reciprocal accreditation (accreditation in several states). This is estimated to consume half an hour of clerical time at $9.00 a hour and $1.50 in administrative expenses for a total application cost of $6.00. The first year cost of reciprocal applications is $5,598.00. The total first year cost is, therefore, $135,098.00.

Instructors must renew their accreditation three years from the date of initial accreditation and five years after the first renewal. OSHA estimates that 1,400 accredited instructors will be needed each year to meet mandatory retraining needs of employees and initial training of new employees. Assuming 1,400 potential applicants, the total cost of reapplications for accreditation and reciprocity for the third and eighth years of regulation is $135,098.00.

OSHA assumes that the application cost per instructor will be recovered in the fee charged for his services. As the standard imposes a minimum cost of compliance on firms and individuals seeking accreditation, OSHA has determined that there will be no substantive economic impact as a result of this standard. Also, since the demand for instructors is expected to be relatively inelastic (due to the mandatory training requirement), costs should be passed along to those requiring instruction.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. et seq.)), the Assistant Secretary has assessed the impact of the standard and concluded that full compliance with the standard will not have a significant impact upon a substantial number of small entities.

The important criterion that governs a Regulatory Flexibility Analysis is whether the standard adequately considers the special compliance problems faced by small entities. "Significance" is determined by the effect upon the profits, the market share, and the financial viability of small entities. In particular, OSHA must determine whether compliance with the standard will place small entities at a competitive disadvantage to large entities.

The standard applies uniformly to all potential applicants. Also, since OSHA's analysis of costs indicate that the standard will impose minimal compliance costs, OSHA believes that there will be no substantial differential impact on small firms.

Impact on International Trade

OSHA evaluated the potential impact that this standard will have upon international trade. Based upon the minimal potential impact of the standard upon the prices of the affected products and services, OSHA determined that there will be no effective change in the level of exported or imported products as a consequence of this standard.

Environmental Impact Assessment

In accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR part 1500, et seq.), and the Department of Labor's implementing regulations for NEPA compliance (29 CFR part 11), the Assistant Secretary has determined that the standard will not have a significant impact on the external environment.

Benefits

The primary economic benefits expected from this proposed regulation would be a guaranteed level of adequate training at hazardous waste operation. The main beneficiaries would be the employees and the employers at hazardous waste operations. At present, there exists no private or public training accreditation program which would ensure the integrity of training courses. The guarantee of effective training programs ensures not only that the benefits outlined in the RIA on hazardous waste operations are met, but also that there will be a greater level of information available in the appropriate markets regarding safety instruction and procedures. Economic theory suggests that greater information leads to greater efficiency in the competitive market.

References

1. Eastern Research Groups, Inc. "Preparation of Data to Support a Regulatory Analysis and Environmental Impact Assessment of the Proposed Standard for Working at Hazardous Waste Sites." Preliminary Report prepared for the U.S. Department of Labor under Contract No. T-9-F-5-0057. Arlington, Massachusetts, April 1987.

2. U.S. Department of Labor. Occupational Safety and Health Administration. Office of Regulatory Analysis. "Regulatory Impact and Regulatory Flexibility Analysis of the Occupational Standard for Hazardous Waste Operations and Emergency Response (29 CFR Part 1910)." Washington, D.C. December 14, 1988.

IV. OMB Approval Under the Paperwork Reduction Act

This proposed standard contains "collection of information" (recordkeeping) requirements pertaining to the procedures for applying for accreditation of training programs. OSHA estimates that these records would be required to be maintained by the applicant in order to fulfill the renewal requirements of this rule. The Agency believes that the records necessary for renewal would not be retained by the employer for more than five years when a new set of records would be developed.

Public reporting burden for this collection of information is estimated to average three and one-half hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to, Docket Office, Docket No. S-760-B, Occupational Safety and Health Administration, Room N-2634, U.S. Department of Labor, Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1218-AB27), Washington, DC 20503.

V. Federalism

This proposed regulation has been reviewed in accordance with Executive Order 12612 (54 FR 41685; October 30, 1987) regarding Federalism. Executive Order 12612 requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Executive Order provides for preemption of state law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

This proposed rulemaking is directed by Congress under amendments to the Superfund Amendments and Reauthorization Act of 1986, as amended (SARA). The constitutional authority and Congressional intent for Federal action in the area of training accreditation for employees engaged in hazardous waste operations is mandated clearly in the amendments to paragraph (d)(3) of section 126 of SARA. Congress therefore has identified the accreditation of employee training programs for employees engaged in hazardous waste operations as a problem of national scope through the enactment and amendment of SARA.

With respect to section 4 of Executive Order 12612, section 18 of the OSH Act also expresses Congress' clear intent to preempt state laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal OSHA approval of a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such approved Plan states must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions (See section 18(c)(2)).

Section 126 of SARA, under paragraph (f), requires that the U.S. Environmental Protection Agency (EPA) provide those state and local government workers who are not covered by the protections of OSHA approved state plans with protection that is identical to that provided under the Federal OSHA standards. State and local government workers, employed in 27 non-OSHA state plan states and the District of Columbia, would not normally be covered by the standards promulgated under Federal OSHA or approved state OSHA programs. OSHA has worked with EPA in the development of this proposed rule to assure that the protections provided to all state and local government employees is consistent with that provided by the Federal OSHA standard and the OSHA Act.

It is not clear to OSHA whether it would be appropriate for EPA to set up a duplicate certification of training programs for the 27 states for which EPA will issue a regulation. OSHA requests comment on this issue.

This proposed rule is written so that employees engaged in hazardous waste operations and related emergency response operations in every state, including those state and local government employees in states regulated by EPA, would be protected by general performance oriented standards. States that will be covered by regulations issued by EPA under paragraph 126(f) of SARA will be provided the same option. Moreover, the performance oriented nature of this proposed rule, of and by itself, allows for flexibility by states and owners or operators of hazardous waste sites or providers of acceptable training to provide as much safety as possible using varying methods consonant with the conditions in each state.

In summary, there is a clear national problem, identified by Congress, related to accredited occupational safety and health training programs in hazardous waste operations. Those states which have elected to participate under section 18 of the OSH Act would not be preempted by these proposed regulations and would be able to address special, local conditions within the framework provided by this performance oriented standard while ensuring that their standards are at least as effective as the Federal standard. State comments are invited on this proposal and those that are submitted to the record will be fully considered prior to promulgation of a Final Rule.

The Agency certifies that this document has been assessed in light of the principles, criteria, and requirements stated in sections 2 through 5 of Executive Order 12621. This rulemaking would not change the state's ability to discharge traditional state governmental functions or other aspects of state sovereignty.

VI. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be postmarked by April 26, 1990, and submitted in quadruplicate to the Docket Office, Docket No. S-760-B, Room N-2634, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested parties may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, N-3649, U.S. Department of Labor, Washington, DC 20210 and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of

the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by March 27, 1990.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which objection is taken or about which the hearing request is made, and must state the grounds therefor;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may, of course, make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VII. State Plan Standards

This **Federal Register** document proposes a new standard, 29 CFR 1910.121, Certification of Hazardous Waste Operations Training Programs, for inclusion in subpart H of 29 CFR part 1910, OSHA's general industry standards. It also would revise certain parts of 29 CFR 1910.120 to reflect requirements in this proposal.

The 25 states or U.S. territories with their own OSHA approved occupational safety and health plans must develop a comparable standard applicable to both the private and public (state and local government employees) sectors within six months of the publication date of a permanent final rule or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective as" the new Federal standard.

These states and territories are Alaska, Arizona, California, Connecticut (Plan covers only state and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (Plan covers only state and local government employees), North Carolina, Puerto Rico, South Carolina, Oregon, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming.

After the effective date of a final Federal rule, until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

List of Subjects in 29 CFR Part 1910

Accreditation, Certification, Hazardous materials, Hazardous substances, Hazardous wastes, Incorporation by reference, Training, Waste disposal.

Authority

This document has been prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Pursuant to section 126 of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499) as amended (29 U.S.C. 655 note), sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657, section 4 of the Administrative Procedures Act (5 U.S.C. 553), Secretary of Labor's Order 9–83 (48 FR 35736) and 29 CFR part 1911, it is proposed to amend 29 CFR part 1910 by adding a new section, 29 CFR 1910.121, Accreditation of Training Programs for Hazardous Waste Operations, and by revising paragraphs (e) and (p) of § 1910.120, as set forth below.

Signed at Washington, DC this 22nd day of January, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart H of part 1910 is proposed to be amended by revising the third paragraph to read as follows:

Authority: * * *

Sections 1910.120 and 1910.121 issued under the authority of section 126 of the Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 note), sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), 29 CFR part 1911 and Secretary of Labor's Order 9–83 (48 FR 35736).

2. Section 1910.120 as revised effective March 6, 1990, and published at 54 FR 9317 (March 6, 1989) is proposed to be amended by revising paragraphs (e) (1), (3), (4), and (9) and (p)(7) to read as follows:

§ 1910.120 Hazardous waste operations and emergency response.

* * * * *

(e) *Training.*

Note to this paragraph (e): Training provided prior to the effective date of 29 CFR 1910.121 will be considered acceptable in meeting the requirements of this paragraph even though it may not have been provided through an OSHA accredited training program.

(1) *General.* (i) All employees (such as, but not limited to, equipment operators, general laborers and others) working onsite and exposed to hazardous substances, health hazards, or safety hazards shall receive training meeting the requirements of this paragraph and accredited by OSHA under 29 CFR 1910.121 before they are permitted to engage in hazardous waste operations that could expose them to hazardous substances, safety, or health hazards. They shall also receive refresher training as specified in this paragraph. * * *

(3) *Initial training.* (i) General site workers (such as equipment operators, general laborers and others) engaged in hazardous substance removal or other activities which expose or potentially expose workers to hazardous substances and health hazards shall receive a minimum of 40 hours of training in a program accredited by OSHA under 29 CFR 1910.121, and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.

