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Friday
June 26, 1992

Briefing on How To Use the Federal Register
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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 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.

SAN FRANCISCO, CA

WHEN: July 22, at 9:00 am
WHERE: Federal Building and U.S. Courthouse, Conference Room 7209-A, 450 Golden Gate Avenue, San Francisco, CA
RESERVATIONS: Federal Information Center, 1-800-726-4995

SEATTLE, WA

WHEN: July 23, at 1:00 pm
WHERE: Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
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Presidential Documents

Title 3—

The President

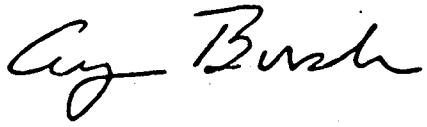
Presidential Determination No. 92–33 of June 15, 1992

Determination Under Section 405(a) of the Trade Act of 1974, as Amended—Albania

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act"), I determine, pursuant to section 405(a) of the Trade Act (19 U.S.C. 2435(a)), that the "Agreement on Trade Relations Between the United States of America and the Republic of Albania" will promote the purposes of the Trade Act and is in the national interest.

You are authorized and directed to transmit copies of this determination to the appropriate Members of Congress and to publish it in the **Federal Register.**



THE WHITE HOUSE,
Washington, June 15, 1992.

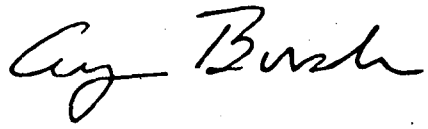
[FR Doc. 92–15239
Filed 6–24–92; 2:11 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12811 of June 24, 1992

Waiver Under the Trade Act of 1974 With Respect to Tajikistan and Turkmenistan

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974, as amended ("Act") (19 U.S.C. 2432(c)(2)), which continues to apply to Tajikistan and Turkmenistan pursuant to section 402(d) of the Act, and having made the report to the Congress required by section 402(c)(2) of the Act, I hereby waive the application of sections 402(a) and 402(b) of the Act with respect to Tajikistan and Turkmenistan.



THE WHITE HOUSE,
June 24, 1992.

[FR Doc. 92-15260
Filed 6-24-92; 4:11 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 124
Friday, June 26, 1992

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 915

[Docket No. FV-92-002]

Avocados Grown in South Florida; Maturity Requirement Revisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises maturity requirements in effect on a continuous basis for avocados grown in Florida. This rule makes calendar date adjustments in the shipping schedules for varieties of avocados to synchronize them with the 1992 and 1993 calendar years. These recommendations were based on recent maturity test results for these varieties. This action is designed to ensure that only mature fruit is shipped to the fresh market, thereby improving grower returns and promoting orderly marketing conditions.

DATES: This rule becomes effective June 26, 1992. Comments must be received by July 27, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, Telephone (202) 720-8139.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Marketing Agreement and Marketing Order No. 915, both as amended [7 CFR part 915], regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production area (South Florida). Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) 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 the avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee), which administers the order locally, met on December 18, 1991, and unanimously recommended maturity revisions. The committee meets prior to and during each season to review the handling requirements for avocados, effective on a continuous basis. Committee meeting are open to the public, and interested persons may express their views at these meetings. The 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.

The maturity requirements are specified in Table 1 of paragraph (a)(2) of § 915.322 (7 CFR part 915) and are based on recent maturity test results. This interim final rule will revise the calendar dates in the shipping schedules for avocado varieties specified in § 915.332 to synchronize these dates with the 1992 and 1993 calendar years. The starting date for the earliest variety on that schedule is May 11, 1992.

The maturity requirements for Florida avocados are in effect on a continuous basis. Such requirements specify minimum weights and diameters for specific shipping periods for some 60 varieties of avocados and color specifications for those varieties which turn red or purple when mature. The maturity requirements for the various varieties of avocados are different,

because each variety has different characteristics.

These maturity requirements are designed to prevent shipments of immature avocados to the fresh market, especially during the early part of the harvest season for each variety. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of both producers and consumers.

The Florida avocado shipping season usually begins about mid-May with light shipments of early varieties and it continues into the following March or April, with heaviest shipments occurring from July through December.

A minimum grade requirement of U.S. No. 2 currently in effect on a continuous basis for Florida avocados under § 915.306 (7 CFR part 915) remains in effect unchanged by this action.

The minimum size (weight and diameter) and skin color maturity requirements specified in § 944.31 (7 CFR 944.31) for imported avocados were in effect on a continuous basis for several years. However, a final rule issued May 15, 1991 (56 FR 23009, May 20, 1991) indefinitely suspended import requirements covered by this section. Therefore this action will not impact imported avocados until the suspension is lifted.

According to the Florida Agricultural Statistics Service, Florida avocado shipments for the 1991–92 season are expected to total 1,100,000 bushels, an increase of 46 percent from the 1990–91 season but 6 percent above the previous 5-year average. Florida avocado production over the last five years (1985–89) averaged 1.1 million bushels per season. Also, competitive supplies from California are likely to exceed those in the 1990–91 season. Competitive supplies from California during the 1990–91 season declined due to crop damage attributed to freezing temperatures in late December. Avocado imports from the Caribbean may reach record proportions.

Handlers may ship, exempt from the minimum grade, size, and maturity requirements effective under the marketing order, up to 55 pounds of avocados during any one day under a minimum quantity provision, and up to 20 pounds of avocados as gift packs in individually addressed containers. Also, avocados utilized in commercial processing are not subject to the grade, size, and maturity requirements under the order.

This action reflects the committee's and the Department's appraisal of the need to make the specified changes. The Department's view is that this action will have a beneficial impact on producers and handlers since it will help ensure that only mature avocados are shipped to fresh markets. The committee considers that maturity requirements for Florida grown avocados are necessary to improve grower returns and promote orderly marketing conditions. Although compliance with these maturity requirements will affect costs to handlers, these costs will be offset by the benefits of providing the trade and consumers with mature avocados.

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, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, 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 simply revises maturity requirement dates to the 1992–93 calendar years so that they conform to recent maturity test results; (2) Florida avocado handlers are aware of this action which was unanimously recommended by the committee at a public meeting held December 18, 1991; (3) these changes apply to varieties of avocados which handlers normally begin shipping in mid-May, and there is not enough time to provide a period for comments prior to implementation of the changes set forth below; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

Note: This section will appear in the annual *Code of Federal Regulations*.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

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

2. Section 915.332 is amended by revising table I in paragraph (a)(2) to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(2) * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Arue	2nd Mon May	4th Sun May	16	3 3/16
	4th Mon May	5th Mon June	14	
Donnie	3rd Mon May	5th Sun May	16	3 5/16
	1st Mon June	5th Mon June	14	3 5/16
Dr. Dupuis #2	4th Mon May	1st Sun June	16	3 7/16
	2nd Mon June	4th Sun June	14	3 5/16
	5th Mon June	2nd Mon July	12	3 3/16
Fuchs	1st Mon June	2nd Sun June	14	3 3/16
	3rd Mon June	5th Mon June	12	3
K-5	2nd Mon June	3rd Sun June	16	3 5/16
	4th Mon June	1st Mon July	14	3 3/16
Simmonds	3rd Mon June	4th Sun June	16	3 5/16
	5th Mon June	2nd Sun July	14	3 7/16
	2nd Mon July	4th Mon July	12	3 1/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Pollock	3rd Mon June	4th Sun June	18	3 11/16
	5th Mon June	2nd Sun July	16	3 7/16
	2nd Mon July	4th Mon July	14	3 5/16
West Indian Seedling[1]	3rd Mon June	2nd Sun July	18	
	2nd Mon July	3rd Sun Aug	16	
	3rd Mon Aug	2nd Mon Sept	14	
Hardee	4th Mon June	4th Sun June	16	3 3/16
	5th Mon June	1st Sun July	14	2 15/16
	1st Mon July	3rd Mon July	12	
Nadir	4th Mon June	4th Sun June	14	3 3/16
	5th Mon June	1st Sun July	12	3 1/16
	1st Mon July	2nd Mon July	10	2 15/16
Gorham	5th Mon June	2nd Sun July	29	4 5/16
	2nd Mon July	2nd Mon Aug	27	4 3/16
Reuhle	5th Mon June	1st Sun July	18	3 11/16
	1st Mon July	2nd Sun July	16	3 9/16
	2nd Mon July	4th Sun July	14	3 7/16
	4th Mon July	1st Sun Aug	12	3 5/16
	1st Mon Aug	2nd Mon Aug	10	3 3/16
Biondo	1st Mon July	2nd Mon Aug	13	
Peterson	1st Mon July	2nd Sun July	14	3 5/16
	2nd Mon July	3rd Sun July	12	3 3/16
	3rd Mon July	1st Mon Aug	10	3 1/16
Bernecker	2nd Mon July	4th Sun July	18	3 9/16
	4th Mon July	2nd Sun Aug	16	3 5/16
	2nd Mon Aug	4th Mon Aug	14	3 1/16
Miguel (P)	2nd Mon July	4th Sun July	22	3 13/16
	4th Mon July	2nd Sun Aug	20	3 11/16
	2nd Mon Aug	4th Mon Aug	18	3 9/16
Nesbitt	2nd Mon July	4th Sun July	22	3 13/16
	4th Mon July	1st Sun Aug	16	3 5/16
	1st Mon Aug	3rd Mon Aug	14	3 3/16
232	2nd Mon July	4th Sun July	14	
	4th Mon July	2nd Mon Aug	12	
Pinelli	2nd Mon July	4th Sun July	18	3 13/16
	4th Mon July	2nd Mon Aug	16	3 9/16
Trapp	2nd Mon July	4th Sun July	14	3 9/16
	4th Mon July	2nd Mon Aug	12	3 7/16
Tonnage	4th Mon July	2nd Sun Aug	16	3 5/16
	2nd Mon Aug	3rd Sun Aug	14	3 1/16
	3rd Mon Aug	4th Mon Aug	12	3
Waldin	4th Mon July	2nd Sun Aug	16	3 9/16
	2nd Mon Aug	4th Sun Aug	14	3 7/16
	4th Mon Aug	1st Mon Sept	12	3 5/16
Tower 2	4th Mon July	2nd Sun Aug	14	3 5/16
	2nd Mon Aug	5th Mon Aug	12	3 3/16
K-9	4th Mon July	3rd Mon Aug	16	
Christina	4th Mon July	3rd Mon Aug	11	2 15/16
Beta	1st Mon Aug	2nd Sun Aug	18	3 3/16
	2nd Mon Aug	5th Mon Aug	16	3 5/16
Lisa (P)	1st Mon Aug	2nd Sun Aug	12	3 3/16
	2nd Mon Aug	3rd Mon Aug	11	3
Black Prince	2nd Mon Aug	4th Sun Aug	28	4 1/16
	4th Mon Aug	2nd Sun Sept	23	3 15/16
	1st Mon Sept	4th Mon Sept	16	3 9/16
Catalina	2nd Mon Aug	4th Sun Aug	24	
	4th Mon Aug	2nd Mon Sept	22	
Loretta	4th Mon Aug	1st Sun Sept	30	4 5/16
	1st Mon Sept	4th Mon Sept	26	3 15/16
Booth 8	4th Mon Aug	1st Sun Sept	16	3 5/16
	1st Mon Sept	3rd Sun Sept	14	3 3/16
	3rd Mon Sept	1st Sun Oct	12	3 5/16
	1st Mon Oct	3rd Mon Oct	10	3 1/16
Booth 7	4th Mon Aug	1st Sun Sept	18	3 13/16
	1st Mon Sept	3rd Sun Sept	16	3 9/16
	3rd Mon Sept	1st Mon Oct	14	3 5/16
Blair	4th Mon Aug	1st Sun Sept	16	3 5/16
	1st Mon Sept	4th Mon Sept	14	3 3/16
Booth 5	5th Mon Aug	2nd Sun Sept	14	3 5/16
	2nd Mon Sept	4th Mon Sept	12	3 3/16
Guatemalan Seedling[2]	5th Mon Aug	4th Sun Sept	15	
	4th Mon Sept	5th Mon Nov	13	
Marcus	5th Mon Aug	2nd Sun Sept	32	4 13/16
	2nd Mon Sept	4th Mon Oct	24	4 5/16
Brooks 1978	5th Mon Aug	1st Sun Sept	12	3 5/16
	1st Mon Sept	2nd Sun Sept	10	3 1/16
	2nd Mon Sept	1st Mon Oct	8	2 15/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Rue	1st Mon Sept	2nd Sun Sept	30	4 3/16
	2nd Mon Sept	4th Sun Sept	24	3 15/16
	4th Mon Sept	2nd Mon Oct	18	3 9/16
Collinson	1st Mon Sept	1st Mon Oct	16	3 10/16
Hickson	1st Mon Sept	3rd Sun Sept	12	3 1/16
	3rd Mon Sept	1st Mon Oct	10	3
Simpson	2nd Mon Sept	1st Mon Oct	16	3 9/16
Chica	2nd Mon Sept	4th Sun Sept	12	3 7/16
	4th Mon Sept	2nd Mon Oct	10	3 5/16
Choquette	3rd Mon Sept	2nd Sun Oct	28	4 5/16
	2nd Mon Oct	4th Sun Oct	24	4 1/16
	4th Mon Oct	2nd Mon Nov	20	3 14/16
Hall	3rd Mon Sept	1st Sun Oct	26	3 15/16
	1st Mon Oct	3rd Sun Oct	20	3 9/16
	3rd Mon Oct	1st Mon Nov	16	3 5/16
Leona	3rd Mon Sept	1st Mon Oct	18	3 10/16
Lula	4th Mon Sept	2nd Sun Oct	18	3 11/16
	2nd Mon Oct	4th Sun Oct	14	3 6/16
	4th Mon Oct	2nd Mon Nov	12	3 3/16
Herman	4th Mon Sept	2nd Sun Oct	16	3 5/16
	2nd Mon Oct	4th Mon Oct	14	3 5/16
Pinkerton (CP)	4th Mon Sept	2nd Sun Oct	13	3 3/16
	2nd Mon Oct	4th Sun Oct	11	3
	4th Mon Oct	2nd Mon Nov	9	
Taylor	1st Mon Oct	3rd Sun Oct	14	3 5/16
	3rd Mon Oct	1st Mon Nov	12	3 3/16
Ajax (B-7)	1st Mon Oct	4th Mon Oct	18	3 14/16
Booth 3	1st Mon Oct	2nd Sun Oct	16	3 5/16
	2nd Mon Oct	4th Mon Oct	14	3 5/16
Monroe	2nd Mon Nov	4th Sun Nov	26	4 5/16
	4th Mon Nov	1st Sun Dec	24	4 1/16
	1st Mon Dec	3rd Sun Dec	20	3 14/16
	3rd Mon Dec	1st Mon Jan	16	3 5/16
Booth 1	2nd Mon Nov	4th Sun Nov	16	3 13/16
	4th Mon Nov	1st Mon Dec	12	3 5/16
Zio (P)	2nd Mon Nov	4th Sun Nov	12	3 1/16
	4th Mon Nov	1st Mon Dec	10	2 14/16
Gossman	4th Mon Nov	3rd Mon Dec	11	3 1/16
Brookslate	1st Mon Dec	2nd Sun Dec	18	3 13/16
	2nd Mon Dec	3rd Sun Dec	16	3 10/16
	3rd Mon Dec	1st Sun Jan	14	3 5/16
	1st Mon Jan	3rd Sun Jan	12	3 5/16
	3rd Mon Jan	1st Mon Feb	10	
Meya (P)	1st Mon Dec	3rd Sun Dec	13	3 3/16
	3rd Mon Dec	1st Mon Jan	11	3
Reed (CP)	1st Mon Dec	3rd Sun Dec	12	3 1/16
	3rd Mon Dec	1st Sun Jan	10	3 3/16
	1st Mon Jan	3rd Mon Jan	9	3

[1] Avocados of West Indian type varieties and seedlings not listed elsewhere in Table I.
[2] Avocados of the Guatemalan type varieties and seedlings, hybrid varieties and seedlings, and unidentified seedlings not listed elsewhere in Table I.

* * * * *

Dated: June 22, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-15031 Filed 6-25-92; 8:45 am]

BILLING CODE 3410-02-m

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7 CFR Part 959

[Docket No. FV-91-440]

Onions Grown in South Texas; Amendment of Continuing Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule expands special purpose shipments under the handling regulation to include shipments for certain types of processing, establishes safeguards and reporting requirements for subcontractors processing cull onions, and requires cull onions shipped in bags to be unlabelled. Also, the introductory paragraph of the handling regulation is changed to clarify the Sunday packing and loading prohibition. These actions will promote orderly marketing and clarify certain requirements in the handling regulation.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 690-0464.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 143 and Order No. 959 (7 CFR part 959) (order), regulating the handling of onions grown in South Texas. The marketing agreement and order are authorized by 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 by the U.S. Department of Agriculture in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and

has been determined to be a non-major rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 34 handlers of South Texas onions subject to regulation under the marketing order, and approximately 47 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) 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 producers and handlers of South Texas onions may be classified as small entities.

Notice of this change for South Texas onions was contained in a proposed rule published in the Federal Register on February 4, 1992 (57 FR 4164). One comment was filed on behalf of the Committee by the manager; the issues raised by this comment are discussed further in this document.

The South Texas Onion Committee (committee) held its organizational meeting on October 15, 1991, and recommended several changes to the continuing handling regulation. Under the current provisions, onions for canning and freezing are special purpose shipments and are exempt from the handling regulation. The committee recommended adding a definition of processing to the handling regulation. The term "processing" includes not only traditional canning and freezing, but also includes cooking or freezing the onions in such a way, or with other food components, that the consistency of the product is altered. Onions for such processing are considered as special purpose shipments. This permits the use of cull onions for such processed products as relishes, sauces, and other cold pack products requiring refrigeration which often do not meet the traditional meaning of the term canning, but are processed products nevertheless. By using the broader term for processing, a greater number of alternative outlets may be served. This should enhance economic returns to handlers and producers by providing an alternative market for cull onions that will otherwise be discarded. Under this definition, onions used as components for sauces, relishes, and similar items are exempt from the handling regulation. Onions served at salad bars and in individual salads provided by many fast food outlets will continue to be deemed for fresh use and, therefore, subject to the grade and size requirements of the handling regulation. Other provisions have been changed for consistency.

The committee also recommended that the status of subcontractors working for onion processors be clarified and their area of responsibility be defined. In recent years, many processors have found that certain processing operations, notably the initial peeling of onions, can be accomplished more economically by subcontractors operating away from the physical plant of the processor. The committee recommended that the use of subcontractors be allowed with the stipulation that the processor or prime contractor be responsible for ensuring that the subcontractor comply with all reporting requirements and that the subcontractor report to the committee in the same manner and frequency as the processor is required to do. A processor's or subcontractor's failure to comply with these reporting requirements may affect a handler's ability to ship under the special purpose provisions of the regulation.

The committee recommended that cull onions shipped in bags have the bags reversed, in the case of burlap bags, or otherwise be unlabelled. Some shippers have found that when cull onions are transported to exempt outlets, the containers used are normally the cheapest available and often are used bags of other shippers. Because of this, cull onions may be mistaken for U.S. No. 1 onions on loading docks. In order to prevent this from happening, the committee recommended that bags used for culls be unlabelled, or that labelled burlap bags be turned inside-out so that the label cannot be seen.

The committee recommended revising the introductory paragraph of the handling regulation to remove any possible misunderstanding regarding the Sunday prohibition of packing and loading. The intent of the committee continues to be that, except as otherwise provided, packing shed operations should be limited to not more than six days per week. This procedure gives receiving markets a chance to dispose of South Texas onion shipments in an orderly manner, which is especially important during the height of the shipping season when movement is heavy.

References to twenty and twenty-five pound containers in paragraph (f)(3)(i) are deleted, since the pertinent parts were previously moved to paragraph (c) and thus are redundant in this paragraph. Also, paragraph (i) "Applicability to imports" is deleted, since the information given therein is provided in the Onion Import Regulation, Part 980.117, or the summary thereto, and is therefore redundant and unnecessary in this regulation.

Notice of these changes was contained in a proposed rule published in the Federal Register of February 4, 1992 (57 FR 4164), affording interested persons until March 5, 1992, to file written comments. One comment was received from the South Texas Onion Committee. The commenter preferred the word "canning" instead of the word "processing" which was used throughout paragraphs (f) and (g), in reference to special purpose shipments and safeguards, respectively. Since the purpose of this action is to establish a definition to include additional non-fresh uses as well as the traditional definition of canning, the Department believes that the term "processing" is more appropriate because it includes more than merely a food product in a hermetically sealed container. This

portion of the comment is therefore found to be without merit.

The commenter also stated that a telephone vote by the Committee was conducted on October 29, 1987, requesting that instructions and procedures for the preparation of the paperwork required under § 959.322(g) be added to that section. However, those changes were not made by the Department. Accordingly, the commenter requested that the changes should be made at this time. At the time of the 1987 request, it was the Department's determination that codification of the changes was unnecessary. This matter has not changed, and therefore, this argument is found to be without merit.

Finally, the commenter stated that the provisions of § 959.322(g)(4) should be applicable to all special purpose shipments, instead of only those shipments destined for processing. However, this point was not raised in the committee recommendation for this proposed change. It was not presented in the proposed rule published February 4, 1992, and the industry has not had an opportunity to comment on it. Therefore, this recommendation is not included in this final rule.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the additional burden resulting from this action has been approved by the Office of Management and Budget. A new form would not be required; the form currently used for canners and freezers also would be used for subcontractors.

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

After consideration of all relevant information, including the proposal set forth in the notice, it is hereby found that this amendment, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

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

2. Section 959.322 *Handling regulation* is amended by: revising the introductory text; revising paragraphs (f)(1) and (f)(3)(i); revising the introductory text of paragraph (g); revising paragraph (g)(4); adding paragraph (g)(5); revising paragraph (h); and removing paragraph (i), to read as follows:

§ 959.322 Handling regulation.

During the period beginning March 1 and ending May 20, no handler shall handle any onions, except red varieties, unless they comply with paragraphs (a) through (d) or (e) or (f) of this section. In addition, no handler may package or load onions on Sunday.

* * * * *

(f) *Special purpose shipments.*

(1) The minimum grade, size, quality, container, and inspection requirements set forth in paragraphs (a) through (d) of this section shall not be applicable to shipments of onions for charity, relief and processing if handled in accordance with paragraph (g) of this section.

* * * * *

(3) *Experimental shipments.* (i) Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches x 37½ inches x 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Each container shall have a new perforated polyethylene liner at least 2 mils in thickness. Such experimental shipments shall be exempt from paragraph (c) of this section but shall be handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section. The committee shall be notified of carton size and furnished a container manifest, and shippers must furnish the committee with outturn reports of such shipments.

* * * * *

(g) *Safeguards.* Each handler making shipments of onions for relief, charity, processing, or experimental purposes shall:

* * * * *

(4) In addition to provisions in the preceding paragraphs, each handler making shipments for processing shall:

(i) Weigh or cause to be weighed each shipment prior to, or upon arrival at, the processor.

(ii) Attach a copy of the weight ticket to a completed copy of the Report of Special Purpose Onion Shipment and return both promptly to the committee office.

(iii) Make each shipment directly to the processor or the processor's subcontractor and attach a copy of the Report of Special Purpose Onion Shipment.

(iv) Each processor or processor's subcontractor who receives cull onions shall weigh the onions upon receipt, complete the Report of Special Purpose Shipment which accompanies each load and mail it immediately to the committee office.

(v) Each processor who receives cull onions shall make available at its business office at any reasonable time during business hours, copies of all applicable purchase orders, sales contracts, or disposition documents for examination by the Department or by the committee, together with any other information which the committee or the Department may deem necessary to enable it to determine the disposition of the onions.

(vi) If a processor employs a subcontractor for any stage of processing, such processor shall be responsible for ensuring that the subcontractor accounts for all quantities of onions received and processed or otherwise disposed of, and that the subcontractor reports to the committee in the same manner and frequently as the processor.

(5) Cull onions transported in bags shall be transported in unlabelled bags, or shall have labelled bags reversed so that the label is not visible.

(h) *Definitions. U.S. onion standards* means the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195–51.3209), or the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) (7 CFR 51.2830–51.2854), whichever is applicable to the particular variety, or variations thereof specified in this section. The term "U.S. No. 1" shall have the same meaning as set forth in these standards. "Processing" means cooking or freezing the onions in such a way, or with such other food components, that the consistency of the product is changed. Canning and freezing shall be considered forms of processing. All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 143, as amended, and this part.

Dated: June 22, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–15033 Filed 6–25–92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 985

[FV-91-439FR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1992-93 Marketing Year, and Amendment of the Administrative Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule: (1) Establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1992-93 marketing year, which begins on June 1, 1992; and (2) amends the order's regulations, for the 1992-93 and 1993-94 seasons, to provide that the one half of one percent of the additional allotment base available each year for distribution to existing producers be issued first to growers who apply and who have under 3,000 pounds of base. The first part of this action is taken in order to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market. The second part of this action is taken because an allotment level of 3,000 pounds is considered to be a better measure of the minimum economic enterprise level required for spearmint oil production. These changes were recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the order.

EFFECTIVE DATE: June 26, 1992.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, salable quantities and allotment percentages may be established for each class of spearmint oil. This action establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers during the 1992-93 marketing year, beginning June 1, 1992, through May 31, 1993. Also, the regulations concerning issuance of additional allotment base to new and existing producers are amended for the 1992-93 and 1993-94 seasons. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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.

The Far West spearmint oil industry is characterized by primarily small producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered under the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order normally accounts for more than 75 percent of U.S. production of spearmint oil annually.

The Committee reports that there are approximately 9 handlers and 253 producers of spearmint oil under the marketing order for spearmint oil produced in the Far West. Of the 253 producers, 160 producers hold "Class I" (Scotch) oil allotment base, and 136 producers hold "Class III" (Native) oil allotment base.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) 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 Far West spearmint oil producers and handlers may be classified as small entities.

The salable quantities and allotment percentages were unanimously recommended by the Committee at its October 9, 1991, meeting.

The first part of this final rule establishes salable quantities of 934,523 pounds and 1,033,161 pounds, respectively, for Scotch and Native spearmint oils produced in the Far West and an allotment percentage of 54 percent for both Scotch and Native spearmint oils produced in the Far West. This action limits the amount of spearmint oil that may be purchased from or handled for producers by handlers, during the 1992-93 marketing year, which begins on June 1, 1992. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The amounts recommended for sale reflect moderate and steady increases in trade demand for both Scotch and Native spearmint oil over the past four years. Based on available information, the Committee indicates that trade demand for the 1992-93 marketing year is likely to be near the average of the last three years.

These final salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market needs which may develop for spearmint oil can be satisfied by an increase in the salable quantity which producers can fill with reserve stocks. The estimated reserve pools for Class I and Class III spearmint oil stand at 176,479 pounds and 232,625 pounds, respectively. Both Scotch and Native spearmint oil

producers who produce more than their annual allotments during the 1992–93 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment.

This final regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from improved returns.

The final salable quantity and allotment percentage for each class of spearmint oil for the 1992–93 marketing year, which begins on June 1, 1992, is based upon recommendations of the Committee and the following data and estimates:

(1) "Class I" (Scotch) Spearmint Oil

(A) Estimated carryin on June 1, 1992—105,978 pounds.

(B) Estimated trade demand (domestic and export) for the 1992–93 marketing year—1,000,000 pounds.

(C) Recommended desirable carryout on May 31, 1993—0 pounds.

(D) Salable quantity required from 1992 regulated production—894,022 pounds.

(E) Total allotment bases for Scotch oil for the 1992–93 marketing year—1,730,598 pounds.

(F) Computed allotment percentage—51.7 percent.

(G) Recommended allotment percentage—54 percent.

(H) The Committee's recommended salable quantity—934,523 pounds.

(2) "Class III" (Native) Spearmint Oil

(A) Estimated carryin on June 1, 1992—49,066 pounds.

(B) Estimated trade demand (domestic and export) for the 1992–93 marketing year—1,075,000 pounds.

(C) Recommended desirable carryout on May 31, 1993—0 pounds.

(D) Salable quantity required from 1992 production—1,025,934 pounds.

(E) Total allotment bases for Native oil—1,913,262 pounds.

(F) Computed allotment percentage—53.6 percent.

(G) Recommended allotment percentage—54 percent.

(H) The Committee's recommended salable quantity—1,033,161 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. Adoption of this final rule will provide spearmint oil producers with information on the amount of oil which should be produced for next season.

The second change recommended by the Committee and included in this final rule amends § 985.153(c)(2) of the order's Administrative Rules and Regulations by revising the procedures for issuing additional allotment base to existing producers. The authority for this action is contained in § 985.53(d)(3) of the order which prescribes that the Committee may, with the approval of the Secretary, establish rules and regulations to be used for determining the distribution of additional allotment base. In establishing such rules, the Committee is required to take into account the minimum economic enterprise requirements for spearmint oil production, the applicant's ability to produce spearmint oil, the area where the spearmint oil will be produced, and other economic and marketing factors.

This amendment of the procedures for issuing additional allotment base provides that, for a period of two years for Class I oil and Class III oil, existing small producers will be given priority when applying for additional allotment base. This amendment is intended to help small producers increase their supply of spearmint oil to a level which will approximate the minimum economic enterprise level required for spearmint oil production. Additionally, this rule provides that such additional allotment cannot be used to replace allotment which a producer has transferred.

Section 985.53(d)(1) of the order provides for an amount equal to no more than 1 percent of the total allotment base for each class of oil to be issued annually and distributed equally as additional allotment base to both new and existing producers. This rule provides that the ½ percent of the additional allotment base, available to existing producers for the 1992–93 and 1993–94 seasons, will be issued first to small producers who apply. Existing producers applying for additional Class I or Class III allotment base with less than 3,000 pounds of base as of June 7, 1990, will be issued sufficient additional allotment base over a two year period (1992–93 and 1993–94) to bring them up to a level not to exceed 3,000 pounds.

This action is similar to a previous rule which provided that for the 1987–88 and 1988–89 seasons, additional allotment base would be issued to existing producers applying for additional spearmint oil allotment base with less than 2,000 pounds of Class I base or 2,200 pounds of Class III oil. In the 1989–90 and 1990–91 seasons, additional allotment bases were distributed equally to those existing producers requesting additional base who could demonstrate the ability to produce additional oil.

The Committee recommended this action because an allotment level of 3,000 pounds is considered to be a better measure of the minimum economic enterprise level required for spearmint oil production. The Committee believes increasing the minimum allotment base of small producers will allow more of them to remain producers and will assure that there will continue to be a broad base of production.

The Committee has estimated that 55 producers of Class I oil, and 30 producers of Class III oil, will be eligible for additional allotment base under the amendment. If there is any additional allotment available for either class during the 1992–93 or 1993–94 seasons, such amounts will be distributed equally among the other existing producers who apply.

Notice of the proposal to establish the salable quantity and allotment percentage for each class of oil and to amend Administrative Rules and Regulations for the 1992–93 and 1993–94 marketing years, was published in the December 31, 1991, issue of the **Federal Register** (56 FR 67544). Comments on the proposed rule were solicited from interested persons until January 30, 1992. No comments were received. The salable quantities and allotment percentages established by this final rule are identical to those contained in the proposed rule.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the Committee's recommendations and other available information, it is found that the regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

The information collection requirements contained in the regulations that are amended by this final action have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0065.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Handlers and producers should be apprised as soon as possible of the salable quantities and allotment percentages for Scotch and Native oils contained in this final rule; and (2) existing producers should be provided the opportunity to benefit from the revised regulations governing the distribution of additional allotment base. Therefore, this action should be expedited.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

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

2. A new § 985.211 is added to read as follows:

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

§ 985.211 Salable quantities and allotment percentages—1992–93 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins on June 1, 1992, shall be as follows:

(a) "Class I" (Scotch) oil—a salable quantity of 934,523 pounds and an allotment percentage of 54 percent.

(b) "Class 3" (Native) oil—a salable quantity of 1,033,161 pounds and an allotment percentage of 54 percent.

3. Section 985.153 is amended by revising paragraph (c)(2)(i) and the first sentence of paragraph (c)(2)(ii) to read as follows:

Subpart—Administrative Rules and Regulation

§ 985.153 Issuance of additional allotment base to new and existing producers.

(c) * * *

(2) * * *

(i) The Committee shall review all requests from existing producers for additional allotment base. With respect to the additional Class I or Class III allotment base for existing producers for the 1992–93 and 1993–94 marketing years, existing producers with less than 3,000 pounds of allotment base as of June 7, 1990, who apply and who have the ability to produce additional quantities of spearmint oil, shall be issued additional allotment base sufficient to bring them up to a level not to exceed 3,000 pounds: *Provided,* That additional allotment base shall not be issued to any person that would replace all or part of allotment base such person has transferred. Additional allotment base in excess of the amount needed to bring eligible producers up to 3,000 pounds of allotment base for Class I or Class III oil shall be distributed equally among all existing producers who apply and who have the ability to produce additional quantities of spearmint oil, and;

(ii) For each marketing year after 1993–94, each existing producer of a class of spearmint oil who requests additional allotment base and who has the ability to produce additional quantities of that class of spearmint oil, shall be eligible to receive a share of the additional allotment base for that class of oil. * * *

* * * * *

Dated: June 22, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–15032 Filed 6–25–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 989

[FV–92–054IFR]

Raisins Produced From Grapes Grown in California; Increase in the Upper Limit of the Substandard Dockage System for All Varietal Types of Raisins Produced from Grapes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule increases the upper limit for substandard raisins allowed in lots of raisins acquired by handlers under the marketing order covering raisins produced from grapes grown in California. This action is needed to facilitate the delivery and handling of the crop and minimize handling expenses for both producers and handlers. This revision was unanimously recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the order. The purpose of this action is to reduce the number of off-grade raisin lots returned by handlers to producers or reconditioned by handlers at the producers' expense.

EFFECTIVE DATE: June 26, 1992. Comments which are received by July 27, 1992 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2020.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a

hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 23 handlers who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) 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 majority of raisin producers and a minority of raisin handlers may be classified as small entities.

This interim final rule revises § 989.212 of the supplementary regulations of the raisin marketing order. This action was unanimously recommended by the Committee at its March 11, 1992, meeting.

The marketing order regulations provide that a handler may acquire under an agreement with a producer, any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins as standard raisins which contain from 5.1 percent to 10.0 percent, by weight, of substandard raisins under a weight dockage system. A handler may also acquire, subject to prior agreement, any lot of Muscat (including other raisins with seeds), Sultana, and Zante currant raisins as standard raisins containing from 12.1 percent to 17.0 percent, by weight, of substandard raisins under a weight dockage system. As provided in § 989.701, substandard raisins are those raisins that fail to meet the minimum grade and condition standards for natural condition raisins. The term "standard raisins" denotes raisins which meet the minimum grade and condition standards applicable to natural condition raisins specified in § 989.701.

The creditable weight of each lot of raisins acquired by handlers under the substandard dockage system is obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factors in the dockage tables in § 989.212. These factors reduce the weight of the raisin lots by an amount approximating the weight of the raisins needed to be removed in order for the remainder of the lot to meet minimum grade and condition requirements for natural condition raisins. The weight determined in this manner represents the creditable weight of the raisins which is used as the basis for payments to producers by handlers. Those raisins that fail to meet the established substandard tolerance levels (10.0 percent or 17.0 percent depending on the varietal type) are returned to the producer or reconditioned by the handler (at the producer's expense) to bring the lot up to acceptable quality standards.

Because of extreme weather conditions during the 1991 growing season, the Committee expected that a large quantity of the crop would not meet the limits for substandard fruit set forth in § 989.212. As a result, § 989.212 was revised to suspend the upper limits of the substandard dockage system for the 1991–92 crop year only. By increasing the upper limits, fewer lots of raisins were returned to producers for reconditioning, and handlers removed the excess substandard fruit during pre-grading and processing, at no cost to the producers.

On the basis of that season's experience, the Committee recommended that the allowable amount of substandard fruit in grower deliveries that can be acquired by handlers under the dockage system be increased, but that the upper limit not be eliminated. The Committee believes that the elimination of the upper limit would place an undue burden on handlers and encourage producers to deliver lower quality raisins. The Committee recommended an increase in the upper limit from 10.0 to 17.0 percent for any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins. The Committee also recommended increasing the upper limit from 17.0 to 20.0 percent for Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins.

Pursuant to this action, the burden of removing the increased percentages of substandard fruit will be shifted from the producer to the handler. However, handlers can more efficiently and economically remove the excess substandard fruit during normal pre-grading and processing operations. This procedure will simplify handling of the crop, reduce costs to producers, as well as enhance the storage life of raisins. This action will also eliminate the cost to producers for hauling such lots from the handlers' premises, for reconditioning, for returning such reconditioned lots to handlers, and for reinspecting the reconditioned lots.

It is expected that this action will facilitate the delivery and handling of the crop and minimize the additional handling expenses for both producers and handlers.

On the basis of the foregoing, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this interim final rule 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 impractical, 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 requirements on handlers; (2) this action was recommended at a public meeting; (3) it is desirable to have this action in place as soon as possible since the beginning of the 1992–93 crop year is August 1, 1992; (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

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

Subpart—Supplementary Regulations

2. Section 989.212 of Subpart—Supplementary Regulations is revised to read as follows: (This section will appear in the annual Code of Federal Regulations).

§ 989.212 Substandard dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins containing from 5.1 through 17.0 percent, by weight, of substandard raisins may be acquired by a handler under a weight dockage system. A handler also may, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing from 12.1 percent through 20.0 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired under the substandard dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the appropriate dockage table prescribed in paragraph (b) or (c) of this section.

(b) *Substandard dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins.*

Percent substandard	Dockage factor
5.0 or less	(1)
5.1	.999
5.2	.998
5.3	.997
5.4	.996
5.5	.995

[1] No dockage.

Note: Percentages in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment. Deliveries in excess of 17 percent would be off-grade; therefore, the dockage factor does not apply.

(c) *Substandard dockage table applicable to Muscat (including other raisins with seeds), Sultana and Zante Currant raisins.*

Percent substandard	Dockage factor
12.0 or less	(1)
12.1	.999
12.2	.998
12.3	.997
12.4	.996
12.5	.995

[1] No dockage.

Note: Percentages in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factpr for the preceding increment. Deliveries in excess of 20 percent would be off-grade; therefore, the dockage factor does not apply.

Dated: June 22, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–15034 Filed 6–25–92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-99-AD; Amendment 39-8275; AD 92-13-05]

Airworthiness Directives; Piper Aircraft Corporation Models PA-34-200 and PA-34-200T Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 92–07–07 concerning certain Piper Aircraft Corporation (Piper) Models PA–34–200 (Seneca) and PA–34–200T (Seneca II) airplanes, which was published in the **Federal Register** on Friday, June 12, 1992 (57 FR 24940). This publication contained a typographical error in the serial number effectivity. The notice of proposed rulemaking (NPRM) contained the correct serial number effectivity. This action incorporates the correct serial number effectivity into the AD.