(ii) Workers on site only occasionally for a specific limited task (such as, but not limited to, ground water monitoring, land surveying, inspections, management site visits or geo-physical surveying), and who are unlikely to be exposed over permissible exposure limits and published exposure limits, shall receive a minimum of 24 hours of training in a program accredited by OSHA under 29 CFR 1910.121, and a minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor.

(iii) Workers regularly on site who work in areas which have been monitored and fully characterized indicating that exposures are under permissible exposure limits and published exposure limits where respirators are not necessary, and when the characterization indicates that there are no health hazards or the possibility of an emergency developing, shall receive a minimum of 24 hours of training in a program accredited by OSHA under 29 CFR 1910.121, and a minimum of one day actual field

experience under the direct supervision of a trained, experienced supervisor.

(iv) Workers with 24 hours of OSHA accredited training who are covered by (a)(3) (ii) and (iii) of this section, and who become general site workers or who are required to wear respirators, shall receive an additional 16 hours of accredited training and two days of supervised field training necessary to total the training specified in paragraph (e)(3)(i) of this section before performing general site work.

(4) *Management and supervisor training.* On-site management and supervisors directly responsible for hazardous waste operations shall receive 40 hours of initial training accredited by OSHA under 29 CFR 1910.121, and three days of supervised field experience. The training may be reduced to 24 hours and one day supervised field experience if the only area of their management and supervisory responsibility is employees covered by paragraphs (e)(3) (ii) and (iii) of this section. In addition, all on-site management and supervisors directly responsible for employees engaged in hazardous waste operations shall receive at least eight additional hours of specialized training, accredited by OSHA under 29 CFR 1910.121, at the time of job assignment. The specialized training shall cover such topics as, but not be limited to, the employer's safety and health program and the associated employee training program (including site hazards); personal protective equipment program; spill containment program; and health hazard monitoring procedures and techniques. * * *

(9) *Equivalent training.* Employers who can show by documentation or certification that an employee's work experience and/or previous training received prior to March 6, 1990, has resulted in training equivalent to that OSHA accredited training required in paragraphs (e)(1) through (e)(4) of this section shall not be required to provide the initial training required in this paragraph to such employees. However, certified employees who begin work at a new site shall receive appropriate, site specific training before site entry and have the appropriate supervised field experience at the new site. Equivalent training includes academic training, the training that existing employees might have already received from actual hazardous waste site work experience, or any previously unaccredited training received to meet the requirements of 29 CFR 1910.120 prior to the effective date of 29 CFR 1910.121.

* * * * *

(p) *Certain Operations Conducted Under the Resource Conservation and Recovery Act of 1976 (RCRA).* * * *

(7) *Training program.*

Note to this paragraph (p)(7): Training provided prior to the effective date of 29 CFR 1910.121 will be considered acceptable in meeting the requirements of this paragraph even though it may not have been provided through an OSHA accredited training program.

(i) *New employees.* The employer shall develop and implement a training program, which will be part of the employer's safety and health program, for employees involved with hazardous waste operations so that those employees will be able to perform their assigned duties and functions in a safe and healthful manner. The initial training shall be for 24 hours and be accredited by OSHA under 29 CFR 1910.121. Employees shall receive eight hours of refresher training annually. Employees who have received and successfully completed the initial accredited training required by this paragraph shall be given a written certificate attesting that they have successfully completed the necessary training in accordance with 29 CFR 1910.121.

(ii) *Current employees.* Employers who can show by documentation or certification that an employee's work experience and/or previous training has provided the skill attainment equivalent to the initial accredited training required by this paragraph, shall be considered as meeting the initial training requirements of this paragraph for that employee. Equivalent training includes the training that existing employees might have already received from actual site work experience or from unaccredited training programs given prior to the effective date of 29 CFR 1910.121. Current employees shall receive eight hours of refresher training annually.

* * * * *

3. A new § 1910.121 of Title 29 of the Code of Federal Regulations is proposed to be added to read as follows:

§ 1910.121 Accreditation of training programs for hazardous waste operations.

(a) *Scope, application, and definitions*—(1) *Scope.* (i) This section contains the procedures to be used in obtaining the necessary accreditation from the U.S. Department of Labor, Occupational Safety and Health Administration, to conduct the 40-hour, the 24-hour, and the manager training programs for hazardous waste operations required in 29 CFR 1910.120, paragraphs (e) and (p).

Notes to this paragraph (a)(1)(i):

1. Training programs containing more hours than the minimum amount required for accreditation may be submitted for accreditation if it is necessary for more time to present appropriate training material. For example, applicants may submit a 60-hour training program for 40-hour accreditation if it is necessary for more time to cover the training material necessary for a particular operation. Courses would be accredited for the amount of hours closest to but below the amount of hours submitted in the application. In the above example, the 60-hour course would be accredited as a 40-hour course if it met the minimum criteria for 40 hours of training.

2. An accredited training program may make use of courses or materials designed for other training programs so long as they meet the requirements of this section. For example, a generic course addressing personal protective equipment would be acceptable as part of an accredited training program provided that employees are also given specific training for the particular types of personal-protective equipment to be worn at a specific site.

(ii) All other OSHA training requirements in Title 29 of the Code of Federal Regulations are not within the scope of this section.

(2) *Application.* This section applies to any applicant who requests accreditation of training programs within the scope of this section.

(3) *Definitions.* "Applicant" means an employer or organization capable of conducting training programs meeting the requirements of this paragraph who has applied to the U.S. Department of Labor, Occupational Safety and Health Administration, for accreditation of a specific training program. "Examination" means any written test or non-written practical test used to evaluate the knowledge and/or specific skill level of the student during or at the conclusion of a training program.

(b) *Requests for accreditation*—(1) *Eligibility.* Any applicant considering itself capable of conducting any of the training programs as required in 29 CFR 1910.120 (e) and (p) eligible to apply for accreditation of that training program.

(2) *Reciprocity*—(i) *Federally accredited programs.* Any hazardous waste operation training program that has received accreditation from the U.S. Department of Labor, Occupational Safety and Health Administration, shall be considered an accredited program pursuant to section 126 of the Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 note) in any state or territory.

(ii) *State accredited programs.* Each training program for hazardous waste operations that has received an individual state accreditation from an

OSHA approved state plan state shall not be considered accredited outside of the individual state's jurisdiction unless OSHA also has granted accreditation to the training program.

(3) *Content of applications.*—(i) *Application for Federal accreditation.* The applicant for Federal OSHA accreditation of training program shall provide, as a minimum, the following information:

(A) The applicant's name, address and telephone number.

(B) The name, title, address and telephone number of the person who will act as liaison with OSHA.

(C) The training program curriculum including the topics to be covered and the length, format, content and passing scores of examinations.

(D) An analysis of how the training program meets the subject criteria noted in this section, and which training requirements in § 1910.120 the training program is targeted to meet.

(E) Length of training in hours.

(F) Amount and type of hands-on training.

(G) A copy of all student textbooks and instructor notebooks including lesson plans.

(H) Required qualifications for each instructor position by subject area. Instructors shall have completed a "train-the-trainer" type of training session for their subject training area or shall have the academic credentials, field experience or a combination of both and the training experience for the specific subject they are teaching.

(I) Description and an example of the numerically identified certificates that would be issued to students who would attend and successfully complete the training program.

(J) The materials required in paragraphs (b)(3)(i) (C), (G) and (I) of this section shall also be provided in a language other than English if the training program is to be provided in a language other than English.

(K) The maximum number of students to be accepted into a given training program course.

(L) The ratio of instructors to students for each hands-on subject.

(M) Certification that the information submitted in the application is accurate and complete.

(ii) *Application for reciprocal Federal accreditation of state accredited programs.* Applicants for Federal reciprocal accreditation of state accredited programs shall provide as a minimum the following:

(A) The applicant's name, address and telephone number.

(B) The name, title, address and telephone number of the person who will act as liaison with OSHA.

(C) Certification that the information submitted in the application is accurate.

(D) An official copy of the letter granting state accreditation of a training program from any of the OSHA approved state programs.

(E) The materials submitted to the state for its accreditation if requested by OSHA.

(4) *Filing office location.* Applications shall be submitted to: OSHA Hazardous Waste Training Accreditation Program, U.S. Department of Labor, Washington, DC 20210.

(5) *Amendments and withdrawals.* (i) The applicant shall be permitted to revise an application any time prior to a final decision on the accreditation application.

(ii) The applicant shall be permitted to withdraw an application, without prejudice, at any time prior to the final decision on the accreditation application.

(c) *Review and decision process.*—(1) *Acknowledgement.* The Agency will acknowledge in writing the receipt of all applications it receives. The Agency may request additional information if it believes information relevant to the requirements for accreditation has been omitted or is incomplete.

(2) *Requirements for accreditation and preliminary decision by the Assistant Secretary of Labor for Occupational Safety and Health.* (i) The requirements for accreditation are:

(A) That the applicant demonstrate that it has a written training program that meets the applicable paragraphs of this section and it will train employees in the topics required by 29 CFR 1910.120;

(B) That it has competent staff and facilities to carry out the training properly;

(C) That it is capable of effectively training employees in the topics required in 29 CFR 1910.120;

(D) That it has an effective method of measuring whether the employees have been adequately trained in the areas of required training;

(E) That it will maintain adequate records of the program and employees who have successfully completed the program; and

(F) That it is capable of and will continue to meet the requirements for accreditation.

(ii) The Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) will make the preliminary decision as to whether or not the applicant has met the requirements for accreditation, based upon the completed application file and the written recommendations of the accreditation staff.

(3) *Preliminary accreditation.* (i) After review of the application and any additional information, the Agency will grant preliminary accreditation if the application appears to meet the requirements for proper accreditation.