EFFECTIVE DATE: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–2910; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: On June 3, 1992, the Federal Aviation Administration (FAA) issued AD 92–13–05, Amendment 39–8275 (57 FR 24940, June 12, 1992), which was applicable to certain Piper Models PA–34–200 and PA–34–200T airplanes. The AD requires (1) an inspection to ensure that a clevis-head bolt is installed correctly in the nose gear centering spring assembly; (2) reinstallation if found incorrectly installed or replacement if a hex-head bolt is installed; and (3) incorporation of placard No. 582–943, which references the clevis-head bolt installation. These actions are accomplished in accordance with Piper Service Bulletin No. 893, dated October 11, 1988.

This AD contains a typographical error in the serial number effectivity of the Piper Model PA–34–200T airplanes. The NPRM for this action, which was published in the **Federal Register** on February 3, 1992 (57 FR 3966), contained the correct serial number effectivity for the Model PA–34–200T airplanes, serial numbers 34–7570001 through 34–8170092. The final rule inadvertently contained the serial number effectivity of the Model PA–34–200T airplanes as serial numbers 34–7570001 through 34–8170082.

Need for Correction

As published, the final regulations contain an incorrect serial number for the Piper Model PA–34–200T airplanes, which could cause the inability to fully extend the nose landing gear on airplanes that should be affected by AD 92–13–05, but currently are not affected.

Correction of Publication

Accordingly, the publication of Friday, June 12, 1992 (57 FR 24940) of Amendment 39–8275; AD 92–13–05, which was the subject of FR Doc. 92–13830, is corrected as follows:

PART 39—CORRECTED

§ 39.13 [Corrected]

On page 24941, in the second column, in § 39.13, in line 5 of the Applicability section of AD 92–13–05, replace "8170082)," with "8170092),".

Issued in Kansas City, Missouri, on June 19, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–15035 Filed 6–25–92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-CE-18-AD; Amendment 39-8294; AD 92-15-01]

Airworthiness Directives; Beech T-34C, 90, 99, 100, 200, and 300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech T-34C, 90, 99, 100, 200, and 300 series airplanes. This action requires a one-time visual inspection of all engine truss-to-firewall bolts to determine whether bolts that could have been improperly heat treated (soft bolts) are installed, and replacement of any such bolts. The Federal Aviation Administration (FAA) has received several reports indicating that Dumont Aviation manufactured soft bolts and that bolts manufactured by Dumont Aviation are the type utilized on the affected airplanes. The actions specified by this AD are intended to prevent undetected failure of the engine truss-to-firewall bolts, which could eventually lead to separation of the engine mount from the airplane.

DATES: Effective August 21, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 21, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4128; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech T-34C, 90, 99, 100, 200, and 300 series airplanes was published in the Federal Register on March 26, 1992 (57 FR 10443). The action proposed a one-time visual inspection of all engine truss-to-firewall bolts to identify any bolts that were manufactured by Dumont Aviation (identified by "DA" on the bolt head), and replacement of any installed bolt that is identified as being manufactured by Dumont Aviation. The proposed actions would be accomplished in accordance with Beech Service Bulletin No. 2432, dated February 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 3,590 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $394,900.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-15-01 Beech: Amendment 39-8294; Docket No. 92-CE-18-AD.

Applicability: The following model and serial numbered airplanes, certificated in any *category:*

Models	Serial Nos.
T-34C	GP-1 through GP-50, GL-1 through GL-353, and GM-2 through GM-98.
65-90, 65-A90, 65-A90-1, 65-A90-2, 65-A90-3, 65-A90-4, B90, C90, C90A, E90, F90, and H90.	LJ-1 through LJ-1295, LW-1 through LW-347, LA-2 through LA-236, LM-1 through LM-141, LS-1, LS-2, LS-3, LT-1, LT-2, LU-1 through LU-15, and LL-1 through LL-61.
99, 99A, A99A, B99, and C99.	U-1 through U-239.
100, A100, and B100	B-1 through B-247 and BE-1 through BE-137.
200, 200C, 200CT, 200T, A200, A100-1, A200CT, B200, B200C, B200CT, and B200T.	BB-2 through BB-1405, BC-1 through BC-75, BD-1 through BD-30, BJ-1 through BJ-66, BL-1 through BL-137, BN-1 through BN-4, BP-1 through BP-71, BT-1 through BT-33, BU-1 through BU-12, BV-1 through BV-12, FC-1, FC-2, FC-3, FE-1 through FE-9, FG-1, and FG-2.
300, 300C, B300, and B300C.	FA-1 through FA-217, FF-1 through FF-19, FL-1 through FL-60, and FM-1.

Compliance: Required as indicated, unless already accomplished.

To prevent undetected failure of engine truss-to-firewall bolts, which could eventually lead to separation of the engine mount from the airplane, accomplish the following:

(a) Within the next 150 hours time-in-service after the effective date of this AD, accomplish the following:

(1) Individually remove each engine truss-to-firewall bolt and determine whether the bolt is manufactured by Dumont Aviation as specified by Figure 2 and in accordance with paragraphs 1 and 2 of the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin (SB) No. 2432, dated February 1992. Only one engine

truss-to-firewall bolt shall be removed at any given time.

(2) Prior to further flight, replace any bolt manufactured by Dumont Aviation as identified in paragraph (a)(1) of this AD with a new bolt part number (P/N) MS20006-20 / M/.

Note 1.—The inspection of the engine truss-to-firewall bolts and associated hardware for corrosion that is referenced in Beech SB No. 2432, dated February 1992, is recommended but is not required by this AD.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2.—Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) The inspection required by this AD shall be done in accordance with Beech Service Bulletin No. 2432, dated February 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(e) This amendment (39-8294) becomes effective on August 21, 1992.

Issued in Kansas City, Missouri, on June 19, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-15066 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-272-AD; Amendment 39-8262; AD 92-12-02]

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1123, 1124, and 1124A Westwind Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Israel Aircraft Industries (IAI), Ltd., Model 1123, 1124, and 1124A Westwind series airplanes, that currently requires repetitive visual inspections to detect corrosion on the lower exterior surface of the aileron torque transfer tubes. This amendment requires replacement of the aileron control rod assemblies. This amendment is prompted by results of a recent evaluation of aileron control rod assemblies which demonstrated the need to replace all rod assemblies with improved rod assemblies. The actions specified by this AD are intended to prevent reduced controllability of the airplane.

DATES: Effective July 31, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-10-04, Amendment 39-6589 (55 FR 18304, May 2, 1990), which is applicable to all Israel Aircraft Industries (IAI), Ltd., Model 1123, 1124, and 1124A Westwind series airplanes, was published in the Federal Register on January 22, 1992 (57 FR 2492). The action proposed to require replacement of the aileron control rod assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and public interest require the adoption of the rule as proposed.

The FAA estimates that 240 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $3,566 ($1,784 per aileron control rod assembly) per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $895,920.

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 it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6589 [55 FR 18304, May 2, 1990], and by adding a new airworthiness directive (AD), amendment 39-8262, to read as follows:

92-12-02. Israel Aircraft Industries (IAI), LTD.: Amendment 39-8262. Docket 91-NM-272-AD. Supersedes AD 90-10-04, Amendment 39-6589.

Applicability: Israel Aircraft Industries (IAI), Ltd., Model 1123, 1124, and 1124A

Westwind series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 20 hours time-in-service after May 18, 1990 (the effective date of AD 90-10-04, Amendment 39-6589), and thereafter at intervals not to exceed 150 hours time-in-service, perform a detailed visual inspection to detect evidence of corrosion, such as pits, and/or blisters under the paint, on the lower exterior surface of the aileron torque transfer tubes, in accordance with Astra Service Bulletin 1123-27-026 (for Model 1123 Westwind series airplanes), Revision 1, dated April 25, 1990; or Astra Service Bulletin 1124-27-100 (for Models 1124 and 1124A Westwind series airplanes), Revision 1, dated April 25, 1990.

(b) If corrosion or cracks are found as a result of the inspections required by paragraph (a) of this AD, prior to further flight, remove and replace the aileron control rod assemblies with improved assemblies, P/N 513506-503 RD or RE, in accordance with Astra Service Bulletin 1123-27-026 (for Model 1123 Westwind series airplanes), Revision 1, dated April 25, 1990, or Revision 2, dated April 24, 1991; or Astra Service Bulletin 1124-27-100 (for Models 1124 and 1124A Westwind series airplanes), Revision 1, dated April 25, 1990, or Revision 2, dated April 24, 1991.

(c) Within 150 hours time-in-service after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, replace the left and right aileron rod assemblies with improved rod assemblies, P/N 513506-503 RD or RE, in accordance with Astra Service Bulletin 1123-27-026 (for Model 1123 Westwind series airplanes), Revision 2, dated April 24, 1991; or Astra Service Bulletin 1124-27-100 (for Models 1124 and 1124A Westwind series airplanes), Revision 2, dated April 24, 1991.

(d) Replacement of the left and right aileron rod assemblies with improved rod assemblies, P/N 513506-503 RD or RE, in accordance with Astra Service Bulletin 1123-27-026 (for Model 1123 Westwind series airplanes), Revision 2, dated April 24, 1991; or Astra Service Bulletin 1124-27-100 (for Models 1124 and 1124A Westwind series airplanes), Revision 2, dated April 24, 1991; constitutes terminating action for the requirements of this AD.

(e) An alternative method 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, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM-113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections and replacement shall be done in accordance with Astra Service Bulletin 1123-27-026 (for Model 1123 Westwind series airplanes), Revision 1, dated April 25, 1990, or Revision 2, dated April 24, 1991; or Astra Service Bulletin 1124-27-100 (for Models 1124 and 1124A Westwind series airplanes), Revision 1, dated April 25, 1990, or Revision 2, dated April 24, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment becomes effective on July 31, 1992.

Issued in Renton, Washington, on May 12, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-15078 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-ANE-29; Amendment 39-8132, AD 92-01-08]

Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Pratt & Whitney Canada PW100 series turboprop engines, that requires rework or replacement of the high pressure turbine front cover, vane ring segments, and cooling air nozzle housing. The AD also requires rework of the low pressure turbine stator assembly. This amendment is prompted by two events where the high pressure rotor seized and an engine failed to restart following an inflight shutdown. The actions specified by this AD are intended to prevent seizure of the high pressure rotor and subsequent inability to restart the engine in flight.

DATES: Effective July 27, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 27, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Ganley, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 272-5047; fax (617) 270-2412.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new airworthiness directive, applicable to certain Pratt & Whitney Canada (PWC) PW100 series turboprop engines was published in the **Federal Register** on December 14, 1990 (55 FR 51428). That action proposed to require rework or replacement of the high pressure turbine front cover, vane ring segments, and cooling air nozzle housing; and rework of the low pressure turbine stator assembly.

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

Three commenters suggest that the compliance interval should be at the next overhaul or hot section inspection (HSI). The commenters also state that a calendar cutoff date is not appropriate in accomplishing the intent of the AD, as newly overhauled engines are more likely to experience this problem, and the possibility of rotor seizure decreases with service time. The commenters therefore request relief from or extension of the calendar cutoff date. The FAA concurs in part with the commenters' suggestions. The possibility of rotor seizure is greater for newly overhauled engines than for engines with significant service time, and decreases with additional service time. The FAA agrees that forced engine removals by a calendar cutoff date for higher time engines does not significantly increase the safety value of this AD. The FAA position is that a calendar cutoff date for incorporation of modifications is still appropriate to assure timely and complete fleet compliance, but can be extended to prevent premature removal of high time engines. Therefore, compliance with this AD is required at the next engine module overhaul, HSI, or within 36

months from the effective date of this AD, whichever occurs first.

Two commenters also identify several referenced service bulletins which have later revision dates than those noted in the NPRM. They also identify an incorrect part number reference for the high pressure vane ring segment assembly in the proposed AD. They suggest the latest service bulletin revision be referenced; and the reference to the incorrect part number be corrected. The FAA concurs. The latest revisions to the service bulletins are now referenced in the AD and provide clarification and minor editorial changes. Paragraph (c) of the NPRM did contain an incorrect part number, and the AD now reflects the correct part number.

One commenter also stated that a note should be placed in the Airplane Flight Manual (AFM), Limitations Section, warning the flight crew that an inflight restart may not be possible. The FAA agrees with the general proposal to provide information to the flight crews of affected aircraft, however the FAA does not concur that this information is a limitation which should be noted in the AFM. Therefore, the FAA has issued a "Notice to Principal Operations Inspectors" describing the problem, with the intent of Principal Operations Inspectors distributing this information to affected operators. The FAA has also requested that the engine manufacturer coordinate with the manufacturers of aircraft on which the affected engines are installed to publish appropriate operations bulletins describing the problem.

The FAA has also determined that additional PWC PW100 service bulletins have been published that provide additional rework or replacement options, but do not alter the compliance requirements. These service bulletins are now referenced in the AD.

Finally, engine models PW124, PW124A, and PW126A, have been deleted from the AD. Engine Models PW124 and PW124A are not type certificated in the U.S. and the inclusion of engine model PW126A in the applicability section was an error.

The economic analysis has been updated to reflect the increase in labor cost from $40 to $55 an hour and the deletion of the three engine models.

After 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 543 PWC PW100 series engines of the affected design in the U.S. fleet. It is estimated that it would take approximately 6 manhours per engine to accomplish the required actions at next part exposure, and that the average labor cost would be $55 per manhour. It is also estimated that the cost of replacement parts would be approximately $24,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,211,190.

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 proposal will 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 it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421, and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-01-06 Pratt & Whitney Canada: Amdt. 39-81332, Docket No. 90-ANE-29

Applicability: Pratt & Whitney Canada (PWC) PW115, PW118, PW118A, PW120, PW120A, PW123, PW123, PW124B, and PW325B model turboprop engines, with specific engine serial numbers noted in the applicable service bulletins (SB). Affected engines are installed in, but not limited to, the Aerospatiale ATR-42, and ATR-72, British Aerospace ATP, DeHavilland of Canada DHC-8, Embraer EMB-120, Canadair CL-215T, and Fokker 50 aircraft.

Compliance: Required at the next engine module overhaul, hot section inspection (HSI), or within 36 months from the effective date of this airworthiness directive (AD), whichever occurs first, unless accomplished previously.

To prevent seizure of the high pressure rotor, and subsequent inability to restart the engine inflight, accomplish the following:

(a) Rework or replace with a serviceable part, the high pressure turbine front cover in accordance with the requirements of any of the following PWC SBs, as applicable: SB 20417, Revision 2, dated August 20, 1990, SB 20412, dated November 27, 1989; SB 20004, Revision 1, dated February 25, 1991; *or* SB 20979, dated April 29, 1991.

(b) Rework the low pressure turbine stator vane assembly in accordance with the requirements of PWC SB 20456, Revision 3, dated August 20, 1990.

(c) For engines incorporating the "triple segmented" high pressure vane ring segment assembly, Part Number (P/N) 3037761, rework or replace the high pressure vane segments as follows:

(1) For PW115, PW118, PW120, PW120A, and PW121 model turboprop engines, rework or replace with a serviceable part in accordance with the requirements of either of the following PWC SBs, as applicable: SB 20419, Revision 3, dated November 26, 1990; *or* SB 20686, Revision 2, dated February 11, 1991.

(2) For PW118A, PW123, PW124B, and PW125B model turboprop engines, rework or replace with a serviceable part in accordance with the requirements of *any* of the following PWC SBs, as applicable: SB 20419, Revision 3, dated November 26, 1990; SB 20726, dated February 19, 1990; SB 20742, Revision 4, dated June 12, 1991; SB 20686, Revision 2, dated February 11, 1991; *or* SB 20869, Revision 1, dated April 26, 1991.

(d) For engines incorporating the "triple segmented" high pressure vane ring segment assembly, P/N 3037761, rework or replace with a serviceable part, the cooling air nozzle housing assembly as follows:

(1) For PW115, PW118, PW120, PW120A, and PW121 model turboprop engines, rework or replace with a serviceable part in accordance with the requirements of any of the following PWC SB's, as applicable: SB 20341, Revision 2, dated September 3, 1991, SB 20436, dated March 6, 1989, or SB 20873, Revision 3, dated April 8, 1991.

(2) For PW118A, PW123, PW124B, and PW125B model turboprop engines, rework or replace with a serviceable part in accordance with the requirements of any of the following PWC SB's, as applicable: SB 20341, Revision

2, dated September 3, 1991, SB 20436, dated March 6, 1989, SB 20873, Revision 3, dated April 8, 1991, SB 20896, Revision 3, dated August 26, 1991, or SB 20872, Revision 2, dated July 8, 1991.

(e) An alternative method of compliance or adjustment of the compliance time, that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, Engine and Propeller Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The engine modifications shall be done in accordance with the following Pratt & Whitney Canada SB's:

Document No.	Page	Issue/Revision	Date
SB 20341R2, Total Pages: 4	1-4	Rev. 2	Sept. 3, 1991.
SB 20412, Total Pages: 8	1-8	Original	Nov. 27, 1989.
SB 20417R2, Total Pages: 7	1-7	Rev. 2	Aug. 20, 1990.
SB 20419R3, Total Pages: 6	1-6	Rev. 3	Nov. 26, 1990.
SB 20436, Total Pages: 3	1-3	Original	Mar. 6, 1989.
SB 20456R3, Total Pages: 8	1-3	Rev. 3	Aug. 20, 1990.
	4	Rev. 1	Oct. 12, 1989.
	5	Rev. 2	Apr. 30, 1990.
	6-8	Original	Jun. 21, 1989.
SB 20604R1, Total Pages: 7	1-7	Rev. 1	Feb. 25, 1991.
SB 20726, Total Pages: 3	1-3	Original	Feb. 19, 1990.
SB 20742R4, Total Pages: 4	1-4	Rev. 4	June 17, 1991.
SB 20869R1, Total Pages: 6	1-6	Rev. 1	Apr. 26, 1991.
SB 20872R2, Total Pages: 30	1-30	Rev. 2	July 8, 1991.
SB 20873R3, Total Pages: 7	1-7	Rev. 3	Apr. 8, 1991.
SB 20886R2, Total Pages: 6	1-6	Rev. 2	Feb. 11, 1991.
SB 20896R3, Total Pages: 9	1-9	Rev. 3	Aug. 26, 1991.
SB 20979, Total Pages: 7	1-7	Original	Apr. 29, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(h) This amendment becomes effective on July 27, 1992.

Issued in Burlington, Massachusetts, on April 17, 1992.

Michael H. Borfitz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-15077 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-13-AD; Amendment 39-8267; AD 92-12-06]

Airworthiness Directives; Airbus Industrie Model A310, A320, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310, A320, and A300-600 series airplanes, that requires the replacement of certain Puritan Bennett passenger emergency oxygen container door latch seals with modified seals, and testing of these units for correct operation. This amendment is prompted by reports of the passenger emergency oxygen masks failing to deploy due to a malfunction of the oxygen container doors. The actions specified by this AD are intended to prevent passengers from being unable to receive oxygen during an emergency situation.

DATES: Effective July 31, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A310, A320, and A300-600 series airplanes was published in the **Federal Register** on January 8, 1992 (57 FR 649). That action proposed to require the replacement of certain Puritan Bennett passenger emergency oxygen container door latch seals with modified seals, and to test these units for correct operation.

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 commenter supports the proposed rule.

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

The FAA estimates that 43 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD

on U.S. operators is estimated to be $9,460. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-12-06. Airbus Industrie: Amendment 39-8267. Docket 91-NM-13-AD.

Applicability: Model A310, A320, and A300-600 series airplanes; as listed in Airbus Industrie Service Bulletins A310-35-2002, Revision 2, dated April 30, 1991; A320-35-1002, Revision 1, dated December 3, 1990; and A300-35-6001, Revision 2, dated April 30, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent passengers from being unable to receive oxygen during an emergency situation, accomplish the following:

(a) Within 90 days after the effective date of this AD, replace Puritan Bennett passenger emergency oxygen container door latch seals with modified seals, and test all units for correct operation, in accordance with Airbus Industrie Service Bulletins A310-35-2002, Revision 2, dated April 30, 1991 (for the Model A310); A320-35-1002, Revision 1, dated December 3, 1990 (for the Model A320); and A300-35-6001, Revision 2, dated April 30, 1991 (for the Model A300-600).

(b) An alternative method 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, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement and testing shall be done in accordance with Airbus Industrie Service Bulletins A310-35-2002, Revision 2, dated April 30, 1991 (for the Model A310); A320-35-1002, Revision 1, dated December 3, 1990 (for the Model A320); and A300-35-6001, Revision 2, dated April 30, 1991 (for the Model A300-600); as applicable. Airbus Industrie Service Bulletin A320-35-1002, Revision 1, dated December 3, 1990 contains the following list of effective pages:

Page No.	Revision level	Date
1, 3-9	1	Dec. 3, 1990.
2	(removed)	

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on July 31, 1992.

Issued in Renton, Washington, on May 19, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-15079 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-09-AD; Amendment 39-8268; AD 92-12-07]

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Israel Aircraft Industries (IAI) Model 1125 Westwind Astra series airplanes, that currently requires repetitive visual inspections to detect cracks in the outer lugs of the horizontal stabilizer hinge fittings, and replacement of any cracked fittings. This amendment expands the area specified for inspection. This amendment is prompted by a report of cracks found around the hinge pin head and nut of lugs located outside the inspection area specified in the existing AD. The actions specified by this AD are intended to prevent reduced structural integrity of the horizontal stabilizer assembly.

DATES: Effective July 31, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-10-08, Amendment 39-6597 (55 FR 19060, May 8, 1990), which is applicable to Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra series airplanes, was published in the Federal Register on March 4, 1992 (57 FR 7682). The action proposed to expand the area originally specified for inspection.

Interested persons have been afforded an opportunity to participate in the

making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and public interest require the adoption of the rule as proposed.

The FAA estimates that 40 airplanes of U.S. registry will be affected by this AD; this number represents 28 airplanes that were affected by AD 90-10-08, and 12 additional airplanes that are affected by this new AD action. The FAA estimates that it will take approximately 0.5 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the cost impact of AD 90-10-08 on U.S. operators (28 airplanes) was $770; the additional cost impact of this new AD action on U.S. operators (12 additional airplanes) will be $330. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,100.

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 it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6597 (55 FR 19060, May 8, 1990), and by adding a new airworthiness directive (AD), amendment 39-8268, to read as follows:

92-12-07. Israel Aircraft Industries (IAI), Ltd: Amendment 39-8268. Docket 92-NM-09-AD. Supersedes AD 90-10-08, Amendment 39-6597.

Applicability: Model 1125 Westwind Astra series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the horizontal stabilizer assembly, accomplish the following:

(a) Within the next 50 hours time-in-service after June 15, 1990 (the effective date of AD 90-10-08, Amendment 39-6597), unless previously accomplished within the last 150 hours time-in-service prior to June 15, 1990, perform a visual inspection to detect cracks in the outer lugs of the horizontal stabilizer hinge fitting, in accordance with Astra Service Bulletin 1125-55-017, dated October 16, 1989.

(b) If no cracks are found as a result of the inspection required by paragraph (a) of this AD, repeat that inspection at intervals not to exceed 200 hours time-in-service.

(c) If any crack is found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace the hinge fitting, in accordance with Astra Service Bulletin 1125-55-017, dated October 16, 1989, or Revision 1, dated April 24, 1991.

(d) Within the next 50 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 150 hours time-in-service, perform a visual inspection of the horizontal stabilizer hinge fitting to detect cracks in the outer lug root radius and fore and aft surfaces, and around the hinge pin head and nut of the lugs, in accordance with Astra Service Bulletin 1125-55-017, Revision 1, dated April 24, 1991. Accomplishment of this inspection terminates the requirements of paragraphs (a), (b), and (c) of this AD.

(e) If no cracks are found as a result of the inspection required by paragraph (d) of this AD, repeat that inspection at intervals not to exceed 200 hours time-in-service.

(f) If any crack is found as a result of the inspection required by paragraph (d) of this AD, prior to further flight, replace the hinge fitting, in accordance with Astra Service Bulletin 1125-55-017, Revision 1, dated April 24, 1991. After replacement, repeat the inspection required by paragraph (d) of this AD at intervals not to exceed 200 hours time-in-service.

(g) An alternative method 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, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from Standardization Branch, ANM-113.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The inspections and replacements shall be done in accordance with Astra Service Bulletin 1125-55-017, dated October 16, 1989, or Revision 1, dated April 24, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(j) This amendment becomes effective on July 31, 1992.

Issued in Renton, Washington, on May 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 92-15080 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Revision of Costs Chargeable in Connection With Relabeling and Reconditioning Inadmissible Imports

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulation providing for reimbursing the government for the costs of reconditioning noncomplying imported hazardous substances.

EFFECTIVE DATE: July 27, 1992.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gomilla, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; Telephone (301) 504-0400.

SUPPLEMENTARY INFORMATION: Section 1500.272 of title 16 of the Code of Federal Regulations is based on section 14(c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1273(c). That section provides for reimbursing the government for the costs of supervising the reconditioning of noncomplying imported hazardous substances. The reimbursement is made by the owner or consignee of the imported hazardous substances who requests such action. The regulation established a flat rate of $8 per hour for the supervising officer and a flat rate of $10 per hour for the analyst (which included the use of the chemical laboratories and equipment of the Consumer Product Safety Commission). These rates remained the same for over 18 years. See **Federal Register** notice 38 FR 27012, published on September 27, 1973.

The revision of the costs for relabeling and reconditioning of inadmissible imported products was necessitated by the fact that the present amounts did not adequately reimburse the government for its costs incurred. The previous amounts were established by the Food and Drug Administration of the Department of Health, Education and Welfare, the predecessor agency of the Consumer Product Safety Commission. When the Consumer Product Safety Commission was established in 1973, the rates were not changed. Because of inflation, the rates are not in line with the actual cost to the government.

The Commission proposed, on March 4, 1992 (see 57 FR 7686), to revise the rates. No comments were received.

The revised rates are based upon the starting salary of a GS 11 investigator and the starting salary of a GS 12 analyst. Since the rates are based on GS (government service) salary grades rather than specific dollar amounts, there will be no need, in the future, to revise this provision to account for inflation.

Impact on Small Businesses

Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of a proposed rule on small entities, including small businesses. However, section 605(b) of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis when the agency certifies that the rule will not, if issued, have a significant economic impact on a substantial number of small entities. Since this certification was inadvertently omitted in the proposed rule published at 57 FR 7686 on March 4, 1992, the Commission, at this time, in accordance with section 605(b) of the RFA, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The final rule merely updates the reimbursement to the government for its costs for relabeling and reconditioning of inadmissible imported products. It will more adequately reflect the government's true costs in such matters, without having a significant economic impact on a substantial number of the small entities affected. Moreover, since this supervision only occurs at the request of the owner or consignee of the noncomplying goods, any economic impact, however insignificant, would be within the control of that owner or consignee.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping requirements, and Toys.

For the reasons stated above, title 16 chapter II of the Code of Federal Regulations is amended as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 2079(a).

2. Section 1500.272 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1500.272 Costs chargeable in connection with relabeling and reconditioning inadmissible imports.

* * * * *

(c) Services of the supervising officer, to be calculated at the rate of a GS 11, step 1 employee, except that such services performed by a customs officer and subject to the provisions of the Act of February 13, 1911, as amended (sec. 5, 36 Stat. 901 as amended; 19 U.S.C. 267), shall be calculated as provided in that Act.

(d) Services of the analyst, to be calculated at the rate of a GS 12, step 1 employee (which shall include the use of the chemical laboratories and equipment of the Consumer Product Safety Commission).

* * * * *

Dated: June 23, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-15087 Filed 6-25-92; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

[T.D. 92-60]

Gray Market Goods

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

ACTION: Notice of court order.

SUMMARY: On April 28, 1992, The United States District Court for the District of Columbia issued an order enjoining the Customs Service from enforcing a regulatory exception to import restrictions regarding foreign-made goods that bear a trademark identical to a valid United States trademark but which are materially, physically different. As a result of this court action, owners of trademarks currently recorded with Customs that are under common ownership or control with entities that own or use the trademark in foreign locations on or in connection with foreign-made goods that are materially, physically different may be eligible for protection against the importation of those foreign-made goods pending further action by a court or final resolution of *Lever Bros. Co.* v. *United States,* Appeal No. 92-5185. Owners affected by the court's order should notify Customs of the circumstances believed to warrant amendment of a particular trademark recordation.

EFFECTIVE DATE: June 26, 1992.

FOR FURTHER INFORMATION CONTACT: Barry P. Miller, Intellectual Property Rights Branch, U.S. Customs Service (202-566-6956).

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1992, The United States District Court for the District of Columbia issued an amended order in *Lever Brothers Company* v. *United States of America* [No. 86-3151 (HHG)]. The amended order enjoins the Customs Service from enforcing § 133.21(c)(2) of the Customs Regulations (19 CFR 133.21(c)(2)) as to foreign-made goods that bear a trademark identical to a valid United States trademark but which are materially, physically different. Section 133.21(c)(2) allows the

importation of otherwise prohibited parallel imports when the foreign and domestic trademark or trade name owners are parent or subsidiary companies or are otherwise subject to common ownership or control. The order also requires Customs to bar from entry into the United States all foreign-manufactured merchandise and material bearing the trademark "Shield" (bar soap) or the trademark "Sunlight" (dishwashing or "washing up" liquid).

Because Customs cannot determine if protection against the importation of foreign-made genuine goods was denied in an existing recordation because (1) the owner of the trademark abroad was the same as the domestic owner, or because (2) the domestic owner was under common ownership or control with the foreign owner, Customs cannot determine if protection against the importation of foreign-made genuine goods for other prior recordations is now required by the court's order. Only situation (2), which is covered by § 133.21(c)(2), was ruled to be an invalid reason for denying protection by the court.

Notification to Customs

Accordingly, Customs hereby invites owners of recorded trademarks who believe their marks have become eligible for protection against the importation of foreign-made genuine goods as a result of the court's order to so advise Customs and explain the reasons for their perceived eligibility for the protection. This will allow Customs to accurately determine which tradmarks are eligible for the protection. This action, inviting trademark owners to explain the circumstances bringing them within the scope of a court ruling, is similar to the action taken by Customs when the Supreme Court invalidated section 133.21(c)(3) of the Customs Regulations in *K Mart Corporation v. Cartier, et al.*, 486 U.S. 281 (1988). Customs emphasizes that this step is temporary. The protection shall apply only in the absence of a further order of a court affecting the injunction and only pending final resolution of any and all appeals of *Lever Bros. Co.* v. *United States*, Appeal No. 92-5165.

Notice should be in writing addressed to: U.S. Customs Service, Intellectual Property Rights Branch, room 2100, 1301 Constitution Avenue, NW., Washington, DC 20229. Parties that are not under common ownership or control with entities that own or use the trademark in foreign locations on or in connection with foreign-made goods that are materially, physically different need not take any action as a result of the limitation in applicability of § 133.21(c)(2), since the limitation will not affect the level of protection afforded these parties.

Approved: June 17, 1992.

Carol Hallett,

Commissioner of Customs.

Nancy L. Worthington,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92-15163 Filed 6-24-92; 10:04 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 86F-0060]

Selenium in Animal Feeds; Environmental Impact; Hearing Before the Commissioner

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing before the Commissioner of Food and Drugs (the Commissioner) to provide interested persons an opportunity to present relevant scientific data and pertinent information on the environmental issues related to the use of the food additive selenium in animal feeds. Selenium is an element essential for normal growth and production in animals, and the food additive regulations provide for the use of supplemental selenium in the feed of cattle, sheep, chickens, turkeys, ducks, and swine. In response to an amendment to the regulations providing for an increase in the level permitted to be added to feed, food supplements, and salt-mineral mixtures, questions have been raised concerning the actual and potential environmental effects of the increase. The Commissioner believes that the questions raised are serious enough to warrant a public hearing.

DATES: Written or oral notices of participation must be received by the close of business July 31, 1992. The hearing will be held on August 25 and 26, 1992, beginning at 8:30 a.m. on August 25, 1992. Further comments, whether on matters discussed in this notice of hearing or at the hearing, are to be submitted by September 25, 1992.

ADDRESSES: The public hearing will be held at the Jack Masur Auditorium, Bldg. 10, Clinical Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205. Written notices of participation and any comments are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Transcripts of the hearing, copies of data and information submitted during the hearing, and any comments will be available for review at the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: Patsy W. Gardner, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8765.

SUPPLEMENTARY INFORMATION:

I. Background

Selenium is an element essential for normal growth and production in animals. The minimum dietary requirement for selenium ranges from 0.1 to 0.5 part per million (ppm) depending upon species, age or level of production, husbandry practices, and other factors. Diet supplementation is practiced because it has been estimated that 70 percent of domestic basic feedstuffs (corn and soybeans) contain less selenium than required to meet the nutritional needs of animals. Selenium deficiency conditions include: White muscle disease, nutritional myodegeneration, exudative diathesis, pancreatic fibrosis, and cardiac myopathy (sudden death).

When used in the feed of livestock and poultry, selenium is a food additive as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)). Accordingly, the additive cannot be added to animal feed in the absence of a food additive regulation published in accordance with section 409 of the act (21 U.S.C. 348). (See also sections 301 and 402 of the act (21 U.S.C. 331 and 342).

Section 409 of the act provides that any interested person may file a food additive petition with FDA with respect to any intended use of the additive. A food additive petition is required to include the following: (1) The complete identity of the additive, (2) the amount of the additive intended for use, (3) data to show that the additive will have the intended physical or other technical effect, (4) a description of practicable methods to determine the amount of the additive in food because of its use, (5) full reports of investigations made with respect to the safety of the food additive, (6) a proposed tolerance for the food additive in food if a tolerance is required, and (7) a claim for categorical exclusion under § 25.24 (21 CFR 25.24) or an environmental assessment under § 25.31 (21 CFR 25.31).

Selenium was initially the subject of food additive regulation § 121.325 (recodified to § 573.920) published in the Federal Register of January 8, 1974 (39 FR 1355) providing for its addition to the complete feed of growing chickens and swine at a level of 0.1 ppm and for its addition to the complete feed of turkeys at a level of 0.2 ppm. Based upon the filing of subsequent petitions, the section was further amended to provide for selenium supplementation to sheep, beef and dairy cattle, ducks, and laying hens (43 FR 11700, March 21, 1978; 44 FR 5392, January 26, 1979; 46 FR 43415, August 28, 1981; 46 FR 49115, October 6, 1981).

In response to a petition filed by the American Feed Industry Association (AFIA), 1501 Wilson Blvd., Suite 1100, Arlington, VA 22209, FDA amended the regulation to provide for: (1) An increase from 0.1 to 0.3 ppm in the level of selenium (as sodium selenite or sodium selenate) in complete feeds for cattle, sheep, chickens, and swine (except for weanling swine, which was already permitted at 0.3 ppm); (2) an increase from 0.2 to 0.3 ppm for turkeys and ducks; (3) a proportional increase in the limit feeding (feed supplements and salt-mineral mixtures) consumption rates for sheep and beef cattle to 0.7 and 3 milligrams per head per day, respectively; (4) a proportional increase in the selenium fortification levels for salt-mineral mixtures for sheep and cattle to 90 and 120 ppm, respectively; and (5) more flexibility in certain manufacturing controls by eliminating the requirement for premix manufacturers to analyze each production batch of selenium premixes (52 FR 10887, April 6, 1987; corrected 52 FR 21001, June 4, 1987). FDA also amended the regulation to include requirements for current good manufacturing practices.

The agency based its decision to amend the regulation on manufacturing, utility, safety, and other data in the petition and in its files. In issuing the 1987 amendments, FDA determined, based in part on the environmental impact analysis report (EIAR) submitted by AFIA, that selenium supplementation of animal feeds at a level of 0.3 ppm in the total diet would not have a significant impact on the human environment. The agency made that determination in a finding of no significant impact (FONSI).

II. Environmental Issues Raised

Section 409 of the act provides that, within 30 days after the issuance of a food additive order, any person adversely affected by the order may file objections. When the selenium food additive regulation was amended in 1987, six organizations filed objections or comments within the 30-day comment period. One or more of five of these organizations (American Council of Independent Laboratories, State of California Health and Welfare Agency, Micro Tracers, Inc., National Mixer-Feeder Association, and Natural Resources Defense Council) requested a hearing on their objections, a stay of the 1987 amendments, or both a hearing and a stay on the grounds that the EIAR submitted by AFIA and the FONSI prepared by the agency did not adequately address the environmental impact of increasing the amount of supplemental selenium permitted in animal feeds.

One more of these organizations argued that the scientific literature demonstrates that selenium bioconcentrates, bioaccumulates, and biomagnifies, that FDA did not consider these processes in estimating the possible buildup of selenium from its continued use in animal feeds, and that bioconcentration, bioaccumulation, and biomagnification can create environmental problems, particularly in aquatic ecosystems, which could threaten the health of fish and wildlife.

More than 50 references were submitted by these organizations discussing primarily selenium toxicity problems that have occurred at the Kesterson Reservoir in California. None of the references discusses whether the addition of selenium to animal feeds and its subsequent disposal through animal wastes would be of adequate quantity and bioavailability to cause significant adverse environmental impacts.

Because the potential environmental impacts were being actively investigated and because FDA's Center for Veterinary Medicine (CVM) wanted to obtain additional information, CVM provided a tentative response to the environmentally related objections in a notice published in the Federal Register of July 11, 1989 (54 FR 29019) (the 1989 notice). The 1989 notice discussed CVM's understanding of the selenium cycle in the environment, the interconversion of selenium from one form to another by the action of living organisms and chemical and geological processes, and the factors that affect selenium concentrations found in the food chain.

At that time, CVM reevaluated its worst-case analysis in the FONSI and tentatively concluded that the model was conservative enough to account for the uncertainties and local variations involved in the environmental fate and effects of selenium introduced into the environment as a result of the 1987 amendments (54 FR 29019 at 29022). From the model (FONSI, p. 9) CVM estimated that, on a local basis, the worst-case increase in concentration (loading) of selenium in agricultural soils amended with manure from animals receiving increased selenium supplementation, as a result of the 1987 amendments, would be about 2 parts per billion (ppb) per application. Further, in a modelled 10-hectare watershed where all the runoff would be carried into a 1-hectare pond, CVM estimated that there would be an influx of 0.02 to 0.24 ppb of selenium per year into the pond. CVM believes that extremely conservative assumptions were used in the worst-case analysis where limited information was available. Those assumptions are as follows: (1) The maximum amounts of selenium will be used in feeds, mineral mixes, and feed supplements; (2) all the supplemented selenium will be excreted directly into the animals' waste; (3) the animal waste is applied to the soil at the maximum practical rate; (4) all the excreted selenium will be in a chemical form readily soluble in water; (5) up to 10 percent of the selenium in the waste-amended soil will be lost to runoff from a single, large rainfall event (soil incorporated pesticides show losses to runoff of no more than 0.5 to 1.5 percent (FONSI, p. 9)); and (6) all the runoff from the large rainfall event of a 10-hectare watershed will be carried into a 1-hectare farm pond and will constitute 20 percent of all the water in the pond.

During the 60-day comment period for the 1989 notice, the agency received 20 comments from scientists in other Federal and State governmental agencies, representatives from conservation and environmental organizations, industry consultants, and United States congressmen. Eight comments provided additional information for consideration based upon the belief that more precise scientific data are needed to support the assumptions used in the model for the worst-case analysis.

Comments from three scientists in the Department of the Interior criticized the assumptions in the worst-case analysis as based upon limited field data on: (1) The various forms of selenium excreted in the wastes, (2) the rates of weathering of animal waste, and (3) the effect of weathering on the conversion of selenium to different forms and the resulting selenium concentrations in animal waste, soils, leachate, and receiving waters. Dennis Lemly (Fish and Wildlife Service) commented that although the forms of selenium excreted by animals may not be bioavailable to

terrestrial ecosystems, they may be bioavailable in aquatic ecosystems. He suggested that certain areas of the United States, where soil selenium levels are relatively high and bioavailable, are incapable of sustaining even small increases of selenium in the aqueous environment (Ref. 1). Joseph Skorupa (Fish and Wildlife Service) suggested that selenium from agricultural irrigation return waters may contribute to problems in various areas throughout the Western United States, and that the long-term safety of aquatic systems containing 2 to 5 ppb of total waterborne selenium can be questioned (Ref. 2). Marc Sylvester (Geological Survey) suggested that selenium in manure spread on farm land in semi-arid and arid areas in the Western United States would most likely be oxidized to the selenate form, which is very mobile. Therefore, he indicated that the assumption used in the worst-case analysis that a maximum of 10 percent of the selenium in waste-amended soil will be lost to runoff is unreasonable (Ref. 3).

CVM met with the scientists from the Department of Interior on May 31, 1990, to discuss their concerns. These scientists stated that research in progress indicates that the specific form of selenium is critical in determining the potential for the occurrence of selenium toxicity because amino forms of selenium may bioconcentrate to toxic levels in fish and birds even when concentrations in water are less than 1 microgram per liter (ppb). For this reason, according to the scientists, information, as opposed to the assumptions used in the worst-case analysis, is needed on the specific forms of selenium entering the environment through animal waste and the fate of these forms (Ref. 4).

More recently, CVM learned that the Environmental Protection Agency (EPA) is developing a threshold value for dissolved waterborne selenium to protect wildlife using aquatic environments because it appears that the current ambient water quality criteria for selenium of 5 ppb established for aquatic species may not be adequate to protect wildlife (Ref. 5).

CVM has evaluated the recent data and the concerns raised by the comments to the 1989 notice and now believes that, in areas of the Western United States (states west of and including North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas), where geological sources of selenium are abundant in the soil profile and bioavailable to ecosystems, the worst-case assumptions in the FONSI may not be adequate to assess the environmental safety of the additional introductions of selenium resulting from the 1987 amendments. A major feature of this area is the presence of pedocal soils (see Figure 1). Pedocals are alkaline soils of semiarid and arid climates (Ref. 6). Bacterial and chemical processes in these highly oxidizing, alkaline soils favor the formation of calcium and sodium selenates, which are very mobile and water soluble, and are readily available forms of selenium to plants (Ref. 7). In addition, many areas in the Western United States are prone to selenium enrichment of the soil because of leaching of underlying seleniferous rocks, such as the shales and clays of the Upper Cretaceous Pierre, Steele, and Niobrara Shales (Ref. 7).

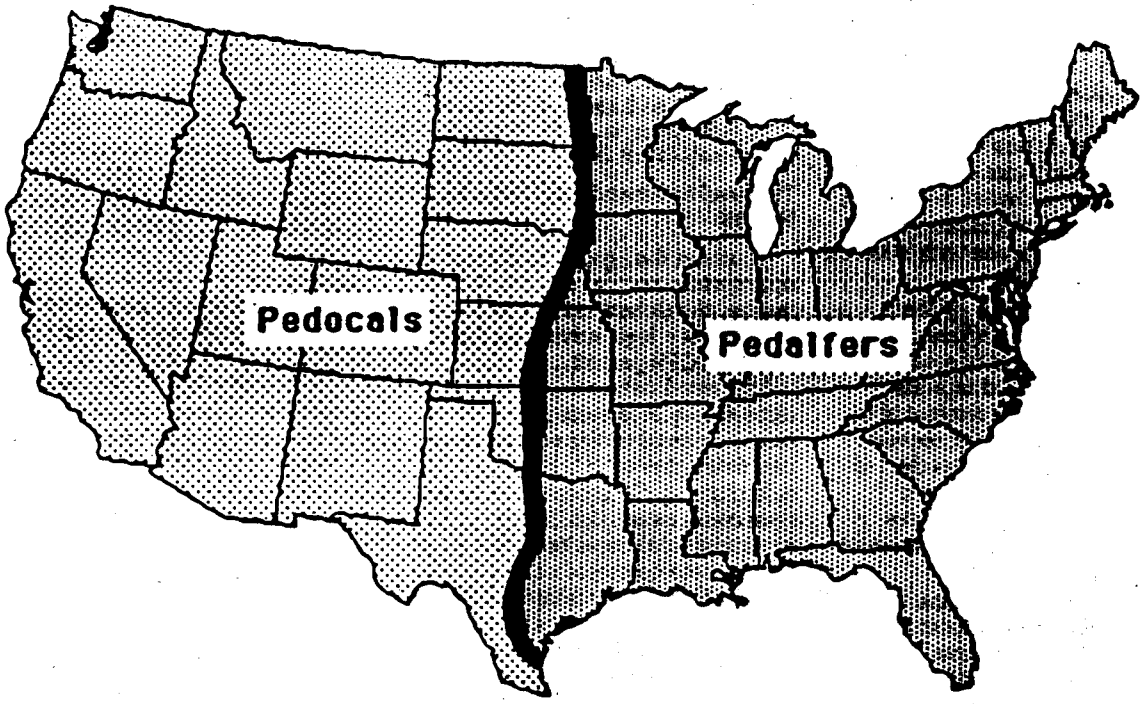

Figure 1. Soils of the United States divided into two major classes determined by soil typed and climate. (Adapted from "Modern Physical Geography," p. 402, edited by Strahler, A. N., and A. H. Strahler, John Wiley and Sons, New York. Copyright © 1987. Reprinted by permission of John Wiley and Sons, Inc.)

It appears from geographical factors that the potential for a significant adverse environmental impact as a result of selenium supplementation of animal feeds may be different in the Eastern United States. Pedalfer soils found in the Eastern United States (see Figure 1) are acid to neutral soils of humid and semihumid climates (Ref. 6). These acid soils favor the formation of more reduced and complexed forms of selenium, such as ferric selenite (Ref. 7). These complexes are generally insoluble so as to reduce selenium bioavailability to the point that forages and feeds grown in the Eastern United States contain insufficient selenium for proper animal nutrition (Ref. 6)

In short, in areas in the Western United States where selenium is abundant and bioavailable, a more detailed analysis may be required. In order to give all interested persons an opportunity to present their data, views, and analyses, FDA is convening a public hearing. The agency requests that persons present relevant scientific data and any other pertinent information concerning the following:

1. *Environmental introductions of selenium resulting from selenium supplementation in each animal species and the waste management system used.* Animals retain only a portion of the total selenium intake; the remainder is excreted. The amount excreted or retained appears to vary with species and the age of the animal. More precise information is requested on the proportion of the applied dose of selenium that is excreted for each species and the concentration of each of the many selenium chemical forms excreted, e.g., methylated, elemental selenium, selenides, aminated forms. Additionally, information is requested on the conversion of excreted selenium compounds to other selenium forms under different waste management practices. For example, do anaerobic conditions in waste pits and certain types of lagoons result in the conversion of selenium compounds to more chemically reduced, less soluble forms? If so, what is the rate of the chemical conversion?

2. *Environmental fate of introduced selenium compounds.* Given the chemical forms and quantities of selenium introduced into the environment from various animal waste management procedures, information is requested to better define the chemical and biological conditions that control the transformation of the introduced selenium compounds to other forms, the mobility of each form through various soil profiles and into ground and surface waters, and the potential for

bioaccumulation for each selenium compound, including biomagnification through human and animal food webs. For example, does the conversion of selenium from animal waste into different chemical forms and the movement of these forms in surface and ground water vary between areas with acid to neutral soils and moderate rainfall compared to areas with alkaline soils with low rainfall?

3. *Environmental effects of the selenium compounds in different ecosystems.* The toxicity of each selenium form introduced into the environment needs to be evaluated in species representative of the exposed ecosystems. In spite of a great deal of laboratory testing and field work conducted so far, few studies have controlled for the form and the amount of selenium being evaluated.

4. *Integration of environmental information into a predictive model for watersheds.* With better knowledge of the environmental introductions and fate and effects of selenium, a predictive model could be assembled so that impacts could be predicted for the varying conditions in each watershed, particularly those in the Western United States. Selenium distribution, soil types, rainfall, and agricultural practices are highly variable in the Western United States, suggesting that there are locales where forages are selenium-deficient and higher levels of selenium supplementation are both needed and would not be expected to have a significant impact on the environment. However, the tools and information necessary to make a science based decision for each watershed do not appear to be available. A predictive model would guide the collection of the appropriate information for individual watersheds.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Lemly, A. D., comment 17 to FDA Docket No. 86F-0060, August 4, 1989.

2. Skorupa, J. P., comment 27 to FDA Docket No. 86F-0060, August 8, 1989.

3. Sylvester, M. A., comment 29 to FDA Docket No. 86F-0060, August 9, 1989.

4. Giduck, S. A., FDA memorandum of meeting, May 31, 1990.

5. Potts, Kennard, Ecological Risk Assessment Branch, EPA, personal communication, 1992.

6. Lakin, H. W., "Selenium Content of Soils," United States Department of Agriculture Handbook No. 200, 1961.

7. Herring, J. R., "Selenium Geochemistry—A Conspectus," in "Proceedings of the 1990 Billings Land Reclamation Symposium on Selenium in Arid and Semiarid Environments, Western United States," edited by Severson, R. C., S. E. Fisher, Jr., and L. P. Gough, U.S. Geological Survey, 1991.

IV. Hearing Procedures Under 21 CFR Part 15

To assist the agency in determining an appropriate course of action in this matter, the Commissioner has decided to conduct a legislative type hearing under 21 CFR part 15.

Interested persons will have an opportunity to comment on the environmental issues so that the agency can determine whether increasing the selenium supplementation from 0.1 to 0.3 ppm could cause significant environmental impacts and, if so, an appropriate course of action for the agency to follow to minimize that risk. Environmental concerns may lead the agency to consider, separately or in combination, courses of action including but not limited to the following:

1. Deny, in whole or in part, the food additive petition that prompted the 1987 amendments.

2. Deny, in whole or in part, the objections and requests for a stay or a hearing.

3. Stay the 1987 amendments in so far as they permit an increase to 0.3 ppm supplemental selenium.

4. Stay the 1987 amendments in so far as they permit an increase to 0.3 ppm supplemental selenium in areas of the Western United States where geological and climate factors (alkaline soil and low rainfall) increase the bioavailability of selenium.

5. Prepare an environmental impact statement.

Issues related to matters other than environmental aspects of selenium supplementation to livestock are outside the scope of this hearing.The hearing will be held on August 25 and 26, 1992, in Jack Masur Auditorium Bldg., 10 Clinical Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205. The hearing will begin at 8:30 a.m. on August 25, 1992. The presiding officer will be Gerald B. Guest, DVM, Director, CVM, with panelists, Sharon Giduck (CVM), George Graber (CVM), John Matheson (CVM), and Michael Landa (Office of General Counsel). The procedures governing the hearing are found at 21 CFR part 15.

Persons who wish to participate are requested to file a written notice of participation with the Dockets Management Branch (address above) on or before July 31, 1992. To ensure timely handling, any outer envelope should be clearly marked with Docket No. 86F-0060 and the statement "Selenium in Animal Feeds." The notice of participation should contain the interested person's name, address, telephone number, any business affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. FDA asks that groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who properly file notices of participation. If time permits, FDA may allow interested persons attending the hearing who did not submit a notice of participation in advance of the hearing to make an oral presentation at the conclusion of the hearing.

Persons who find that there is insufficient time to submit the required information in writing may give oral notice of participation by calling Patsy Gardner, 301-295-8765, no later than July 31, 1992. Those persons who give oral notice of participation should also submit written notice containing the information described above to the Dockets Management Branch by the close of business on August 12, 1992. Any outer envelope should be clearly marked with Docket No. 86F-0060 and the statement "Selenium in Animal Feeds."After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing schedule will be available at the hearing, and after the hearing it will be placed on file in the Dockets Management Branch under Docket No. 86F-0060.

To provide time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open for 30 days following the hearing. Persons who wish to provide additional materials for consideration are to file these materials with the Dockets Management Branch by September 25, 1992. To ensure timely handling, any outer envelope should be clearly marked with Docket No. 86F-0060 and the statement "Selenium in Animal Feeds."

The hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures

for electronic media coverage of FDA's public administrative proceeding, including hearings under part 15. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.This notice of hearing is issued under 21 CFR part 15.

Dated: June 22, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-15058 Filed 6-25-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8394]

RIN 1545-A037

Proceeds of Bonds Used for Reimbursement; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations (T.D. 8394), which were published Thursday, January 30, 1992 (57 FR 3526). The regulations provide guidance as to when the allocation of bond proceeds to reimburse expenditures previously made by an issuer is treated as an expenditure of the bond proceeds.

EFFECTIVE DATE: The regulations and these corrections are effective for bonds issued after March 2, 1992.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo (202) 566-3283 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, provide rules for allocating proceeds of reimbursement bonds. Reimbursement bonds are bonds the proceeds of which are allocated to reimburse expenditures paid prior to the date of issue of the bonds.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8394), which were the subject of FR Doc. 92-2023, is corrected as follows:

PART 1—[CORRECTED]

§ 1.103-18 [Corrected]

Paragraph 1. On page 3531, column 2, in § 1.103-18, paragraph (c)(2)(ii)(B), line 2, the language "placed in service." is corrected to read "placed in service (as defined in § 1.103-8(d)(5))".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-14880 Filed 6-25-92; 8:45 am]

BILLING CODE 4830-01-M

Internal Revenue Service

26 CFR Part 1

[T.D. 8385]

RIN 1545-AP75

Allocation Attributable to Partnership Nonrecourse Liabilities; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8385), which were published Friday, December 27, 1991 (56 FR 66978), relating to the allocation among partners of certain losses or deductions and certain income or gain attributable to partnership nonrecourse liabilities.

EFFECTIVE DATE: December 28, 1991.

FOR FURTHER INFORMATION CONTACT: Susan Pace Hamill, 202-377-9372 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these corrections added new regulation § 1.704-2 to the Income Tax Regulations (26 CFR part 1) under section 704(b) of the Internal Revenue Code of 1986.

Need for Correction

As published, T.D. 8385 contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8385), which was the subject of FR Doc. 91-30843, is corrected as follows:

PART 1—[CORRECTED]

§ 1.704-2 [Corrected]

1. On page 66984, column 1, § 1.704-2(b)(4), line six, the language "of § 1.1001-2, and a partner (or related" is corrected to read "of § 1.1001-2, and a partner or related".

2. On page 66984, column 1, § 1.704-2(c), eighth line from the bottom of the paragraph, the language "necessary, by a pro rata portion of other" is corrected to read "necessary, a pro rata portion of other".

3. On page 66984, column 3, § 1.704-2(e)(3), second line from the bottom of the paragraph, the language "chargeback requirements of paragraph" is corrected to read "chargeback requirement of paragraph".

4. On page 66985, column 3, § 1.704-2(f)(7), second line from the bottom of the second paragraph of *Example 1*, the language "the partnerships allocations and" is corrected to read "the partnership's allocations and".

5. On page 66986, column 1, § 1.704-2(f)(7), *Example 2*, ninth line from the top of the column, the language "partnership has no income in year six, the" is corrected to read "partnership has no gross income in year six, the".

6. On page 66987, column 2, § 1.704-2(i)(4), third line from the bottom of the paragraph, the language "paragraph (f)(5) of this section. See" is corrected to read "paragraph (f)(6) of this section. See".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-14882 Filed 6-25-92; 8:45 am]

BILLING CODE 4830-01-M

Internal Revenue Service

26 CFR Part 1

[T.D. 8417]

RIN 1545-AQ53

Limitation on Passive Activity Losses and Credits—Technical Amendments to Regulations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8417), which were published Friday, May 15, 1992, (57 FR 20747). The regulations relate to the limitation on passive activity losses and credits.

EFFECTIVE DATE: May 15, 1992.

FOR FURTHER INFORMATION CONTACT: Donna J. Welch (202) 566-4751 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections adopt as final regulations amendments previously proposed that made corrective and clarifying changes to the existing regulations under section 469 of the Internal Revenue Code, as amended (the "Code").

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8417), which were the subject of FR Doc. 92-11310, is corrected as follows:

PART 1—[CORRECTED]

Paragraph 1. On page 20748, column one, under the heading "PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953", in the last line of the authority citation, the language "issued under 26 U.S.C. 469(l) (1). * * *" is corrected to read "issued under 26 U.S.C. 469 (l) (1). * * *".

§ 1.469-1 [Corrected]

Par. 2. On page 20753, column one, in § 1.469-1, paragraph (f)(4)(iii), paragraph (i) of *Example 6*, line 1, the language "*Example 6.* (i) (i) The taxpayer owns stock" is corrected to read "*Example 6.* (i) The taxpayer owns stock".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-14884 Filed 6-25-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1, 31, 301, and 602

[T.D. 8411]

RIN 1545-AH13

Definition of Resident Alien; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8411), which were published in the Federal Register Monday, April 27, 1992, (57 FR 15237). This document contains final Income Tax Regulations relating to the definition of a resident alien. Changes to the applicable tax law were made by the Deficit Reduction Act of 1984, the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988.

EFFECTIVE DATE: April 27, 1992.

FOR FURTHER INFORMATION CONTACT: David A. Juster, 202-566-3452, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide guidance under sections 871, 904, 953, 1303, 1441, 3121, 3306, 6013 and 7701(b) of the Internal Revenue Code.

Need for Correction

As published, T.D. 8411 contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8411), which was the subject of FR Doc. 92-8496, is corrected as follows:

1. On page 15238, column 1, in the preamble under the heading "Explanation of Provisions", third line from the bottom of the first paragraph, the language "151), with the INS or consular office," is corrected to read "151 or Form I-551), with the INS or consular officer,".

PART 301—[Corrected]

§ 301.7701(b)-1 [Corrected]

2. On page 15244, column 1, § 301.7701(b)-1(e), *Example 3*, fourth line from the top of the column, the language "fact that he present in the United States for" is corrected to read "fact that he was present in the United States for".

§ 301.7701(b)-2 [Corrected]

3. On page 15244, column 3, § 301.7701(b)-2(f)(3), line 2, the language, "Naturalization Form 1-130 (Petition for" is corrected to read "Naturalization Form I-130 (Petition for".

§ 301.7701(b)-3 [Corrected]

4. On page 15245, column 3, § 301.7701(b)-3(b)(6), sixth line from the bottom of the paragraph, the language "the Internal Revenue Service to be full" is corrected to read "the Internal Revenue Service to be full-".

§ 301.7701(b)-4 [Corrected]

5. On page 15249, column 3, § 301.7701(b)-4(d), *Example 5*, third line from the bottom of the paragraph, the language "December 31=75.4%) If D makes the election" is corrected to read "December 31=75.4%). If D makes the election".

§ 301.7701(b)-6 [Corrected]

6. On page 15250, column 3, § 301.7701(b)-6(b) *Example 1*, line 10, the language "home is in Country F for the remainder of" is corrected to read "home in Country F for the remainder of".

§ 301.7701(b)-7 [Corrected]

7. On page 15252, column 1, § 301.7701(b)-7(e), *Example 3*, line 33, the language "She will not be entitled to deduct his" is corrected to read "She will not be entitled to deduct her".

§ 301.7701(b)-8 [Corrected]

8. On page 15252, column 3, § 301.7701(b)-8(b)(2), second line from the bottom of the introductory paragraph, the language "through (vi) of this section and the" is corrected to read "through (vi) of this section (as applicable) and the".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-14875 Filed 6-25-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[T.D. 8419]

RIN 1545-AC37

One Class of Stock Requirement; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8419), which was published in the Federal Register for Friday, May 29, 1992 (57 FR 22646). The final regulations relate to the requirement that a small business corporation have only one class of stock.

EFFECTIVE DATE: May 29, 1992.

FOR FURTHER INFORMATION CONTACT: Scott Carlson, 202-343-8459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections amends the Income Tax Regulations (26 CFR part 1) under section 1361 of the Internal Revenue Code. These amendments were proposed to implement section

1361(b)(1)(D) and (c)(4) and (5) as added by the subchapter S Revision Act of 1982.

Need for Correction

As published, T.D. 8419 contains typographical errors which may prove to be misleading and is in need of clarification.

Correction of Publication

PART 1—[AMENDED]

Accordingly, the publication of final regulations (T.D. 8419), which was subject to FR Doc. 92-12507, is corrected as follows:

§ 1.1361-1 [Corrected]

1. On page 22649, column 1, in § 1.1361-1(b)(1), line 4, the language "small business corporation means a" is corrected to read "*small business corporation* means a".

2. On page 22649, column 2, in § 1.1361-1(b)(6), line 9, the language "May 28, 1992 that has been treated as" is corrected to read "May 28, 1992, that has been treated as".

3. On page 22652, column 3, in § 1.1361-1(l)(4)(v), paragraph (ii) of *Example 2*, line 2, the language "under paragraph (l)(4)(iii)(B)(*2*) of this section" is corrected to read "under paragraph (l)(4)(iii)(B)(*2*) of this section,".

4. On page 22653, columns 1 and 2, in § 1.1361-1(l)(7), lines 7, 11, and 14 of that paragraph, the date "May 28, 1992" is corrected by adding a comma following the year in each location.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-14876 Filed 6-25-92; 8:45 am]

BILLING CODE 4830-01-M

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Office of Foreign Assets Control ("FAC") is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the "FACR"), to clarify the scope of the reporting requirement concerning funds transferred to Vietnam on behalf of other persons for travel-related purposes, and to expand the scope of transactions authorized in § 500.571 to authorize U.S. common carriers to make payments out of proceeds owed to Vietnam for Vietnam's obligations to third-country service providers arising from telecommunications transmissions between Vietnam and the United States.

EFFECTIVE DATE: June 23, 1992.

FOR FURTHER INFORMATION: Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: This rule amends the FACR to clarify that travel-related payments made by persons subject to U.S. jurisdiction in their personal capacity are not subject to the reporting requirement applicable to travel service providers, and that funds transferred by travel service providers do not have to be reported by the persons on whose behalf the transfers are being made.

In addition, this rule modifies § 500.571 of the FACR, which authorizes telecommunications transactions involving Vietnam, provided that payments owed to Vietnam or its nationals are deposited into blocked interest-bearing accounts in domestic U.S. banks pending full lifting of the embargo (57 FR 17855, April 28, 1992). U.S. common carriers are authorized to make payments out of proceeds owed to Vietnam arising from telecommunications transmissions between Vietnam and the United States for Vietnam's obligations to third-country providers of international facilities and earth station services. Payments made on behalf of Vietnam pursuant to this paragraph must be deducted from any funds owed to Vietnam prior to their deposit in a blocked account.

Because the FACR involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 500

Banks, Blocking of assets, Finance, Reporting and recordkeeping requirements, Telecommunications, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1936-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 500.563 is amended by adding a new paragraph (c)(4) to read as follows:

§ 500.563 Certain transactions incident to travel to and within Cambodia, North Korea, and Vietnam.

* * * * *

(c) * * *

(4) For purposes of the monthly reporting requirements in paragraph (c)(3) of this section:

(i) Payments made directly in their personal capacities by individuals traveling alone or in a group in Vietnam, *e.g.*, for lodging, transportation, meals, and other travel-related expenses, do not constitute direct or indirect transfers to Vietnam by a travel service provider; and

(ii) Transfers of funds to Vietnam by a travel agency or other travel service provider arranging group travel are to be reported by that travel service provider, and need not be separately reported as indirect transfers to Vietnam by the groups on whose behalf the travel to Vietnam is arranged, even if those groups also constitute travel service providers for purposes of this section. All payments made on behalf of individual travelers by a travel service provider must comply with the $200 per diem limitation on expenses by the traveler, as set forth in this section.

* * * * *

3. In § 500.571, paragraph (b) is redesignated as paragraph (c); paragraph (a) is revised and a new paragraph (b) is added to read as follows:

§ 500.571 Transactions related to telecommunications authorized.

(a) All transactions of U.S. common carriers incident to the receipt or transmission of telecommunications involving Vietnam are authorized, provided that any funds owed to Vietnam or any national thereof are paid into a blocked interest-bearing account in a domestic bank established exclusively for this purpose.

Note: Exports or reexports to Vietnam of goods and technical data, or of the direct products of technical data (regardless of U.S. content), not prohibited by this part may require authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations, 15 CFR parts 768-799.)

(b) U.S. common carriers are authorized to make payments out of proceeds owed to Vietnam arising from telecommunications transmissions between Vietnam and the United States for Vietnam's obligations to third-country providers of international telecommunications facilities and earth station services. Payments made on behalf of Vietnam pursuant to this paragraph must be deducted from any funds owed to Vietnam prior to their deposit in a blocked account as required in paragraph (a) of this section.

* * * * *

Dated: June 11, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 17, 1992.

Nancy L. Worthington,

Acting Assistant Secretary (Enforcement).

[FR Doc. 92-15138 Filed 6-23-92; 8:45 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO-9-1-5409; FRL-4147-9]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Ozone SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is today approving revisions to the Colorado Ozone State Implementation Plan (SIP) submitted by the Governor on September 27, 1989, and August 30, 1990. The revisions consist of amendments to Regulation No. 7, "Regulation To Control Emissions of Volatile Organic Compounds." In its review of the September 27, 1989 State submittal, EPA identified several areas where the regulation still did not meet EPA requirements. On August 30, 1990, the State submitted additional revisions to Regulation No. 7 to address these deficiencies. This final rule is taking action on both of these submittals. The amendments were made to conform Regulation No. 7 to federal requirements, and to improve the clarity and enforceability of the regulation. EPA's approval serves to make the revisions federally enforceable and was requested by the State of Colorado.

DATES: This action will become effective on August 25, 1992 unless notice is received within 30 days of publication that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following offices:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405

Air Pollution Control Division, Colorado Department of Health, 3773 Cherry Creek Drive North, suite 300, Denver, Colorado 80209

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Jeff Houk, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1766.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA designated the Denver metropolitan area as nonattainment for the National Ambient Air Quality Standards (NAAQS) for ozone (43 FR 8976). This designation was reaffirmed by EPA on November 6, 1991 (56 FR 56694) pursuant to section 107(d)(1) of the Clean Air Act, as amended in 1990. Furthermore, since the Denver area had not suffered a violation of the ozone standard during the three year period from January 1, 1987 to December 31, 1989, Denver was classified as a "transitional" ozone nonattainment area under section 185A of the amended Act. In order to meet the RACT requirements of the Act, transitional areas must correct any RACT deficiencies regarding enforceability.

The current Colorado Ozone SIP was approved by EPA in the Federal Register on December 12, 1983 (48 FR 55284). The SIP contains Regulation No. 7 (Reg 7), which applies reasonably available control technology (RACT) to the stationary sources of volatile organic compounds (VOC). Reg 7 was adopted to meet the requirements of section 172(b) (2) and (3) of the 1977 Clean Air Act (concerning the application of RACT to stationary sources) [1], but the Ozone SIP did not rely on the emissions reduction credit the regulation would produce in order to demonstrate attainment; rather, the SIP relied only on mobile source controls in order to demonstrate attainment.

During 1987 and 1988, EPA Region VIII conducted a review of Reg 7 for consistency with the Control Techniques Guidelines documents (CTGs) and regulatory guidance, for enforceability and for clarity. The CTGs, which are guidance documents issued by EPA, set forth measures that are presumptively RACT for specific categories of sources that emit VOCs. A substantial number of deficiencies were identified in the regulation. In 1987, EPA published a proposed policy document that included, among other things, an interpretation of the RACT requirements as it applied to VOC nonattainment areas (52 FR 45044, November 24, 1987, Post-87 Policy). On May 25, 1988, EPA published a guidance document entitled "Issue Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (the "Blue Book"); a review of Reg 7 against these documents uncovered additional deficiencies in the regulation.

On May 26, 1988, EPA notified the Governor of Colorado that the Carbon Monoxide (CO) SIPs for Colorado Springs and Fort Collins were inadequate to achieve the CO NAAQS. In that letter, EPA also notified the Governor that the Ozone SIP had significant deficiencies in design and implementation, and requested that these deficiencies be remedied. EPA did not make a formal call for a revised Ozone SIP in the May 1988 letter [2], even though the Denver area was (and is) designated nonattainment for ozone, because no violations of the ozone NAAQS had been recorded in the area for the previous three years. However, EPA indicated that the deficiencies, if uncorrected, could jeopardize the area's ability to obtain eventual redesignation as an attainment area.

On September 27, 1989, the Governor of Colorado submitted revisions to Reg 7 to partially address EPA's concerns with the Ozone SIP. A detailed description of the specific revisions to the regulation is contained in the Technical Support Document for todays Federal Register notice. Revisions were made to the following sections of Reg 7:

7. I Applicability
7. II General Provisions
7.III General Requirements for Storage and Transfer of Volatile Organic Compounds

[1] The requirement to apply RACT to existing stationary sources of VOC emissions was carried forth under the amended Act in section 172(c)(1).

[2] Under the pre-amended Act, EPA had the authority under section 110(a)(2)(H) to issue a "SIP Call," requiring a State to correct deficiencies in an existing SIP. Section 110(a)(2)(H) was not modified by the 1990 Amendments. In addition, the amended Act contains new section 110(k)(5) which also provides authority for a SIP Call.

7.IV Storage of Highly Volatile Organic Compounds
7.V Disposal of Volatile Organic Compounds
7.VI Storage and Transfer of Petroleum Liquid
7.VIII Petroleum Processing and Refining
7.IX Surface Coating Operations
7.X Use of Solvents for Degreasing and Cleaning
7.XI Use of Cutback Asphalt
7.XII Control of VOC Emissions from Dry Cleaning Facilities Using Perchloroethylene As a Solvent
7.XIII Graphic Arts
7.XIV Pharmaceutical Synthesis
7.XV Control of Volatile Organic Compound Leaks from Vapor Collection Systems Located At Gasoline Terminals, Bulk Plants, and Gasoline Dispensing Facilities
Appendix A Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks
Appendix B Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants (Vapor Balance System)
Appendix D Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Trucks

In addition, the following new emission sources and appendices were added to Reg 7:

7.IX.A.7 Fugitive Emission Control
7.IX.N. Flat Wood Paneling Coating
7.IX.O. Manufacture of Pneumatic Rubber Tires
7.XI.D. Coal Tar
Appendix E Emission Limit Conversion Procedure

In general, the revised Reg 7 (as submitted by the Governor on September 27, 1989) met the CAA requirements, which were interpreted in the CTGs, the Blue Book, and the Post-87 Policy. However, in its review, EPA identified three remaining concerns about areas of the regulation which did not explicitly follow EPA guidance:

A. Areas of the country which requested extensions of the attainment date for the ozone NAAQS beyond the initial 1982 target specified in the Clean Air Act, as amended in 1977, were required to submit SIP revisions by July 1, 1982 (46 FR 7182, January 22, 1981). This requirement applied to the Denver metropolitan area. The 1982 submittal was required to include RACT regulations for all sources of VOC covered by a CTG and for all remaining stationary sources in the nonattainment area with potential VOC emissions (before control) of 100 tons per year or greater ("major non-CTG sources").

The 1982 Ozone SIP was submitted to EPA on June 24, 1982. Among other deficiencies, the SIP did not contain regulations requiring RACT on major non-CTG sources of VOC. EPA noted this deficiency in the February 3, 1983, proposed approval of the plan (48 FR 5030). The State responded by committing to adopt RACT for any VOC sources subsequently covered by a CTG. EPA considered this commitment adequate to meet the non-CTG RACT requirement, and approved the 1982 Ozone SIP on December 12, 1983 (48 FR 55284).

EPA's review of the Ozone SIP during 1987 and 1988 revealed that the intent of the requirement for RACT for major non-CTG sources had not been met. EPA tentatively identified several stationary sources which should have applied RACT since 1982, but were as yet unregulated. Reg 7 contained no mechanism for requiring control of these sources, other than a "General Emission Limitation," for sources not specifically regulated by Reg 7, of 450 pounds per hour or 3000 pounds per day. This general limitation allowed sources to have actual emissions of up to nearly 550 tons per year before control was required. This provision clearly did not meet the 1982 SIP requirement, which was reiterated in the May 25, 1988, Appendix D Clarification document.

To address this concern, the State revised Reg 7 to delete the existing "General Emission Limitation" and to require RACT for stationary sources with potential emissions of VOC of 100 tons per year or more, under certain conditions. Section 7.II.C. applies this new RACT requirement to sources not specifically covered by the regulation as follows:

(1) Sources with actual emissions of 100 tons per year or more must apply RACT.

(2) Sources with potential emissions of 100 tons per year or more, but with actual emissions of less than 100 tons per year, may avoid having to apply RACT by obtaining a federally enforceable permit to limit production or hours of operation to keep actual emissions below 100 tons per year.

(3) Sources with potential emissions of 100 tons per year or more, but with actual emissions of less than 50 tons per year on a 12-month rolling average, may avoid RACT and permit requirements by (a) submitting a report each year demonstrating that the 50 tons per year threshold has not been exceeded and (b) maintaining monthly records of VOC usage and emissions to enable the State to verify these reports.

The State developed this approach to regulating 100 ton per year non-CTG sources after receiving comments on the proposed Reg 7 revisions from several industries in the Denver area. These sources indicated that their processes involved a number of non-CTG category operations which are performed infrequently (such as painting letters on four production units per year) which resulted in low actual emissions, but which would result in large potential emissions when calculated on an 8760 hour per year basis. EPA is approving section 7.II.C. of the state rules for its strengthening effect on the SIP. The submitted rule is stronger than the pre-existing non-CTG RACT rule because it specifically applies to sources that have a potential to emit greater than 100 tons per year of VOCs and that are not yet covered by a CTG. The rule requires those sources to adopt RACT. The previous rule, which was a commitment of the State and did not directly affect non-CTG sources, only applied to those sources for which EPA subsequently issued a CTG. Therefore, the submitted rule strengthens the SIP because it applies to major sources not covered by a CTG.

EPA is not addressing whether this rule establishes RACT for major stationary sources not subject to a CTG. The Denver metropolitan area is a transitional area for ozone; therefore, it is not subject to the RACT fix-up requirement of section 182(a)(2)(A) of the Clean Air Act, as amended in 1990. Instead, as required by section 185A of the amended Act, EPA must determine by June 30, 1992, whether or not transitional areas (including Denver) attained the ozone NAAQS as of December 31, 1991. If a finding of attainment is made, the State must submit a maintenance plan within 12 months of the finding. For a maintenance plan to be approved and the Denver metropolitan area to be redesignated as attainment pursuant to section 107(d)(3)(E), the State may have to develop specific RACT regulations for major non-CTG sources. Information available to EPA suggests that there has been growth in emissions from some non-CTG sources in the area; RACT regulations for these sources may be necessary to assure ten-year maintenance of the NAAQS, as required by section 175A of the Act.

B. Reg 7 did not contain an explicit deadline for compliance with the revised regulation. In response to EPA comments, the State adopted additional revisions to Reg 7 requiring all sources to come into compliance with the revised Reg 7 by October 31, 1991.

EPA considered a two-year timeframe for compliance with the regulation revisions to be acceptable because no Ozone SIP Call was made in 1988 (no violations of the ozone NAAQS have been monitored in the Denver area since 1984) and thus, the revisions were not immediately necessary for the area to attain the NAAQS. The two-year compliance timeframe applies only to the regulation revisions, and not to

requirements which existed prior to October 30, 1989. Sources which were in existence prior to the regulation revisionss and which were covered by the regulations at that time were required to maintain compliance with those provisions.

C. The Graphic Arts provisions contained a definition of potential to emit which was somewhat unclear (see section 7.XIII.A.2., Applicability). The definition referenced the EPA requirement that potential to emit be determined at maximum capacity before control (per the Appendix D Clarification document), but also included a requirement that potential emissions be based on historical records of solvent and ink consumption (per the previous regulatory guidance document, Guidance to State and Local Agencies in Preparing Regulations to Control Volatile Organic Compounds from Ten Stationary Source Categories, September 1979). As a result, the definition could have been interpreted to require potential to emit to be calculated at both maximum and historical operating rates, which in most cases will be different. EPA's interpretation of this definition was that potential to emit should be calculated at maximum capacity before control; historical records of solvent and ink consumption should be used to determine VOC emissions at a given operating rate, not to determine the historical maximum operating rate. The Reg 7 revisions, submitted by the Governor on August 30, 1990, addressed this concern.

In addition, due to additional information received after the adoption of revisions to Reg 7 in September 1989, the State reconsidered its regulation of coal tar under section 7.XI. (Use of Cutback Asphalt). In the revisions submitted on August 30, 1990, section 7.XI.D., covering coal tar, was deleted. Regulation of coal tar is not covered by the CTG for cutback asphalt use; EPA believes that it is not needed to meet the RACT requirement of the CAA.

On January 13, 1992, EPA notified the State that, prior to finalizing today's action, it was necessary to document the State's position with regard to capture efficiency (CE) determination. During earlier reviews of the State's VOC regulations, EPA Region VIII had indicated that, because EPA had not issued final, generally-applicable CE test methods, an acceptable State approach to CE was a commitment to develop test methods consistent with the most recent EPA guidance on CE testing on a case-by-case basis as needed, and a commitment to adopt test methods after EPA issued final CE test methods. The CE provision adopted by the State in section IX.A.5.e. of Regulation No. 7 does address the requirement that testing for CE be performed on a case-by-case basis, and that this testing be consistent with EPA guidance. In a letter dated February 5, 1992, from John Leary, Acting Director, Colorado Air Pollution Control Division, to Douglas Skie, Chief, Air Programs Branch, EPA Region VIII, the State committed to adopt and use all new CE methods as they are developed and promulgated by the EPA's rulemaking process. In that same letter, the State indicated that until changes are promulgated, the Air Pollution Control Division will use the CE protocols that were published by EPA on June 29, 1990 (55 FR 26814). This is the same protocol developed for the Chicago Federal Implementation Plan and contained within 40 CFR 52.741(a)(4)(iii) and appendix B.