(ii) The Agency will notify the applicant in writing of the decision to grant preliminary accreditation.

(iii) Upon receipt of the notification of preliminary accreditation, the applicant may begin to conduct the accredited training program.

(4) *Denial of preliminary accreditation.* (i) After review of the application and any additional information, the Agency will deny preliminary accreditation if the application does not appear to meet the requirements of this section or the training program requirements of the targeted provisions in § 1910.120.

(ii) The Agency will notify the applicant in writing of the decision not to grant preliminary accreditation, and will identify the specific requirements of this section or those of § 1910.120 that were not met and the reasons therefor.

(iii) After receipt of a notification of preliminary non-accreditation, the applicant shall be permitted to submit a revised application for further review by the Agency pursuant to the procedures of this section.

(iv) The applicant may resubmit the original application with a statement of reasons why the applicant believes that the original application meets the requirements for accreditation, and may request accreditation under paragraphs (c)(5) and (c)(6) of this section.

(5) *Public comment period.* (i) The preliminary decision by the Assistant Secretary to grant accreditation or to deny accreditation when the applicant appeals the preliminary decision, with a summary of the application and decision, will be published by the Agency in the **Federal Register.** A decision to deny accreditation which is not appealed will not be published in the **Federal Register.**

(ii) The Agency will provide a minimum of 60 calendar days for written comments on the applicant's fulfillment of the requirements for accreditation and the Assistant Secretary's decision. The application, supporting documents, staff recommendations, statement of applicant's reasons for requesting approval, and any comments received will be made available for public inspection and copying at the Docket Office, U.S. Department of Labor, OSHA, Room N-2634, 200 Constitution

Avenue, NW., Washington, DC. (202) 523-7894.

(iii) Any interested party may submit comments. In addition, any interested party may request a public hearing on OSHA's decision by the close of the comment period in accordance with the requirements of 29 CFR part 1905, subpart C, if the party can demonstrate why a hearing is necessary to present evidence relevant to the decision which can not be presented through public comments.

(6) *Final decision by the Assistant Secretary*—(i) *Without a public hearing.* Where there is no hearing, the Assistant Secretary will issue a written final decision on the application based on the evidence in the record from the comments, if any, the full application, the supporting documentation, the staff recommendations, and the written comments and evidence submitted.

(ii) *With a public hearing.* If there is a valid request for a hearing on an application, the following procedures will be used:

(A) The Assistant Secretary will issue a notice of hearing before an Administrative Law Judge of the Department of Labor pursuant to the rules specified in 29 CFR part 1905, subpart C.

(B) After the hearing, pursuant to 29 CFR part 1905, subpart C, the Administrative Law Judge shall issue a decision (including reasons) based on the application, the supporting documentation, the staff recommendation, the public comments and the evidence submitted during the hearing (the record), stating whether it has been demonstrated, based on a preponderance of evidence, that the applicant meets the requirements for accreditation. If no exceptions are filed, this is the final decision of the Department of Labor.

(C) Upon issuance of the decision, any party to the hearing may file exceptions within 20 days, pursuant to subpart C. If exceptions are filed, the Administrative Law Judge shall forward the decision, exceptions and record to the Assistant Secretary for the final decision on the application.

(D) The Assistant Secretary shall review the record, the decision by the Administrative Law Judge, and the exceptions. Based on these, the Assistant Secretary shall issue the final decision (including reasons) of the Department of Labor stating whether the applicant has demonstrated by a preponderance of evidence that it meets the requirements for recognition.

(iii) *Publication of the final decision.* A notice of the final decision will be published in the **Federal Register**, and a copy of the Assistant Secretary's final decision will be sent to the applicant.

(iv) *Review of the Assistant Secretary's final decision.* The final decision of the Assistant Secretary, or the Administrative Law Judge if no exceptions are filed, is the final decision of the Department of Labor.

(d) *Terms and conditions of accreditation*—(1) *Accreditation of program.* The following terms and conditions shall be part of every accreditation:

(i) The accreditation of each training program will be evidenced by a letter of accreditation from the Assistant Secretary. The letter will provide the specific details of the scope of the OSHA accreditation as well as any conditions imposed by OSHA.

(ii) The accreditation of each training program shall be valid for three years after the initial accreditation, and valid for five years for each subsequent renewal unless revoked for good cause. The dates of the period of accreditation will be stated in the accreditation letter.

(iii) The accredited applicant shall continue to satisfy all the requirements of this section and the letter of accreditation during the period of accreditation.

(2) *Revision of an accredited program.* The accredited applicant may change elements of the accredited training program by notifying the Assistant Secretary of the change, certifying that the revised program change meets the requirements of this section; that the entire accredited program continues to meet the requirements of this section; and that supporting documentation is provided upon which its conclusions are based. The applicant may make the change upon notification of OSHA. However, if on subsequent review, OSHA determines the change is inconsistent with this section and so notifies the applicant, the applicant must revert to the original elements.

(3) *Renewal of an accredited program.* An accredited applicant may renew its accreditation by filing a renewal request at the address in paragraph (b)(4) of this section not less than 180 calendar days, nor more than one year, before the expiration date of its current accreditation. When an accredited applicant has filed such a renewal request, the current accreditation will not expire until a final decision has been made on the renewal request. The renewal request will be processed in accordance with the procedures of paragraphs (b) and (c) of this section.

(4) *Transfer of an accredited program.* An accredited applicant may not transfer its accreditation to any other person or organization.

(5) *Revocation of an accredited program.* (i) The Agency may revoke its accreditation of a training program if the accredited applicant either has failed to continue to satisfy the requirements of this section or the Agency's letter of accreditation, or has misrepresented itself in its application.

(ii) Before proposing to revoke accreditation, the Agency will notify the accredited applicant of the basis of the proposed revocation, and will allow rebuttal or correction of the alleged deficiencies. The Agency must receive any evidence in rebuttal or of corrections of deficiencies from accredited applicants within 60 days from the date of OSHA's notice of proposed revocation or OSHA will initiate revocation proceedings. If the deficiencies are not corrected, OSHA may revoke its accreditation 30 days later after the date OSHA receives the applicant's response unless the accredited applicant requests a hearing within that period.

(iii) If a hearing is requested, it shall be held before an Administrative Law Judge of the Department of Labor pursuant to the rules specified in 29 CFR part 1905, subpart C.

(iv) The parties of the hearing shall be limited to OSHA and the accredited applicant. The decision shall be made pursuant to the procedures specified in paragraph (c)(6) of this section, except that the burden of proof shall be on OSHA to demonstrate that the accreditation should be revoked because the accredited applicant is not meeting the requirements of accreditation, the Agency's accreditation letter, or has misrepresented itself in its application.

(v) Any interested party may file a complaint stating that the accredited applicant is not meeting the requirements of accreditation, the Agency's accreditation letter, or has misrepresented itself in its application. Such complaint shall contain specific information as to the deficiencies identified. OSHA will acknowledge such complaints in writing and provide the accredited applicant with a copy of the complaint subject to Privacy Act limitations.

(vi) OSHA will investigate such complaints and upon completion of such investigation may invoke the revocation procedures described in this section. If the decision is not to pursue revocation, the complainant will be notified in writing by OSHA of its investigation findings and reason why the accreditation remains valid.

(e) *Requirements of an accredited applicant.* Each accredited applicant shall:

(1) Allow OSHA or its authorized representative to attend, evaluate and monitor any part of the accredited training program without charge or cost to OSHA. OSHA will not give advance notice of attendance at the training program.

(2) Agree to modify the accredited training program if the training requirements of this section or § 1910.120 are changed or if any other OSHA standard which is the subject of training is changed so that it will affect this section. The modification in the training program shall take place no later than 30 days after this section or other relevant standard becomes effective.

(3) Agree to modify the accredited training program if the "state of the art" changes relative to any of the topics provided in the training program.

(4) Agree to provide OSHA annually, no later than 60 days after the accreditation anniversary date, the name and location of each program given, the date given, the number of participants in each program, and the number of participants that were certified as having successfully completed each program.

(f) *Examinations.* Examinations shall cover the necessary skills and knowledge. Each examination shall adequately cover the important topics included in the training program.

(g) *Certificates.* (1) The accredited applicant shall issue certificates to students who have attended and successfully complete the training program.

(2) The certificate shall include the accredited applicant's name, the student's name, the accredited program name, the dates of the program, a statement indicating that the participant successfully completed the program, the location where the program was given and an identifying number unique to the student.

(h) *Specific course content* —(1) *40-hour hazardous waste clean-up course.* As a minimum, the training course required in paragraph (e) of § 1910.120 for the 40-hour training program shall include the following topics:

(i) Overview of the applicable paragraphs of 29 CFR 1910.120 and the elements of an employer's effective occupational safety and health program.

(ii) Effect of chemical exposures to hazardous substances (i.e., toxicity, carcinogens, irritants, sensitizers, etc.).

(iii) Effects of biological and radiological exposures.

(iv) Fire and explosion hazards (i.e., flammable and combustible liquids, reactive materials).

(v) General Safety hazards, including electrical hazards, powered equipment hazards, walking-working surface hazards and those hazards associated with hot and cold temperature extremes.

(vi) Confined space, tank and vault hazards and entry procedures.

(vii) Names of personnel and alternates, where appropriate, responsible for site safety and health at the site.

(viii) Specific safety, health and other hazards that are to be addressed at a site and in the site safety and health plan.

(ix) Use of personal protective equipment and the implementation of the personal protective equipment program.

(x) Work practices that will minimize employee risk from site hazards.

(xi) Safe use of engineering controls and equipment and any new relevant technology or procedure.

(xii) Content of the medical surveillance program and requirements, including the recognition of signs and symptoms of overexposure to hazardous substances.

(xiii) The contents of an effective site safety and health plan.

(xiv) Use of monitoring equipment with "hands-on" experience and the implementation of the employee and site monitoring program.