In today's action, EPA is approving the State's VOC definition as submitted in the 1989 and 1990 revisions to Reg 7. However, on February 3, 1992, EPA published a revised definition of volatile organic compounds (57 FR 3941). The definition excludes a number of organic compounds from the definition of VOC on the basis that they are negligibly reactive and do not contribute to tropospheric ozone formation. The State's definition excludes some, but not all, of these compounds. Therefore, the State's definition of VOC provides for the regulation of some compounds which are no longer considered VOCs by EPA. In light of EPA's most recent definition of VOC, EPA will not enforce against sources for failure to control the emission of compounds that are exempt from the VOC definition. EPA is in the process of informing the Region VIII States of the revised definition of VOC and will request that future SIP revisions reflect the most recent VOC definition.

Based on the above revisions, EPA believes that Colorado has met the RACT requirement of the Act as it applies to the Denver metropolitan area. Colorado has corrected its RACT rule deficiencies regarding enforceability.

The Denver metropolitan area is classified as a "transitional" area under the 1990 Clean Air Act Amendments, meaning that the area is legally designated as an ozone nonattainment area, but that it did not experience violations of the ozone NAAQS during the 1987–89 period used to classify areas under the Amendments. Under the transitional classification, EPA must review the available ambient air quality data and make a determination by June 30, 1992, whether the area has, in fact, attained the ozone NAAQS. EPA's review will be based on the completeness and adequacy of the monitoring data and on the adequacy of the monitoring network used to collect those data.

Should EPA find that the area has attained the ozone NAAQS, the State will be required to develop a maintenance plan demonstrating that the NAAQS will be maintained for a period of not less than 10 years. (This plan must later be updated to demonstrate that the NAAQS will be maintained for an additional 10 years.) When the maintenance plan is developed, the State may consider revisions to the ozone control strategy, including revisions to the VOC control requirements of Reg 7. Until any such revisions are approved by EPA, the requirements of Reg 7 will remain in effect.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 25, 1992 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 25, 1992.

Final Action

EPA is today approving Colorado's Ozone SIP revisions, submitted by the Governor on September 27, 1989, and August 30, 1990. These revisions consist of amendments to Regulation No. 7.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

This action has been classified as a Table 2 action by the Regional

Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments to the Clean Air Act enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

The Denver metropolitan nonattainment area is a transitional area under the amended Act and did not receive an ozone SIP Call under the pre-amended Act; therefore, the area was not subject to the RACT fix-up requirement of the amended Act (Section 182(a)(2)(A)). EPA isn't addressing whether or not this rule establishes RACT for major, non-CTG sources. If the area is found to be in attainment of the ozone NAAQS, the State may have to develop specific RACT regulations for major non-CTG sources to assure a ten-year maintenance of the NAAQS. However, for the present time, EPA believes that this rule need not fulfill the RACT fix-up requirement of the amended Act in order for Colorado to have a fully approved SIP for the Denver metropolitan area.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 1992. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1980.

Dated: May 26, 1992.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR Part 52, Subpart G, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.320 is amended by adding paragraph (c)(55) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(55) Revisions to the Colorado Ozone State Implementation Plan were submitted by the Governor on September 27, 1989, and August 30, 1990. The revisions consist of amendments to Regulation No. 7, "Regulation To Control Emissions of Volatile Organic Compounds."

(i) *Incorporation by reference.* (A) Revisions to Regulation No. 7, Sections 7.I (Applicability), 7.II (General Provisions), 7.III (General Requirements for Storage and Transfer of Volatile Organic Compounds), 7.IV (Storage of Highly Volatile Organic Compounds), 7.V (Disposal of Volatile Organic Compounds), 7.VI (Storage and Transfer of Petroleum Liquid), 7.VIII (Petroleum Processing and Refining), 7.IX (Surface Coating Operations), 7.X (Use of Solvents for Degreasing and Cleaning), 7.XI (Use of Cutback Asphalt), 7.XII (Control of VOC Emissions from Dry Cleaning Facilities Using Perchloroethylene as a Solvent), 7.XIII (Graphic Arts), 7.XIV (Pharmaceutical Synthesis), 7.XV (Control of Volatile Organic Compound Leaks from Vapor Collection Systems Located at Gasoline Terminals, Bulk Plants, and Gasoline Dispensing Facilities), and Appendices A (Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks), B (Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants—Vapor Balance System), and D (Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Trucks). The following new emission sources and appendices were added to Regulation No. 7: 7.IX.A.7 (Fugitive Emission Control), 7.IX.N. (Flat Wood Paneling Coating), 7.IX.0. (Manufacture of Pneumatic Rubber Tires), and Appendix E (Emission Limit Conversion Procedure). These revisions became effective on October 30, 1989, and August 30, 1990.

(ii) *Additional material.* (A) February 5, 1992, letter from John Leary, Acting Director, Colorado Air Pollution Control Division, to Douglas Skie, EPA. This letter contained the State's commitment to conduct capture efficiency testing using the most recent EPA capture efficiency protocols, and the commitment to adopt federal capture efficiency test methods after they are officially promulgated by EPA.

[FR Doc. 92–15028 Filed 6–25–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[IL 10–2–5435; FRL–4125–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On December 20, 1991, USEPA proposed to approve a revision to the Illinois sulfur dioxide (SO_2) State Implementation Plan (SIP) and solicited public comment on the proposed SIP revision and USEPA's proposed approval of it. Today's rule responds to the public comments received and announces approval of the revision, which amends 35 Illinois Administrative Code 214 (35 IAC 214), Measurement Methods for the Emission of Sulfur Compounds.

USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act.

EFFECTIVE DATE: This final rulemaking becomes effective on July 27, 1992.

ADDRESSES: Copies of the SIP revision, public comments on the notice of final rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Mary Onischak at (312) 353–5954 before visiting the Region V Office.).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604

A copy of today's revision to the Illinois SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, Regulation Development Branch, Regulation Development Section (5AR–18J), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 353–5954.

SUPPLEMENTARY INFORMATION: On February 8, 1991, the Illinois Environmental Protection Agency (IEPA) submitted amendments to 35 IAC 214 (sulfur limitations) to the USEPA as a revision to the Illinois SIP. The amendments correct several defects identified by USEPA in the SO_2 compliance determination methodology. The Illinois Pollution Control Board adopted the regulation, R87-31, Proposed Amendments to part 214, Measurement Methods for Emissions of Sulfur Compounds, on December 20, 1990. On January 25, 1991, the final rule was published in the Illinois Register.

USEPA is approving this SIP revision because the revised compliance methodology satisfactorily corrects several defects in the 1972 SIP, including the lack of a short-term compliance test method, the test methods' ability to refute other noncompliance findings, and the provision for director's discretion. The approval of this rule may allow USEPA to reinstate the 1.8 pounds SO_2 per million British Thermal Units (lb SO_2/MMBTU) emission limit for coal-burning combustion sources in the Chicago and East St. Louis major metropolitan areas of Illinois. Currently, there are no federally enforceable SO_2 emission limits in these areas. For additional information regarding this submittal, please see the technical support document of June 26, 1991.

A notice proposing approval of this SIP revision was published in the **Federal Register** on December 20, 1991 (56 FR 66003). The public comment period closed on January 21, 1992. Three public comments were received in response to USEPA's proposed rule. They are summarized below. USEPA's response to each comment is also presented below.

Public Comments

(1) *Comment:* On January 9, 1992, Bharat Mathur, Manager, Division of Air Pollution Control, IEPA, submitted a letter supporting USEPA's proposed rulemaking.

USEPA Response: None necessary.

(2) *Comment:* In a letter dated January 17, 1992, the Illinois Power Company commented that since USEPA has approved revised SO_2 emission limits for its Baldwin Power Plant in Randolph County, Illinois, the facility should no longer be included in the list of rural SO_2 sources which are not subject to a federally enforceable SO_2 emission limit in the units of lb SO_2/MMBTU.

USEPA Response: The Illinois Power Company is correct in this statement. USEPA's approval of the site-specific SIP revision for the Baldwin Power Plant, published in the **Federal Register** on April 18, 1990, (55 FR 14419) does establish a federally enforceable lb SO_2/MMBTU emission limit for this facility. USEPA regrets this misunderstanding.

(3) *Comment:* The Chemical Manufacturers Association (CMA) commented in a January 21, 1992, letter that "there is a definite place for the use of director's discretion in making decisions regarding stack testing." CMA argues that USEPA-approved stack test methods, as published, may not work in the field without modification, and that schedules imposed by the requirements of the Clean Air Act Amendments of 1990 (1990 Amendments) may not allow time for such modifications to be approved by USEPA.

USEPA Response: USEPA is currently drafting new policy on director's discretion. The new policy is expected to allow some State discretion for minor matters such as slight adjustments to test procedures for practicality. However, USEPA's purpose in restricting the use of director's discretion is to ensure that changes which could affect a SIP's ability to attain and maintain the national ambient air quality standards (NAAQS) cannot be made to a SIP without USEPA review and approval.

Final Rulemaking Action

Based on the information contained in the State's February 8, 1991, submittal of amendments to 35 IAC 214, and in consideration of the public comments received on the December 20, 1991, notice of proposed rulemaking, USEPA is approving Illinois' revised measurement methods for emission of sulfur compounds.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: April 14, 1982.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52, subpart O, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671(q).

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(86) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(86) On February 8, 1991, the State submitted revisions to its sulfur dioxide measurement methodology.

(i) *Incorporation by reference.* (A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Part 214 Sulfur Limitations, Subpart A: General Provisions, section 214.101 Measurement Methods. Adopted December 20, 1990, effective January 15, 1991.

[FR Doc. 92-15030 Filed 6-25-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[ND-1-2-5412; 4147-7]

Approval and Promulgation of State Implementation Plans; North Dakota; Ambient Air Quality Standards and Other Minor Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is today approving revisions to North Dakota's State Implementation Plan (SIP) submitted by the Governor on June 26, 1990, which modified the Ambient Air Quality Standards (AAQS) (Chapter 33-15-02 of the North Dakota Administrative Code [N.D.A.C.]) to amend the hydrogen sulfide standard and the format of other ambient standards, and various other minor changes in N.D.A.C. Chapters 33-15-01, 33-15-05, 33-15-10, 33-15-14, and 33-15-20. The June 26, 1990 submittal also includes revisions to: The Prevention of Significant Deterioration of Air Quality (PSD) regulations (N.D.A.C. Chapter 33-15-15) to incorporate the nitrogen dioxide (NO_2) increments; and the Standards of Performance for New Stationary Sources (NSPS) (N.D.A.C. Chapter 33-15-12) and the Emission Standards for Hazardous Air Pollutants (NESHAPs) (N.D.A.C. Chapter 33-15-13). At this time, EPA is only acting on the revisions to the AAQS and the various other minor changes. The revisions to the PSD regulations were approved by EPA in the **Federal Register** on March 28, 1991; the revisions to the NSPS regulations were approved by EPA in the **Federal Register** on June 20, 1991. EPA will be acting upon the remainder of the June 26, 1990 submittal in another action. The effect of this action is to make those revisions which are being acted on in this final rule part of the North Dakota SIP and thus federally enforceable. This action was requested by the State of North Dakota.

DATES: This action will become effective on August 25, 1992 unless notice is received by July 27, 1992 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405

Division of Environmental Engineering, North Dakota Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, Bismarck, North Dakota 58502

FOR FURTHER INFORMATION CONTACT: Mindy Mohr, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405, (303) 294-7539, FTS 330-7539.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(H)(i) of the Clean Air Act (CAA), as amended in 1990, provides the State the opportunity to amend its SIP from time-to-time as may be necessary. The State is utilizing this authority of the CAA to update and revise existing regulations which are a part of the SIP.

Article 33-15 (Air Pollution Control) of the North Dakota Administrative Code (N.D.A.C.) contains the rules and regulations used to control air pollution in the State. Article 33-15 consists of 20 chapters, numbered 33-15-01 through 33-15-20. In this action, EPA is only addressing the following chapters:

33-15-01—General Provisions
33-15-02—Ambient Air Quality Standards
33-15-05—Emissions of Particulate Matter Restricted
33-15-10—Control of Pesticides
33-15-14—Designated Air Contaminant Sources, Permit to Construct, Permit to Operate
33-15-20—Control of Emissions from Oil and Gas Well Production Facilities

The revisions to the above-mentioned Chapters are highlighted below:

1. Chapter 33-15-01—General Provisions—several changes have been made to this Chapter: the definition of a public nuisance was changed, the conditions for granting a variance were modified, the circumvention clause was modified, and a new section defining the Department's enforcement policy was added.

2. Chapter 33-15-02—Ambient Air Quality Standards—has been revised to incorporate four new ambient standards for hydrogen sulfide (H_2S), place the previous ambient standard for H_2S in Chapter 33-15-16, (Restriction of Odorous Air Contaminants), and revise the way in which other pollutant standards (sulfur dioxide, carbon monoxide, ozone and nitrogen dioxide) are expressed; from micrograms per cubic meter (ug/m^3) to parts per million (ppm).

3. Chapter 33-15-05—Emissions of Particulate Matter Restricted—has been modified to clarify which sources are exempt from this Chapter. Previously, the language in the regulation indicated that only new sources rated at less than 10 MMBTU/hr heat input were exempt from the particulate matter emission rates. It had always been intended that *all* sources less than 10 MMBTU/hr heat input be exempt. This has been clarified with these revisions. Additionally, Table 4, Maximum Allowable Rates of Emissions of Particulate Matter from New Fuel Burning Equipment, has been revised to assure that sources with multiple boilers (each boiler less than 10 MMBTU/hr heat input, but when the heat input of the multiple boilers is summed, the total heat input would be greater than 10 MMBTU/hr) have applied the applicable emission limit.

4. Chapter 33-15-10—Control of Pesticides—has been revised to add a section which indicates that the handling and disposal of pesticide containers, including burning, must comply with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended October 25, 1988.

5. Chapter 33-15-14—Designated Air Contaminant Sources, Permit to Construct, Permit to Operate—has been revised to reference the EPA's "Guideline on Air Quality Models (Revised)" and the "North Dakota Guideline for Air Quality Modeling Analysis". Although both documents are referenced, EPA expects that, as a minimum, all required modeling analyses will meet all requirements of EPA's "Guideline on Air Quality Models (Revised)", and EPA's modeling policies in effect at the time of permit application. In a February 14, 1992, letter from Dana K. Mount, Director, North Dakota Division of Environmental Engineering, to Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, the State committed to meeting all requirements of the EPA Guideline for "air quality modeling demonstrations associated with the permitting of new PSD sources, PSD major modifications, and sources which will be located in nonattainment areas. If any conflict exists, the EPA Guideline will take precedence for these source categories." The State also indicated that, because certain requirements of the EPA Guideline are impractical for smaller sources, the State does not intend to meet all requirements of the EPA Guideline for the smaller sources covered by Chapter 33-15-14. This revision to the Chapter also clarifies that a source will be denied a permit to construct if it causes or significantly contributes to a violation of an ambient air quality standard. The significance levels were added to the Chapter. Finally, this Chapter was amended to clarify an exemption to the Chapter. That is, fossil fuel burning equipment, other than smokehouse generators,

which, among other things, has actual emissions that do not exceed twenty-five tons per year of any air contaminant, do not need a permit to construct or operate. Previously, the exemption had just stated "emission" and has now been clarified to state "actual emissions".

6. Chapter 33-15-20—Control of Emissions from Oil and Gas Well Production Facilities—has been revised to more explicitly outline its intent. These revisions include wording changes and additional language to better clarify the applicability and specific requirements of the Chapter.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 25, 1992 unless, by July 27, 1992, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 25, 1992.

Final Action

EPA is approving revisions to North Dakota's SIP submitted by the Governor on June 26, 1990, which modified the Ambient Air Quality Standards (AAQS) (Chapter 33-15-02 of the North Dakota Administrative Code [N.D.A.C.]) to amend the State's hydrogen sulfide standard and format of other ambient standards, and various other minor changes in N.D.A.C. Chapters 33-15-01, 33-15-05, 33-15-10, 33-15-14, and 33-15-20.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact the submittal preceded the date of enactment. Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401-7671q.

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

Dated: May 21, 1992.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR part 52, subpart JJ, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart JJ—North Dakota

2. Section 52.1820 is amended by adding (c)(2) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(22) On June 26, 1990, the Governor of North Dakota submitted revisions to the plan. The revisions include amendments to the hydrogen sulfide standard and the format of other ambient standards, and various other minor changes.

(i) *Incorporation by reference.* (A) Revisions to the North Dakota Administrative Code: General Provisions 33-15-01-04.30, 33-15-01-07.2, 33-15-01-06, 33-15-01-15.2, 33-15-01-17; Ambient Air Quality Standards 33-15-02 Table 1 standards for sulfur dioxide, hydrogen sulfide, carbon monoxide, ozone, and nitrogen dioxide; Emissions of Particulate Matter Restricted 33-15-05-02.2e, Table 4; Control of Pesticides 33-15-10-02.5; Designated Air Contaminant Sources, Permit to Construct, Permit to Operate 33-15-14-02.4.a and b, 33-15-14-02.5.a, 33-15-14-05.1.b(3); Control of Emissions from Oil and Gas Well Production Facilities 33-15-20-01.1, 33-15-20-01.2.l and m, 33-15-20-02.1, 33-15-20-03.1, 2, and 3, 33-15-20-04; effective June 1, 1990.

(ii) *Additional material.* Letter dated February 14, 1992, from Dana K. Mount, Director, Division of Environmental Engineering, to Douglas M. Skie, EPA. This letter provided the State's commitment to meet all requirements of the EPA "Guideline on Air Quality Models (Revised)" for air quality modeling demonstrations associated with the permitting of new PSD sources, PSD major modifications, and sources to be located in nonattainment areas.

3. Section 52.1824 is amended by adding paragraph (c) to read as follows:

§ 52.1824 Review of new sources and modifications.

* * * * *

(c) The State of North Dakota has clarified the language contained in the North Dakota Administrative Code on the use of the EPA "Guideline on Air Quality Models" as supplemented by the "North Dakota Guideline for Air Quality Modeling Analysis". In a letter to Douglas M. Skie, EPA, dated February 14, 1992, Dana K. Mount, Director of the Division of Environmental Engineering, stated:

To clarify this issue, the State of North Dakota will commit to meeting all requirements of the EPA Guideline for air quality modeling demonstrations associated with the permitting of new PSD sources, PSD major modifications, and sources which will be located in nonattainment areas. If any

conflict exists, the EPA Guideline will take precedence for these source categories.

[FR Doc. 92-15029 Filed 6-25-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[UT-1-1-5410; FRL-4147-8]

Approval and Promulgation of State Implementation Plans; Utah; Ozone SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is today approving revisions to Utah's State Implementation Plan (SIP) submitted by the Governor on May 4, 1990, and July 25, 1991. The revisions consist of amendments to the State's regulations for stationary sources of volatile organic compounds (VOCs), contained within Regulation R446-1-4.9 of the Utah Air Conservation Regulations, "Emission Standards. Non-Attainment Area Requirements—Ozone," and revisions to those definitions applicable to the VOC regulations, contained within Regulation R446-1-1, "Foreward and Definitions." The amendments were made to conform Regulations R446-1-1 and R446-1-4.9 to federal requirements for application of reasonably available control technology (RACT) to stationary sources of VOCs, as required by section 182(a)(2)(A) of the 1990 Clear Air Act, and to improve the clarity and enforceability of the regulation; these amendments are commonly termed "RACT fix-ups." The May 4, 1990 submittal also includes revisions to the State's new source review regulations, contained within R446-1-3, "Control of Installations," and revisions to other definitions which are not specifically related to the VOC regulations, contained within R446-1-1. At this time, EPA is acting only on the revisions to the definitions and emission standards for ozone nonattainment areas, contained within R446-1-1 and R446-1-4.9. The revisions to R446-1-3 and to the other definitions in R446-1-1 were previously approved by EPA in the **Federal Register** on June 27, 1991.

This final rule is taking action on both the May 4, 1990, and the July 25, 1991, submittals. The effect of this action is to make the revisions to the VOC regulations part of the Utah SIP and thus federally enforceable. This action was requested by the State of Utah.

DATES: This action will become effective on August 25, 1992 unless notice is received by July 27, 1992 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405

Division of Air Quality, Department of Environmental Quality, State of Utah, Salt Lake City, Utah 84114-4820

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Mindy Mohr, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405, (303) 294-7539, FTS 330-7539.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA designated Salt Lake County and Davis County as nonattainment for the National Ambient Air Quality Standard (NAAQS) for ozone (43 FR 8962). This designation was reaffirmed by EPA on November 6, 1991 (56 FR 56694) pursuant to section 107(d)(1) of the Clean Air Act, as amended in 1990. The current Utah Ozone SIP was approved by EPA in the **Federal Register** on August 15, 1984 (49 FR 32575). Pursuant to EPA requirements, the SIP contains Regulation R446-1-4.9 of the Utah Air Conservation Regulations, "Emission Standards. Non-Attainment Area Requirements—Ozone," which applies reasonably available control technology (RACT) to the stationary sources that emit volatile organic compounds (VOCs). The SIP also contains Regulation R446-1-1, "Foreward and Definitions"; many of these definitions are specifically applicable to the VOC regulations contained within R446-1-4.9. Regulation R446-1-4.9 was adopted to meet the requirements of sections 172(b)(2) and (3) of the 1977 Clean Air Act (concerning the application of RACT to stationary sources). This general requirement for RACT has been reaffirmed in section 172(c)(1) of the 1990 Clean Air Act.

During 1987 and 1988, EPA Region VIII conducted a review of Regulations R446-1-1 and R446-1-4.9 for consistency with the Control Techniques Guidelines (CTGs) and regulatory guidance, for enforceability, and for clarity. A substantial number of deficiencies were identified in the regulations. On May 25, 1988, EPA published a guidance document entitled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (the "Blue Book"); a review of Regulations R446-1-1 and R446-1-4.9 against this document uncovered additional deficiencies in the regulations.

On May 26, 1988, pursuant to Section 110(a)(2)(H) of the 1977 Act, EPA notified the Governor of Utah that the SIP was inadequate to achieve the Ozone NAAQS in Davis and Salt Lake Counties (SIP Call). In that letter, EPA requested that the State correct identified deficiencies in the existing SIP, and adopt regulations previously required or committed to but never adopted. The notice of Ozone SIP inadequacy was published in the **Federal Register** on September 7, 1988 (53 FR 34500).

During 1988, 1989, and 1990, EPA Region VIII reviewed and commented on revisions to Regulations R446-1-1 and R446-1-4.9 which were prepared in response to the 1988 Ozone SIP Call. On May 4, 1990, the Governor of Utah submitted revisions to Regulations R446-1-1 and R446-1-4.9 to partially address EPA's concerns with the Ozone SIP; however, the package was administratively incomplete. EPA verbally agreed to delay processing of this submittal after discussions with the State indicated problems in obtaining the official copy of the regulations from the State's Division of Administrative Rules. The necessary documentation, which met all administrative requirements of 40 CFR part 51 appendix V, Criteria for Determining Completeness of SIP Submittals, was not submitted to EPA until January 11, 1991. On February 19, 1991, EPA notified the State that the May 4, 1990 submittal was administratively complete.[1]

The May 4, 1990 submittal also included revisions to the State's new source review regulations, contained within R446-1-3, "Control of Installations," and revisions to other definitions which are not specifically related to the VOC regulations, contained within R446-1-1. The revisions to R446-1-3 and to the other definitions in R446-1-1 were previously approved by EPA in the **Federal Register** on June 27, 1991 (56 FR 29436). In today's action, EPA is acting upon those definitions contained within R446-1-1 which relate to the VOC regulations of

[1] This completeness determination was made pursuant to EPA's completeness criteria set forth at 40 CFR part 51, appendix V. EPA has since amended those criteria pursuant to section 110(k)(1)(A) of the amended Act (56 FR 42216, August 26, 1991).

R446-1-4.9; these are the definitions for the following: "Air dried coating," "Asphalt or asphalt cement," "Condenser," "Fabric coating," "Paper coating," "Rotogravure coating," "Submerged fill pipe," "Vinyl coating," "Volatile Organic Compound," "Basecoat," "Coating," "Exterior single coat," "Filler," "Groove coat," "Hardwood plywood," "Ink," "Interior single coat," "Low organic solvent coating," "Prime coat," "Primer," "Printed Interior panels," "Sealer," "Stain," "Emulsified asphalt," "Open top vapor degreaser," "Solvent metal cleaning," "Specialty printing operations," "Capture system," "Carbon adsorption system," "Solvent," "Asphalt concrete," "Dry cleaning facility," and "Patch mix."

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted, Public Law 101-549, 104 Stat. 2399 (1992), codified at 45 U.S.C. 7401-7671q. Section 182(a)(2)(A) of the 1990 Clean Air Act codified the requirement that States correct deficient SIPs for ozone areas that had received a pre-amendment SIP Call, had retained a designation of nonattainment under the amended Act, and were classified as marginal or above. Under this provision, these areas were required to submit within six months of the date of classification (*i.e.*, by May 15, 1991) a revision which corrects (or adds) those requirements concerning RACT required under Section 172(b) of the 1977 Clean Air Act, as interpreted in EPA's pre-amendment guidance. Among other things, the pre-amendment guidance consists of the post-87 policy, (52 FR 45044) (November 24, 1987); the guidance document entitled "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations" (the "Blue Book", notice of availability of which was published in the **Federal Register** on May 25, 1988); and the existing CTGs. The SIP Call letter interpreted that guidance and indicated corrections necessary for Salt Lake County and Davis County (the "Salt Lake City nonattainment area"). The Salt Lake City nonattainment area retained its designation of nonattainment and was classified as moderate by operation of law under section 181(a) of the amended Act. Although portions of the Utah submittal preceded the date of enactment of the amended Act, the submittal may be reviewed for meeting the RACT fix-up requirement.

The State's May 4, 1990 submittal, as supplemented by the documentation submitted on January 11, 1991, although administratively complete, did not address all of the RACT fix-up requirements of section 182(a)(2)(A) of the 1990 Clean Air Act. In a letter dated May 9, 1991, from F. Burnell Cordner, Executive Secretary of the Utah Air Conservation Committee, to Douglas Skie, Chief, Air Programs Branch, EPA Region VIII, the State indicated that the final changes to Regulation R446-1-4.9, which would satisfy all of the RACT fix-up requirements, had been adopted on April 23, 1991. These changes became effective on June 15, 1991. However, due to administrative difficulties (obtaining an official copy of the revised rules), the State was unable to submit the complete RACT fix-up package by the statutory due date of May 15, 1991; this package was submitted to EPA on July 25, 1991.

The SIP submittal of July 25, 1991 addresses the requirement to adopt regulations applying RACT to all sources of VOCs covered by a CTG. The SIP submittal also contains a rule, R446-1-4.9D, which requires the utilization of RACT by sources that have the potential to emit greater than 100 tons per year of VOCs and that are not yet covered by a CTG (major non-CTG sources). This rule represents a commitment by the State to require RACT for major non-CTG sources; however, this rule does not satisfy the requirements for a non-CTG generic RACT rule, since it does not specify emission limits, is not replicable, and does not meet all criteria for federal enforceability.

Although Utah was required to submit a non-CTG RACT rule as part of its RACT fix-up process, at this time, neither EPA nor State staff are aware of any sources within the Salt Lake City nonattainment area to which this regulation would apply; *i.e.*, no major non-CTG sources. EPA review of the EPA Aerometric Information Retrieval System and the State's review of its preliminary emission inventory, which is being prepared as required under section 182(a)(1) of the amended Act, identify no major non-CTG sources. The State and EPA's Regional Office will continue to analyze the information produced for the emission inventory to determine if any major non-CTG sources exist. If such sources are found by either the State or by the EPA in the future, the State must expeditiously develop specific RACT rules for such sources upon their discovery, and must submit such rules to EPA for approval as specific SIP revisions.

EPA's approval of R446-1-4.9.D is for strengthening the SIP. EPA is not making a finding that the rule meets the requirements to be considered RACT. However, since EPA is making a negative finding that no major non-CTG sources are located in the Salt Lake City nonattainment area, the Agency believes that the State has met the RACT fix-up requirement for major non-CTG sources.

A detailed description of the specific revisions to regulation R446-1 is contained in the Technical Support Document for today's **Federal Register** final rule. Revisions were made to the following sections of Regulation R446-1-4.9:

4.9 *Non-Attainment Area Requirements—Ozone*

Sections 4.9.A through 4.9.E were added to address disposal of VOCs; requirements for EPA concurrence on alternative test methods, alternative methods of control, alternative compliance periods, alternative emission limits, or alternative monitoring schedules; recordkeeping and reporting requirements; RACT requirements for major non-CTG sources; "once-in, always-in" requirements; and allowance for exclusion of non-reactive VOCs.

4.9.1 *Petroleum Liquid Storage*

Sections 4.9.1.A through 4.9.1.C were modified to satisfy the requirements of the Clean Air Act, as interpreted in the applicable CTG's and EPA guidance.

4.9.2 *Gasoline Transfer/Storage*

Sections 4.9.2.A through 4.9.2.C were modified, and section 4.9.2.D was added, to satisfy the requirements of the Clean Air Act, as interpreted in the applicable CTG's and EPA guidance.

4.9.3 *Control of Hydrocarbon Emissions in Refineries*

Sections 4.9.3.A through 4.9.3.F were modified to satisfy the requirements of the Clean Air Act, as interpreted in the applicable CTG's and EPA guidance.

4.9.4 *Degreasing and Solvent Cleaning Operations*

Sections 4.9.4.A through 4.9.4.C were modified to satisfy the requirements of the Clean Air Act, as interpreted in the applicable CTG and EPA guidance.

4.9.5 *Cutback Asphalt*

Section 4.9.5 was revised as sections 4.9.5.A and 4.9.5.B, and modified to satisfy the requirements of the Clean Air Act, as interpreted in the applicable CTG and EPA guidance.

4.9.6 *Volatile Organic Compounds Used for Coating Paper, Fabric, Vinyl, Metal Furniture, Large Appliances, Magnet Wire, Flat Wood Paneling, Miscellaneous Metal Parts and Products, and Graphic Arts*

Sections 4.9.6.A through 4.9.6.K were modified, and section 4.9.6.L was added, to satisfy the requirements of the Clean

Air Act, as interpreted in the applicable CTG's and EPA guidance.

4.9.7 *Perchloroethylene Dry Cleaning Plants*

Section 4.9.7 previously regulated synthesized pharmaceutical product manufacturing. This portion of Regulation R446-1-4.9 was removed in conjunction with the negative declaration for this source category, and replaced with a revised version of the previous section 4.9.8 for the category of perchloroethylene dry cleaning plants. The previous sections 4.9.8.A through 4.9.8.E were modified and rewritten as 4.9.7.A through 4.9.7.E, and a new section 4.9.7.F was added, to satisfy the requirements of the Clean Air Act, as interpreted in the applicable CTG and EPA guidance for perchloroethylene dry cleaning plants.

4.9.8 *Compliance Schedule*

Section 4.9.8 previously regulated perchloroethylene dry cleaning plants. This portion of the regulation has been revised to indicate that the compliance date for Regulation R446-1-4.9 is within 180 days after the effective date of the regulation (the effective date of the final changes to Regulation R446-1-4.9 was June 15, 1991). The previous section 4.9.9 addressed the compliance schedule; section 4.9.9 was removed for the SIP submittals, which are the subject of today's action.

Negative Declarations

The State's submittal of July 25, 1991 contained a letter dated July 25, 1991, from Norman H. Bangerter, Governor, State of Utah, to James Scherer, Regional Administrator, EPA Region VIII, which indicated that the State had not adopted regulations for the following source categories because, after thorough examination of the emissions inventory, it was determined that there were no affected sources located within the ozone nonattainment area: large petroleum dry cleaners, manufacturers of high density polyethylene, polypropylene, polystyrene resins, manufacturers of synthesized pharmaceutical products, manufacturers of pneumatic rubber tires, natural gas/gas processing plants, and synthetic organic chemical manufacturing industries (SOCMI) with fugitive emissions and/or air oxidation processes.

The "negative declaration" of July 25, 1991 inadvertently failed to address three other CTG source categories for which the State had not adopted regulations; in a letter dated September 5, 1991, from F. Burnell Cordner, Executive Secretary, Utah Air Quality Board, to James Scherer, Regional Administrator, EPA Region VIII, the State provided a negative declaration for the following source categories: surface coating of cans, surface coating of metal coils, and surface coating of automobiles and light duty trucks.

Testing of Capture Efficiency

On January 21, 1992, EPA notified the State that, prior to finalizing today's action, it was necessary to document the State's position with regard to capture efficiency (CE) determination. During earlier reviews of the State's VOC regulations, EPA Region VIII had indicated that, because EPA had not issued final, generally-applicable capture efficiency test methods, an acceptable State approach to capture efficiency was a commitment to develop test methods consistent with the most recent EPA guidance on CE testing on a case-by-case basis as needed, and a commitment to adopt test methods after EPA issued final CE test methods. The capture efficiency provision adopted by the State in Regulation R446-1-4.9.6.K does address the requirement that testing for capture efficiency be performed on a case-by-case basis, and that this testing be consistent with EPA guidance. In a letter dated January 30, 1992, from F. Burnell Cordner, Executive Secretary, Utah Air Quality Board, to Doug Skie, Chief, Air Programs Branch, EPA Region VIII, the State indicated that, until final capture efficiency test methods are officially promulgated by EPA, the State will commit to apply the capture efficiency protocol recommended by EPA (which is currently the protocol developed for the Chicago Federal Implementation Plan, which is contained within 40 CFR 52.741(a)(4)(iii) and appendix B), as modified by any forthcoming guidance from EPA. In the letter dated January 30, 1992, the State committed to adopt final capture efficiency test methods, when they are officially promulgated by EPA.

Therefore, EPA believes that the State of Utah has adopted the minimum Ozone SIP RACT requirements regarded as necessary for a moderate ozone nonattainment area to satisfy the statutory requirements of section 182(a)(2)(A) of the 1990 Clean Air Act.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 25, 1992 unless, by July 27, 1992, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 25, 1992.

Final Action

EPA is today approving revisions to Utah's SIP submitted by the Governor on May 4, 1990 and July 25, 1991, which modified the State's regulations for stationary sources of volatile organic compounds (VOCs), contained within Regulation R446-1-4.9 of the Utah Air Conservation Regulations, "Emission Standards. Non-Attainment Area Requirements—Ozone," and the definitions applicable to the VOC regulations, contained within Regulation R446-1-1, "Foreward and Definitions." The May 4, 1990 submittal also includes revisions to the State's new source review regulations, contained within R446-1-3, "Control of Installations," and revisions to the definitions contained within R446-1-1 which are not specifically related to the VOC regulations. At this time, EPA is acting only on the revisions to the definitions and VOC regulations for ozone nonattainment areas, contained within R446-1-1 and R446-1-4.9. The revisions to R446-1-3, and the revisions to the definitions in R446-1-1 not specifically related to the VOC regulations, were previously approved by EPA in the Federal Register on June 27, 1991 (56 FR 29436).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and

Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

This SIP submittal contains a rule, R446-1-4.9.D, which requires the utilization of RACT by sources that have the potential to emit greater than 100 tons per year of VOCs and that are not yet covered by a CTG (major non-CTG sources). At this time, neither EPA nor State staff are aware of any sources within the Salt Lake City nonattainment area to which this regulation would apply; *i.e.*, no major non-CTG sources. If such sources are found by either the State or by the EPA in the future, the State must expeditiously develop specific RACT rules for such sources upon their discovery, and must submit such rules to EPA for approval as specific SIP revisions.

In addition, although portions of this submittal preceded the date of enactment of the Clean Air Act Amendments of 1990, it serves to fulfill the "RACT fix-up" requirement of section 182(a)(2)(A) of the amended Act for the Salt Lake City nonattainment area (Salt Lake County and Davis County). Although EPA has not determined that Utah's non-CTG rule meets the requirements to be considered RACT, EPA finds that Utah has met its RACT fix-up obligation based on EPA's determination that no major non-CTG sources are located in the Salt Lake City nonattainment area.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 21, 1992.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR part 52, subpart TT, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart TT—Utah

2. Section 52.2320 is amended by adding (c)(24) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(24) On May 4, 1990, and July 25, 1991, the Governor of Utah submitted revisions to the plan. The revisions include amendments to the ozone nonattainment area regulations for stationary sources of volatile organic compounds (VOCs), contained within Regulation R446-1-4.9 of the Utah Air Conservation Regulations, "Emission Standards. Non-Attainment Area Requirements—Ozone," and the definitions applicable to the VOC regulations, contained within Regulation R446-1-1, "Foreward and Definitions." The amendments were made to conform Regulations R446-1-1 and R446-1-4.9 to statutory requirements for application of reasonably available control technology (RACT) to stationary sources of VOC's, as required by section 182(a)(2)(A) of the 1990 Clean Air Act, and to improve the clarity and enforceability of the regulations.

(i) *Incorporation by reference.* (A) Revisions to the following Utah Air Conservation Regulations, Section R446-1-1, Foreward and Definitions, effective January 1, 1991: R446-1-1.10, 1.16, 1.40, 1.60, 1.109, 1.126, 1.140, 1.150, 1.151, 1.159, 1.160, 1.161, 1.162, 1.163, 1.164, 1.165, 1.166, 1.167, 1.168, 1.169, 1.170, 1.171, 1.172, 1.173, 1.174, 1.175, 1.176, 1.177, 1.178, 1.180, 1.182, 1.183, 1.184.

(B) Revisions to the following rules of R446-1-4.9, *Emission Standards. Non-Attainment Area Requirements—Ozone,* effective June 15, 1991: 4.9.A through 4.9.E were added (disposal of VOCs; requirements for EPA concurrence on alternative test methods, alternative methods of control, alternative compliance periods, alternative emission limits, or alternative monitoring schedules; recordkeeping and reporting requirements; RACT requirements for major non-CTG sources; "once-in, always-in" requirements; and allowance for exclusion of non-reactive VOC's); revisions to 4.9.1 (Petroleum Liquid Storage), 4.9.2 (Gasoline Transfer/Storage), 4.9.3 (Control of Hydrocarbon Emissions in Refineries), 4.9.4 (Degreasing and Solvent Cleaning Operations), 4.9.5 (Cutback Asphalt), 4.9.6 (Volatile Organic Compounds Used for Coating Paper, Fabric, Vinyl, Metal Furniture, Large Appliances, Magnet Wire, Flat Wood Paneling, Miscellaneous Metal Parts and Products and Graphic Arts), 4.9.7 (Perchlorethylene Dry Cleaning Plants), 4.9.8 (Compliance Schedule); 4.9.9 (Compliance Schedule) was deleted.

(ii) *Additional material.* (A) May 9, 1991, letter from F. Burnell Cordner, Executive Secretary, Utah Air Conservation Committee, to Douglas Skie, EPA. This letter provided final changes to R446-1-4.9, indicated that these changes would become effective on June 15, 1991, and indicated that the State would submit the Ozone SIP revision package to EPA after the changes become effective.