(xv) Implementation and use of the informational program.

(xvi) Drum and container handling procedures and the elements of a spill containment program.

(xvii) Selection and use of material handling equipment.

(xviii) Methods for assessment of risk and handling of radioactive wastes.

(xix) Methods for handling shock-sensitive wastes.

(xx) Laboratory waste pack handling procedures.

(xxi) Container sampling procedures and safeguards.

(xxii) Safe preparation procedures for shipping and transport of containers.

(xxiii) Decontamination program and procedures.

(xxiv) Emergency response plan and procedures including first-aid.

(xxv) Safe site illumination levels.

(xxvi) Site sanitation procedures and equipment for employee needs.

(xxvii) Review of the applicable appendices to 29 CFR 1910.120.

(xxviii) Overview and explanation of OSHA's hazard communication standard (29 CFR 1910.1200).

(xxix) Sources of reference, additional information and efficient use of relevant manuals and hazard coding systems.

(xxx) Principles of toxicology and biological monitoring.

(xxxi) Rights and responsibilities of employees and employers under OSHA and CERCLA.

(xxxii) "Hands-on" field exercises and demonstrations.

(xxxiii) Final examination.

(2) *24-hour hazardous waste clean-up course.* As a minimum, the 24-hour training course required in paragraph (e) of this section for employees engaged in occasional visits to uncontrolled hazardous waste sites shall include the following topics where they are applicable to the job function to be performed:

(i) Overview of applicable paragraphs of 29 CFR 1910.120 and the elements of the employer's effective occupational safety and health program.

(ii) Employee rights and responsibilities under OSHA and CERCLA.

(iii) Overview of relevant chemical exposures to hazardous substances (i.e., toxics, carcinogens, irritants, sensitizers, etc.).

(iv) Overview of the principles of toxicological and biological monitoring.

(v) Use of monitoring equipment with hands/on practice and an overview of a site monitoring program.

(vi) Overview of site hazards including fire and explosion, confined spaces, oxygen deficiency, electrical hazards, powered equipment hazards, walking-working surface hazards.

(vii) The contents of an effective site safety and health plan.

(viii) Use of personal protective equipment and the implementation of the personal protective equipment program.

(ix) Work practices that will minimize employee risk from site hazards.

(x) Site simulations with "hands-on" exercises and practice.

(xi) Emergency response planning and response including first-aid.

(xii) Content of the medical surveillance program and requirements, including the recognition of signs and symptoms of overexposure to hazardous substances.

(xiii) Decontamination programs and procedures.

(xiv) Safe use of engineering controls and equipment.

(xv) Sources of references and efficient use of relevant manuals and knowledge of hazard coding systems.

(xvi) Final examination.

(3) *16-hour supplemental training for uncontrolled hazardous waste sites.* As

a minimum, employees who have received 24 hours of accredited training for uncontrolled hazardous waste site operations shall receive training in the following topics before they are allowed to work in areas where 40 hours of training is required:

(i) Relevant chemical exposures to hazardous substances beyond that previously covered.

(ii) Site hazards including fire and explosion, confined spaces, oxygen deficiency, electrical, powered equipment, and walking-working surfaces beyond that previously covered.

(iii) Names of personnel and alternates responsible for site safety and health at the site, where appropriate.

(iv) Use of monitoring equipment and the implementation of the employee and the site monitoring program beyond that previously covered.

(v) Implementation and use of the informational program.

(vi) Drum and container handling procedures and the elements of a spill containment program.

(vii) Selection and use of material handling equipment.

(viii) Methods for assessment of risk and handling of radioactive wastes.

(ix) Methods for handling shock-sensitive wastes.

(x) Laboratory waste pack handling procedures.

(xi) Container sampling procedures and safeguards.

(xii) Safe preparation procedures for shipping and transport of containers.

(xiii) Decontamination program and procedures.

(xiv) Safety site illumination levels.

(xv) Site sanitation procedures and equipment.

(xvi) Review of the applicable appendices to 29 CFR 1910.120.

(xvii) Overview and explanation of OSHA's Hazard Communication Standard (29 CFR 1910.1200).

(xviii) Sources of reference and additional information.

(xix) Final examination.

(4) *24-hour treatment, storage, and disposal (TSD) course.* As a minimum, the training course required in paragraph (p) of § 1910.120 for the 24-hour training program shall include the following topics:

(i) Overview of the applicable paragraphs of 29 CFR 1910.120 and the elements of an employer's effective occupational safety and health program and those responsible for the program.

(ii) Overview of relevant hazards such as, but not limited to, chemical exposures, biological exposures, fire and explosion exposures, radiological exposures, heat and cold exposures.

(iii) General safety hazards including those associated with electrical hazards, powered equipment, and walking-working surfaces.

(iv) Confined space hazards and procedures.

(v) Work practices that will minimize employee risk from workplace hazards.

(vi) Emergency response plan and procedures including first-aid meeting the requirements of paragraph (p)(8) of § 1910.120.

(vii) A review of the employer's hazardous waste handling procedures including the materials handling program and the spill containment program.

(viii) An overview and explanation of the employer's Hazard Communication Program meeting the requirements of 29 CFR 1910.1200 for those chemicals other than hazardous wastes in the workplace.

(ix) A review of the employer's medical surveillance program meeting the requirements of 29 CFR 1910.120(p)(3) including the recognition of signs and symptoms of overexposure to relevant hazardous substances.

(x) A review of the employer's decontamination program and procedures meeting the requirements of 29 CFR 1910.120(p)(4).

(xi) A review of the employer's training program and the personnel responsible for that program.

(xii) A review of the employer's personal protective equipment (PPE) program including the proper selection and use of PPE based upon specific site hazards.

(xiii) Safe use of engineering controls and equipment.

(xiv) A review of the applicable appendices to 29 CFR 1910.120.

(xv) Principles of toxicology and biological monitoring.

(xvi) Rights and responsibilities of employees and employers under OSHA and RCRA.

(xvii) Sources of reference and efficient use of relevant manuals and knowledge of hazard coding systems.

(xviii) Hands-on exercises and demonstrations with equipment expected to be used during the performance of work duties.

(xix) Final examination.

(5) *Additional 8 hours of training for supervisors and managers.* Supervisors and managers shall receive an additional eight hours of training in the following subjects:

(i) Management of hazardous wastes and their disposal.

(ii) Federal, state and local agencies to be contacted in the event of a release of hazardous substances.

(iii) Management of emergency procedures in the event of a release of hazardous substances.

[FR Doc. 90-1734 Filed 1-23-90, 12:01 pm]

BILLING CODE 4510-26-M

federal register

Friday
January 26, 1990

Part VI

Department of Energy

48 CFR Part 970
Acquisition Regulations; Notice of Proposed Rulemaking

DEPARTMENT OF ENERGY

48 CFR Part 970

Acquisition Regulation

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) today proposes a rule to amend the Department of Energy Acquisition Regulation (DEAR) regarding its contracting practices in the administration of its profit making and fee bearing management and operating (M&O) contracts. The proposed change is intended to clarify the responsibilities of the parties and provide additional incentives directed toward improved accountability of M&O contractors. DOE's objective in proposing the new rule is to emphasize the importance it places on the responsibility of its M&O contractors for excellent performance, particularly in the areas of environment, health and safety, in managing and operating DOE facilities. Although the proposed rule would apply only to the performance of its profit making and fee bearing M&O contractors, DOE welcomes views and comments concerning improved methods for evaluating the performance of its nonprofit M&O contractors and appropriate incentives to insure the responsibility and accountability of those contractors.

DATE: Written comments must be received by March 27, 1990.

ADDRESS: Comments should be addressed to: Stephen D. Mournighan, Office of Policy, MA-402, Procurement and Assistance Management, Washington, DC 20585, (202) 586-8182.

FOR FURTHER INFORMATION CONTACT:

Stephen D. Mournighan, Office of Policy, MA-402, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8182.

Lawrence R. Oliver, Assistant General Counsel for Procurement and Finance (GC-34), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2440.

SUPPLEMENTARY INFORMATION:

I. Background
II. Reasons for Proposal
III. Nature of Proposal
IV. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 12612
F. Public Hearing
V. Public Comments

I. Background

The Department of Energy (DOE) and its predecessor agencies have engaged management and operating (M&O) contractors beginning with the Manhattan Project, which was conceived during World War II to build the nation's first atomic bomb. M&O contractors continue to participate in carrying out DOE's research and development (R&D) and weapons production mission.

DOE's policy has been to reimburse its M&O contractors fully for virtually all costs incurred in the performance of these contracts. This policy includes reimbursement for all nuclear and non-nuclear costs, claims and liabilities incurred, by or otherwise the responsibility of, the contractor. However, DOE's reimbursement practices may not have provided the appropriate incentive to M&O contractors to minimize their costs while simultaneously safeguarding the public health, safety and the environment since the government has, in effect, agreed to indemnify them against all costs incurred.

DOE's objective is to assure that its M&O contractors have every incentive to perform in an excellent manner in every aspect of their service, including environment, health and safety. Accordingly, DOE has examined this full indemnification policy and today proposes to make prospective modifications.

These proposed changes would apply to only those M&O contractors which are profit making or fee bearing (hereinafter referred to as "profit making") under their contracts with DOE. However, DOE welcomes views and comments of interested parties concerning DOE's relationship with its nonprofit contractors, including whether current contractual provisions best serve the public interest. Commenters are invited to discuss the appropriateness of applying economic sanctions to contractors who do not share the profit motivations of differently situated contractors; improved techniques for evaluating the performance of these contractors; and practices and provisions which exert the maximum influence toward achieving appropriate responsibility and accountability by these contractors.