(B) July 25, 1991, letter from Norman H. Bangerter, Governor, State of Utah, to James Scherer, EPA. Official SIP submittal, transmitting revised Regulation R446-1-4.9, and other administrative materials. This letter provided a negative declaration for seven CTG source categories: large petroleum dry cleaners, manufacturers of high density polyethylene, polypropylene, polystyrene resins, manufacturers of synthesized pharmaceutical products, manufacturers of pneumatic rubber tires, natural gas/gas processing plants, and synthetic organic chemical manufacturing industries (SOCMI) with fugitive emissions and/or air oxidation processes.

(C) September 5, 1991, letter from F. Burnell Cordner, Executive Secretary, Utah Air Quality Board, to James Scherer, EPA. This letter provided a negative declaration for three CTG source categories: surface coating of cans, surface coating of metal coils, and surface coating of automobiles and light duty trucks.

(D) January 30, 1992, letter from F. Burnell Cordner, Executive Secretary, Utah Air Quality Board, to Doug Skie, EPA. This letter contained the State's commitment to conduct capture efficiency testing using the most recent EPA capture efficiency protocols, and the commitment to adopt federal capture efficiency test methods after they are officially promulgated by EPA.

[FR Doc. 92-15027 Filed 6-25-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[TN-091-2-5458; FRL-4141-2]

Approval of Tennessee State Implementation Plan for Nashville and Davidson County; Proposed Amendments Regulation for Control of Volatile Organic Compounds

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The EPA is today approving the amendments to the Nashville/Davidson County portion of Tennessee's State Implementation Plan (SIP) as meeting the requirements of section 182(a)(2)(A) of the Clean Air Act, as amended. On July 3, 1991, the State of Tennessee through the Department of Environment and Conservation submitted amendments to the regulation of Volatile Organic Compounds (VOC) on behalf of the Nashville/Davidson County Metropolitan Health Department (MHD). Subsequent amendments were submitted on October 4, 1991 and January 2, 1992. These amendments being approved today correct deficiencies within the Nashville/Davidson County portion of the Tennessee SIP, and are contained within the Nashville/Davidson County MHD Division of Air Pollution Control's Regulation No. 7. These amendments also delete unnecessary cross references, alphabetize definitions and make grammatical corrections. Additionally, this rule corrects the previous rule approved on March 11, 1991, identifying section 7-22, "Special Provisions for New Volatile Organic Compound Sources and Modifications," as a reserved section. A brief discussion about each amendment and the correction is contained in the **"SUPPLEMENTARY INFORMATION"** section of this rule.

DATES: This action will be effective August 25, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37243-1531

Bureau of Environmental Health Services, Nashville-Davidson County, Metropolitan Health Department, 311 - 23rd Avenue, North, Nashville, Tennessee 37203

FOR FURTHER INFORMATION CONTACT: Andrew Fischer of the EPA Region IV AIR Programs Branch at (404) 347-2864 or FTS 257-2864 and at the above address.

SUPPLEMENTARY INFORMATION: On May 26, 1988, EPA notified the Governor of Tennessee that areas of the State had failed to attain the National Ambient Air Quality Standards (NAAQS) for ozone. Since the Clean Air Act attainment date of December 31, 1987, has passed, the Tennessee SIP was declared substantially inadequate to achieve the NAAQS for ozone. EPA requested that Tennessee respond to the SIP call in two phases. The response for Phase I was due approximately one year following the issuance of final EPA policy program requirements for ozone and CO nonattainment areas and/or reauthorization of the Clean Air Act (CAA). One of the Phase I requirements called for correction of EPA identified deviations in the volatile organic compound (VOC) regulations within the Nashville/Davidson County portion of the Tennessee SIP. Most of the corrections were submitted on February 16, 1990, and approved on March 11, 1991 (56 FR 10171).

For "SIP Call" corrections that were not SIP-approved prior to the amendment of the Clean Air Act on November 15, 1990 (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q), section 182(a)(2)(A) required that those corrections be submitted by May 15, 1991. Under Section 182(a)(2)(A), areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up in pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections are necessary for specific nonattainment areas. The Nashville/Davidson County nonattainment area is classified as moderate and is, therefore, subject to the RACT fix-up requirement.

On July 3, 1991, the Nashville/Davidson County MHD, through the Tennessee Department of Conservation, submitted amendments to Nashville/Davidson County's regulation No. 7, "Regulation for Control of Volatile Organic Compounds." These amendments were adopted by the Metropolitan Board of Health on May 14, 1991. On October 4, 1991, and January 2, 1992, Nashville/Davidson County MHD submitted additional amendments that corrected deficiencies in the Nashville/Davidson County VOC regulations. Tennessee requested that these amendments, which respond to the RACT fix-up requirement of section 182(a)(2)(A), be adopted as part of the Federally approved SIP. EPA is today approving the following amendments:

(1) In Section 7-3, "Petition for Alternative Controls," amend sentence 5 by deleting "Stated" and replacing with "States."

(2) In Section 7-13, "Gasoline Dispensing Facility, Stage 1," delete paragraph (g), "Determination of vapor tight shall be by the method of Section 7-13, Paragraph (e)(1)(iii)," in its entirety, and replace with: "(g) Determination of vapor-tight shall be (40 CFR part 60) Appendix A, Reference Method 27."

(3) In Section 7-24, "Test Methods and Procedures," amend paragraphs (e)(1) and (e)(3) by deleting "7-13" and replacing with "7-12."

This rule also corrects an error in 56 FR 10171, March 11, 1991, in which Section 7-22, "Special Provisions for New Volatile Organic Compound Sources and Modifications," was listed as revised. Section 7-22 has been adopted as a reserved section by the Nashville/Davidson County MHD on May 14, 1991, and submitted by the State of Tennessee as part of the Nashville/Davidson County VOC regulations on July 3, 1991.

In Section 7-25, "Recordkeeping and Reporting Requirements:" Nashville/Davidson County committed in a letter dated May 7, 1990, to include a separate provision that requires records to be maintained for at least two years. Nashville/Davidson County has agreed to submit the additional provision in a subsequent submittal. This provision is scheduled for public hearing on July 15, 1992, at the Nashville/Davidson County MHD and will be submitted to EPA for approval shortly after that date.

[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987) The Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to appendix D of November 24, 1987 Federal Register Notice" (of which notice of availability was published in the Federal Register on May 25, 1988); and the existing CTGs.

These amendments correct all of the deficiencies identified in the Nashville/Davidson County portion of the Tennessee SIP except the recordkeeping requirements. This remaining deficiency will be acted upon in a separate notice. Therefore, the requirements of section 182(a)(2)(A) for Reasonably Available Control Technology have been met for the Nashville/Davidson County portion of the Tennessee SIP.

Final Action

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective August 25, 1992. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule of action. This action may not be challenged later in proceedings to enforce its requirements [See 307(b)(2)].

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: May 21, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(105) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(105) Amendments to the Nashville/Davidson County portion of Tennessee's SIP, Regulation No. 7—Regulation for Control of Volatile Organic Compounds submitted on July 3, 1991, October 4, 1991, and January 2, 1992.

(i) *Incorporation by reference.*

(A) Regulation No. 7—Regulation for the Control of Volatile Organic Compounds, effective December 10, 1991.

(ii) *Other material.*

(A) Letter of July 3, 1991, from the Metropolitan Health Department for Nashville/Davidson County.

(B) Letter of October 4, 1991, from the Metropolitan Health Department for Nashville/Davidson County.

(C) Letter of January 2, 1991, from the Metropolitan Health Department for Nashville/Davidson County.

3. Section 52.2225 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 52.2225 VOC rule deficiency correction.

(a) Revisions to the sections 7–3, 7–13, and 7–24 of the Tennessee regulations are approved. These amendments are in response to the Clean Air Act section 182(a)(2)(A) requirement to submit RACT rules correcting deficiencies in the existing SIP in accordance with EPA's pre-amendment guidance. These deficiencies were first noted in a letter from Greer Tidwell, the EPA Region IV Administrator, to Governor McWherter on May 26, 1988, and clarified in a letter dated June 10, 1988, from Winston Smith, EPA Region IV Air Division Director, to Paul Bontrager, Director of the Air Pollution Control Division of the Metropolitan Health Department for Nashville/Davidson County, and were further identified in EPA guidance including the Blue Book and the proposed Post–87 policy. The following deficiency in the Tennessee Regulations, however, has not been corrected.

(1) Section 7–25, "Recordkeeping and Reporting Requirements" Nashville/Davidson County committed in a letter dated May 7, 1991, to include a separate provision that requires records to be maintained for at least two years. This additional provision, which is scheduled for a July 15, 1992, public hearing, will be submitted to EPA shortly after that date and will be acted upon separately.

* * * * *

[FR Doc. 92–14685 Filed 6–25–92; 8:45 am]

BILLING CODE 6560–50–M

[EPA/OSW–FR–92–4146–6]

40 CFR Parts 257 and 258

Solid Waste Disposal Facility Criteria

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule; corrections.

SUMMARY: EPA is correcting errors in the preamble and rule language for the Solid Waste Disposal Facility Criteria for municipal solid waste landfills that appeared in the **Federal Register** on October 9, 1991 (56 FR 50978). This correction notice will resolve the minor misunderstandings that the regulated community has called to the Agency's attention. The Agency also is clarifying its interpretation of the final cover requirements for the Criteria.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Cassidy at (202) 260–4682 or Mr. Allen Geswein at (202) 260–4687.

SUPPLEMENTARY INFORMATION: On October 9, 1991, EPA promulgated a rule under Subtitle D of the Resource Conservation and Recovery Act and section 405 of the Clean Water Act pertaining to the disposal of solid waste and sewage sludge in municipal solid waste landfills (MSWLFs) (56 FR 50978 (October 9, 1991)). The preamble and rule language contained minor editorial and typographical errors that EPA is correcting in this notice. The Agency also is clarifying its interpretation of that part of the MSWLF rule concerning the design of a final cover under § 258.60(a)).

The MSWLF rule requires that owners/operators "must install a final cover system that is designed to minimize infiltration and erosion" (40 CFR 258.60(a). As specified in the rule, the final cover system must be comprised of an infiltration layer that is "a minimum of 18 inches of earthen material that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less" and an erosion layer that must consist of a "minimum of 6 inches of earthen material that is capable of sustaining native plant growth" (40 CFR 258.60 (a)(1) and (2)).

EPA established the requirement for a final cover infiltration layer, which includes a permeability standard, to prevent the "bathtub effect" from occurring. The "bathtub effect" occurs when a landfill fills up with liquids because the infiltration layer of the final cover is more permeable than the bottom liner system or natural subsoils present. Such an effect greatly increases the potential for the formation and migration of leachate (56 FR 50978, 51095 (October 9, 1991)).

Some members of the public have questioned the applicability of the permeability standard contained in § 258.6(a)(1) to a MSWLF that has a synthetic membrane on the bottom of the landfill. They have interpreted § 258.60(a)(1) to suggest that only 18 inches of earthen material is required as an infiltration layer even when the landfill has a synthetic membrane on the bottom.

Such an interpretation of the permeability standard contained in § 258.60(a)(1) is incorrect. EPA intended, and has always interpreted, the language in this section to be a performance standard that requires the permeability of the final cover be less than or equal to that of the bottom liner system or natural subsoils present, whichever is less. To achieve this, it requires as a minimum the use of 18 inches of earthen material. While this standard does not explicitly require the use of a synthetic membrane in the final cover, the Agency anticipates that if a MSWLF has a synthetic membrane in the bottom of the unit, then the infiltration layer in the final cover will, in all likelihood given today's technologies, include a synthetic membrane as part of the final cover. This is so because it generally is not currently possible to have an earthen material infiltration layer as part of the final cover that has a permeability of less than or equal to the permeability of a synthetic membrane. The Agency established this requirement because if a MSWLF were constructed with a bottom synthetic membrane, but covered only with 18 inches of earthen material as the infiltration layer, the bathtub effect would likely occur, and the Agency's overriding reason for establishing the permeability standard in § 258.60(a)(1) would be negated.

If a synthetic membrane needs to be included in the final cover, the Agency recommends that a minimum thickness of 20 mils be used. (In the case of high density polyethylene (HDPE), a minimum 60 mils is necessary to ensure proper seaming of the synthetic membrane.) The synthetic portion of the final cover does not have to be the same type or thickness as the membrane used in the bottom of the facility since the performance standard is concerned with the permeability standard.

This interpretation is not new. It is clear from reviewing the Regulatory Impact Analysis (RIA) and the preamble to the final rule (see 56 FR 50987) that the Agency had always interpreted this rule language to mean if there was a synthetic membrane in the bottom of a MSWLF, a synthetic membrane would, given today's technologies, be necessary as part of the final cover. The Agency has recently issued an Environmental Fact Sheet (EPA/530-SW-91-084, March 1992) that further highlights this interpretation.

The following are illustrations of the correct interpretation of this rule language. These illustrations present typical designs of MSWLFs and the corresponding correct final cover as required under § 258.60(a).

MSWLF design	Minimum final cover
No liner (in-situ soils)	Minimum infiltration layer of 18-inches of 1×10^{-5} cm/sec earthen material overlain by a minimum 6-inch erosion layer
Recompacted 1×10^{-6} cm/sec. soil liner.	Minimum infiltration layer of 18-inches of 1×10^{-6} cm/sec earthen material overlain by a minimum 6-inch erosion layer
Composite liner (60 mil synthetic over 3 foot recompacted 1×10^{-7} soil liner).	Minimum infiltration layer of 18-inches of 1×10^{-5} cm/sec earthen material overlain by a synthetic liner (Agency recommends minimum 20 mils; if HDPE 60 mils) overlain by minimum 6-inch erosion layer.

To correct any misunderstanding regarding the permeability standard of the final cover design, the Agency is today revising the language of § 258.60(a) to provide further clarification. This revision is intended to eliminate any confusion regarding the correct interpretation of this rule language. This clarifying language does not remove any of the flexibility in § 258.60(b) regarding alternative final cover designs approved by the Director of a State/Tribal program that has been deemed adequate by EPA.

The other technical corrections being made today involve editorial changes, typographical changes, and minor corrections to dates, and are necessary to make the Code of Federal Regulations accurate.

Dated: June 15, 1992.

Don R. Clay,

Assistant Administrator.

The following corrections are made in FRL-4011-9, the Solid Waste Disposal Facility Criteria; final rule published in the **Federal Register** on October 9, 1991 (56 FR 50978):

1. On page 51001—Figure 1, third rectangle in the right side of the flow chart, change "You must comply only with the final cover requirements of § 258.60(a)(2)" to read "You must comply only with the final cover requirements of § 258.60(a)".

2. On page 51010—Figure 5, second decision diamond on the left side of the flow chart, change "Are All Appendix II Constituents Below Background" to read "Are All Appendix II Constituents At Or Below Background".

3. On page 51012, third column, last paragraph, fourth sentence, change "Figure 1 indicates, for example, that if your MSWLF will not receive waste after the effective date, only the final cover requirements of § 258.60(a)(2) will apply" to read "Figure 1 indicates, for example, that if your MSWLF will not receive waste after the effective date, only the final cover requirements of § 258.60(a) will apply".

4. On page 51018, first column, line 10 of the definition of "Municipal solid waste landfill unit," revise "solid waste, nonhazardous sludge, small" to read "solid waste, nonhazardous sludge, conditionally exempt small".

PART 258—[AMENDED]

§ 258.14 [Amended]

5. On page 51019, second column, lines 6 and 7 of § 258.14(b)(1), revise the phrase "paragraph (g) of this section" to read "(g)".

§ 258.25 [Amended]

6. On page 51021, first column, revise the title "§ 258.25 Run-on/run-off control systems" to read "§ 258.26 Run-on/run-off control systems".

§ 258.50 [Amended]

7. On page 51022, second column, § 258.50 Applicability, last line of paragraph (c)(1), revise "by October 9, 1996;" to read "by October 9, 1994;".

§ 258.60 [Amended]

8. On page 51028, second column, § 258.60 Closure criteria paragraph (a) is revised to read as follows:

(a) Owners or operators of all MSWLF units must install a final cover system that is designed to minimize infiltration and erosion. The final cover system must be designed and constructed to:

(1) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less, and

(2) Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum 18-inches of earthen material, and

(3) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum 6-inches of earthen material that is capable of sustaining native plant growth.

9. On page 51028, third column, line 15, paragraph (b)(1) revise "in paragraph (a)(1) of this section, and" to read "paragraphs (a)(1) and (a)(2) of this section, and".

10. On page 51028, third column, § 258.60 Closure criteria, paragraph (b)(2) revise "specified in paragraph (a)(2) of this section." to read "specified in paragraph (a)(3) of this section."

11. On page 51028, third column, § 258.60 Closure criteria, paragraph (c), revise "all MSWLF units at any point during its active life" to read "all MSWLF units at any point during their active life".

§ 258.61 [Amended]

12. On page 51029, second column, § 258.61 Post-closure care requirements, paragraph (a)(2), revise "§ 258.40. The Director of an approved" to read "§ 258.40, if applicable. The Director of an approved".

13. On page 51029, second and third columns, § 258.61 Post closure care requirements, paragraph (d), revise "October 9, 1991," to read "October 9, 1993,".

§ 258.71 [Amended]

14. On page 51029, third column, § 258.71 Financial assurance for closure, lines 4 and 5 of paragraph (a), revise "the largest area of all MSWLF unit ever" to read "the largest area of all MSWLF units ever".

[FR Doc 92-15137 Filed 6-25-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 268

[FRL-4146-5]

Hazardous Waste Management System: Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to approve storage of lead-bearing hazardous materials case-by-case capacity variance.

SUMMARY: In the final rule establishing land disposal restrictions for Third Third hazardous wastes (55 FR 22520), EPA granted a two-year national capacity variance to allow the continued storage of lead-bearing hazardous materials in waste piles (considered a form of land disposal) prior to smelting. The variance has now expired and these untreated wastes became prohibited from land disposal on May 8, 1992. At the time it granted the national capacity variance, the Agency indicated its intent to address the concerns raised by the secondary lead smelting industry to allow the continued storage of these materials in piles prior to lead recovery. While the Agency has published a proposal that would address this problem, the Agency has not yet finalized such a rule. The Agency believes that the continued storage of these lead-bearing hazardous materials in piles at smelting facilities prior to recovery is preferable to any alternative management available and consistent with the Agency's goal of waste minimization. Although the Agency is developing a solution that would allow the continued management of these wastes prior to lead recovery, until final standards are issued, it would be infeasible as a practical matter for regulated parties to design and construct the capacity to store the materials properly. This practical infeasibility results in an industry-wide, short term unavailability of non-land based storage capacity preceding treatment.

Therefore, EPA is taking regulatory action to approve an extension of the LDR effective date applicable to owners and operators of secondary lead smelters who are engaged in the reclamation of lead-bearing hazardous materials. This extension applies only to lead-bearing hazardous wastes placed in a staging area immediately prior to being introduced into a lead smelter. EPA believes that this extension to the LDR effective date is appropriate and consistent with the Agency's overall objective of encouraging recycling. No further applications will be required at this time from persons granted the extension of this action. However, EPA is requiring such persons to maintain certain recordkeeping, and to meet certain other requirements to qualify for the extension.

EFFECTIVE DATE: This notice becomes effective on June 5, 1992.

ADDRESSES: The official record for this notice is identified as Docket Number F-92-CD2P-FFFFF, and is located in the EPA RCRA Docket, room 2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 toll-free or (703) 920-9810 locally. For information on specific aspects of this notice, contact Nick Vizzone, Office of Solid Waste, Capacity Programs Branch (OS-321W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 308-8477.

SUPPLEMENTARY INFORMATION:

Outline

I. Background
- A. History
- B. Proposed Containment Building Standards

II. Justification for the Case-by-Case Extension
- A. Demonstration of Part 40 CFR 268.5
- B. Conclusion

III. Requirements for the Case-by-Case Extension

IV. Conditions of Further Extension

I. Background

A. History

In 1984, Congress enacted the Hazardous and Solid Waste Amendments (HSWA), which amended the Resource Conservation and Recovery Act (RCRA). Among other things, HSWA required EPA to develop regulations that would impose, on a phased schedule, restrictions on the land disposal of hazardous wastes. In particular, sections 3004 (d) through (g) prohibit the land disposal of certain hazardous wastes by specified dates in order to protect human health and the environment. In addition, section 3004(m) requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to

human health and the environment are minimized." Wastes that meet the treatment standards established by EPA are not prohibited and may be land disposed.

In developing such a broad program, Congress recognized that adequate capacity which is protective of human health and the environment might not be available by the applicable statutory effective dates. Therefore, section 3004(h)(2) authorized EPA to grant a national capacity variance (based on the earliest date that such capacity will be available but not to exceed two years) from the effective date which would otherwise apply to specific hazardous wastes. In addition, under section 3004(h)(3), EPA can grant an additional capacity extension of the statutory deadline on a case-by-case basis for up to one year beyond the applicable deadline, renewable once for an additional year.

On June 1, 1990, EPA published a final rule (55 FR 22520) establishing land disposal restrictions (LDRs) for the Third Third group of scheduled wastes. Among other things, EPA set thermal recovery (as a method of treatment) as the treatment standard for D008 lead acid batteries. The Agency was aware that in most cases, lead-bearing hazardous materials are stored in waste or staging piles prior to the actual recovery operation. Since such piles are a form of land disposal and thus are subject to the statutory prohibitions, the Agency was concerned that without granting some relief, the recovery of lead-acid batteries would stop while the staging piles were being replaced by another manner of storage, the anomalous result being less treatment of lead-acid batteries. As a result, the Agency granted a two-year national capacity variance to allow the storage of lead-bearing hazardous materials prior to recovery (see 55 FR 22637, Friday, June 1, 1990). In that same **Federal Register** notice, the Agency indicated that it was reconsidering whether certain forms of battery parts storage prior to recovery truly warranted a designation of land disposal within the meaning of RCRA section 3004(k). To this end, the Agency proposed on January 9, 1992, to define a new management unit—referred to as a containment building—that would allow the storage of D008 lead-bearing hazardous materials at secondary smelters without such a unit being defined as land disposal. The Agency had hoped to promulgate this rule by May 8, 1992; however, the final rule has not yet been issued.

B. Proposed Containment Building Standards

Secondary lead smelters recover lead from used lead-acid batteries by smelting the lead-bearing plates and groups from the battery. This process is the required treatment for lead acid batteries under the land disposal restrictions. However, before smelting can occur, the lead parts must be accumulated at the smelting facility, and the manner in which such accumulation is done could itself constitute land disposal thus violating the ban on land disposal prior to treatment. See 55 FR at 22637.

On January 9, 1992, EPA proposed a rule allowing the use of containment buildings for the storage or treatment of any hazardous wastes that are not liquid in form. The proposed rule would allow generators to accumulate wastes in such buildings for up to 90 days, as is currently allowed for tanks and containers. The containment building rule would include existing and new interim status units that treat or store waste at any RCRA facility, and may encompass part of or all of a building. Accumulations of lead-bearing hazardous wastes in this manner would then be permissible without the parts first meeting a treatment standard.

The proposed rule contained technical requirements for containment buildings, primarily that they have structurally self supporting walls, floors, and a roof for weather protection. The rule also proposed certain other requirements that would have to be met for the unit to be considered a containment building. EPA is now considering public comment on the proposal and anticipates promulgating a final rule by June 30, 1992.[1]

II. Justification for the Case-by-Case Extension

Pending final promulgation of standards for containment buildings, the immediate application of the land disposal restrictions to lead smelters' staging areas would virtually prohibit the accumulation of lead for smelting. Battery plates and groups are bulky, solid objects not readily amenable to tank or container storage. Thus, the short term quandary noted in the Third Third rule is presented whereby a needed mode of storage preceding best treatment may be invalidated because it is a type of land disposal, thus potentially impeding treatment as well. Although EPA is devising a form of storage unit for these wastes that is not classified as land disposal, the absence of final containment building standards has created a uniform storage capacity shortage in the industry, since the industry has been understandably reluctant to make significant expenditures to construct these units without knowing the standards they have to meet (although, as noted below, at least some industry members have started the process of building construction). EPA notes further that allowing the extension serves the ultimate statutory purpose by facilitating BDAT treatment of the lead plates and groups. As stated previously, this extension applies only to those materials stored in a staging area immediately prior to introduction into a lead smelter.

A. Demonstration of Part 40 CFR 268.5

Part 40 CFR 268.5 specifies seven demonstrations that must be made for a case-by-case extension of the LDR effective date to be approved. Through the various trade associations, EPA contacted secondary lead smelters and gave them an opportunity to comment on the need for an extension. From the comments and information available to it, EPA has made an evaluation of these seven required demonstrations as follows:

Demonstration 40 CFR 268.5(a)(1): The applicant must demonstrate that he has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established under subpart C of this part.

In the Third Third final rule, EPA promulgated thermal recovery as the method of treatment for lead-acid batteries. Therefore, in determining whether the applicant has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities, the only type of treatment technology that was considered was reclamation units. Based on the information available to the Agency, there appears to be sufficient reclamation capacity to treat these wastes. However, most of the secondary lead smelters who process these lead-bearing hazardous materials must store these materials in waste or staging piles before they are introduced into the smelters. This type of storage, as already indicated, is land disposal and thus would not be allowed after May 8,

[1] It should also be noted that EPA's rules classify the lead-bearing hazardous materials as solid and hazardous wastes, and hence subject to RCRA Subtitle C regulation (including land disposal prohibitions). See (57 FR 260) (Jan. 9, 1992). EPA intends to address comments received in connection with the extension questioning the Agency's jurisdiction over these materials in the rule finalizing the January 9, 1992 proposed rule.

1992. Thus, while there may be sufficient recovery capacity to treat this waste, the management of this waste prior to such treatment would itself violate the LDR treatment standards. Comments from the lead smelters, which have been filed in the docket for this rule, indicate that the smelters are attempting to provide appropriate storage capacity pending treatment, but are hampered by not knowing the final containment building standards. Therefore, the Agency is satisfied that lead smelters have made good-faith efforts to obtain appropriate capacity.

One commenter contended that because secondary lead smelters have been on notice for several years that EPA interprets the LDRs to apply to the staging of furnace feed materials, a good faith effort to manage their wastes in compliance with the LDRs could not be demonstrated. EPA disagrees. First, until the containment building standards are finalized, smelters will necessarily find it difficult to comply with the LDRs and remain in operation. In addition, as noted elsewhere in this notice, EPA believes that smelters could reasonably choose to defer such construction until the rules are final, so failure to construct a building in anticipation of the final rule does not indicate a lack of good-faith effort. Finally, EPA notes that the information obtained from lead smelters indicates that they are making significant effort to prepare for construction once the final rule is issued. For example, several of the lead smelters are in the process of designing containment buildings based on the standards set forth in the proposed rule. However, final design cannot be completed until the final containment building standards are promulgated. Several of the lead smelters have also begun preliminary work on the required Part B permit amendments for their facilities to incorporate the modifications to their operations.

The commenter also suggested that EPA's guidance and proposed rule provided "ample specificity" as to what would be required of lead smelters. In EPA's view, however, smelters did not act in bad faith in waiting to see whether the final rule might change some aspects of the required design.

Demonstration 40 CFR 268.5(a)(2): The applicant has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g., recycling), or disposal capacity that meets the treatment standards specified in subpart D or, where treatment standards have not been specified, such capacity is protective of human health and the environment.

The ability of the industry to design and construct storage capacity has been limited by the fact that the containment building standards have not yet been promulgated. Until the Agency promulgates the final standards for containment buildings, it will be impossible for secondary lead smelters to design and construct the necessary facilities, or enter into contractual commitments to do so, with assurance that the design will conform to the final regulations.

EPA also notes that it anticipates no significant difficulty for industry in constructing the needed storage capacity, once containment building standards are promulgated. In particular, through the Association of Battery Recyclers, the Battery Council International, and the Lead Industries Association, EPA requested a letter from each lead smelting facility stating that it will comply with the proposed provisions of the containment building standards and indicating the time required to do so. In response to that request, EPA received nine letters and eight case-by-case applications from secondary lead smelters. Each of the respondents stated that it will construct or is now constructing a containment building to store its lead-bearing hazardous materials prior to recovery, but that it would need an extension to complete the construction. Hence, there is affirmative assurance that the needed capacity will ultimately be provided, but the lack of promulgated standards is an impediment to obtaining contracts.

Nevertheless, the Agency believes that it is important for secondary lead smelters to enter into such contracts as soon as possible. Therefore, EPA is requiring that any secondary lead smelter participating in this extension must enter into such a contract and submit it to the Agency within eight months after the promulgation of the containment building standards.[2] All documentation regarding the binding contractual commitment must be accompanied by a certification as required under 40 CFR 268.5(b). If such a contract is not entered into by this time, the case-by-case extension will automatically expire for that facility, unless the secondary lead smelter has been granted a further individual extension based on a showing that entering into such a contract was impossible for reasons beyond the smelter's control. Such an extension can only be granted after notice and opportunity for comment. For smelters that have entered into a contract by March 1, 1993, the present extension will be effective until May 8, 1993.

Demonstration 40 CFR 268.5(a)(3): Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date.

For reasons discussed above, it is impossible for secondary lead smelters to provide storage capacity for their wastes with assurance that it will comply with regulatory requirements, before promulgation of the containment building standards. For example, the commenters stated correctly that the secondary containment and leak detection system and the controls for fugitive dust emissions could not be designed with certainty prior to promulgation of the containment building rule. Accordingly, EPA believes that the current lack of storage capacity is beyond the control of the secondary lead smelters who recycle lead-bearing hazardous wastes.

One commenter stated that it has already constructed containment buildings in compliance with EPA's proposed rule, so that the lack of capacity is not beyond the control of the other secondary lead smelters. However, EPA believes that the secondary lead smelters could reasonably choose to wait until the final rule is issued before making final plans.

Demonstration 40 CFR 268.5(a)(4): The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application.

The commenters all stated that they would be able to construct sufficient capacity to manage the entire quantity of waste after the containment building standards are promulgated. Indeed, most of the secondary lead smelters already have sufficient storage capacity in place to accommodate the batteries that they process.

However, EPA is requiring that any secondary lead smelters receiving this case-by-case extension provide data to EPA, at the address stated in part III, to support this demonstration by March 1, 1993. This demonstration must be accompanied by a certification as required under 40 CFR 268.5(b). If such a demonstration is made, the extension will be in effect until May 8, 1993. If such

[2] The amendment to 40 CFR 268.35 promulgated today states a deadline of March 1, 1993 for this and other required submissions, reflecting the Agency's current expectation of when final containment building standards will be issued. A revised deadline may be promulgated depending upon the actual date of promulgation of such standards.

data is not provided, the case-by-case extension will automatically expire for that facility, unless the secondary lead smelter has been granted an individual extension based on a showing that providing the data would be impossible for reasons beyond the smelter's control. Such an extension can only be granted after notice, and opportunity for comment.

Demonstration 40 CFR 268.5(a)(5): He provides a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available.

In response to EPA's request for information regarding the construction of containment buildings by secondary lead smelters, the commenters provided preliminary schedules for the completion of the buildings. The amount of time needed to construct these buildings, according to the secondary lead smelters, ranges from one to two years, with one respondent requesting three years and another requesting four years.

While preliminary time-frames have been provided, until the actual containment building standards are promulgated, it will be impractical for owners and operators to provide a detailed schedule for obtaining operating and construction permits because they are unable to determine the actual design of their containment buildings. In keeping with the 40 CFR 268.5(a)(5) demonstration, EPA is requiring that each owner/operator requesting an extension provide to EPA, at the address in part III, a detailed schedule by March 1, 1993. The demonstration for a detailed schedule must be accompanied by a certification as required under 40 CFR 268.5(b). If such a demonstration is made the present extension will remain effective until May 8, 1993.

If such data is not provided within this timeframe, the case-by-case extension will expire, unless the secondary lead smelter has been granted an individual extension based on a showing that providing such a schedule is impossible for reasons beyond the control of the smelter. Such an extension can only be granted after notice, and opportunity for comment.

Demonstration 40 CFR 268.5(a)(6): The applicant must demonstrate that he has arranged for adequate capacity to manage his waste during an extension and has documented in the application the location of all sites at which the waste will be managed.

As discussed above, storage capacity in compliance with LDR standards cannot be provided immediately. However, the comments received by EPA indicate that the management of waste during this period will be done in a manner preferable to any other management approach. In addition, of course, piles presently used to stage the wastes are regulated units subject to the substantive standards for piles. See 268.8(b)(2).

Most of the commenters indicated that they would be retrofitting existing buildings. The commenters expect to continue the recycling process during the retrofit and will move the waste inside existing facilities to areas not under construction. EPA is requiring owners and operators to include documentation in the facility record describing the means by which their waste will be managed between June 5, 1992 and May 8, 1993. Such documentation must be in the facility record within 30 days of publication of this case-by-case variance in the Federal Register. Management consistent with current practices and with the representation made in comments from the smelters will be considered adequate during the extension period. Existing substantive standards under 40 CFR 268.8(b)(2) will continue to apply until the containment building standards become effective.

Demonstration 40 CFR 268.5(a)(7): Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of paragraph (h)(2) of 40 CFR 268.5.

These lead-bearing hazardous materials are not stored in surface impoundments or landfills (since they must be available for smelting). The secondary lead smelters have indicated to EPA that these materials will be stored in containment buildings. Therefore, this demonstration is not applicable in this case.

C. Conclusion

Several commenters asked EPA to grant a longer extension period, up to four years. However, under 40 CFR 268.5, the maximum allowable extension that EPA may grant is one year. Therefore, based on its evaluation of the demonstrations required under 40 CFR 268.5, and for the reasons stated above, EPA is approving an extension to the Land Disposal Restrictions for lead-bearing hazardous wastes prior to secondary lead smelting from June 26, 1992 to May 8, 1993. Any lead-bearing hazardous wastes stored after May 8, 1993 will be subject to the LDRs unless a site-specific extension beyond that date is obtained. This extension applies only to wastes being managed by secondary lead smelters in staging prior to thermal recovery, it has no effect with respect to other lead-bearing wastes. EPA is taking this action because of the unique circumstances which have resulted due to the lack of containment building standards.

III. Requirements for the Case-by-Case Extension

To receive the benefit of this extension, a secondary lead smelter owner or operator must notify EPA of his intention to do so, and must include the following information, by July 27, 1992:

(1) The name, mailing address, location and EPA identification number (if assigned) of the facility. The term "facility" includes any site, whether permanent or temporary where lead-bearing hazardous materials will be stored prior to recycling as of May 8, 1992; and

(2) A description of the waste streams.

In addition, secondary lead smelter owners and operators must submit data to support demonstration number 2 regarding binding contractual commitment, number 4 regarding sufficient recovery capacity, and number 5 regarding a detailed schedule by March 1, 1993. If such data is not provided by this date, this case-by-case extension will automatically expire, unless an individual extension is requested. Such an extension can only be granted after notice, and opportunity for comment.

Four copies of the above information should be sent to the following address:

If by regular U.S. mail:

U.S. Environmental Protection Agency, Office of Solid Waste, Capacity Programs Branch (OS-321W), 401 M Street SW., Washington, DC 20460.

If by courier, overnight mail, etc.:

U.S. Environmental Protection Agency, Office of Solid Waste, Capacity Programs Branch, 2800 Crystal Drive, Arlington, VA 22202.

IV. Conditions of Further Extension

Under 40 CFR 268.5(e), the Administrator may renew this extension for up to one additional year. Any owner or operator who wishes to renew this one-year extension must submit an individual application not later than November 8, 1992. The application must address the demonstrations in accordance with 40 CFR 268.5, and must justify the requested renewal period. The Agency recognizes that applicants may be unable, by November 8, 1992, to address the issues of binding contractual commitment, sufficient storage capacity and a detailed schedule; however, all other

demonstrations should be fully addressed in their application. The remaining demonstrations must be addressed by March 1, 1993. In reviewing an application for renewal of the extension, EPA will closely evaluate the degree to which the applicant has progressed in providing the necessary storage capacity. If a renewal of today's extension is approved by EPA, the extension would be effective until May 1994.

List of Subjects in 40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

Dated: June 5, 1992.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.35 is amended by revising paragraph (c) and by adding paragraph (k) to read as follows:

§ 268.35 Waste specific prohibitions—Third Third wastes.

* * * * *

(c) Effective May 8, 1992, the following waste specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F039 (nonwastewaters); the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Number K031 (nonwastewaters); K084 (nonwastewaters); K101 (nonwastewaters); K102 (nonwastewaters); K106 (nonwastewaters); the wastes specified in 40 CFR 261.33(e) as EPA Hazardous Waste Numbers P010 (nonwastewaters); P011 (nonwastewaters); P012 (nonwastewaters); P036 (nonwastewaters); P038 (nonwastewaters); P065 (nonwastewaters); P087; and P092 (nonwastewaters); the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Numbers U136 (nonwastewaters); and U151 (nonwastewaters); the following wastes identified as hazardous based on a characteristic alone: D004 (nonwastewaters); and D009 (nonwastewaters); inorganic solid debris as defined in 40 CFR 268.2(g) (which also applies to chromium refractory bricks carrying the EPA Hazardous Waste Numbers K048–K052); and RCRA hazardous wastes that contain naturally occurring radioactive materials are prohibited from land disposal.

* * * * *

(k) Effective May 8, 1993, D008 lead materials stored before secondary smelting are prohibited from land disposal. On or before March 1, 1993, the owner or operator of each secondary lead smelting facility shall submit to EPA the following: A binding contractual commitment to construct or otherwise provide capacity for storing such D008 wastes prior to smelting which complies with all applicable storage standards; documentation that the capacity to be provided will be sufficient to manage the entire quantity of such DOO8 wastes; and a detailed schedule for providing such capacity. Failure by a facility to submit such documentation shall render such D008 managed by that facility prohibited from land disposal effective March 1, 1993. In addition, no later than July 27, 1992 the owner or operator of each facility must place in the facility record documentation of the manner and location in which such wastes will be managed pending completion of such capacity, demonstrating that such management capacity will be adequate and complies with all applicable subtitle C requirements.

[FR Doc. 92–14751 Filed 6–25–92; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Chapters 301, 302, 303 and 304

[FTR Amendment 26]

Federal Travel Regulation; 1992 Omnibus Technical and Editorial Corrections

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to make various technical and editorial corrections throughout the regulation. These corrections are required to improve readability of the FTR and accommodate previous changes to the regulation.

EFFECTIVE DATE: The provisions of this final rule are effective June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS or commercial (703) 305–5253.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has conducted a technical and editorial review of the FTR and has identified a number of technical (principally cross referencing) and editorial corrections that improve the readability of the FTR and accommodate previous changes to the regulation.

This amendment incorporates these corrections without substantive change to any FTR provisions. The corrections will reduce the possibility of error when using the FTR and save users time in locating referenced paragraphs within the regulation.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects

41 CFR Parts 301–1, 301–2, 301–3, 301–4, 301–5, 301–6, 301–7, 301–8, 301–9, 301–10, 301–11, 301–12, 301–14, 301–15, and 301–16

Government employees, Interviewees, Travel and transportation expenses.

41 CFR Parts 302–1, 302–2, 302–3, 302–4, 302–5, 302–6, 302–7, 302–8, 302–9, 302–10, 302–11, and 302–12

Government employees, Income Taxes, Relocation allowances and entitlements, Transfers.

41 CFR Parts 303–1, 303–2, 304–1, and 304–2

Government employees, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR chapters 301, 302, 303, and 304 are amended as follows:

CHAPTER 301—TRAVEL ALLOWANCES

PART 301–1—APPLICABILITY AND GENERAL RULES

1. The authority citation for part 301–1 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709; 31 U.S.C. 1353; 40 U.S.C. 486(c); and E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—Authority, Applicability, and General Rules

§ 301-1.1 [Amended]

2. In § 301–1.1, remove the phrase "40 U.S.C. 486(c), and 31 U.S.C. 1353" and add in its place the phrase "31 U.S.C. 1353, and 40 U.S.C. 486(c)".

§§ 301-1.2 and 301-1.3 [Amended]

3. In part 301–1, remove the phrase "chapter 301" and add in its place the word "chapter" in the following places:

(a) Section 301–1.2 (a), (b), and (c); and

(b) Section 301–1.3(c) (1) and (2).

§ 301-1.2 [Amended]

4. In addition to the amendment set forth above, in § 301–1.2(b), remove the word "herein" in the text and add in its place the phrase "in this chapter".

§ 301-1.3 [Amended]

5. In addition to the amendment set forth above, in § 301–1.3(c)(6), remove the phrase "Continental United States" in the text and add in its place "*Continental United States*".

Subpart B—Official Government Business Travel

§ 301-1.102 [Amended]

6. In the introductory text of § 301–1.102(b), remove the phrase "paragraph (b)" and add in its place the word "paragraph".

7. In addition to the amendment set forth above, § 301–1.102 is amended by revising the last sentence of paragraph (b)(3) to read as follows:

§ 301-1.102 Guidelines for issuing travel authorizations.

* * * * *

(b) * * *

(3) *** This also includes a new appointee covered under § 302–1.2 of this subtitle when issued an authorization for travel to the first duty station.

PART 301-2—TRANSPORTATION ALLOWABLE

8. The authority citation for part 301–2 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 301-2.2 [Amended]

9. In § 301–2.2(d)(4), remove the phrase "paragraph (d)" and add in its place the word "paragraph".

§ 301-2.3 [Amended]

10. In § 301–2.3(e), remove the word "herein" and add in its place the phrase "in this paragraph".

PART 301-3—USE OF COMMERCIAL TRANSPORTATION

11. The authority citation for part 301–3 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 301-3.3 [Amended]

12. In § 301–3.3(d)(2)(i), remove the word "herein" and add in its place the phrase "in this paragraph", and remove the phrase "paragraph (d)" in two places and add in each place the word "paragraph".

§ 301-3.4 [Amended]

13. In § 301–3.4(b)(1)(ii), remove the phrase "Military Traffic Management Regulation" and add in its place the phrase "Defense Traffic Management Regulation".

§ 301-3.5 [Amended]

14. In § 301–3.5(a) introductory text, remove the phrase "paragraph (a)" and add in its place the word "paragraph".

§ 301-3.6 [Amended]

15. In § 301–3.6(b)(1) introductory text, remove the word "paragraph" and add in its place the word "section".

PART 301-4—REIMBURSEMENT FOR USE OF PRIVATELY OWNED CONVEYANCES

16. The authority citation for part 301–4 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 301-4.2 [Amended]

17. In § 301–4.2(a) introductory text, remove the reference "§ 301–2.2(c)(3)" and add in its place the reference "§ 301–2.2(d)(3)", and remove the phrase "paragraph (a)" and add in its place the word "paragraph".

18. In the introductory text of § 301–4.2(b), remove the phrase "General Services Administration (FB)," and add in its place the phrase "General Services Administration, Attn: Transportation Management Division (FBX),".

PART 301-5—BAGGAGE

19. The authority citation for part 301–5 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 301-5.1 [Amended]

20. In § 301–5.1(a), remove the word "regulation" and add in its place the word "subtitle".

PART 301-6—COMMUNICATIONS SERVICES

21. The authority citation for part 301–6 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 301-6.4 [Amended]

22. In § 301–6.4(c), remove the reference "(41 CFR 201–38.007 through 201–38.007–7)" and add in its place the reference "(41 CFR 201–21.600 through 201–21.602)".

PART 301-7—PER DIEM ALLOWANCES

23. The authority citation for part 301–7 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 301-7.1 [Amended]

24. In § 301–7.1, remove the word "herein" from the introductory text of the section and add in its place the phrase "in this part".

§ 301-7.2 [Amended]

25. In § 301–7.2(b) introductory text, remove the phrase "paragraph (b)" and add in its place the word "paragraph".

PART 301-8—REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES

26. The authority citation for part 301–8 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§§ 301-8.1, 301-8.3, 301-8.4, and 301-8.5 [Amended]

27. In part 301–8, remove the phrase "part 301–8" and add in its place the word "part" in the following places:

(a) Section 301–8.1 (c) and (d);

(b) Section 301–8.3(d);

(c) Section 301–8.4(c); and

(d) Section 301–8.5(b).

§ 301-8.1 [Amended]

28. In addition to the amendments set forth above, § 301–8.1 in the introductory text to the section and paragraph (a) remove the word "herein" and add in its place the phrase "in this part".

§ 301-8.2 [Amended]

29. In § 301–8.2(b), remove the phrase "these provisions" and add in its place the phrase "this paragraph".

PART 301-9—MISCELLANEOUS EXPENSES

30. The authority citation for part 301-9 is revised to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 301-9.4 [Amended]

31. In § 301-9.4, remove the phrase "part 301-9" and add in its place the word "part".

PART 301-10—SOURCES OF FUNDS

32. The authority citation for part 301-10 is revised to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 301-10.1 [Amended]

33. In § 301-10.1(b)(3), remove the reference "§ 301-10.3(e)" and add in its place the reference "§ 301-10.3(d)".

§ 301-10.2 [Amended]

34. In § 301-10.2(b) introductory text, remove the phrase "paragraph (b)" and add in its place the word "paragraph".

35. In § 301-10.2(b)(2)(iii), remove the phrase "this cited provision" and add in its place the phrase "41 CFR 101-41.203-2(b)".

PART 301-11—CLAIMS FOR REIMBURSEMENT

36. The authority citation for part 301-11 is revised to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 301-11.3 [Amended]

37. In § 301-11.3(a), remove the word "regulation" and the phrase "certain provisions" and add in their places the word "subtitle" and the phrase "specific requirements", respectively.

§ 301-11.4 [Amended]

38. In § 301-11.4(a), remove the phrase "part 301-11" and add in its place the word "part".

PART 301-12—EMERGENCY TRAVEL OF EMPLOYEE DUE TO ILLNESS OR INJURY OR A PERSONAL EMERGENCY SITUATION, WITHIN OR OUTSIDE CONUS

39. The authority citation for part 301-12 is revised to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§§ 301-12.2, 301-12.4, and 301-12.7 [Amended]

40. In part 301-12, remove the phrase "part 301-12" and add in its place the word "part" in the following places:

(a) Section 301-12.2;

(b) Section 301-12.4 in the introductory text to the section and paragraph (c); and

(c) Section 301-12.7 (a) and (c).

§ 301-12.2 [Amended]

41. In addition to the amendment set forth above, in § 301-12.2, remove the phrase "these provisions" and add in its place the phrase "this part".

PART 301-14—PAYMENT OF SUBSISTENCE AND TRANSPORTATION EXPENSES FOR THREATENED LAW ENFORCEMENT/ INVESTIGATIVE EMPLOYEES

42. The authority citation for part 301-14 is revised to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§§ 301-14.2, 301-14.4, 301-14.9, and 301-14.10 [Amended]

43. In part 301-14, remove the phrase "part 301-14" and add in its place the word "part" in the following places:

(a) Section 301-14.2;

(b) Section 301-14.4;

(c) Section 301-14.9; and

(d) Section 301-14.10.

§ 301-14.2 [Amended]

44. In addition to the amendment set forth above, in § 301-14.2, remove the word "herein" and add in its place the phrase "in this part".

§ 301-14.4 [Amended]

45. In addition to the amendment set forth above, in § 301-14.4, remove the phrase "of this title" and add in its place the phrase "of this subtitle".

PART 301-15—TRAVEL MANAGEMENT PROGRAMS

46. The authority citation for part 301-15 is revised to read as follows:

Authority: Sec. 205 (c), Pub. L. 152, Ch. 288, 63 Stat. 390; (40 U.S.C. 486(c)).

§ 301-15.43 [Amended]

47. In § 301-15.43(a), remove the phrase "Travel Management Division (FBT), General Services Administration," and add in its place the phrase "General Services Administration, Attn: Transportation Management Division (FBX),".

PART 301-16—REQUIREMENT TO REPORT AGENCY PAYMENTS FOR EMPLOYEE TRAVEL AND RELOCATION

48. The authority citation for part 301-16 is revised to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 301-16.1 [Amended]

49. In § 301-16.1, remove the phrase "part 301-16" and add in its place the word "part".

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for Conus

50. Appendix A to chapter 301 is amended in the introductory text by removing the phrase "of this regulation" and adding in its place the phrase "of this chapter" and by adding the phrase "of this chapter" following the reference "part 301-7" in the last sentence, and in the entry for "CONUS, Standard rate" by removing the word "title" and adding in its place the word "subtitle".

CHAPTER 302—RELOCATION ALLOWANCES

PART 302-1—APPLICABILITY, GENERAL RULES, AND ELIGIBILITY CONDITIONS

51. The authority citation for part 302-1 is revised to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3CFR, 1971-1975 Comp., p. 586.

Subpart A—New Appointees and Transferred Employees

§ 302-1.3 [Amended]

52. In § 302-1.3(a) introductory text, remove the phrase "paragraph (a)" and add in its place the word "paragraph".

§ 302-1.4 [Amended]

53. In § 302-1.4(d), remove the phrase "title 41" and add in its place the word "title".

54. In § 302-1.4(f)(1)(ii), add ";" at the end of the paragraph.

55. In § 302-1.4(f)(1) (iii) and (iv), remove the reference "paragraph (e)(2)" and add in its place the reference "paragraph (f)(2)".

56. In § 302-1.4(f)(2), remove the reference "paragraph (e)(1) (iii) and (iv)" and add in its place the reference "paragraph (f)(1) (iii) and (iv)".

57. In § 302-1.4(j)(1) introductory text, remove the reference "paragraph (i)" and add in its place the reference "paragraph".

§ 302-1.10 [Amended]

58. In § 302-1.10(g), remove the word "regulation" and add in its place the word "subtitle".

§ 302-1.12 [Amended]

59. In § 302-1.12(e)(6), remove the reference "paragraph (e)" in two places

and add in each place the reference "paragraph".

§ 302-1.13 [Amended]

60. In § 302-1.13(a)(2) introductory text, remove the phrase "these provisions" and add in its place the phrase "this section".

61. In § 302-1.13(c)(2)(ii), remove the word "regulation" and add in its place the word "subtitle".

62. In § 302-1.13(d)(1)(i)(D), remove the word "regulation" and add in its place the word "subtitle".

63. In § 302-1.13(d)(2)(i), remove the word "regulation" and add in its place the word "chapter".

§ 302-1.14 [Amended]

64. In the introductory text of § 302-1.14(b), remove the word "regulation" and add in its place the word "chapter".

§§ 302-1.1, 302-1.2, 302-1.3, 302-1.4, 302-1.5, 302-1.6, and 302-1.9, 302-1.12, and 302-1.13 [Amended]

65. In addition to the amendments set forth above, in part 302-1, remove the phrase "chapter 302" and add in its place the word "chapter" in the following places:

(a) Section 302-1.1;

(b) Section 302-1.2(b) introductory text;

(c) Section 302-1.3 (a) introductory text and (c);

(d) Section 302-1.4 in the introductory text to the section and paragraphs (b), (e) introductory text, (f)(2), and (k);

(e) Section 302-1.5(b) (1) and (2) introductory text;

(f) Section 302-1.6 in the introductory text to the section;

(g) Section 302-1.9(b);

(h) Section 302-1.12(a) in two places, and (b) (1), (2) introductory text, (3), and (5); and

(i) Section 302-1.13(c)(1).

Subpart B—SES Career Appointees upon Separation for Retirement

§ 302-1.105 [Amended]

66. In § 302-1.105(c), remove the phrase "These provisions contemplate" and add in its place the phrase "This subpart contemplates".

PART 302-2—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

67. The authority citation for part 302-2 is revised to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 302-2.3 [Amended]

68. In § 302-2.3 (c)(2) and (e)(1) introductory text, remove the phrase "part 302-2" and add in its place the word "part".

69. In § 302-2.3(e) (2) and (3), remove the phrase "paragraph (e)" and add in its place the word "paragraph".

PART 302-3—ALLOWANCE FOR MISCELLANEOUS EXPENSES

70. The authority citation for part 302-3 is revised to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 302-3.1 [Amended]

71. In § 302-3.1(c), in the introductory text in two places and in paragraph (c)(2) in one place, remove the word "regulation" and add in its place the word "subtitle".

72. In § 302-3.1(c)(4), remove the phrase "chapter 302" and add in its place the word "chapter".

§§ 302-3.2 and 302-3.4 [Amended]

73. In part 302-3, remove the phrase "part 302-3" and add in its place the word "part" in the following places:

(a) Section 302-3.2(b); and

(b) Section 302-3.4.

§ 302-3.3 [Amended]

74. In § 302-3.3(b), remove the phrase "paragraph (b)" and add in its place the word "paragraph" in two places.

PART 302-4—TRAVEL TO SEEK RESIDENCE QUARTERS

75. The authority citation for part 302-4 is revised to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§§ 302-4.1, 302-4.3, and 302-4.4 [Amended]

76. In part 302-4, remove the phrase "part 302-4" and add in its place the word "part" in the following places:

(a) Section 302-4.1(b) introductory text;

(b) Section 302-4.3(b); and

(c) Section 302-4.4.

PART 302-5—SUBSISTENCE WHILE OCCUPYING TEMPORARY QUARTERS

77. The authority citation for part 302-5 is revised to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 302-5.1 [Amended]

78. In § 302-5.1, remove the phrase "these provisions" and add in its place "the provisions of this part".

§ 302-5.2 [Amended]

79. In § 302-5.2(e) and (i), remove the phrase "these provisions" and add in its place the phrase "the provisions of this part".

§ 302-5.3 [Amended]

80. In § 302-5.3, remove the phrase "including those appointees covered in § 302-1.11,".

§§ 302-5.3 and 302-5.5 [Amended]

81. In addition to the amendment set forth above, in part 302-5, remove the phrase "part 302-5" and add in its place the word "part" in the following places:

(a) Section 302-5.3; and

(b) Section 302-5.5.

PART 302-6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

82. The authority citation for part 302-6 is revised to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 302-6.1 [Amended]

83. In § 302-6.1(g)(1)(ii), remove the phrase "the Commonwealth of Puerto Rico," and add in its place the phrase "the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands,".

84. In § 302-6.1(g) (1) introductory text, (2), (4), and (5), remove the phrase "paragraph (g)" and add in its place the word "paragraph".

§ 302-6.4 [Amended]

85. In § 302-6.4, remove the phrase ", including those covered under § 302-1.11,".

§§ 302-6.1, 302-6.3, 302-6.4, and 302-6.5 [Amended]

86. In addition to the amendments set forth above, in part 302-6, remove the phrase "part 302-6" and add in its place the word "part" in the following places:

(a) Section 302-6.1 in the introductory text to the section and (g)(2);

(b) Section 302-6.3(b);

(c) Section 302-6.4; and

(d) Section 302-6.5.

PART 302-7—TRANSPORTATION OF MOBILE HOMES

87a. The authority citation for part 302-7 is revised to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

PART 302–8—TRANSPORTATION AND TEMPORARY STORAGE OF HOUSEHOLD GOODS AND PROFESSIONAL BOOKS, PAPERS, AND EQUIPMENT

87b. The authority citation for part 302–8 is revised to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11012, 27 FR 2983, 3 CFR, 1959–1963 Comp., p. 591; E.0. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 302–8.1 [Amended]

88. In § 302–8.1, remove the word "regulation" and add in its place the word "subtitle".

§ 302–8.2 [Amended]

89. In § 302–8.2(a), remove the phrase "paragraph (a)" and add in its place the word "paragraph".

§ 302–8.3 [Amended]

90. In § 302–8.3(a)(3), remove the reference "302–8.2(b)(4)" and add in its place the reference "302–8.2(c)(4)".

§ 302–8.4 [Amended]

91. In § 302–8.4(e)(3), remove the reference "302–8.2(e)" and add in its place the reference "302–8.2(f)".

§§ 302–8.1 and 302–8.2 [Amended]

92. In addition to the amendments set forth above, in part 302–8, remove the phrase "part 302–8" and add in its place the word "part" in the following places:

(a) Section 302–8.1; and

(b) Section 302–8.2 (a), (b)(1), (e), and (f).

PART 302–9—ALLOWANCES FOR NONTEMPORARY STORAGE OF HOUSEHOLD GOODS

93. The authority citation for part 302–9 is revised to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 302–9.1 [Amended]

94. In § 302–9.1(d), remove the reference "under 302–1.11".

§§ 302–9.1, 302–9.3, and 302–9.4 [Amended]

95. In addition to the amendment set forth above, in part 302–9, remove the phrase "part 302–9" and add in its place the word "part" in the following places:

(a) Section 302–9.1(a);

(b) Section 302–9.3(b); and

(c) Section 302–9.4.

PART 302–10—ALLOWANCES FOR TRANSPORTATION AND EMERGENCY STORAGE OF PRIVATELY OWNED VEHICLES

96. The authority citation for part 302–10 is revised to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§§ 302–10.1, 302–10.2, 302–10.3, 302–10.4, 302–10.5, and 302–10.6 [Amended]

97. In part 302–10, remove the phrase "part 302–10" and add in its place the word "part" in the following places:

(a) Section 302–10.1(a) (1) and (2), and (b) in three places;

(b) Section 302–10.2(a);

(c) Section 302–10.3(b) introductory text and (b)(2), (c)(1), and (c)(2) in three places, and (d)(2);

(d) Section 302–10.4 (b) and (e);

(e) Section 302–10.5(a)(1); and

(f) Section 302–10.6.

98. In § 302–10.5(c), remove the phrase "paragraph (c)" and add in its place the word "paragraph".

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

99. The authority citation for part 302–11 is revised to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586; E.O. 12466, 49 FR 7349, 3 CFR, 1984 Comp., p. 165.

§ 302–11.2 [Amended]

100. In § 302–11.2(b), remove the phrase "chapter 302" and add in its place the word "part".

§ 302–11.3 [Amended]

101. In § 302–11.3(i), remove the phrase "paragraph (i)" and add in its place the word "paragraph".

§ 302–11.5 [Amended]

102. In § 302–11.5(e), remove the word "regulation" and add in its place the word "part".

§ 302–11.6 [Amended]

103. In § 302–11.6 (a) in two places and (e), remove the word "regulation" and add in its place the word "part".

§ 302–11.8 [Amended]

104. In § 302–11.8(d), remove the phrase "paragraph (d)" and add in its place the word "paragraph".

105. In § 302–11.8(f)(3)(ii), add the symbol "$" in front of "8,482.44".

§§ 302–11.1, 302–11.4, 302–11.5, 302–11.8, 302–11.9, 302–11.12, and 302–11.13 [Amended]

106. In addition to the amendments set forth above, in part 302–11 remove the phrase "part 302–11" and add in its place the word "part" in the following places:

(a) Section 302–11.1;

(b) Section 302–11.4 in the introductory text to the section;

(c) Section 302–11.5 in the introductory text to the section, and (e);

(d) Section 302–11.8 (a), (e)(1) in three places, (e)(2)(i), (e)(2)(ii) in two places, and (e)(4) introductory text;

(e) Section 302–11.9(a);

(f) Section 302–11.12; and

(g) Section 302–11.13 in the introductory text to the section.

Appendix B to Part 302–11—State Tax Tables for RIT Allowance

107. Appendix B to part 302–11 is amended by removing from the introductory text of the tax tables for years 1983/1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991, the reference "302–11.8(e)(1)" and adding in each place the reference "302–11.8(e)(2)".

108. Appendix B to part 302–11 is amended by removing from footnote 2 of the tax tables for years 1983/1984, 1985, 1986, 1987, 1988, and 1989, the reference "302–11.8(e)(2)(b)" and adding in each place the reference "302–11.8(e)(2)(ii)".

109. Appendix B to part 302–11 is amended by removing from footnote 4 of the tax tables for years 1983/1984, 1985, 1986, 1987, 1988, and 1989, the reference "302–11.8(e)(2)" and adding in each place the reference "302–11.8(e)(2)(iii)".

110. Appendix B to part 302–11 is amended by removing the term "FTR" from the introductory text of the tax table for year 1985.

111. Appendix B to part 302–11 is amended by removing from the tax table for tax year 1990, the number "7.375" each place it appears in the second, third, fourth and fifth columns in entry number 33, New York and adding in each place the number "7.875" (in seven places).

PART 302–12—USE OF RELOCATION SERVICE COMPANIES

112. The authority citation for part 302–12 is revised to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586; E.O. 12466, 49 FR 7349, 3 CFR, 1984 Comp., p. 165; E.O. 12522, 50 FR 26337, 3 CFR, 1985 Comp., p. 375.

§ 302–12.1 [Amended]

113. In § 302–12.1, remove the word "directive" and add in its place the word "part", and remove the phrase "These guidelines are" and add in its place the phrase "This part is".

§ 302-12.3 [Amended]

114. In § 302-12.3, remove the phrase "these guidelines" and add in its place the phrase "this part".

§ 302-12.4 [Amended]

115. In the introductory text of § 302-12.4(b), remove the phrase "part 302-12" and add in its place the word "part".

116. Section 302-12.4 is amended by revising paragraph (b)(1) to read as follows:

§ 302-12.4 General conditions and limitations for eligibility.

* * * * *

(b) * * *

(1) New appointees;

* * * * *

§§ 302-12.5 and 302-12.6 [Amended]

117. In §§ 302-12.5(b) and 302-12.6(a)(2), remove the phrase "this chapter 302, parts 302-1 through 302-10" and add in its place the phrase "parts 302-1 through 302-10 of this chapter".

§ 302-12.6 [Amended]

118. In addition to the amendment set forth above, remove the phrase "chapter 302" from the introductory text of § 302-12.6(b)(2) in three places, and add in its place the word "chapter".

119. Section 302-12.7 is amended by revising the last sentence to read as follows:

§ 302-12.7 Income tax consequences of using relocation companies.

*** For further information relating to the income tax consequences of payments to relocation companies, agencies should contact the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Room 5501, Washington, DC 20224.

CHAPTER 303—PAYMENT OF EXPENSES CONNECTED WITH THE DEATH OF CERTAIN EMPLOYEES

PART 303-1—GENERAL

120. The authority citation for part 303-1 is revised to read as follows:

Authority: 5 U.S.C. 5721-5734, 5741-5742; E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 303-1.1 [Amended]

121. In § 303-1.1(a), remove the phrase "by 5 U.S.C. 5722 (See § 303-2.6 of this chapter)".

§ 303-1.2 [Amended]

122. In § 303-1.2, remove the word "regulation" and add in its place the word "subtitle".

PART 303-2—ALLOWANCES

123. The authority citation for part 303-2 is revised to read as follows:

Authority: 5 U.S.C. 5721-5734, 5741-5742; E.O. 11609,36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§§ 303-2.6 and 303-2.7 [Amended]

124. In §§ 303-2.6(a)(3) and 303-2.7, remove the word "title" and add in its place the word "subtitle".

CHAPTER 304—PAYMENT FROM A NON-FEDERAL SOURCE FOR TRAVEL EXPENSES

PART 304-1—GENERAL

125a. The authority citation for part 304-1 is revised to read as follows:

Authority: 5 U.S.C. 4111(b); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

PART 304-2—REDUCTIONS IN MEETING AND TRAINING ALLOWANCE PAYMENTS

125b. The authority citation for part 304-2 is revised to read as follows:

Authority: 5 U.S.C. 4111(b); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 304-2.2 [Amended]

126. In § 304-2.2, remove the phrase "this part 304-2" in two places and add in its place the phrase "this part", and remove the word "hereinafter".

127. Section 304-2.3 is amended by revising the last sentence to read as follows:

§ 304-2.3 Conditions for approval of contributions or payments.

*** These organizations are referred to in this part as "donors".

§ 304-2.4 [Amended]

128. In the introductory text of § 304-2.4, remove the word "regulations" and add in its place the phrase "provisions of this section".

129. In addition to the amendment set forth above, in § 304-2.4(e), remove the phrase "this regulation" and add in its place the phrase "the provisions of this part".

Dated: May 8, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-14996 Filed 6-25-92; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6934

[UT-942-4214-10; UTU 4061]

Partial Revocation of Executive Order No. 5327 and Public Land Order No. 4522; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two oil shale withdrawal orders insofar as they affect 280 acres of public lands. The lands are no longer needed for the purpose of the withdrawals, and the revocation is necessary to permit disposal of the lands through sale under section 203 of the Federal Land Policy and Management Act of 1976. The lands have been and will remain open to oil and gas leasing.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, 801-539-4119.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is hereby ordered as follows:

1. Executive Order No. 5327, and Public Land Order No. 4522, which withdrew oil shale deposits and the lands containing such deposits for protection of oil shale values, are hereby revoked insofar as they affect the following described lands:

Salt Lake Meridian

T. 12 S., R. 12 E.,
Sec. 19, E½NE¼ and SW¼NE¼;
Sec. 20, SE¼NE¼, SE¼SW¼, and W½SE¼.

The areas described aggregate 280 acres in Carbon County.

2. At 9 a.m. on July 27, 1992, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 27, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on July 27, 1992, the lands will be opened to mining location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals,

other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 17, 1992.

David O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-15075 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-DQ-M

43-CFR Public Land Order 6935

[CO-930-4214-10; COC-0124534]

Extension of Public Land Order No. 6649, Fort Carson-Pinon Canyon Military Reservation; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 6649, which withdrew 2,517 acres of public lands from surface entry and mining, and approximately 141,555 acres of reserved public domain mineral interests in acquired lands from mining, for protection of the Fort Carson-Pinon Canyon Military Reservation, for an additional 5-year period. This extension is necessary to continue protection of these lands and minerals until Congress takes action on the proposed legislative withdrawal. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: June 23, 1992.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 6649 (52 FR 23548, June 23, 1987), which withdrew 2,517 acres of public lands from surface entry and mining, and approximately 141,555 acres of reserved public domain mineral interests in acquired lands from mining, for protection of the Fort Carson-Pinon Canyon Military Reservation, is hereby extended for an additional 5-year period.

2. This withdrawal will expire 5 years from the effective date of this order, unless as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended. If Congress takes action on the proposed legislative withdrawal prior to the expiration date of this extension, this protective withdrawal will automatically terminate.

Dated: June 22, 1992.

John E. Schrote,

Assistant Secretary for Policy, Management and Budget.

[FR Doc. 92-15076 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-JB-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-314, FCC 92-208]

Broadcast Services; Broadcast Hoaxes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this decision, adds a new section to its Rules, expressly prohibiting the broadcast of hoaxes that are harmful to the public. The action is taken to provide the Commission with greater enforcement flexibility in deterring broadcast hoaxes which might prove harmful to the public. The gap in such authority in the existing Commission Rules proved a particular hindrance in responding to a recent series of such hoaxes The **NOTICE OF PROPOSED RULE MAKING (NOTICE)** (56 FR 60080, November 27, 1991) initiating this proceeding was issued to remedy that deficiency in the rules.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Brien Ham, 202-632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 91-314, adopted May 14, 1992, and released June 12, 1992.

The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Report and Order

1. This Report and Order adds a new section to the Commission's Rules at 47 CFR 73.1217, to expressly prohibit the broadcast of hoaxes that are harmful to the public. Specifically, we adopt a rule that will prohibit a broadcast licensee or permittee from knowingly broadcasting false information concerning a crime or catastrophe if it is foreseeable that broadcast of the information will cause substantial public harm, and broadcast of the information does in fact directly cause substantial public harm. This rule will provide the Commission with greater enforcement flexibility by subjecting licensees that perpetrate harmful hoaxes to possible forfeitures, in addition to other applicable penalties. In deference to First Amendment concerns, we have crafted the rule narrowly, restricting only those hoaxes most likely to result in substantial public harm.

2. Recently, serious broadcast hoaxes have occurred where stations fabricated stories concerning a crime or catastrophe that alarmed the public and resulted in the needless diversion of public safety or law enforcement resources.[1] Because hoaxes of this nature are inconsistent with the public interest, we issued the Notice to determine whether we should adopt a rule specifically prohibiting such conduct. Under existing policies, the Commission has limited recourse against a licensee that perpetrates hoaxes. In most cases, the Commission can either issue a letter of admonition, which may be considered on renewal or sale of the station, or, in extreme cases, the Commission can revoke a station's license. A rule, by contrast, offers greater enforcement flexibility by permitting the Commission to levy fines against the violators. We therefore sought comment on how a hoax rule might be formulated without causing an undue chilling effect on broadcast speech.

[1] See Letter to KSLX-FM, (MMB, dated October 2, 1989) (station admonished for false report that station had been taken hostage); Letter to WCCC-AM/FM, (MMB, dated July 26, 1990) (station admonished for false report of nearby volcanic eruption); Letter to KROO-FM, 6 FCC Rcd 7262 (1991) (station admonished for murder confession hoax); Letter to WALE-AM, 7 FCC Rcd 2345 (MMB 1992) (station admonished for false report that station employee had been shot).

3. The Notice suggested a narrowly crafted rule that would result in licensee liability only if three elements were present: (1) The licensee must know that the material broadcast is false; (2) the hoax must directly cause immediate, substantial and actual public harm; and (3) the public harm flowing from the hoax be foreseeable. The Notice sought comment on this proposed rule and on several other matters relevant to the rule's structure.

4. After reviewing the record in this proceeding, we decide to adopt a rule against hoaxes, but restrict that rule to incidents involving the false report of a crime or catastrophe. A "crimes and catastrophes" standard encompasses the kinds of harmful hoaxes that have raised the most public concern to date. For purposes of our rule, a "crime" is defined as any act or omission that makes the offender subject to criminal punishment by law. A "catastrophe" is defined as a disaster or imminent disaster involving a violent or sudden event affecting the public.

5. Contrary to the commenters' assertions that a rule is unnecessary because harmful hoaxes occur infrequently, we believe that this regulation is needed to contend with and deter serious hoaxes that pose a substantial threat to the public safety and welfare. As stated above, in recent cases, we have been limited to only two types of penalties—admonition and license revocation or non-renewal. This rule will provide us with the option of imposing an intermediate sanction, one which has more deterrence value than admonition but which is less drastic than license revocation or non-renewal. We do not intend by our adoption of a specific rule addressing harmful hoaxes to displace our existing range of remedies for false programming that is not covered by this rule. Thus, we will continue to enforce other appropriate policies (*e.g.*, the news staging policy) against false or fraudulent licensee behavior. In this regard, we note that false programming may be actionable as a violation of a licensee's public interest obligations, even if it falls outside of the strict requirements of the new rule.

6. We believe that the rule is sufficiently narrow to avoid any adverse impact on broadcast speech. In this regard, it is not our intent to restrict harmless pranks, or to deter broadcasts that might upset some listeners but do not pose a substantial threat to public health or safety. We instead focus on a narrow category of cases—those involving the false report of a crime or catastrophe—which present the greatest potential for substantial public harm. Moreover, within this narrow category of cases, we restrict the reach of the rule even further by holding licensees liable only when they know the report to be false and can foresee that the report will, and does in fact, result in substantial public harm. We believe that these careful restraints should sufficiently address our concerns about hoaxes without causing an undue chilling effect on broadcast speech.

7. We also believe that the rule, as drawn, is fully consistent with First Amendment principles. In this latter regard, the Supreme Court has recognized that speech may be subject to government regulation if the regulation is narrowly tailored to further a compelling government interest and is the least restrictive means of furthering that interest. *Sable Communications of California, Inc.* v. *FCC*, 492 U.S. 115 (1989). We believe that our rule would meet this exacting test. First, the rule is narrowly tailored to curtail only hoaxes involving the false report of a crime or catastrophe when the licensee knows the report is false and can foresee that the report will, and it does in fact, result in substantial public harm. Thus, the rule cannot be considered to be overly broad. Second, the Government has a compelling interest in preventing substantial public harm, such as the substantial diversion of police and emergency resources from their duties. Finally, the Commission has chosen the least restrictive means by which it may effectively and precisely further its interest of preventing substantial public harm.

8. Moreover, contrary to the concerns expressed by the commenters, a bedrock principle of First Amendment doctrine holds that "[t]he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." *Schenck* v. *United States*, 249 U.S. 48, 57 (1919). Thus, for example, the Supreme Court has never imposed a constitutional bar to regulating speech that threatens to cause imminent lawless action. Similarly, the First Amendment does not preclude civil liability for broadcasts that create a foreseeable risk of personal injury. See *Weirum* v. *RKO General, Inc.*, 15 Cal. 3d 40, 123 Cal. Rptr. 468 (1975). The broadcast speech in these cases is closely analogous to the hoax programming which we seek to preclude, and the courts have not found a First Amendment bar to imposing liability in such cases. In each instance, the speech at issue must create a foreseeable risk of substantial harm, and such harm must, in fact, occur. We now examine each element of the rule in greater detail.

9. Licensee Knowledge of Falsity of Crime or Catastrophe. In order to incur liability, a licensee must have known that the broadcast concerning a crime or catastrophe was false. To this end, and in accordance with well established Commission principle, a licensee will be held accountable for the actions of its employees. Some commenters argue that prompt and appropriate corrective action on the part of the licensee should be a factor in assessing liability. Although our general policy is not to consider such remedial actions in determining whether a rule violation has occurred, we note that a licensee's overall conduct in connection with such a violation is always assessed in determining the appropriate sanction, and could, in certain circumstances, result in a decision that no sanction is warranted. We recently set standards for assessing forfeitures and indicated that certain criteria, such as good faith or voluntary disclosure or a history of overall compliance, may be taken into consideration and could result in a reduction in the amount of the fine imposed. See Policy Statement on Standards for Assessing Forfeitures, 6 FCC Rcd 4695, 4700 (1991), *recon denied*, Memorandum Opinion and Order in Standards for Assessing Forfeitures, FCC 92-212, (released June 4, 1992). Finally, we have taken steps to ensure that this element of our rule does not implicate legitimate dramatic or other fictional programming. Thus, as explained below in our discussion on foreseeability, we are instituting a presumption that will effectively remove from liability fictional material accompanied by disclaimer.

10. Foreseeability of the Substantial Public Harm. For a hoax to be actionable, the substantial public harm that results from the broadcast must be foreseeable. We believe that a foreseeability test is needed to avoid imposing unreasonable or chilling constraints on broadcast speech. For purposes of this rule, the public harm will be deemed foreseeable if the licensee could expect with a significant degree of certainty that substantial harm would occur. We will presume, and will accord broadcasters the right to presume, that the public will behave in a rational manner. We will not hold broadcasters accountable for unreasonable or unpredictable public conduct.

11. Also, we believe that the nature of the broadcast will be the single greatest determinant of foreseeability. Thus, the more inherently unbelievable the

broadcast, the more certain broadcasters can be that substantial public harm is unforeseeable. By contrast, the timing of the broadcast will not necessarily determine foreseeability, although it may be one factor that is considered. Other factors, such as the number of public complaints received about the broadcast, may also be relevant in determining whether any public harm that has occurred should have been foreseeable.

12. We are also mindful of commenters' concern that legitimate fictitious programming might be implicated by our rule, since all fiction is, by definition, "false" programming. Therefore, one situation in which we will presume that programming otherwise subject to this rule will pose no foreseeable harm is if the programming is accompanied by a disclaimer. To qualify for this presumption, disclaimers must clearly label the broadcast as a fiction and be presented in a way that is reasonable under the circumstances. For example, indicia of reasonableness would include airing disclaimers at the beginning and end of a program and ensuring that no more than 15 minutes elapses between disclaimers during a program. We do not intend to impose a requirement that all fictional works must now include disclaimers. Rather, disclaimers would be necessary only in those programs that would otherwise meet all elements of the rule.

13. Direct Causation of Substantial Public Harm. Finally, the hoax must in fact directly cause substantial public harm. "Public harm" will include damage to the health or safety of the general public, diversion of law enforcement or other public health or safety authorities from their duties and damage to property. In all cases, the public harm must be substantial. The public harm must also begin immediately after the broadcast and result in actual damage. (By "immediate," we mean that the harm would have to occur contemporaneously or shortly after the broadcast. By "actual" damage, we mean that there must be injury in fact; the mere threat of harm is not sufficient.)

14. Rather than adopt a particular benchmark or definition by which we will assess "substantial" public harm, we have decided to leave this determination to the factual context of each case. In general, however, a broadcast concerning an imaginary danger that diverts local police and emergency resources from their duties, causes widespread public disorder or harms the health or safety of the general public, would most likely inflict substantial public harm. By contrast, a broadcast hoax that results in no more than a few questions to the police or complaints to the station would probably not impose substantial public harm. Clearly, we are concerned with public harm that is more than nominal in nature.

Ordering Clauses

15. Accordingly, *it is ordered* that pursuant to authority contained in Sections 4 and 303 of the Communications Act of 1934, 47 U.S.C. 154 and 303, as amended, part 73 of the Commissions Rules is amended as set forth below.

16. *It is further ordered* that the amendments to 47 CFR part 73 adopted in this Report and Order will be effective 30 days after publication in the **Federal Register.**

17. *It is further ordered* that this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Amendatory Text

Part 73 of title 47 of the Code Of Federal Regulations is amended to read as follows:

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

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

2. Section 73.1217, Broadcast hoaxes, is added to part 73 to read as follows:

§ 73.1217 Broadcast hoaxes.

No licensee or permittee of any broadcast station shall broadcast false information concerning a crime or a catastrophe if:

(a) The licensee knows this information is false;

(b) It is forseeable that broadcast of the information will cause substantial public harm, and

(c) Broadcast of the information does in fact directly cause substantial public harm.

Any programming accompanied by a disclaimer will be presumed not to pose foreseeable harm if the disclaimer clearly characterizes the program as a fiction and is presented in a way that is reasonable under the circumstances.

Note: For purposes of this rule, "public harm" must begin immediately, and cause direct and actual damage to property or to the health or safety of the general public, or diversion of law enforcement or other public health and safety authorities from their duties. The public harm will be deemed foreseeable if the licensee could expect with a significant degree of certainty that public harm would occur. A "crime" is any act or omission that makes the offender subject to criminal punishment by law. A "catastrophe" is a disaster or imminent disaster involving violent or sudden event affecting the public.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-15011 Filed 6-25-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 55 (Sub-No. 22B)]

Implementation of Environmental Laws

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is removing a regulation to conform with its revision of environmental regulations effective September 29, 1991. In addition, it is modifying a regulation to update that provision. Since the changes are technical in nature and not intended to have substantive effect, public comment is not sought.