The circumstances and exigencies of the 1940's dictated the indemnification policy which has continued, without serious reassessment, into a changing time. The Manhattan Engineer District (MED) of the War Department recruited private industry and educational institutions during World War II to construct and operate the facilities necessary to develop the atomic bomb. Time was of the essence. Conditions necessitated the recruitment of the best minds and institutions to undertake the task which, if successful, would be a major factor in ending the war. Obtaining these services required appeals to patriotism and assurances that the risks of participation, including all costs and expenses, would be borne by the U.S. Government. Because of the unknown and uncertain hazards associated with the production of nuclear material, the MED provided contractors with broad indemnification against any loss, expense, claim or damage arising out of performance of their work for the MED. As far back as 1943, the government undertook the role of total insurer with the only risk assumed by the contractor being that associated with losses caused by the willful misconduct or bad faith of senior corporate officials.

Following the war, the Atomic Energy Commission (AEC) was given responsibility for the facilities utilized in the production of our nuclear weapons arsenal. The AEC continued the MED policy of indemnifying its contractors from virtually all expenses or losses, recognizing that the risks of a nuclear incident inherent in the technology with which the contractors were dealing were incalculable and not insurable through the private sector. Continuing prior practice, although the precise details varied from contract to contract, the AEC generally assumed all the costs and risks associated with its production facilities, except for loss or damage willfully caused or resulting from an act of bad faith by a senior corporate official of the contractor.

Passage of the Price-Anderson Act in 1957 was intended primarily to assist the infant commercial nuclear industry, which was otherwise unable to insure itself because of the hazardous nature of its enterprise. Congress included government contractors under coverage of the legislation in order to provide the public with full protection for nuclear incidents, whether they took place at government-owned facilities or at commercial nuclear powerplants. Although Congress made indemnification of M&O contractors optional in the original Price-Anderson Act, the AEC routinely protected its contractors against all public liability resulting from nuclear incidents. Additionally, extending the role of government insurer into the non-nuclear area, the AEC provided contractual protection for all other activities of the

contractor which might result in fines and penalties, liability to third parties, or loss of or damage to government property.

DOE was established and assumed responsibility for the nuclear weapons production facilities in 1977. The contractual framework developed during and shortly after World War II, under which the government was the insurer of virtually all risks, was inherited by DOE. Under this system, the contractor is reimbursed for essentially all costs incurred in connection with its performance. DOE agrees to indemnify its M&O contractors from public liability resulting from a nuclear incident and from all other liabilities, except those which may result from willful misconduct or lack of good faith on the part of the contractor's top level management personnel. In addition to cost reimbursement, DOE's profit making M&O contractors are paid relatively low fees which, in large measure, reflect the fact that they operate in an environment of little risk.

For the first time in four decades, DOE is reassessing its policy of providing complete indemnification for non-nuclear risks in order to evaluate the extent to which that policy remains consistent with the public interest. Factors which have changed in that period include an increased awareness of our environment, a heightened public concern over the operation of DOE's nuclear weapons complex and the manner in which DOE is managing those facilities, and the extent to which corporations can be motivated primarily by appeal to national security and the public interest in agreeing to serve as M&O contractors. In addition, both contractors and DOE have a greater operational understanding of the nuclear complex which simultaneously have removed some of the unknown risk that resulted in broad indemnification of M&O's during the 1940's. This proposal addresses the issue of whether the government should continue as the insurer of all risk of loss or whether the M&O contractors should, in effect, assume the deductible portion of certain risk, to the extent that risk of loss is within the control of the M&O contractor.

II. Reasons for Proposal

A primary criterion in DOE's selection of its M&O contractors is their demonstrated management skills and expertise in operating their own industrial facilities. DOE expects these contractors to apply the same expertise, skills, and prudence to the management and operation of DOE's facilities as they apply to their non-government commercial production facilities. The practice of full indemnification against all risks and costs which has developed over four decades and exists in the current M&O contract framework, however, may not provide the same economic incentive for the profit making M&O contractor to exercise care and prudent business judgment, to exert control over its workforce, and to be accountable fully for its performance under its contract with DOE as the profit motive exerts upon commercial operations. DOE expects its contractors to achieve excellence in the performance of their M&O contracts. Provisions in those contracts should not be counterproductive to that objective.

As examples of expenses which a corporation would consider to be part of the cost of doing business in its commercial operations, but not as an M&O contractor, DOE has been asked to reimburse M&O contractors for damage to government property or to third persons resulting from ordinary contractor negligence. Certain current provisions in M&O contracts may require full indemnification for fines and penalties and related expenses incurred by M&O contractors even though the failure to comply with DOE guidance resulted in violation of an environmental statute under circumstances which placed responsibility for compliance squarely on the contractor. DOE is seeking to define those conditions under which, if held accountable for these practices, the M&O contractor will have the same economic incentive to exercise care in the performance of its contractual obligations at DOE facilities that it would have in the operation of its own facilities.

Similarly, DOE may presently not require reimbursement by M&O contractors for costs incurred for losses of government property resulting from ultra vires activity, such as theft, embezzlement, or unauthorized use, by contractor or subcontractor personnel. Likewise, the expense of additional, extraordinary work occasioned by contractor negligence is now borne by DOE. Corporations would consider these losses part of the cost of doing business in the private sector and thus have an economic incentive to minimize those costs.

Contractors operating in the private sector are ultimately responsible for costs incurred in their commercial operations that result from the contractors' negligence. One purpose of this rulemaking is to delineate the circumstances under which M&O contractors should be liable for certain non-nuclear costs at DOE facilities. This rulemaking proceeds from the premise that M&O contractors should be at risk for costs that they are in the best position to avoid. At present, however, virtually all M&O contractor costs are reimbursed by DOE regardless of the circumstances under which they are incurred. Under DOE's recent modifications to its award fee system, however, the contractor may be substantially penalized, up to the amount of its available award fee, for deficiencies in performance if its actions led to the reimbursement of avoidable costs, DEAR section 5204–54. The result is that M&O contractors risk indirect, but not direct, financial exposure for the consequences of their actions. In order to define more clearly the connection between cost incurrence and recovery, DOE proposes to change the framework of its M&O contract so that more direct responsibility for avoidable costs would be placed on the contractor while simultaneously seeking to minimize the contractor's duplicative exposure to a reduced award fee arising from the same facts or conditions which created the nonreimbursable cost or expense. DOE would encourage its M&O contractors to identify incidents of avoidable costs and to advise DOE when they incur certain costs or liabilities which might not be allowable under these proposed regulations. When an M&O contractor timely advises DOE of incidents of weaknesses discovered, and voluntarily agrees that it will bear those costs or liabilities, it is the intention that such critical self-evaluation will be favorably considered with regard to performance for award fee purposes.

The proposed rule will not impact contractor responsibility for public liability for nuclear incidents. M&O contractors will continue to be indemnified against all nuclear risks contemplated by Price-Anderson. Also, DOE will continue to indemnify its contractors against non-nuclear risks for actions ordered by the contracting officer or a representative of the contracting officer. However, civil fines or penalties for violations of applicable DOE nuclear safety rules, regulations and orders, when made effective under the Price-Anderson Amendments Act of 1988, will not be subject to reimbursement unless required by law.

Since this proposed rule, if adopted, will transform the Government from a full insurer to a partial insurer, DOE recognizes that increased risks are being imposed upon its contractors. In the past, DOE and its predecessors established fee schedules based upon the understanding that M&O contractors

were being asked to assume very little risk. DOE now proposes to modify that understanding by placing greater risk on its profit making contractors. The extent to which risks may be increased has a direct bearing on the potential rewards which should be available. Recognizing the need to reconsider its overall relationship with its contractors, DOE anticipates an enhanced award fee structure with the potential to earn higher fees to be an appropriate balance when taken in conjunction with new policy proposals which would require M&O contractors to undertake increased risk. At the same time, such enhanced fees will provide additional incentives for M&O contractors to attain greater standards of efficiency and responsiveness to environmental, safety, and health issues. The consideration of an appropriate level of potential award fees will proceed simultaneously with this proposed rulemaking and will take into account the increased risks which M&O contractors are ultimately being expected to incur.

III. Nature of Proposal

Under the proposed rule, certain costs which are otherwise avoidable would be disallowed. These costs would include:

1. Direct costs and expenses resulting from damage to government property as a direct result of ordinary contractor or subcontractor negligence where, in effect, the M&O contractor has not provided DOE the skill and expertise for which DOE bargained. The costs which are to be borne by the contractor are those incurred in effecting the repairs to the government property. These avoidable costs do not contemplate disallowance for scrap, waste and other routine damages or losses which occur as part of the cost of doing business and are reasonably anticipated. Those costs, which may be greater or lesser than normally anticipated as a part of the contractor's work description, will be taken into account in establishing the periodic award fee. Costs which may not be reimbursable are the result of extraordinary, nonroutine circumstances (i) clearly within the sole and exclusive control and (ii) resulting from the sole and exclusive actions or inactions of the contractor or its subcontractors, in which the exercise of reasonable care would have avoided the loss or damage. In the event that such direct costs and expenses resulting from damage to government property are also partially caused by the contributing fault of third parties, other than DOE, such costs and expenses will not be reimbursed by DOE. The allocation of financial responsibility between the contractor and such third party should be determined by the parties involved.

2. Direct damage to, or losses of, government property stemming from theft, embezzlement, unauthorized use, or any other ultra vires activity by any contractor or subcontractor personnel. The contractor would be required to bear the cost of repairing or replacing the damaged or lost government property. Those costs would not be reimbursable.

3. Direct costs and expenses resulting from ordinary negligence by the contractor or its subcontractors in carrying out well-understood, non-experimental work under the contract when the work is clearly within the sole and exclusive control of the contractor and the increased costs and expenses result from the sole and exclusive actions or inactions of the contractor. In the event that such direct costs and expenses resulting from ordinary negligence were also partially caused by third parties, other than DOE, such costs and expenses will not be reimbursed by DOE. The allocation of financial responsibility between the contractor and such third party should be determined by the parties involved. The contractor would be required to bear those costs that are additional increments necessary to carry out the same task, a second time, correctly. As in paragraph 1, costs and expenses which are routinely incurred in the ordinary course of doing business and are not extraordinary occurrences are not encompassed within this disallowance. The level or extent of these costs will be viewed, favorably or unfavorably, in establishing the contractor's award fee.