EFFECTIVE DATE: June 26, 1992.

FOR FURTHER INFORMATION CONTACT:

Richard B. Felder (202) 927-5610 [TDD for hearing impaired: (202) 927-5721]

SUPPLEMENTARY INFORMATION: The Commission is removing its regulation at 49 CFR 1180.6(a)(9) to reflect the revisions approved in Implementation of Environmental Laws, 7 I.C.C.2d 807 (1991) (Implementation) and making a technical change to its regulation at 49 CFR 1180.6(a)(8) to update that provision. Section 1180.6(a)(9) currently directs that required energy data be prepared in accordance with 49 CFR part 1106. In Implementation, we deleted the separate Energy Policy and Conservation Act requirements at 49 CFR part 1106 and incorporated them into more general environmental regulations set forth at 49 CFR part 1105. Implementation at 818. To conform with our revision, we are removing § 1180.6(a)(9). In addition, we are substituting the phrase the Commission's Section of Energy and Environment for the phrase the Commission's Energy and Environment Branch in the second sentence of § 1180.6(a)(8) to update that provision. These changes are not intended to have an impact on any person or Commission proceeding.

This action will not have a significant effect on a substantial number of small entities.

List of Subjects in 49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: June 17, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reason set forth in the preamble, the Commission amends title 49, chapter X, part 1180 as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10903–10906, 11341, 11343–11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 915.

2. In § 1180.6, paragraph (a)(8) is revised to read as follows and paragraph (a)(9) is removed.

§ 1180.6 Supporting information.

(a) * * *

(8) Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transaction, applicants shall, as soon as possible, and no later than the filing a notice of intent, consult with the Commission's Section of Energy and Environment for the proper format of the environmental report.

* * * * *

[FR Doc. 92–15082 Filed 6–25–92; 8:45am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 57, No. 124
Friday, June 26, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AE12

Minor Modifications to Nuclear Power Reactor Event Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to make minor modifications to the current nuclear power reactor event reporting requirements. The proposed amendments would apply to all nuclear power reactor licensees and would delete reporting requirements for some events that have been determined to be of little or no safety significance. These proposed amendments would reduce the industry's reporting burden and the NRC's response burden in event review and assessment.

DATES: The comment period expires July 27, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 am and 4:15 pm on Federal workdays.

Copies of the draft regulatory analysis, the supporting statement submitted to OMB and comments received may be examined at: The NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Raji Tripathi (10 CFR 50.73) or Eric Weiss (10 CFR 50.72), Office of Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-4435 and (301) 492-9005, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Commission is proposing minor amendments to the current nuclear power reactor event reporting requirements contained in 10 CFR 50.72, "Immediate Notification Requirements for Operating Nuclear Power Reactors," and 10 CFR 50.73, "Licensee Event Reporting System," as part of its ongoing activities to improve its regulations.

In this regard, various NRC reviews of operating experience and the patterns of licensees' reporting of operating events since 1984 have indicated that reports on some of these events are not necessary for the NRC to perform its safety mission. The reporting of certain types of events are no longer contributing useful information to the operating reactor events database and, therefore, are no longer necessary. The unnecessary reports are consuming resources in preparation and review that would be better applied elsewhere.

Over the past several years, the NRC has increased its attention to event reporting issues to ensure uniformity, consistency, and completeness in event reporting. As a result, in September 1991, the NRC's Office for Analysis and Evaluation of Operational Data (AEOD) issued for comment a draft NUREG-1022, Revision,[1] "Event Reporting Systems 10 CFR 50.72 and 10 CFR 50.73—Clarification of NRC Systems and Guidelines for Reporting." Following resolution of public comments, the NUREG will contain improved guidance for event reporting. The NRC's continuing examination of reported events during development of this document has determined that certain types of events primarily involving invalid engineered safety feature (ESF) actuations are of little or no safety significance.

Valid ESF actuations are those actuations that result from "valid signals" or from international manual initiation. Valid signals are those signals that are initiated in response to actual plant conditions or parameters satisfying the requirements for ESF initiation.

Invalid actuations are by definition those that do not meet the criteria for being valid. Thus, invalid actuations include actuations that are not due to valid signals and are not intentional manual actuations. Invalid actuations include instances where instrument drift, spurious signals, human error, or other invalid signals caused actuation of the ESF (e.g., jarring a cabinet, an error in use of jumpers or lifted leads, an error in actuation of switches or controls, equipment failure or radio frequency interference).

NRC's evaluation of both the reported events since January 1984, when the existing rules first became effective, and the comments received during the Event Reporting Workshops conducted in Fall of 1990, identified needed improvements in the rules. The NRC determined that invalid actuation, isolation, or realignment of a limited set of ESFs or their equivalent systems, subsystems, or components (i.e., an invalid actuation, isolation, or realignment of only the reactor water clean-up (RWCU) system, the control room emergency ventilation (CREV) system, the reactor building ventilation system, the fuel building ventilation system, or the auxiliary building ventilation system) are of little or no safety significance. However, these events are currently reportable under 10 CFR 50.72 (b)(2)(ii) and 10 CFR 50.73 (a)(2)(iv).

The final rules for the current event reporting regulations, 10 CFR 50.72 and 10 CFR 50.73 (48 FR 39039; August 28, 1983, and 48 FR 33850; July 26, 1983, respectively), stated that ESF systems, including the reactor protection system (RPS), are provided to mitigate the consequences of a significant event. Therefore, ESFs should (1) work properly when called upon and (2) should not be challenged frequently or unnecessarily. The Statements of Consideration for these final rules also stated that operation of an ESF as part of a pre-planned operational procedure or test need not be reported. The Commission noted that ESF actuations, including reactor trips, are frequently associated with significant plant transients and are indicative of events

[1] A free single copy may be requested by writing to the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy is also available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

that are of safety significance. At that time, the Commission also required all ESF actuations, including the RPS actuations, whether manual or automatic, valid or invalid—except as noted, to be reported to the NRC by telephone within 4 hours of occurrence followed by a written Licensee Event Report (LER) within 30 days of the incident. This requirement on timeliness of reporting remains unchanged.

The reported information is used by NRC in confirmation of the licensing bases, identification of precursors to severe core damage, identification of plant specific deficiencies, generic lessons, review of management control systems, and licensee performance assessment.

Discussion

Relaxing reporting requirements for certain ESF actuations, primarily invalid actuations, could save resources for both the industry and the NRC. The Commission emphasizes that only specific invalid ESF actuations would be exempt from reporting. The relaxations in event reporting requirements contained in the proposed rule would apply only to a limited set of specifically defined invalid ESF actuations. These events are limited to invalid actuation, isolation, or realignment of the RWCU system, the CREV system, the reactor building ventilation system, the fuel building ventilation system, or the auxiliary building ventilation system. Invalid actuation/isolation/realignment events in these systems are of little or no safety significance.

Invalid actuations of all other ESFs, except those noted above, have been found to be safety significant and would continue to be reportable under 10 CFR 50.72(b)(2)(ii) and 10 CFR 50.73(a)(2)(iv). Reportable invalid actuations would include emergency core cooling system isolations/actuations, containment isolation valve closures that affect cooling systems, main steam flow, essential support systems, etc., containment spray actuation, and residual heat removal system isolations.

However, the Commission emphasizes that if an invalid ESF actuation reveals a defect in the system so that the system failed or would fail to perform its intended function, the event continues to be reportable under other requirements of 10 CFR 50.72 and 10 CFR 50.73. If a condition or deficiency has (1) an adverse impact on safety-related equipment and consequently on the ability to shut down the reactor and maintain it in a safe shutdown condition, (2) has a potential for significant radiological release or potential exposure to plant personnel or the general public, or (3) would compromise control room habitability, the event/discovery continues to be reportable.

Invalid ESF actuations that would be excluded by this proposed rule, but occur as a part of a reportable event, would continue to be described as part of the reportable event. The proposed amendments are not intended to preclude submittal of a complete, accurate, and thorough description of an event that is otherwise reportable under 10 CFR 50.72 or 10 CFR 50.73. The Commission is proposing to relax only the selected event reporting requirements specified in this proposed rule. Licensees are still required under 10 CFR 50, appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to address whether corrective actions for events or conditions that are adverse to quality are reportable or not. In addition, minimizing ESF actuations (such as RWCU isolations) to reduce operational radiation exposures associated with the investigation and recovery from the actuations, are consistent with ALARA requirements.

The existing provisions in 10 CFR 50.72 (b)(2)(ii) and 10 CFR 50.73(a)(2)(iv), require the reporting of an event or condition that results in a manual or automatic actuation of an ESF, including the RPS, except when the actuation results from and is part of the pre-planned sequence during testing or reactor operation. A pre-planned sequence implies that the procedural step indicates the specific ESF or RPS actuation that will be generated and control room personnel are aware of the specific signal generation before its occurrence or indication in the control room. However, if the ESF, including the RPS, actuates during the planned operation or test in a way that is not part of the planned procedure, such as at the wrong step, the event is reportable.

The Commission proposes to make additional relaxations to event reporting by excluding three additional categories of events as follows:

(1) The first category excludes events in which an invalid ESF or RPS actuation occurs when the system is already properly removed from service if all requirements of plant procedures for removing equipment from service have been met. This would include required clearance documentation, equipment and control board tagging, and properly positioned valves and power supply breakers.

(2) The second category excludes events in which an invalid ESF or RPS actuation occurs after the safety function has already been completed (e.g., an invalid containment isolation signal while the containment isolation valves are already closed, or an invalid actuation of the RPS when all rods are fully inserted).

(3) The third category excludes events when an invalid actuation, isolation, or realignment of only the reactor water clean-up (RWCU) system, or any of the following ventilation systems: Control room emergency ventilation (CREV) system, reactor building ventilation system, fuel building ventilation system, auxiliary building ventilation system, or their equivalent ventilation systems occurs. Invalid actuations that involve other ESFs not specifically excluded, (such as emergency core cooling system isolations or actuations; containment isolation valve closures that affect cooling systems, main steam flow, essential support systems, etc.; containment spray actuation; and, residual heat removal system isolations), would continue to be reportable.

Licensees would continue to be requird to submit LERs if a deficiency or condition associated with any of the invalid ESF actuations of the RWCU or the CREV systems (or other equivalent ventilation systems) satisfies any reportability criteria under § 50.72 and § 50.73.

Impact of the Proposed Amendments

Relaxing the current requirement for reporting of certain types of ESF actuations will reduce the industry's reporting burden and the NRC's response burden. This reduction would be consistent with the objectives and the requirements of the Paperwork Reduction Act. The proposed amendments would have no impact on the NRC's ability to fulfill its mission to ensure public health and safety because the reporting requirements that the Commission proposes to delete have little or no safety significance.

It is estimated that the proposed changes to the existing rules will result in about 150 (or 5–10 percent) fewer Licensee Event Reports each year. Similar reductions are expected in the number of prompt event notifications reportable under 10 CFR 50.72.

Submittal of Comments

The licensees are encouraged to submit their estimates on impact of the proposed amendments in their comments on the proposed rule.

Commenters are encouraged to submit, in addition to the original paper copy, a copy of their comments in an electronic format on IBM PC DOS-

compatible 3.5- or 5.25-inch, double-sided diskettes. Data files should be provided in WordPerfect 5.0, or 5.1. ASCII code is also acceptable, or if formatted text is required, data files should be submitted in IBM Revisable Format Text Document Content Architecture (RFT/DCA) format.

Finding of No Significant Environmental Impact: Availability

The NRC has determined that this proposed regulation is the type of action described in categorical exclusions 10 CFR 51.22 (c)(3)(ii) and (iii). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

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

Because the rule would relax existing reporting requirements, public reporting burden for the collection of information is expected to be reduced. It is estimated that about 150 fewer Licensee Event Reports (NRC Form 366) and a similarly reduced number of prompt event notifications, made pursuant to 10 CFR 50.72, will be required each year. The resulting reduction in burden is estimated to average 50 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 the estimated burden reductions or any other aspect of this collection of information, including suggestions for further reducing reporting burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB 3019, (3150-0011 and 3150-0104), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed rule change. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555. Single copies of the draft analysis may be obtained from: Raji Tripathi, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (310) 492-4435.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (B)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule affects only the event reporting requirements for operational nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration Act in 13 CFR part 121.

Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed an assessment of the need for Backfit Analysis for the proposed rule. The proposed amendments include relaxations of certain existing requirements on reporting of information to the NRC. These changes neither impose additional reporting requirements nor require modifications to the facilities or their licenses.

Accordingly, the NRC has concluded that the proposed rule does not constitute a backfit and, thus, a backfit analysis is not required.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1964, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Commission is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.5, 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)-(c), 50.34(a) and (e), 50.44(a)-(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (1)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)-(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 69 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.72, paragraph (b)(2)(ii) is revised to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

* * * * *

(b) Non-emergency events * * *

(2) Four-hour reports. * * *

(ii) Any event or condition that results in a manual or automatic actuation of any engineered safety feature (ESF), including the reactor protection system (RPS), except when:

(A) The actuation results from and is part of a pre-planned sequence during testing or reactor operation;

(B) The actuation is invalid and:

(*1*) Occurs while the system is properly removed from service;

(*2*) Occurs after the safety function has been already completed; or

(*3*) Involves only the following specific ESFs or their equivalent systems:

(*i*) Reactor water clean-up system;

(*ii*) Control room emergency ventilation system;

(*iii*) Reactor building ventilation system;

(*iv*) Fuel building ventilation system; or

(*v*) Auxiliary building ventilation system.

* * * * *

3. In § 50.73, paragraph (a)(2) introductory text is republished and paragraph (a)(2)(iv) is revised to read as follows:

§ 50.73 Licensee event report system.

(a) Reportable events. * * *

(2) The licensee shall report: * * *

(iv) Any event or condition that resulted in a manual or automatic actuation of any engineered safety feature (ESF), including the reactor protection system (RPS), except when:

(A) The actuation resulted from and was part of pre-planned sequence during testing or reactor operation;

(B) The actuation was invalid and:

(*1*) Occurred while the system was properly removed from service;

(*2*) Occurred after the safety function had been already completed; or

(*3*) Involved only the following specific ESFs or their equivalent systems:

(*i*) Reactor water clean-up system;

(*ii*) Control room emergency ventilation system;

(*iii*) Reactor building ventilation system;

(*iv*) Fuel building ventilation system; or

(*v*) Auxiliary building ventilation system.

* * * * *

Dated at Rockville, MD, this 19th day of June, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-15067 Filed 6-25-92; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 72

RIN 3150-AE15

List of Approved Spent Fuel Storage Casks: Additions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to approve two additional spent fuel storage casks (TN-24 and VSC-24). These casks would be added to the "List of Approved Spent Fuel Storage Casks." Holders of power reactor operating licenses are permitted to store spent fuel in the approved casks under a general license. This action is necessary to inform the public and NRC licensees of the propose additions.

DATE: Comment period expires September 9, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, MD between 7:45 a.m. and 4:15 p.m. Federal workdays.

A copy of NUREG-1092, which is referenced in the environmental assessment, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Local Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Copies of the environmental assessment and finding of no significant environmental impact, and any comments received on this proposed rule are available for inspection and copying for a fee at the NRC Public Document Room at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3803, or Mr. James F. Schneider, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2692.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982 (NWPA) includes the following directive: "The Secretary [of DOE] shall establish a demonstration program in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the (Nuclear Regulatory) Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission."

The Commission approved dry storage of spent nuclear fuel in publishing a final rule on July 18, 1990 (55 FR 29181), which established a new subpart K within 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites."

Section 133 of the NWPA states, in part, that "the Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor." This directive was carried out on July 18, 1990 (55 FR 29181), by the publication in the Federal Register of a final rule establishing a new subpart L within 10 CFR part 72 entitled "Approval of Spent Fuel Storage Casks."

At the time of this rulemaking, four casks were listed in § 72.214 of subpart K as approved by the NRC for storage of spent fuel at power reactor sites under general license by persons authorized to possess or operate nuclear power reactors.

Discussion

This proposed rulemaking would add two spent fuel storage casks to the list of approved casks in § 72.214. Following the procedures in § 72.230 of subpart L, Transnuclear, Inc., submitted a Topical Safety Analysis Report (TSAR) entitled "TN-24 Dry Storage Cask Topical Report" in July 1988. In July 1989, the NRC issued a Safety Evaluation Report (SER) approving the TSAR with instructions to Transnuclear to revise the TSAR prior to docketing. Pacific Sierra Nuclear Associates (PSNA) submitted a "Topical Report on the Ventilated Storage Cask System for Irradiated Fuel" for their VSC-24 cask in February 1989. The NRC issued its SER in April 1991. Also following the procedures of § 72.230, PSNA submitted a "Safety Analysis Report for the Ventilated Storage Cask System" in November 1991. The NRC issued its SER in April 1992.

The TSARs for the Transnuclear TN-24 and the Pacific Sierra Nuclear Associates VSC-24 casks have been approved for storage of spent fuel under the conditions specified in their Certificates of Compliance. These casks, when used according to the conditions specified in their Certificates of Compliance, will meet the requirements of 10 CFR part 72 and, thus, adequate protection of the public health and safety would be ensured. These casks are being proposed for listing under § 72.214, "List of Approved Spent Fuel Storage Casks." Holders of power reactor operating licenses are permitted

to store spent fuel in these casks under a general license. A Certificate of Compliance terminates 20 years after the date that the particular cask is first used by the general licensee to store spent fuel, unless the cask's Certificate of Compliance is renewed. While the certificates of compliance for each cask may differ in some specifics—e.g., certificate number, operating procedures, training exercises, spent fuel specification—many of the safety conditons are similar. Copies of the certificates of compliance are available for inspection and comment at the NRC Public Document Room 2120 L Street, NW. (Lower Level), Washington. DC. Single copies of the proposed certificates may be obtained from Mr. J. F. Schneider, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2692.

Submission of Comments in Electronic Format

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the letter in electronic format on IBM PC-compatible 5.25- or 3.5-inch computer diskette. Data files should be provided in one of the following formats: WordPerfect, IBM Document Content Architecture/ Revisable-Form-Text (DCA/RFT), or unformatted ASCII text.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, the Commission has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule is mainly administrative in nature and would not change safety requirements, which could have significiant environmental impacts. The proposed rule adds to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the Commission. The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the envirnomental assessment and the finding of no significant impact are available from Mr. G. E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3803.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget Approval Number 3150-0132.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR part 72, which provided for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use these casks if (1) they notify the NRC in advance, (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance, and (3) the other conditions of the general license are met. At the time of the rulemaking, four spent fuel storage casks were approved for use at reactor sites, and were listed in 10 CFR 72.214. That rulemaking envisioned that storage tasks certified in the future could be routinely added to the listing in § 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs was provided in 10 CFR 72.230.

The alternative to this proposed action is to withhold certification of these new designs and give a site-specific license to each utility that wanted to use the casks. This would cost the NRC more time and money for each site-specific review. In addition, withholding certification would ignore the procedures and criteria currently in-place for the addition of new cask designs. Further, it is in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site reviews. Also, this alternative is anticompetitive in that it would exclude new vendors without cause and would arbitrarily limit choice of cask designs available to power reactor licensees.

Approval of the proposed rulemaking would eliminate the above problems. Further, the proposed rule will have no adverse effect on the public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs which can be used under a general license. However, the newer cask designs may have a market advantage over the existing designs in that power reactor licensees may prefer to use the newer casks with improved features. The new cask vendors with casks to be listed in § 72.214 benefit by having to obtain NRC certificates only once for a design which can then be used by many power reactor licensees. Vendors with cask designs already listed may be adversely impacted in that power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees.

This proposed rulemaking has no significant identifiable impact or benefit on other government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the Commission's responsiblities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, thus, this action is recommended.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule, if promulgated, will not have a significant ecomonic impact on a substantial number of small entities. This proposed rule affects only licensees owning and operating nuclear power reactors and cask vendors. The owners of nuclear power plants do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and, thus, a backfit analysis is not required for this proposed rule, because this amendment does not involve any provisions which would impose backfits as defined in § 50.109(a)(1).

List of Subjects in 10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c)(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 96 Stat. 2230 (42 U.S.C. 10153) and 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.12, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72(b), (c), 72.74(a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10(a), (e), 72.12, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.90(a)-(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102(c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.142 , 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b)(3), (c)(5), (d)(3), (e), (f), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140(b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154(a), (b), 72.156, 72.160, 72.162, 72.166, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192, 72.212(b), 72.216, 72.218, 72.230, 72.234(e) and (g) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 72.214, certificates of compliance 1005 and 1007 are added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1005.
SAR Submitted by: Transnuclear, Inc.
SAR Title: TN-24 Dry Storage Cask Topical Report.
Docket Number: 72-1005.
Certification Expiration Date: (20 years after effective date of final rule.
Model Number: TN-24.
Certificate Number: 1007.
SAR Submitted by: Pacific Sierra Nuclear Associates.
SAR Title: Safety Analysis Report for the Ventilated Storage Cask System.
Docket Number: 72-1007.
Certification Expiration Date: (20 years after effective date of final rule publication).
Model Number: VSC-24.

Dated at Rockville, Maryland, this 19th day of June 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-15198 Filed 6-25-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Ch. II

[Docket Number 920363-2063]

Proposal to Establish the Conformity Assessment Systems Evaluation Program (CASE); Extension of Public Comment Period

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Extension of comment period.

SUMMARY: The National Institute of Standards and Technology (NIST) is extending the deadline for public comments on the Conformity Assessment Systems Evaluation Program (CASE). This voluntary program is intended as a mechanism to provide U.S. Government assurances to the Commission of the European Communities and other governments of the competency of qualified U.S. conformity assessment entities. The program was originally published for comment on March 27, 1992. The original deadline for receiving comments was May 26, 1992, but an extension of the deadline to July 25, 1992 was published April 29, 1992. In response to requests from the public, the deadline is hereby extended again to September 30, 1992.

DATES: Comments must be received on or before September 30, 1992.

ADDRESSES: Comments may be mailed to Dr. Stanley I. Warshaw, Director, Office of Standards Services, National Institute of Standards and Technology, Administration Building, Room A-603, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley I. Warshaw, telephone 301-975-4000, FAX 301-963-2871.

Dated: June 23, 1992.

John W. Lyons,

Director.

[FR Doc. 92-15091 Filed 6-25-92; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 92N-0072]

Public Information; Communications with Foreign Government Officials; Removal of Restrictions on International Cooperation on New Product Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing communications with foreign government officials to provide that the agency may disclose to foreign government officials confidential commercial information submitted to FDA or incorporated into agency-prepared records, provided certain conditions are met, and that such disclosure will not make the information available to the public. The proposed amendment would not permit FDA to disclose trade secret information entitled to protection under provisions of the Federal Food, Drug, and Cosmetic Act (the act) without the express consent of the submitter of the information.

The existing regulation provides that FDA may receive confidential commercial information from foreign government officials who perform counterpart functions to FDA for a foreign government and that such information will be exempt from public disclosure. However, under existing regulations, the agency may not provide confidential commercial information in its own files to such officials. This proposed action is being taken, in part, to facilitate the review, approval, disapproval, and withdrawal of approval, as appropriate, of FDA-regulated articles including products intended to cure, mitigate, treat, or prevent serious or life-threatening diseases.

DATES: Written comments by August 25, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Office of Policy (HF-26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's regulations governing public information (part 20 (21 CFR part 20)) implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and other laws that affect public access to government records and information (e.g., 18 U.S.C. 1905 and 21 U.S.C. 331(j)). Section 20.21 (21 CFR 20.21) of FDA's regulations implementing these laws provides that any record of the agency that is disclosed in an authorized manner to any member of the public is available for disclosure to all members of the public. In general, communications with foreign government officials have the same status as communications with any member of the public. For this reason, and in accordance with FDA's policy of uniform access, the disclosure of agency records to such officials ordinarily constitutes disclosure to the public and obligates FDA to make the same records available to any person who requests them under the FOIA.

Subpart E of part 20 identifies several categories of people or institutions to whom disclosure of certain FDA records may be made without requiring uniform access under § 20.21, including foreign government officials who perform counterpart functions to FDA for a foreign government (§ 20.89). Under § 20.89(a), however, although confidential commercial information obtained by such officials and voluntarily disclosed to FDA as part of cooperative law enforcement and regulatory efforts is protected from disclosure under § 20.61 (21 CFR 20.61), FDA may not disclose to those officials confidential commercial information submitted to, or incorporated into records prepared by, the agency. Disclosure of such information by FDA would invoke the requirement in § 20.21 of uniform access to records.

In 1974, when FDA promulgated the public information regulations now codified at Part 20, the agency considered the exchange of confidential commercial information with foreign governments and decided not to make such an exchange an exception to § 20.21.

> * * * Foreign governments have discussed with the Food and Drug Administration the possibility of exchanging data and information on the safety and effectiveness of investigational and marketed drugs.
>
> *The Commissioner concludes that the same rules will apply with respect to disclosure of such information to foreign governments as apply to disclosure to the public.* This will permit the Food and Drug Administration to provide full summaries of all safety and effectiveness data for all approved NDA's and selected summaries for IND's and pending NDA's for which the existence of an IND has been publicly disclosed or acknowledged. *The Commissioner concludes that this will adequately satisfy the need for international exchange of important regulatory information of this type.*

(39 FR 44602 at 44636, December 24, 1974 (emphasis added)).

FDA has tentatively concluded that its inability under the public information regulations to disclose to foreign government officials confidential commercial information submitted to FDA or incorporated into agency-prepared records is impeding its efforts to meet the current need for international exchange of important regulatory information. In the years that have passed since FDA promulgated § 20.89, agency scientists have found it increasingly beneficial to review data in the files of foreign government officials and to share with counterpart foreign government officials the results of scientific investigations relating to products that have been, or are intended to be, manufactured and marketed in the respective countries.

Cooperative efforts with government scientists of other countries are particularly important to comprehensive and timely review of products that are being developed to cure, mitigate, treat, or prevent life-threatening illnesses. For example, in the case of didanosine (ddI), a drug intended for use in the treatment of acquired immunodeficiency syndrome (AIDS), FDA and its Canadian counterparts received simultaneous submissions of the application from Bristol-Myers Squibb and carried out a joint review. To accomplish this joint review in accordance with the current public information regulations, a variety of agreements and contracts had to be drawn up to ensure that the data in the application did not become subject to premature public disclosure. The purpose of the proposed amended regulation is to eliminate the need for such special and time-consuming arrangements each time review of a product will benefit from international cooperation, whether that review is in the context of approval, a refusal to approve, or a withdrawal of approval.

In summary, to facilitate approval of products shown to be safe and effective, to ensure the disapproval of products not shown to be safe and effective, and to expedite the withdrawal of approval of products no longer shown to be safe and effective, FDA is proposing to amend § 20.89 by adding a new paragraph (c) to permit disclosure to foreign government officials, in the circumstances described below, of confidential commercial information submitted to FDA or incorporated into agency prepared records.

II. The Proposed Amendment

Proposed § 20.89(c) is intended to cover the nonpublic exchange between FDA and foreign government officials of certain information that is protected from mandatory public disclosure by exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). Exemption 4 covers two broad categories of information in Federal agency records: trade secret information, and information that is (1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential ("confidential commercial information").

Trade secret information has been defined by the courts as information relating to the making, preparing, compounding, or processing of trade commodities (*Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983)). This definition, which requires a "direct relationship" between the trade secret and the productive process, applies to a relatively narrow category of information that coincides with information prohibited from disclosure by section 301(j) of the act (21 U.S.C. 331(j)). The agency is aware that the definition of "trade secret" promulgated in § 20.61(a) in the 1970's is a broader and more inclusive one. Section 20.61(a), however, has since been narrowed by judicial opinions interpreting the FOIA

(see *Public Citizen Health Research Group* v. *FDA*; *Anderson* v. *HHS*, 907 F.2d 936, 944 (10th Cir. 1990)), and FDA is in the process of amending § 20.61 to reflect the narrow trade secret definition. In any case, the proposed amendment would not alter FDA's practice with respect to the narrow category of information that can be considered "trade secret" because secret information relating to a method or process would not be disclosed to foreign government officials pursuant to this amendment.

The proposal is intended to permit the limited and nonpublic exchange of the other category of information covered by exemption 4 of the FOIA, "confidential commercial information." Information is "confidential" for purposes of exemption 4 if disclosure of the information is likely to (1) impair the Government's ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. (See *National Parks & Conservation Ass'n* v. *Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)). The types of information that may be exempt from public disclosure pursuant to this section of the FOIA include: business sales statistics, customer and supplier lists, research data, profit and loss data, and overhead and operating costs. Under most circumstances, FDA treats data supporting product approval applications as confidential commercial information that is entitled to be protected from public disclosure. Thus, under the amended regulation, confidential commercial information submitted to the agency that could be shared with foreign governments would include: information (other than trade secret information protected from disclosure under section 301(j) of the act) in pending and approved applications for permission to investigate or market regulated articles such as new drugs, new animal drugs, medical devices, biological products, and food additives, and information in agency-prepared reviews of such applications.

The amended regulation would establish that foreign government officials are not members of the public for purposes of disclosure of confidential commercial information submitted to FDA or incorporated into records prepared by the agency, and that such disclosure would not invoke the requirement in § 20.21 of uniform access to records. Disclosure to foreign government officials under these circumstances would be a limited, 'nonpublic disclosure intended to protect and promote the public health in accordance with the act. Furthermore, this limited disclosure would be pursuant to written agreements that any confidential information involved in such an exchange may not be further disclosed. (See proposed § 20.89(c)(4).) For these reasons, FDA would not waive its ability to invoke the protection of exemption 4 of the FOIA in response to a request from a member of the public for information that had been disclosed to foreign government officials pursuant to the terms of proposed § 20.89(c).

Disclosure to foreign government officials pursuant to proposed § 20.89(c) would be an "authorized" disclosure. Accordingly, no FDA employee engaged in such a nonpublic exchange of confidential commercial information would be in violation of 18 U.S.C. 1905, which makes the unauthorized disclosure of such information by a Federal employee a crime.

Proposed § 20.89(c) would permit, but not require, the Commissioner of Food and Drugs, or any other officer or employee of FDA whom he may designate to act on his behalf for the purpose, to disclose confidential commercial information to foreign government officials who perform counterpart functions to FDA for a foreign government, upon request, as part of cooperative law enforcement or regulatory efforts, including efforts to facilitate evaluation of applications for approval of products shown to be safe and effective, to ensure the disapproval of products not shown to be safe and effective, and to expedite the withdrawal of approval of products no longer shown to be safe and effective. The Commissioner of Food and Drugs would be authorized to disclose the information if the Commissioner made each of the following determinations: (1) Disclosure would be in the public interest and would promote the objectives of the act and the agency; (2) The foreign government official's agency had provided a written statement of its authority to protect confidential commercial information from public disclosure and a written commitment that the records would not be further disclosed by the foreign government except with the written permission of FDA or the sponsor.

The amended regulation would not permit the disclosure of trade secret information that relates to manufacturing methods and processes and that is entitled to protection under section 301(j) of the act. Circumstances might arise, however, when FDA determined that the exchange of information relating to manufacturing methods and processes would enhance the agency's ability to review an application for product approval or examine regulatory issues that have arisen with respect to a marketed product. In such circumstances, FDA would seek permission from the submitter of the information protected from disclosure by 301(j) of the act to disclose that information to foreign government officials. FDA would not disclose the information without the express written consent of its submitter in the form of a waiver of protection under section 301(j) with respect to the limited and nonpublic disclosure.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

IV. Economic Impact

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal and has determined that the final rule, if promulgated, would not be a major rule as defined by the Order.FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

V. Comments

Interested persons may, on or before August 25, 1992 submit to the Dockets Management Branch (address above) written comments regarding this proposal. 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 office above between 9 a.m. to 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, it is proposed that 21 CFR part 20 be amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation of 21 CFR Part 20 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

2. Section 20.89 is amended by adding new paragraph (c) to read as follows:

§ 20.89 Communications with foreign government officials.

* * * * *

(c)(1) Disclosure of confidential commercial information submitted to the Food and Drug Administration or incorporated into agency prepared records may be authorized by the Commissioner of Food and Drugs, or any other officer or employee of the Food and Drug Administration whom the Commissioner may designate to act on his behalf for the purpose, to foreign government officials who perform counterpart functions to FDA for a foreign government, upon request, as part of cooperative law enforcement or regulatory efforts, provided the Commissioner of Food and Drugs or his designee makes each of the following determinations:

(i) Disclosure would be in the public interest and would promote the objectives of the Federal Food, Drug, and Cosmetic Act and the agency;

(ii) The foreign government official's agency had provided a written statement of its authority to protect confidential commercial information from public disclosure and a written commitment that the records would not be further disclosed by the foreign government except with the written permission of the Food and Drug Administration or the sponsor.

(2) Such disclosure of confidential commercial information submitted to the Food and Drug Administration or incorporated into agency-prepared records does not invoke the rule established in § 20.21 that such records shall be made available to all members of the public.

Dated: May 4, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–15055 Filed 6–23–92; 10:50 am]

BILLING CODE 4160–01–F

Notices

Federal Register
Vol. 57, No. 124
Friday, June 26, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) The "national average payments," the amount of money the Federal Government provides States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the school lunch program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the school lunch and school breakfast programs reflect changes in the food away from home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for milk reflects changes in the Producer Price Index for Fresh Processed Milk. These payments and rates are in effect from July 1, 1992 through June 30, 1993.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 305-2618.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fresh Processed Milk, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1992 to June 30, 1993, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 11.00 cents. This reflects no change over the current reimbursement rate because the Producer Price Index for Fresh Processed Milk from May 1991 to May 1992 (from a level of 119.2 in May 1991 to 120.5 in May 1992) did not change significantly enough to trigger a change in the reimbursement rate.

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a), and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for meals served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 1992 through June 30, 1993 reflect a 2.1 percent increase in the Price Index during the 12-month period May 1991 to May 1992 (from a level of 137.5 in May 1991 to 140.4 in May 1992).

Lunch Payment Factors—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served in school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served in school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price. To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced-price lunches. The section 11 National Average Payment Factor for each reduced-price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act, maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), establishes

National Average Payment Factors for free, reduced-price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4 and section 11 National Average Payment Factors and maximum reimbursement rates are in effect through June 30, 1993. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and the Pacific Territories use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served less than 60 percent free and reduced-price lunches in School Year 1990–91, the payments are: *Contiguous States*—16.25 cents, maximum rate—24.25 cents; *Alaska*—26.50 cents, maximum rate 38.00 cents; *Hawaii*—19.00 cents, maximum rate 28.00 cents.

In school food authorities which served 60 percent or more free and reduced-price lunches in School Year 1990–91, payments are: *Contiguous States*—18.25 cents, maximum rate 24.25 cents; *Alaska*—28.50 cents, maximum rate 38.00 cents; *Hawaii*—21.00 cents, maximum rate 28.00 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch—153.25 cents, reduced-price lunch 113.25 cents; *Alaska*—free lunch 248.50 cents, reduced-price lunch 208.50 cents; *Hawaii*—free lunch 179.50 cents, reduced-price lunch 139.50 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*—free breakfast 94.50 cents, reduced-price breakfast 64.50 cents, paid breakfast 18.75 cents; *Alaska*—free breakfast 149.50 cents, reduced-price breakfast 119.50 cents, paid breakfast 26.75 cents; *Hawaii*—free breakfast 109.50 cents, reduced-price breakfast 79.50 cents, paid breakfast 21.00 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast 112.25 cents, reduced-price breakfast 82.25 cents, paid breakfast 18.75 cents; *Alaska*—free breakfast 178.25 cents, reduced-price breakfast 148.25 cents, paid breakfast 26.75 cents; *Hawaii*—free breakfast 130.50 cents, reduced-price breakfast 100.50 cents, paid breakfast 21.00 cents.

Payment Chart

The following chart illustrates: the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous States.

SCHOOL PROGRAMS.—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in Dollars or Fractions Thereof Effective From July 1, 1992–June 30, 1993]

		Less than 60 percent	60 percent or more	Maximum rate
National school lunch program [1]:				
Contiguous States	Paid	$.1625	.1825	.2425
	Reduced-price	1.2950	1.3150	1.4650
	Free	1.6950	1.7150	1.8650
Alaska	Paid	.2650	.2850	.3800
	Reduced-price	2.3500	2.3700	2.61
	Free	2.7500	2.7700	3.01
Hawaii	Paid	.19	.21	.28
	Reduced-price	1.5850	1.6050	1.7775
	Free	1.9850	2.0050	2.1775

		Non-severe need	Severe need
School breakfast program:			
Contiguous states	Paid	$.1875	.1875
	Reduced-price	.6450	.8225
	Free	.9450	1.1225
Alaska	Paid	.2675	.2675
	Reduced-price	1.1950	1.4825
	Free	1.4950	1.7825
Hawaii	Paid	.21	.21
	Reduced-price	.7950	1.0050
	Free	1.0950	1.3050

	All milk	Paid milk	Free milk
Special milk program:			
Pricing programs without free option	$.11	N/A	N/A.
Pricing programs with free option	N/A	.11	Average cost½ pint milk.
Nonpricing programs	.11	N/A	N/A.

[1] Payments listed for Free & Reduced-Price Lunches include both sections 4 and 11 funds.

Authority: Sections 4, 8, and 11 of the National School Lunch Act, as amended (42 U.S.C. 1753, 1757, 1759a) and sections 3 and 4(b) of the Child Nutrition Act, as amended (42 U.S.C. 1772 and 1773b).

Dated: June 22, 1992.

George A. Braley,

Associate Administrator.

[FR Doc. 92-15064 Filed 6-25-92; 8:45 am]

BILLING CODE 3410-30-M

Child and Adult Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1992–June 30, 1993

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in child care, outside-school-hours care and adult day care centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 305-2620.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR part 226).

Background

Pursuant to sections 4, 11 and 17 of the National School Lunch Act (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1992–June 30, 1993.

As provided for under the National School Lunch Act and the Child Nutrition Act of 1966, all rates in the CACFP must be prescribed annually on July 1 to reflect changes in the Consumer Price Index for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes and the administrative reimbursement rates for sponsors of day care homes on July 10, 1991 (for the period July 1, 1991–June 30, 1992).

ALL STATES EXCEPT ALASKA AND HAWAII

Meals served in CENTERS—Per Meal Rates in Dollars or Fractions thereof	
Breakfasts:	
Paid	$.1875
Free	.9450
Reduced	.6450
Lunches and Suppers: (1)	
Paid	.1625
Free	1.6950
Reduced	1.2950
Supplements:	
Paid	.0425
Free	.4650
Reduced	.2325
Meals Served in DAY CARE HOMES—Per Meal Rates in Dollars or Fractions thereof	
Breakfasts	.8000
Lunches and Suppers	1.4525
Supplements	.4325
ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars	
Initial 50 day care homes	65
Next 150 day care homes	50
Next 800 day care homes	39
Additional day care homes	34

(1) These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the FEDERAL REGISTER.