4. Fines, penalties, judgments, settlements, and related litigation costs (including attorneys fees) imposed under (or resulting from) statutory regulatory regimes and resulting from contractor or subcontractor negligence or misconduct where the contractor's conduct did not occur from compliance with formal DOE guidance, and where the breach of the contractor's legal duty giving rise to the liability involves an area of responsibility clearly placed on the M&O contractor. Fines, penalties, judgments, settlements and related litigation costs imposed under statutory regulatory regimes and resulting from the negligence of a third party, other than DOE, will not be reimbursed by DOE. The allocation of financial responsibility should be determined by the parties involved. This primarily contemplates nonreimbursement of such costs resulting from noncompliance with environmental laws and violations where, but for the actions or inaction of the M&O contractor or its subcontractor, compliance could have occurred. The contractor is not responsible in those circumstances in which the contractor has appropriately reported the instance of noncompliance but DOE authorizations or appropriations necessary to achieve compliance have not been forthcoming.

5. Judgments, settlements and related litigation costs resulting from common-law contractor or subcontractor negligence or misconduct giving rise to simple tort liability to third parties (in contrast to violations of federal statutory regulatory schemes), other than public liability for a nuclear incident indemnified by the Price-Anderson Act, where the liability did not occur from compliance with formal DOE guidance, and where the breach of the contractor's or subcontractor's legal duty giving rise to the liability involves an area of responsibility (i) solely and exclusively placed on the contractor and (ii) such liability resulted solely and exclusively from the action(s) or inaction(s) of the contractor. Judgments, settlements and related litigation costs resulting from such contractor common law negligence will not be reimbursed by DOE if the actions or inactions of a third party, other than DOE, were a contributing factor. The allocation of financial responsibility between the contractor and such third party should be determined by the parties involved.

The above paragraphs numbered 4 and 5 may raise questions concerning appropriate DOE control of contractor litigation, including proceedings before administrative agencies, and of settlements arising out of the contractor's performance under the contract. Although the rule now being proposed includes no changes to DEAR section 970.5204–31 dealing with litigation and claims, DOE solicits comments on the issue of litigation control and reimbursability of the cost of litigation. Specifically, commenters should address the need and mechanics for revising DEAR section 970.5204–31 to take into account situations where litigation and claims involve potentially unallowable costs, balancing the contractors' desire for greater independence and control of litigation with DOE's need to ensure legal and policy positions which are in the best interest of its overall M&O mission. DOE requests views on whether a contractor's refusal to allow DOE control should result in a waiver of claims for reimbursement, even in those cases in which a ceiling on disallowance might otherwise exist.

6. Civil and criminal penalties assessed by DOE pursuant to the Price-Anderson Amendments Act of 1988, and costs of litigation involving such penalties.

7. Any other costs, other than public liability for a nuclear incident indemnified by the Price-Anderson Act, that stem from the willful misconduct or lack of good faith of an M&O contractor supervisory or management employee at any tier.

M&O contractors may desire to obtain insurance against the risks posed by the nonreimbursement of avoidable costs. The DEAR currently classify insurance costs as allowable costs. The allowability of the cost of insurance for avoidable costs, however, should be viewed as part of the allocation of the risk between DOE and the M&O contractor. If DOE were to allow insurance premiums for costs which might be unallowable, the incentive for excellent performance by the contractor would be no greater than under current practice and the cost to DOE would likely be greater than if DOE continued as the total insurer. Accordingly, DOE is proposing that the cost of insurance against avoidable costs by unallowable.

The proposed rule would result in an amendment to DOE's Acquisition Regulations (DEAR). DEAR section 970.3102-21 Fines and Penalties would be revised to reflect that, for profit making M&O contractors, fines, penalties and related costs incurred in the performance of the contract will be nonreimbursable unless they result from acts specifically directed or authorized by the contracting officer or from the failure of DOE to provide necessary authorizations or appropriations to achieve compliance of appropriately reported requirements by the contractor. No profit making contractor which is not otherwise exempt by law or regulation will be reimbursed for fines or penalties imposed by DOE under the Price-Anderson Amendments Act of 1988. All of the above nonreimbursable costs would be listed as unallowable costs under DEAR section 970.5204-13(e)(12) as well as section 970.5204-14(e)(10).

Also DEAR section 970.5204-13(e)(17), losses, would be revised to disallow any costs that could have been avoided by the contractor or its subcontractors, and were incurred solely and exclusively as the result of negligence or willful misconduct on the part of any contractor or subcontractor employee at any level. This is intended to include situations where the contractor or subcontractor has not performed with the skill and expertise for which DOE has bargained under the contract. Third party claims and litigation expenses would also be unallowable under this section.

DEAR section 970.5204-13(e)(36) would be revised to make clear that the cost of bonds and insurance will be considered unallowable when they are incurred to insure against losses resulting from costs that are otherwise unallowable under the contract. The purpose of the revision would be to preclude the contractor from being indirectly reimbursed for unallowable costs that would not be directly reimbursable.

The proposed regulation would hold the contractor liable for loss or destruction of or damage to government property resulting solely and exclusively from any negligent act or omission or willful misconduct including theft of any kind on the part of any contractor or subcontractor employee at any level. New DEAR section 970.5204-21(j) would also hold the contractor liable for any such losses resulting from failure to comply with any directive of the contracting officer to safeguard the property given under section 970.5204-21(e).

Contractors are entitled to an understanding of the new exposure which they are expected to assume. Even though the potential risk of disallowed costs may be within the contractor's control, an indefinite or incalculable vulnerability to disallowed expenses would not permit contractors to compare their risks and rewards in determining whether to undertake an M&O contract. DEAR section 970.5204-55 would be added to provide a limitation on the exposure of the contractor for fines, penalties, and other costs which might no longer be allowed costs under these new regulations. This ceiling would be equal to the maximum available award fee for the six-month evaluation period during which such costs are actually incurred but would not apply to any costs or liabilities incurred under other provisions of the contract. (In cost plus fixed fee contracts, the liability ceiling would be equal to the amount of 6 months of fixed fee for the period.) If the award fee actually earned by the contractor in any period is determined to be less than the full award fee available, the contractor shall nevertheless be responsible for fines, penalties, unallowable avoidable costs, and avoidable losses to government property actually incurred during that period, up to the amount of the full award fee which would have been available. In other words, if, for example, the available award fee is $10 million and the contractor receives $2 million of that amount as an award while incurring during that six-month period unallowable avoidable costs of $6 million, the contractor will be asked to assume the $4 million differential, plus foregoing the $2 million award fee. DOE does not, however, propose that the contractor be at risk for more than the amount of an award fee that would have been available in any six-month period. In the example above, if the unallowable avoidable costs incurred in the period are $12 million, the contractor will be asked to assume responsibility for $10 million—the fee actually awarded ($2 million) plus $8 million more, up to the fee available ($10 million). Thus, the M&O contractor should be able to calculate its maximum risk for any period by comparison to its total award fee available for that period.

The contractor would be required to provide a guarantee that it will be able to satisfy any potential future liability discovered after the award fee period or after the contract expires and/or the contractor is replaced. Liability for fines, penalties, unallowable avoidable costs and loss to government property incurred over multiple evaluation periods would be allocated to a single evaluation period in which the incident or event giving rise to the cost occurred. If it is not reasonably possible to so allocate these activities to a specific evaluation period, or the incidents or events giving rise occurred over multiple evaluation periods, the contractor's financial risk is limited to the available award fee in the evaluation period when the amount of nonreimbursable costs or losses were determined. If such determination is made following the expiration of a contract, or the contractor is otherwise replaced, the available award fee for the last six-month period that the contract was in effect shall be utilized, after deducting such disallowed costs as were previously charged to that period.

It is contemplated that DOE and its M&O contractors will make every effort to resolve as soon as possible on an informal basis any disagreements which arise concerning particular costs which may be unallowable under these regulations. DOE recognizes that it will be in the best interest of cooperative contract administration and performance to encourage mutually satisfactory agreements with its contractors regarding cost allowability in a timely and informal manner.

DOE recognizes that if the proposed rule is adopted, new categories of unallowable costs will be in place. The current accounting system of the M&O contractors may not in every case be the most efficient and sound method for

identifying these new unallowables. Therefore, DOE welcomes comments regarding any necessary changes in the current systems of accounting.

If finalized, DOE proposes to implement the rule by including the provisions in each new or extended contract which it enters. In addition, DOE will seek to include the new provisions in each current M&O contract as the annual fee is negotiated.

IV. Procedural Requirements

A. Review Under Executive Order 12291

Executive Order 12291, entitled "Federal Regulation," provides that all rules be reviewed to determine whether they are "major rules" which require a regulatory analysis. DOE has concluded that today's notice does not involve a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. 46 FR 13193 (February 19, 1981).

The Executive Order requires that certain regulations be reviewed by the OMB prior to their promulgation. OMB Bulletin 85-7 exempts all but certain types of procurement regulations from such review. This proposed rule does not involve any of the topics requiring review under the bulletin, and accordingly, is exempt from such review.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities, i.e. small businesses, small organizations, and small governmental jurisdictions. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980.

(44 U.S.C. 3501, *et seq.*)

D. Review Under the National Environmental Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976), or the Council on Environmental Quality regulations (40 CFR Parts 1500-1508) and the DOE guidelines (10 CFR Part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain policy and procedural requirements. However, the Department of Energy has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law, nor should it have a substantial effect on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95-91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

V. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. All written comments received by (the date indicated in the "DATE" section of this notice) will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. Any information you consider to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination. List of subjects in 48 CFR parts 970.

Government contracts, DOE management and operating contracts.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC, on January 23, 1990.

Berton J. Roth,

Director for Procurement and Assistance Management.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99-145 (42 U.S.C. 7256a), as amended.

2. Section 970.3102-21, Fines and Penalties, is revised as follows:

970.3102-21 Fines and penalties.

(a) It is DOE policy to reimburse nonprofit management and operating contractors for fines and penalties that are incurred in the performance of their contracts. Any such reimbursement for fines and penalties incurred under the contract will be made as long as such fines and penalties are not the result of the willful misconduct or lack of good faith on the part of the contractor's officers, directors or supervising representatives.

(b) It is DOE policy not to reimburse profit making management and operating contractors for fines and penalties that are incurred in the performance of their contracts, unless such fines and penalties result from acts or omissions which were specifically

directed or authorized by the contracting officer or occur after specific instances of noncompliance were reported by the contractor to the contracting officer and necessary authorizations or appropriations to correct the conditions were not received.

(c) It is DOE's policy not to reimburse any contractor for civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988 or for costs of litigation, resulting from such assessments, except as may be specifically provided in regulations implementing those civil and criminal penalties provisions.

(d) For purposes of this section, a nonprofit management and operating contractor is one which receives no fee and is considered nonprofit under the laws of the jurisdiction where it is incorporated, and if it is a subsidiary, is a subsidiary of a company which is considered nonprofit under the laws of the jurisdiction where it is incorporated. A contracting officer may also treat as nonprofit a contractor which receives no fee and whose particular corporate organization or circumstances, in the judgment of the contracting officer, warrants such consideration. All other management and operating contractors are considered profit making.

3. Section 970.5204–4, Definition of Nonprofit and Profit Making Management and Operating Contractors, is added as follows:

970.5204–4 Definition of Nonprofit and Profit Making Management and Operating Contractors.

For purposes of subsections 970.5204–13 (e)(12) and (e)(17), 970.5204–14 (e)(10) and (e)(15), and 970.5204–21(j), a nonprofit management and operating contractor is one which receives no fee and is considered nonprofit under the laws of the jurisdiction where it is incorporated, and if it is a subsidiary, is a subsidiary of a company which is considered nonprofit under the laws of the jurisdiction where it is incorporated. A contracting officer may also treat as nonprofit a contractor which receives no fee and whose particular corporate organization or circumstances, in the judgment of the contracting officer, warrants such consideration. All other management and operating contractors are considered profit making.

4. Section 970.5204–13(e), items of unallowable costs, is amended by republishing the introductory text of (e), by revising (e)(12), and by adding (e)(17)(iv) and (e)(36) as follows:

970.5204–13 Allowable costs and fixed-fee (management and operating contracts).

* * * * *

(e) *Items of unallowable costs.* The following items of costs are unallowable under this contract to the extent indicated:

(12) Fines and penalties: (i) In contracts with nonprofit contractors, use the folloing clause:

"Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with Federal, state, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988 or costs of litigation resulting from such assessments, are unallowable except as may be specifically provided in regulations implementing those civil and criminal penalties provisions."

"In contracts with profit making contractors, use the following clause:

"Fines and penalties, including assessed interest and litigation expenses, resulting from violations of, or failure of the contractor to comply with, Federal, state, local or foreign laws and regulations, unless such fines and penalties result from acts or omissions which were specifically directed or authorized by the contracting officer, or occur after specific instances of noncompliance were reported by the contractor to the contracting officer and necessary authorizations or appropriations to correct the conditions were not received. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988 or costs of litigation resulting from such assessments, are unallowable except as may be specifically provided in regulations implementing those civil or criminal penalties provisions."

* * * * *

(17) * * *

(iv) In contracts with profit making contractors, add the following paragraph:

"or, are direct costs which are avoidable that are incurred by the contractor, without any fault of DOE, exclusively as a result of the negligence or willful misconduct on the part of any of the contractor's or its subcontractor's personnel in performing work under the contract. Such direct costs may include, for example, additional programmatic expenses for research and development or production activities, and third party claims against the contractor, but shall not include consequential damages.

Litigation expenses incurred by the contractor in bringing or defending claims relating to these costs are also unallowable."

* * * * *

(36) Nothwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the contractor against otherwise unallowable costs, such as fines and penalties, third party claims, negligently or willfully caused additional programmatic expenses or damage to government property.

5. Section 970.520–14(e), Items of unallowable costs, is amended by republishing the introductory text of (e), by revising (e)(10), and by adding (e)(15)(iv), and (e)(34) as follows:

970.5204–14 Allowable costs and fixed-fee (support contracts).

* * * * *

(e) *Items of unallowable costs.* The following examples of items of costs are unallowable under this contract to the extent indicated:

* * * * *

(10) Fines and penalties: (i) In contracts with nonprofit contractors, use the following clause:

"Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with Federal, state, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988 or costs of litigation resulting from such assessments, are unallowable except as may be specifically provided in regulations implementing those civil and criminal penalties provisions.

(ii) In contracts with profit making contractors, use the following clause:

Fines and penalties, including assessed interest and litigation expenses, resulting from violations of or failure of the contractor to comply with Federal, state, or local or foreign laws and regulations, unless such fines and penalties result from acts or omissions which were specifically directed or authorized by the contracting officer, or occur after specific instances of noncompliance were reported by the contractor to the contracting officer and necessary authorizations or appropriations to correct the conditions were not received. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988 or costs of litigation resulting from such assessments, are unallowable except as may be specifically provided in regulations implementing those civil or criminal penalties provisions.

* * * * *

(15) * * *

(iv) In contracts with profit making contractor, add the following paragraph:

"or, are direct costs which are avoidable that are incurred by the contractor, without any fault of DOE, exclusively as a result of the negligence or willful misconduct on the part of any of the contractor's or its subcontractor's personnel in performing work under the contract. Such direct costs may include, for example, additional programmatic expenses for research and development or production activities, and third party claims against the contractor, but

shall not include consequential damages. Litigation expenses incurred by the contractor in bringing or defending claims relating to these costs are also unallowable."

* * * * *

(34) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the contractor against otherwise unallowable costs, such as fines and penalties, third party claims, negligently or willfully caused additional programmatic expenses or damage to government property.

6. Section 970.5204–21 *Property*, is amended by adding after paragraph (i) the following paragraph (j):

970.5204-21 Property.

* * * * *

(j) *Additional responsibility for risk of loss of government property.* The following paragraph (j) shall be added in contracts with profit making contractors:

"Notwithstanding the limitation of liability described in paragraph (f) above, the contractor will also be liable for loss or destruction of or damage to government property in the contractors' possession if such loss, destruction or damage results, without any fault of DOE, from a failure on the part of any of the contractor's personnel or on the part of the personnel of any subcontractor to take all reasonable steps to comply with any written directive of the contracting officer to safeguard such property under paragraph (e) hereof, or results from negligent acts or omissions, or willful misconduct, including theft or embezzlement by any of the contractor's or subcontractor's personnel."

7. Section 970.5204–55 Ceiling On Certain Liabilities for Profit Making Contractors, is added as follows:

970.5204-55 Ceiling On Certain Liabilities for Profit Making Contractors.

(a) The contractor's potential financial risk under the unallowable cost provisions concerning fines and penalties and losses which are avoidable costs, and the provision concerning additional responsibility for risk of loss of government property, shall be limited to the amount of the award fee (or the amount of 6-months of fixed fee in the case of cost plus fixed fee contracts) which is available in the evaluation period when the event which led to the imposition of the costs or liabilities occurred. This limitation does not apply to any other categories of unallowable costs. In the case of continuing activities of the contractor which occur over a number of evaluation periods and result in costs or liabilities described above, the potential financial risk of the contractor shall be limited to the amount of the award fee which was available in the single evaluation period when the incident or event giving rise to the contractor's disallowed cost or expense took place. If it is not possible to relate or reasonably allocate particular activities to individual evaluation periods, the financial risk of the contractor shall be limited to the amount of the award fee which was available in the evaluation period when the amount of nonreimbursable costs or liabilities were finally determined. If such determination is made following the expiration of a contract, or the contractor is otherwise replaced, the available award fee for the last evaluation period that the contract was in effect shall be utilized, after deducting such disallowed costs as were previously charged to that period.

(b) If the award fee actually earned by the contractor is determined to be less than the full award fee available, the contractor shall nevertheless be responsible for the costs and liabilities described above, up to the amount of the full award fee which was available in the evaluation period. The contractor agrees to provide, in such form and amount as shall be satisfactory to the contracting officer, a guarantee to assure that the contractor will have sufficient resources to satisfy all costs and liabilities up to the amount of the available award fee. This responsibility of the contractor and the guarantee shall remain in effect notwithstanding the completion, termination, or expiration of the contract. Any costs or liabilities to third parties beyond the limitations described above would be reimbursed subject to the other provisions of the contract governing cost reimbursement. The contractor's potential financial risk under the civil or criminal penalties provisions of the Price-Anderson Amendments Act of 1988 will not be limited except as provided in regulations implementing those provisions.

[FR Doc. 90–1908 Filed 1–25–90; 8:45 am]

BILLING CODE 6450-01-M

Reader Aids

Federal Register
Vol. 55, No. 18
Friday, January 26, 1990

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-128 2
129-242 3
243-418 4
418-590 5
591-708 8
709-838 9
839-990 10
991-1170 11
1171-1352 12
1353-1556 16
1557-1660 17
1661-1780 18
1781-2046 19
2047-2216 22
2217-2358 23
2359-2508 24
2509-2600 25
2601-2802 26

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR
305 1665

3 CFR
Proclamations:
6085 591
6086 593
6087 709
6088 991
6089 1661
6090 2217
Executive Orders:
12543 (See Notice of Jan. 4, 1990) 589
12544 (See Notice of Jan. 4, 1990) 589
12699 835
12700 2219
Administrative Orders:
Notices:
Jan. 4, 1990 589
Presidential Determinations:
No. 90-5 of Jan. 2, 1990 1663
No. 90-6 of Jan. 3, 1990 595

4 CFR
25 2359

5 CFR
534 1353
550 1353
581 1354
591 1370
841 993
870 993
871 993
872 993
873 993
890 ..... 993, 1781
1201 548
1655 978
2429 2509
2638 1665
Proposed Rules:
315 2385

7 CFR
1e 106
58 2360
215 1376
225 1376
226 1376
235 1376
272 1670
275 1670
301 ..... 711, 712
354 2221
401 ..... 1782, 1784
456 1785
719 1557
793 1557
801 839
905 ..... 1786, 2222, 2223, 2601
907 ..... 1, 726, 839, 841, 1171, 1788, 2604
908 841
910 ..... 3, 728, 1173, 1790
918 1379
955 715
967 2362
979 723
981 129
982 724
989 2224
1032 2226
1210 2047
1405 1557
1413 1557
1421 1557
1430 2363
1446 ..... 1383, 1385
1497 1557
1498 1557
1762 ..... 130, 2509
1772 1791
1786 1142
1900 1576
1942 134
1980 ..... 136, 2365
3402 2214
Proposed Rules:
1 636
51 2383
401 1825
425 295
929 295
932 737
948 299
959 437
1786 1152

8 CFR
214 2606
238 1576
242 1576
286 729
Proposed Rules:
212 438
214 438
238 438

9 CFR
78 419
97 2227
381 145
Proposed Rules:
310 2386
391 439

10 CFR
2 843
10 4
19 243
34 ..... 843, 2281
430 996
Proposed Rules:
35 1439
436 2590

11 CFR
100 2281
102 2281
110 ..... 1139, 2281
114 2281
9034 2281

12 CFR
5 996

32....854
203....695, 2481
207....2631
220....2631
221....2631
224....2631
312....1912
528....1386
571....126, 696
700....1792
701....1792, 1798
705....1792
741....1792, 1798
910....2228
912....2228
931....1393, 2228
932....1393, 2228
933....2228
934....2228
935....2228
936....2228
937....2228
938....2228
939....2228
940....2228
941....2228
942....2228
943....2228
944....2228
950....2228
955....2228

Proposed Rules:
208....582
225....582
602....440
701....1827
1505....820

13 CFR
116....2048
120....2049, 2050
122....2050

14 CFR
21....270, 2366
23....270
25....2366
39....248-269, 597-607, 857-860, 998, 1006, 1400, 1401, 1579, 1799, 1805, 2051, 2056, 2231, 2634-2639
71....609, 610, 1402, 1535, 2059, 2060
73....274, 610, 1806
75....611, 1403
91....412
95....1008
97....274, 612, 1581
1221....1404
1240....613

Proposed Rules:
Ch. I....2237
21....2665
25....2665
27....988
29....698, 988
39....300-309, 877, 1043, 1046, 1450, 1451, 1831-1834, 2095-2098, 2237, 2667-2672
71....645, 1452-1454, 1544, 1836, 2095-2099, 2674, 2675
75....1455
91....2206
327....1215

15 CFR
799....2281

Proposed Rules:
400....2760

16 CFR

Proposed Rules:
401....878
414....879, 1768
1700....1456, 2733

17 CFR
270....1641
274....959
279....959

Proposed Rules:
155....1047
200....1678
230....1460
239....1460
270....1460
274....1460

18 CFR
16....4
37....146, 2060
154....1174
157....1174
250....1807
260....1174
270....20
284....1174
385....1174
388....1174

19 CFR
12....1809

Proposed Rules:
111....2528
113....2528
142....2528
143....2528
159....2528
357....1348

Proposed Rules:
12....738, 2100, 2386
24....2386
133....2386
134....1837

20 CFR
327....1810
332....1812
404....1012
410....1012
416....1012
422....1012
625....550

21 CFR
Ch. I....276
14....1404
19....1404
20....1404
133....2510
176....1672
430....2640
440....277, 278, 2481
444....616, 2642
452....279, 2481
455....2640
510....1405, 1673
520....2233
522....1405
524....797
558....22, 1406
801....548

Proposed Rules:
10....1471
179....646
310....797, 1471, 2202
314....1471
320....1471
333....797, 2202
341....310, 2387
343....1471
369....1471
1020....1472

23 CFR
655....2373
1313....1185

24 CFR
16....2064
201....420, 1312
203....280, 1312
234....1312
291....1156
577....1156
578....1156

Proposed Rules:
50....396, 2533
55....396, 2533
58....396, 2533
200....396, 2533

25 CFR

Proposed Rules:
262....2580

26 CFR
1....283, 729, 1406, 1768, 2374, 2511-2515
7....1406
602....1406, 2374

Proposed Rules:
1....310, 739, 1215, 1472, 2100, 2534, 2535
7....1472
602....1472

27 CFR
5....1768, 1912
9....285

Proposed Rules:
5....1061

28 CFR
0....1583
2....288, 289, 862
545....78

29 CFR
503....106
1601....2518
1956....1204
2610....1206
2622....1206
2644....1208
2676....1208

Proposed Rules:
1910....2101, 2776
1926....2101

30 CFR
220....1209
700....78
702....78
750....78
870....78
905....78
910....78
912....78
921....78
922....78
925....618
933....78
934....1813
937....78
939....78
941....78
942....78
947....78

Proposed Rules:
16....2212
56....2535
57....2535
58....2535
70....2535
71....2535
72....2535
75....2204, 2535
90....2535
243....158
256....2388
816....2105
817....2111
901....647
904....2239
914....2536, 2538
917....1216
920....2111
935....649
938....2675
946....2240
948....34

31 CFR
2....1644
103....1021
351....566
353....575
515....2644

32 CFR
40a....23
199....621
706....152, 1418

Proposed Rules:
199....2116
220....1473

33 CFR
100....153, 1583
110....154
117....2065
165....27, 734, 1583, 1584, 2645
334....2586

Proposed Rules:
80....2539
110....1679

34 CFR
319....194
669....2772
755....1584

Proposed Rules:
302....1217

36 CFR
222....2646
1120....2518

Proposed Rules:
1220....1912
1222....1912
1224....1912

38 CFR
4....154

Proposed Rules:
1220....740
1222....740
1224....740

40 CFR
52....735, 1052, 1419, 1420, 2066, 2234
60....28
61....28, 78
81....1420
180....1585, 2376-2379
186....1423
228....1024
260....2322
261....2322
262....2322
350....420
749....222
761....695
795....627
799....627

Proposed Rules:
52....311, 1592, 2245, 2390
81....35
85....1680
86....1914, 2248
141....160
143....160
180....2391
261....2248
372....650
435....2540
600....1680

41 CFR
105-1....1673
105-2....1674
201-1....29
201-2....29

201-23 ... 29
201-24 ... 29
Ch. 301 ... 1946
301-8 ... 2379
302-11 ... 1674

42 CFR
100 ... 2652
405 ... 2652
411 ... 1819
412 ... 290, 1819
413 ... 290, 2652
433 ... 1423, 1820
447 ... 1423, 2652
489 ... 1819

43 CFR
3470 ... 2653

Proposed Rules:
3160 ... 1837

Public Land Orders:
6760 ... 695
6761 ... 862
6762 ... 863
6763 ... 1210

44 CFR
64 ... 155
67 ... 863
206 ... 2284, 2297
334 ... 1820

Proposed Rules:
67 ... 743, 1217, 1226

45 CFR
3 ... 2067

Proposed Rules:
1180 ... 1592

46 CFR
15 ... 1210
16 ... 634
54 ... 696
90 ... 2522
91 ... 2522
540 ... 1823
586 ... 2071

Proposed Rules:
540 ... 1850
580 ... 315
581 ... 315

47 CFR
0 ... 1676
1 ... 2380
73 ... 290, 291, 421, 869, 1035, 2236, 2664

Proposed Rules:
0 ... 315
1 ... 315
2 ... 315, 744
15 ... 879
68 ... 879
73 ... 322-327, 881-885, 1065, 1066, 1481-1483, 2254
76 ... 1483, 1484
80 ... 2392, 2393
87 ... 2393
90 ... 328, 744
95 ... 315

48 CFR
52 ... 30
303 ... 2077
525 ... 421

Proposed Rules:
9 ... 416
16 ... 2356
17 ... 2356
19 ... 2358
31 ... 1554
33 ... 990
48 ... 416
52 ... 30, 2358
205 ... 962
208 ... 962, 1593, 1594
209 ... 962
214 ... 962
215 ... 962
225 ... 962
246 ... 962
252 ... 962, 1593, 1594
271 ... 1594
522 ... 445
552 ... 445
970 ... 2796
Appendix T ... 962

49 CFR
171 ... 422, 870
172 ... 870
173 ... 422, 870
175 ... 870
199 ... 797
571 ... 1586, 1681
594 ... 78
653 ... 2526
1312 ... 1035
1313 ... 156

Proposed Rules:
240 ... 2395
392 ... 37
567 ... 747
571 ... 446, 747, 760, 1226, 1681
572 ... 1139
585 ... 747
605 ... 334
1151 ... 1067

50 CFR
17 ... 425, 429
204 ... 2201
229 ... 2201
611 ... 291, 1036, 1434, 1591
641 ... 2078
642 ... 1212
650 ... 433, 2201
652 ... 1213
663 ... 30, 1036
672 ... 31, 1036
675 ... 31, 1036, 1486, 1434

Proposed Rules:
16 ... 1851
17 ... 761, 886, 1230, 1486, 1488, 2541
228 ... 1685
301 ... 1491
628 ... 652
642 ... 2118
651 ... 38, 1853
658 ... 447

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List: January 19, 1990.