Pursuant to section 12(f) of the NSLA (42 U.S.C. 1760(f)), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

ALASKA

Alaska—Meals Served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof*	
Breakfasts:	
Paid	$.2675
Free	1.4950
Reduced	1.1950
Lunches and Suppers: (1)	
Paid	$.2650
Free	2.7500
Reduced	2.3500
Supplements:	
Paid	.0700
Free	.7550
Reduced	.3775
Alaska—Meals Served in DAY CARE HOMES—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts	1.2600
Lunches and Suppers	2.3550
Supplements	.7025
Alaska—ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars:*	
Initial 5 day care homes	106
Next 150 day care chomes	81
Next 800 day care homes	63
Additional day care homes	55

(1) These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**

The new payment rates for Hawaii are as follows:

HAWAII

Hawaii—Meals served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof*	
Breakfasts:	
Paid	$.2100
Free	1.0950
Reduced	.7950
Lunches and Suppers: (1)	
Paid	1900
Free	1.9850
Reduced	1.5850
Supplements:	
Paid	.0500
Free	.5450
Reduced	.2725
Hawaii—Meals Served in DAY CARE HOMES—Per Meal Rates *in Dollars or Fractions thereof*	
Breakfasts	.9275
Lunches and Suppers	1.7000
Supplements	.5075
Hawaii—ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars*	
Initial 50 day care homes	76
Next 150 day care homes	58
Next 800 day care homes	46
Additional day care homes	40

(1) These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register.**

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 2.1 percent increase during the 12-month period May 1991 to May 1992 (from 137.5 in May 1991 to 140.4 in May 1992) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 3.0 percent increase during the 12-month period May 1991 to May 1992 (from 135.6 in May 1991 to 139.7 in May 1992) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

Authority: Sections 4(b)(2), 11(a), 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1759(a), 1766) and section 4(b)(B) of the Child Nutrition Act of 1966 as amended, (42 U.S.C. 1773b).

Dated: June 22, 1992.

George A. Braley,

Associate Administrator.

[FR Doc. 92-15063 Filed 6-25-92; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Establishment of 24 New Research Natural Areas

AGENCY: Forest Service, USDA.

ACTION: Notice of decision.

SUMMARY: Notice is hereby given that the Chief of the Forest Service has issued Decision Notices/Designation Orders to establish 24 new Research Natural Areas within the National Forest System. Establishment of these areas is subject to administrative appeal pursuant to the rules at 36 CFR part 217.

DATES: The establishment of the areas is effective August 10, 1992. Also, pursuant to 36 CFR 217.8(b), the period for appealing this decision begins June 27, 1992. Any notice of appeal must be received in writing by August 10, 1992.

ADDRESSES: Copies of the establishment records and of the Decision Notices/Designation Orders for the 24 areas are available upon written request to Chief (4060), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090. Copies are available for inspection in the office of the Director of Forest Management Research, First Floor, Northwest Wing, Auditor's Building, 201 Fourteenth Street SW., Washington, DC. To facilitate entry into the building, visitors are encouraged to call in advance (202-205-1552).

Anyone who wishes to appeal must submit a notice of appeal to The Honorable Edward Madigan, Secretary of Agriculture, Fourteenth and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Jacob L. Whitmore, Forest Management Research Staff, (202) 205-1149.

SUPPLEMENTARY INFORMATION: Research Natural Areas are part of a national network of ecological areas on National Forest System lands designated and permanently recorded for research, education, and/or maintenance of biological diversity. These areas are managed for nonmanipulative research, observation, and study, and they may assist in implementing provisions of special statutes, such as recovery of species under the Endangered Species Act and the monitoring provisions of the National Forest Management Act. The establishment of the 24 new areas will bring the total number of Research Natural Areas on National Forest System lands to 290.

The new areas to be established are as follows:

Name of RNA	State	County	National forest	Acres
King Creek *	CA	San Diego	Cleveland	1002
Church Dome	CA	Tulare	Sequoia	1380
Peavine Point	CA	El Dorado	El Dorado	1113
Wolf-Weigel	MT	Lincoln	Kootenai	250
Hoskins Lake	MT	Lincoln	Kootenai	380
Grave Peak	ID	Idaho	Clearwater	360
Grass Lake	CA	El Dorado	El Dorado	100
Bitterroot River	ID	Ravalli	Bitterroot	40
Bitterroot Mountain Snow Avalanche	MT	Ravalli	Bitterroot	1850
American Canyon	CA	San Luis Obispo	Los Padres	1500
Upper Lost Horse Canyon	MT	Ravalli	Bitterroot	1720
Sugar Pine Point	CA	Nevada	Tahoe	625
Mount Pleasant	CA	Plumas	Plumas	1416
East Shore	MT	Flathead	Flathead	646
Sawmill Creek	MT	Ravalli	Bitterroot	270
Bose Lake	WI	Forest	Nicolet	81
Tuchuck	MT	Flathead	Flathead	2062
Lyon Peak/Needle Lake	CA	Placer	Tahoe	700
McCaslin Mountain	WI	Forest	Nicolet	524
Lower Lost Horse Canyon	MT	Ravalli	Bitterroot	1601
Pete Creek Meadows	MT	Lincoln	Kootenai	155
Sheyenne Springs	ND	Ransom	Custer	57
Little Bitterroot	MT	Flathead	Flathead	200
Frog Meadows *	ID	Lemhi	Salmon	330

The designation order, when necessary, amends the relevant forest plan to assure consistency between the establishment record and the management direction in the forest plan. Those plans being amended are designated herein with an asterisk. In these cases, notice of the establishment of a new RNA and notice of forest plan amendment are accomplished simultaneously by publication in the **Federal Register.**

The effective date of establishment has been delayed to permit giving public notice of the decision and to permit appeal as provided in 36 CFR part 217. Pursuant to 36 CFR 217.7(a), review of the Chief's decision by the Secretary is wholly discretionary.

Dated: June 19, 1992.

James C. Overbay,

Acting Chief.

[FR Doc. 92-15070 Filed 6-25-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey – CATI/CAPI Overlap Test Reinterview.

Form Number(s): MLS-1R, MLS-2R, MLS-3R.

Type of Request: New collection.

Burden: 750 hours.

Number of Respondents: 15,000.

Avg Hours Per Response: 3 minutes.

Needs and Uses: Census requests clearance to conduct a reinterview program for the CATI/CAPI Overlap (CCO) Test. The CCO test which was submitted to OMB by the Bureau of Labor Statistics is a test collection of Current Population Survey (CPS) data from a small sample of CPS respondents using improved information technologies (Computer Assisted Telephone Interviewing and Computer Assisted Personal Interviewing, i.e., CATI/CAPI). The test is designed to collect the same data as the CPS for an overlap period of 18 months. Census will compare the results of the test to CPS results for the same period and make a determination of the effectiveness of the new collection methods. They will conduct the reinterview program to detect interviewer falsification, including fabrication of interviews or any major procedural violations, such as purposely misclassifying occupied households as vacant.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-15096 Filed 6-25-92; 8:45 am]

BILLING CODE 3510-07-F

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on July 1-2, 1992, at the King's Grant Inn, Route 128 at Trask Lane, Danvers, MA, telephone: 508-774-6800. The Council will begin its meeting at 10 a.m. on July 1, and reconvene on July 2 at 9 a.m.

The first day of the meeting will begin with a report from the Atlantic Sea Scallop Oversight Committee. The report will concern final revisions to the public hearing document for Amendment #4 to the Scallop Fishery Management Plan (FMP). The Lobster Committee report will follow and incorporate a discussion of progress on the development of Amendment #5 to the Lobster FMP.

On the second day, the meeting will be continued with reports from the Council Chairman; the Council Executive Director; the National Marine Fisheries Service Regional Director; the Northeast Fisheries Center liaison; the Mid-Atlantic Fishery Management Council liaison; and representatives from the Department of State, Coast Guard, Fish and Wildlife Service, and the Atlantic States Marine Fisheries Commission.

The Habitat Committee will then report on the Massachusetts Water Resources Authority's plans to clean up Boston Harbor and any possible impacts to fisheries habitat and resources. The Marine Mammal and Endangered Species Committee will next discuss harbor porpoise/fisheries interactions in the Gulf of Maine.

Before closing the meeting with other business, the Groundfish Committee will give a report. It will review the comments received during public hearings on Amendment #5 to the Northeast Multispecies Fishery Management Plan and also make a recommendation to the National Marine Fisheries Service concerning gear requirements for the Gulf of Maine shrimp fishery.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone (617) 231-0422.

Dated: June 22, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-15052 Filed 6-25-92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council (Council) and its advisory entities will meet on July 6-10, 1992, at the Sheraton Hotel (near the Portland Airport), 8235 NE Airport Way, Portland, OR. Except as noted below, the meetings are open to the public.

The Council will convene on July 7 at 7 p.m. to hold a groundfish stock assessment workshop at which biologists will present preliminary results of new stock assessments. On July 8 at 8 a.m. the Council will meet in closed session (not open to the public) to discuss personnel matters, litigation and sensitive international issues. The Council's open session begins at 8:30 a.m. on July 8 to consider the anchovy spawning biomass estimate and harvest quotas for the 1992-93 season. The Council will next address the following groundfish management issues: (1) Summary of preliminary stock assessments; (2) status of regulations implementing Council actions; (3) status of fisheries and inseason adjustments; (4) 1993 fixed gear sablefish management; (5) individual quotas for halibut and fixed gear sablefish fisheries; (6) long-term Pacific whiting allocation; (7) whiting season opening date; (8) plan amendment to establish by-catch restrictions; (9) comprehensive groundfish data gathering plan; (10) feasibility of a multi-year groundfish management process; (11) definition of legal trawl gear and fixed gear marking requirements; and (12) experimental fishing permit for shortbelly rockfish. The Council will reconvene in open session at 8 a.m. on July 9 and July 10.

Consideration of the groundfish issues is expected to conclude on or before July 10. The public may address the Council on fisheries issues unrelated to the agenda items on July 8 at 4 p.m. Public comments on action items on the agenda will be heard during the Council's deliberations on each issue.

Salmon management and other issues will be discussed on July 10 following a conclusion of the groundfish discussions. Salmon issues on the agenda include: 1) status of the 1992 regulations and the fishery; 2) policy on adjustments to seasons due to adverse weather; and 3) plan amendment issues. The Council will then discuss habitat and administrative matters, including consideration of work load priorities, adoption of a budget for fiscal year (FY) 1993, and adoption of research and data collection needs.

Other Meetings: Scientific and Statistical Committee will meet on July 6 at 10 a.m. to address scientific issues on the Council's agenda, and reconvene on July 7 at 8 a.m.

Groundfish Advisory Subpanel will meet on July 6 at 1 p.m. to address groundfish management issues on the Council's agenda, and will reconvene on July 7 at 8 a.m.

Legal Gear Committee will meet on July 6 at 1 p.m. to discuss changes to the definition of legal trawl gear and other gear regulations as appropriate.

Habitat Committee will meet on July 7 at 1 p.m. to address activities affecting the habitat of fish stocks managed by the Council.

Budget Committee will meet on July 7 at 3 p.m. to review the fiscal year 1993 Council budget and to make recommendations for adjustments to the FY 1992 budget, if necessary.

Enforcement Consultants will meet on July 7 at 7 p.m., to address enforcement issues on the Council's agenda.

Detailed agendas for the above meetings will be available to the public after June 25, 1992. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: June 22, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-15054 Filed 6-25-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

June 22, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 26, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6496. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no agreement was reached in consultations with the Government of Malaysia on a mutually satisfactory solution on Categories 350/650, the United States Government has decided to control imports in these categories for the prorated period beginning on June 26, 1992 and extending through December 31, 1992.

The United States remains committed to finding a solution concerning Categories 350/650. Should such a solution be reached in further consultations with the Government of Malaysia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 13711, published on April 17, 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 22, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended and extended by a Memorandum of Understanding (MOU) dated October 12, 1991, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 26, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 350/650, produced or manufactured in Malaysia and exported during the period beginning on June 26, 1992 and extending through December 31, 1992, in excess of 49,358 dozen.

Textile products in Categories 350/650 which have been exported to the United States on and after January 1, 1992 shall remain subject to the Group II limit established for the period January 1, 1992 through December 31, 1992.

Imports charged to the limit for Categories 350/650 for the ninety-day period beginning on March 26, 1992 and extending through June 25, 1992 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-15065 Filed 6-25-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List floor polishing machine pads to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 27, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 17, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 13715) of the proposed addition of these pads to the Procurement List.

No comments were received during the public comment period. However, the Committee did consider comments written to a member of Congress by one of the current contractors for the pads. The contractor claimed that the proposed addition to the Procurement List, along with a 1990 addition, would result in all floor polishing machine pads the Government purchases being on the Procurement List. The contractor also reviewed arguments made in opposition to the 1990 addition, when it questioned whether the nonprofit agency designated to produce the pads was a bona-fide organization for people with disabilities, as well as that organization's trading practices. The contractor also revived an argument about relative tax benefits to the Government of procuring the pads from entities organized for profit rather than nonprofit organizations.

While the contractor correctly states that the proposed addition would put the remaining floor polishing machine pads the Government currently procures on the Procurement List, it should be noted that private firms, as well as State and local governments, procure the same types of pads as do Federal agencies. All of this market, except the Federal sector, remains open to the contractor.

The Committee uses total annual sales of a contractor as its initial basis for determining impact of a proposed addition to the Procurement List on a contractor. The commenting contractor has refused to provide this information, even though it has been given several opportunities and has been told that the Committee does not usually find severe adverse impact where this information is not provided. The contractor also refused to provide this information in connection with the 1990 addition of other pads to the Procurement List. Faced with this situation and the existence of a commercial market for the various types of pads, the Committee has concluded that the proposed addition does not constitute severe adverse impact on this contractor.

The contractor's allegations against the nonprofit agency were investigated in 1990. As the contractor has provided no new information, the Committee sees no reason to question its conclusion that the nonprofit agency is fully qualified to participate in the Committee's program.

The contractor has also provided no new information on its tax benefits argument, which was also before the Committee in 1990. The Committee's program creates jobs, with taxable income, for persons who were formerly dependent on benefits financed with tax dollars. Moreover, the Committee considers that the existence of the Committee's program shows that Congress deemed the creation of jobs for persons with severe disabilities to be more important than the corporate tax revenues that would accrue if items on the Procurement List were produced by profit-making organizations.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Pad, Floor Polishing Machine

7910-01-089-9084
7910-01-090-9827
7910-01-090-9828
7910-01-090-9829
7910-01-091-8959
7910-01-091-8960
7910-01-091-8961
7910-01-091-8962
7910-01-092-8502
7910-01-092-8503
7910-01-092-8505
7910-01-094-0033
7910-01-095-7831

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman

Executive Director.

[FR Doc. 92-15097 Filed 6-25-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; 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 the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 27, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severly Handicapped, Crystal Square 3, suite 403, 1735 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 51-2.3. 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 (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The

major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the commodities and services.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Specimen Kit, Urine

6530–00–075–6636

Nonprofit Agency: Royal Maid Association for the Blind, Inc., Hazlehurst, Mississippi.

Deodorant, General Purpose

6840–00–721–6055

Nonprofit Agency: The Lighthouse for the Blind, Inc., St. Louis, Missouri at its facility in Berkeley, Missouri.

Services

Grounds Maintenance

U.S. Army Reserve Center, 2997 N. 2d Street, Harrisburg, Pennsylvania

Nonprofit Agency: Goodwill Industries of Central Pennsylvania, Harrisburg, Pennsylvania.

Janitorial/Custodial

Federal Building, U.S. Courthouse, 701 C Street, Anchorage, Alaska

Nonprofit Agency: Alaska Specialized Education and Traning Services, Inc., Anchorage, Alaska.

Janitorial/Custodial (except annual carpet cleaning, annual floor care requirements and window washing)

Naval Surface Warefare Center, Carderock Division, Buildings 8, 121, 191, 192, 193—Complexes L, M, N

Enclosed walkways—Buildings 17 to 191 & Buildings 191 to 192, Bethesda, Maryland

Nonprofit Agency: Centers for the Handicapped, Inc. Silver Spring, Maryland

Laundry Service

U.S. Army Aviation Support Command, CMPSC Commissary, Granite City, Illinois

Nonprofit Agency: St. Clair Association Vocational Enterprises, Inc., Belleville, Illinois

Switchboard Operation

Patrick Air Force Base, Florida

Nonprofit Agency: Brevard Achievement Center, Inc. Rocklege, Florida

Warehousing

U.S. Army Corps of Engineers, 2600 East Carson Street, Pittsburgh, Pennsylvania

Nonprofit Agency: Goodwill Industries of Pittsburgh Pittsburgh, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–15098 Filed 6–25–92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities, and deletes from the Procurement List a commodity previously furnished by such agencies.

EFFECTIVE DATE: July 27, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 17 and May 1, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 13713 and 18869) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and 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 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Accordingly, the following commodity and service is hereby added to the Procurement List:

Commodity

Tarpaulin, Support Arm

5815–01–108–9180

Service

Janitorial/Custodial

Federal Building, U.S. Courthouse and Post Office, Oxford, Mississippi

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Vise, Multiposition

5120–00–991–1907

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–15099 Filed 6–25–92; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 92-64-NG]

Direct Energy Marketing Inc.; Application for Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 19, 1992, of an application filed by Direct Energy Marketing Inc. (DEMI) requesting blanket authorization to export up to a maximum of 200 Bcf of natural gas to Canada over a two-year period beginning on the date of the first delivery. DEMI states it would transport the gas using existing pipeline facilities and would 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, and written comments are invited.

DATES: 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., eastern time, July 27, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

C. Frank Duchaine, Jr., Office of Fuels Programs Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3G-087, FE-53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8233.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: DEMI, a Deleware corporation with its principal place of business in Calgary, Alberta, requests authorization to export this gas for its own account, as well as for the accounts of others. The specific terms of each transaction, including price and volume, would be nogotiated at arms length in response to market conditions.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with 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 on these matters as they relate to the requested export authority. The applicant asserts there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

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 their 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, notice of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application 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 procedures is scheduled, notice will be provided to all parties. 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 pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of DEMI's applcation is available for inspection and copying in the Office of Fuels Program Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 22, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-15092 Filed 6-25-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF92-123-000, et al.]

AES WR Limited Partnership, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. AES WR Limited Partnership

[Docket No. QF92-123-000]

June 17, 1992.

On June 11, 1992, AES WR Limited Partnership tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining primarily to the technical data and the ownership structure of the cogeneration facility.

Comment date: June 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Tucson Electric Power Co.

[Docket No. ER92-638-000]

June 17, 1992.

Take notice that on June 12, 1992, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 43, "WSCC Broker Identified Energy Agreement."

Tucson proposes an effective date of September 28, 1984.

Comment date: June 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Tucson Electric Power Co.

[Docket No. ER92-639-000]

June 17, 1992.

Take notice that on June 12, 1992, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 44, "WSCC Transmission Service Agreement."

Tucson proposes an effective date of September 28, 1984.

Comment date: June 1, 1992, in accordance with Standard Paragraph E end of this notice.

4. New England Power Co.

[Docket No. ER92-637-000]

June 17, 1992.

Take notice that on June 12, 1992, New England Power Company (NEP) tendered for filing a proposed revision to its service agreement with Templeton (Mass.) Light & Power Department under NEP's FERC Electric Tariff, Original Volume No. 3. According to NEP, the proposed revision would permit Templeton to receive power from Orange Hydro No. 2 station.

Comment date: June 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Ohio Power Company v. American Municipal Power-Ohio, Inc., City of Dover, OH; City of Orrville, OH; City of St. Marys, OH; American Municipal Power-Ohio, Inc., City of Dover, OH; City of Orrville, OH; City of St. Marys, OH; City of Shelby, OH; and City of Hamilton, OH v. Ohio Power Company and American Electric Power Company, Inc.

[Docket Nos. EL90-42-001; EL91-1-000]

Notice of Filing

June 17, 1992.

Take notice that the Ohio Power Company (Ohio Power) on May 26, 1992, tendered for filing, in compliance with the Commission's Order of April 13, 1992, in the above-captioned dockets and in accordance with an Amendment to Settlement Agreement signed by the parties to such dockets, proposed Revised Modification No. 1 to an Agreement dated April 1, 1974, between Ohio Power and American Municipal-Ohio, Inc. (Ohio Power FERC Rate Schedule No. 74). The proposed tariff change eliminates a percentage adder contained in the charge for inadvertent energy as originally agreed to by the parties in a Settlement Agreement which was approved by the Commission, except for the percentage adder, in its April 13, 1992, Order.

Ohio Power requests an effective date of January 1, 1992, for the proposed tariff change.

Ohio Power states that a copy of its filing was served upon all parties to these dockets, the Public Utilities Commission of Ohio and the Public Service Commission of Kentucky.

Comment date: June 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Co.

[Docket No. ER92-363-000]

June 17, 1992.

Take notice that on June 11, 1992, Idaho Power Company (IPC) submitted an amendment to its filing in the above referenced docket regarding the Restated Transmission Service Agreement between Idaho Power Company and PacifiCorp Electric Operations dated February 6, 1992 (Agreement). The filing was amended to submit additional information in response to a request by the Federal Energy Regulatory Commission Staff. Idaho Power has renewed its request for an effective date of May 9, 1992, or the Agreement.

Comment date: June 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Kansas Gas and Electric Co.

[Docket No. ER92-552-000]

June 17, 1992.

Take notice that on June 12, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing an amendment to its May 15, 1992 filing in this docket. KG&E states that the amendment is to correct a typographical error and to provide additional description of the service to be rendered to the KPL division of Western Resources, Inc. under Service Schedule SP-1. Service Schedule SP-1 is proposed to become effective June 1, 1992.

Copies of the filing were served upon the KPL division of Western Resources, Inc. and the Kansas Corporation Commission.

Comment date: June 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Doswell Limited Partnership

[Docket No. EC92-19-000]

June 18, 1992.

Take notice that on June 17, 1992, Doswell Limited Partnership (Doswell LP) tendered for filing a petition for a declaratory order disclaiming jurisdiction under Section 203 of the Federal Power Act, 16 U.S.C. 824b (1988), over, or approving, the conversion of the managing general partnership interest in Doswell LP held by Doswell I, Inc., to a limited partnership interest, and the conversion of the limited partnership interest in Doswell LP acquired by North Anna Power Company to a managing general partnership interest. Doswell LP also requests waiver of the Commission's regulations (18 CFR part 33) and expedited consideration.

Comment date: July 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Union Electric Co.

[Docket No. ER92-640-000]

June 18, 1992.

Take notice that Union Electric Company, on June 12, 1992, tendered for filing an Amendatory Agreement between the United States of America, as represented by the Administrator, Southwestern Power Administration (SPA) and Union Electric Company (UE).

UE states that the purpose of the Amendatory Agreement is to extend the term of the Interconnection and Power Sales Agreement between the parties from June 30, 1992 to June 30, 1994.

Comment date: July 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Central Vermont Public Service Corp.

[Docket No. ER92-613-000]

June 18, 1992.

Take notice that Central Vermont Public Service Corporation (CVPS) on May 29, 1992, tendered for filing a Notice of Termination of Electric Service concerning FERC Rate Schedule No. 158.

Comment date: June 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Co.

[Docket No. ER92-616-000]

June 18, 1992.

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated June 5, 1992, tendered for filing as an initial Rate Schedule a Unit Power Purchase Agreement dated December 30, 1991, between LG&E and Indiana Municipal Power Agency (IMPA and the First Supplemental Agreement, Dated December 30, 1991 (Revised June 1, 1992) to the Interconnection Agreement between LG&E and IMPA dated February 7, 1989.

The Unit Power Purchase Agreement establishes a schedule for the sale by LG&E to IMPA of Unit Capacity and Unit Energy from Trimble County Unit 1.

The First Supplemental Agreement establishes rate schedules for Backup Power, Transmission Service, and Replacement Energy and updates charges in several other rate schedules contained in the Interconnection Agreement.

A copy of the filing was served upon the Indiana Utility Regulatory Commission, and the Kentucky Public Service Commission.

Comment date: June 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Co.

[Docket No. ER92-643-000]

June 18, 1992.

Take notice that on June 15, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing a change in rate schedule for Rate Schedule FERC No. 142, the "Interconnection Agreement between Northern California Power Agency and Pacific Gas and Electric Company" (IA).

PG&E proposes to amend Exhibits III.1, III.2, III.4, and VII.1 of the IA to include NCPA's request for (1) 128 MW of California-Oregon Transmission Project Transmission Service, and (2) 0.4 MW of Firm Transmission Service to the Graeagle Hydro Project. Total 1993 revenues to PG&E are estimated to be $562,587. Since the increase is under $1,000,000 and NCPA has agreed to the proposed rate, PG&E is filing in accordance with § 35.13(a)(2) of the Commission's regulations (18 CFR 35.13(a)(2)).

Copies of this filing were served upon NCPA and the California Public Utilities Commission.

Comment date: June 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Interstate Power Co.

[Docket No. ER92-630-000]

June 18, 1992.

Take notice that on June 10, 1992, Interstate Power Company (IPW) tendered for filing Amendment No. 4 to the Electric Service Agreement between the Municipal Light and Water Department Board of Trustees of the City of Bellevue and Company. This amendment revises the firm power commitment.

Comment date: July 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Southern Indiana Gas and Electric Co.

[Docket No. ER92-627-000]

June 18, 1992.

Take notice that on June 9, 1992, Southern Indiana Gas and Electric Company (Southern Indiana) tendered for filing a change in its Rate Schedule FERC No. 44 under which it sells peaking power to Hoosier Electric Rural Electric Cooperative, Inc. (Hoosier). The change is in the demand charge and will result in a small rate increase and revenue change. Southern Indiana has requested a waiver of the minimum 60 day notice requirement. The only affected customer is the purchaser. Southern Indiana and Hoosier are parties to a written Revised Agreement for Sale of Firm Power executed on January 23, 1992, for the service.

The reason for the demand charge change in the rate schedule is to reflect a new peaker turbine recently installed by Southern Indiana which will add capacity and reliability to the peaking power service. The change is therefore mutually beneficial.

A copy of the filing has been served upon Hoosier.

Comment date: June 2, 1992, in accordance with Standard Paragraph E end of this notice.

15. Idaho Power Co.

[Docket No. ER92-92-000]

June 18, 1992.

Take notice that on June 12, 1992, Idaho Power Company (IPC) submitted an amendment to its filing in the above referenced docket. The filing was amended to submit additional information in response to a request by the Federal Energy Regulatory Commission Staff.

Comment date: June 2, 1992, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-15043 Filed 6-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-534-000, et al.]

Arkla Energy Resources, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP92-534-000]

June 17, 1992.

Take notice that on June 12, 1992, Arkla Energy Resources (AER), a division of Arkla, Inc., Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP92-534-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to increase the size of the meter station at an existing tap to serve new customers and to serve one new customer from an existing tap under AER's blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 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.

AER requests authorization to enlarge the capacity of an existing meter station, originally installed to serve right-of-way grantors, to serve industrial end users in Arkansas and to serve one new domestic customer from an existing tap in Arkansas. AER asserts that the gas would be delivered to Arkansas Louisiana Gas Company for resale to the domestic and industrial customers. AER states that gas would be used for domestic and industrial purposes and estimates total peak day sales to be

1,521 Mcf and total annual sales to be 554,885 Mcf.

AER states that the gas will be delivered from its general system supply which it asserts is adequate to provide the service.

Comment date: August 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Eastern Shore Natural Gas Co.

[Docket No. CP92-536-000]

June 17, 1992.

Take notice that on June 15, 1992, Eastern Shore Natural Gas Company (Eastern Shore), P.O. Box 1769, Dover, Delaware 19903-1769, filed in Docket No. CP92-536-000 a request pursuant to §§ 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to construct and operate facilities to add a delivery point and also to abandon an existing delivery point to Delmarva Power and Light Company (Delmarva), under its blanket certificate issued in Docket No. CP83-40-000, pursuant to sections 7(c) and 7(b) of the Natural Gas Act, respectively, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Eastern Shore proposes to construct and operate a tap and associated mater and regulating station in New Castle County, Delaware to establish the Salem Church Road delivery point would enable Delmarva to service approximately 17,500 Mcf of natural gas per year to residences in the area by the 1995-96 winter. Eastern Shore estimates peak day deliveries of 175 Mcf by the 1995-96 winter. Eastern Shore states that the service rendered through the proposed facility would be within Eastern Shore's currently certificated entitlement to Delmarva and would not affect Eastern Shore's peak day or annual deliveries to its other customers. It is indicated that the construction cost of the new delivery point would be reimbursed by Delmarva.

Eastern Shore also proposes to abandon the existing Brookmont Farms delivery point to Delmarva also located in New Castle County, Delaware and located 1.2 miles south of the proposed Salem Church road delivery point. It is stated that Delmarva no longer requires service at the Brookmont Farms delivery point due to the expansion of Delmarva's distribution system to serve the existing and future needs of the customers in the areas. It is indicated that Eastern Shore's tariff does not prohibit the abandonment of delivery points on behalf of its customers.

Eastern Shore states that it would incur no costs in the abandonment of the Brookmont Farms delivery point because Delmarva, which financed the construction of the facility, would also finance the abandonment. It is also stated that the station piping and regulation station from the Brookmont Farms delivery point would be relocated and used in the construction of the new delivery point.

Comment date: August 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

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.

Louis D. Cashell,

Secretary.

[FR Doc. 92-15042 Filed 6-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES92-39-000]

PacifiCorp; Application

June 22, 1992.

Take notice that on June 9, 1992, PacifiCorp filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $500 million of its commercial paper in the United States or overseas from time to time through June 30, 1996.

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 June 26, 1992. Protests will be considered by the Commission 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 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. 92-15044 Filed 6-25-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of May 29 Through June 5, 1992

During the Week of May 29 through June 5, 1992, the appeals and applications for other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 29 through June 5, 1992]

Date	Name and location of applicant	Case No.	Type of submission
June 1, 1992	Eastern Motor Transport, Inc., Paris, Tennessee	RR272-94	Request for modification/rescission in the crude oil refund proceeding. If granted: The May 19, 1992 Dismissal Letter (Case No. RF272-75946) issued to Eastern Motor Transport, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
June 2, 1992	Gulf/Crowfoot Gulf, Woodbridge, Virginia	RR300-172	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 24, 1992 Dismissal Letter (Case No. RF300-13942) issued to Crowfoot Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
June 4, 1992	Jon Berg, Charlottesville, Virginia	LFA-0214	Appeal of an information request denial. If granted: Jon Berg would receive access to all documents and information withheld by other departments of the Agency and also a Vaughn Index of all documents under review.
June 5, 1992	Macmillan Oil Company, Washington, DC	LEF-0046	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with the March 7, 1988 Consent Order entered into with Macmillan Oil Company.

Date received	Name of refund proceeding/name of refund application	Case No.
6/1/92	Glendale Clark	RF342-216.
6/1/92	Burt's Clark Service.	RF342-217.
6/1/92	Frank M. Ward Arco.	RF304-13146.
6/1/92	Bill's Arco	RF905-13147.
6/1/92	Al's Arco of New Bedford.	RF304-13148.
6/1/92	Circle G. Petroleum.	RF304-13149.
6/3/92	Gencarelli Oil Co., Inc.	RF315-10212.
6/3/92	City of Ann Arbor Michigan.	RF304-13150.
6/4/92	Rehiff's Arco Service #2.	RF304-13151.
6/4/92	Staton Oil Co	RF304-13152.
6/4/92	Joe's Arco #2	RF304-13153.
10/28/91	Holmes Oil Corporation.	RF315-10213.
6/5/92	Marge's Owens Service.	RF342-218.

Date received	Name of refund proceeding/name of refund application	Case No.
5/29/92 thru 6/5/92.	Crude Oil Applications received.	RF272-92473 thru RF272-92545.
5/29/92 thru 6/5/92.	Texaco Refund Applications received.	RF321-18658 thru RF321-18676.
5/29/92 thru 6/5/92.	Gulf Oil Refund Applications received.	RF300-20049 thru RF300-20066.

[FR Doc. 92-15093 Filed 6-25-92; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of June 5 Through June 12, 1992

During the week of June 5 through June 12, 1992, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 5 through June 12, 1992]

Date	Name and location of applicant	Case No.	Type of submission
June 8, 1992	Aluminum Company of America, Washington, DC	RR272-95	Request for modification/Rescission in the Crude oil refund proceeding. If granted: The January 29, 1992 Decision and Order (Case No. RF272-64893) issued to Aluminum Company of America would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
Do	Daniel Grossman, Watertown, MA	LFA-0215	Appeal of an information request denial. If granted: The May 28, 1992 Freedom of Information Request Denial issued by the Director, Executive Secretariat would be rescinded, and Daniel Grossman would receive access to complete documents of Weekly Activity and Monthly Status Reports from Hanford to AEC Headquarters between 1947 and 1955.
Do	Gulf/A.L. Cleveland Gulf, Summit, MS	RR300-174	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 6, 1992 dismissal letter (Case No. RF300-13250) issued to A.L. Cleveland Gulf would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 5 through June 12, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Do	Gulf/East Market Gulf, Woodbridge, VA	RR300-173	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 6, 1992 dismissal letter (Case No. RF300-13293) issued to East Market Gulf would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
June 9, 1992	Robert Condra, Apache Junction, AZ	LFA-0216	Appeal of an information request denial. If granted: The June 8, 1992 Freedom of Information Request Denial issued by the Office of Bonneville Power Administration would be rescinded, and Robert Condra would receive access to DOE information.
June 11, 1992	Gulf/Hesse Oil Company, Washington, DC	RR300-175	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-629) issued to Hesse Oil Company would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of June 5 to June 12, 1992]

Date	Name of firm	Case No.
6/5/92 thru 6/12/92.	Crude oil applications received.	RF272-92546 thru RF272-92630.
6/5/92 thru 6/12/92.	Texaco refund applications received.	RF321-18677 thru RF321-18690.
6/5/92 thru 6/12/92.	Gulf Oil refund applications received.	RF300-20067 thru RF300-20242.
6/5/92 thru 6/12/92.	Atlantic Richfield applications received.	RF304-13154 thru RF304-13174.
6/8/92	Kerr-McGee Corp.	RF339-8.
6/8/92	Triangle Refineries	RF339-9.
6/8/92	Bob's Clark Super 100.	RF342-219.
6/8/92	Service Oil Company.	RF324-220.
6/8/92	Gil's Clark Super 100.	RF342-221.
6/8/92	Edward Schelfo	RF342-222.
6/8/92	Bowling's Clark Service.	RF342-223.
6/9/92	Richardson Products Co., Ltd.	RF342-171.
6/11/92	Dow Hydrocarbons and Resources.	RF342-172.
06/10/92	Jerry Clark Super 100.	RF342-224.
06/10/92	Owens Oil Service	RF342-225.
06/11/92	Joe's Super 100	RF342-226.
06/11/92	Shefond Oil, Inc.	RF342-227.

[FR Doc. 92-15094 Filed 6-25-92; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed During the Week of May 25 Through May 29, 1992

During the week of May 25 through May 29, 1992, the notices of objection to the proposed remedial order listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the appendix to this notice must file a request to participate pursuant to 10 U.S.C. 205.194 within 20 days after publication of this notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Chevron U.S.A., Inc., San Francisco, CA, LRO-0004, Crude Oil

On May 27, 1992 and on May 23, 1992, respectively, Chevron U.S.A., Inc. (Chevron), San Francisco, CA, and a consortium of fourteen States filed Notices of Objection to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) of the U.S. Department of Energy issued to the firm on March 26, 1992. In the PRO, the ERA charges that as a participant in the DOE Tertiary Incentive Program, Chevron received excess tertiary incentive revenue attributable to its first sales of domestically produced crude oil during the period January 1980 through January 27, 1981, in violation of 10 U.S.C. 212.78, 212.73, 212.74 and 205.202. According to the PRO, the total violation amount is $124,989,588.

[FR Doc. 92-15095 Filed 6-25-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4147-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075. Availability of Environmental Impact Statements Filed June 15, 1992 Through June 19, 1992 Pursuant to CFR 1506.9.

EIS No. 920229, DRAFT EIS, FHW, MT, Shiloh Road Interchange Project, Construction, I-90 in the vicinity of the existing Shiloh Road Overpass (I-90 milepost 443) and Improvements to the South Frontage Road, Funding and section 404 Permit, between the Cities of Laurel and Billings, Yellowstone County, MT, Due: August 15, 1992, Contact: David S. Johnson (406) 444-6242.

EIS No. 920230, FINAL EIS, SFW, WY, Cokeville Meadows National Wildlife Refuge, Management Plan, Land Acquisition, Implementation, Bear River Valley, Lincoln County, WY, Due: July 27, 1992, Contact: David E. James (303) 236-8114.

EIS No. 920231, FINAL SUPPLEMENT, AFS, Rocky Mountain Regional Guide/Plan, Silicultural Standards and Guidelines for Land and Resource Management Planning, CO, SD, WY, NB and KS, Due: July 27, 1992, Contact: Pamela Case (303) 236-9646.

EIS No. 920232, FINAL EIS, IBR, CA, Lake Berryessa Reservoir Area Management Plan, Land and Water Management, Implementation, Napa County, CA, Due: August 07, 1992, Contact: Ronald Brockman (916) 978-5313.

EIS No. 920233, DRAFT EIS, NPS, MT, Grant-Kohrs Ranch National Historic Site, General Management Plan and Development Concept Plan, Implementation, Northern Rockies,

Powell County, MT, Due: August 12, 1992, Contact: Eddie L. Lopez (406) 846-2070.

EIS No. 920234, FINAL EIS, COE, NC, Hobucken Bridge Replacement, Atlantic Intracoastal Waterway Bridge (AIWW), Implementation, Pamlico County, NC, Due: July 27, 1992, Contact: Coleman Long (919) 251-4751.

EIS No. 920235, FINAL EIS, VAD, TX, Dallas-Fort Worth Area National Cemetery Construction and Operation, Site Selection, Cedar Hill, Mansfield or Mountain Creek, and Possible COE Section 404 Permit, Dallas and Tarrant Counties, TX, Due: July 27, 1992, Contact: James Holtschulte (202) 233-7082.

EIS No. 920236, FINAL EIS, VAD, FL, East Central Florida Medical Center (ECFMC) Construction Alternative Site Selection, Brevard, Orange, Seminole and Volusia Countries, FL, Due: July 27, 1992, Contact: Mr. Scott Gebhardtsbauer (202) 233-3316.

EIS No. 920237. FINAL EIS, FHW, IL, FAP-322/US 51 Improvement, from US 51 south of Pana to FAP 322 near Elwin, Funding, section 404 Permit and Possible NPDES Permit, Christian, Shelby, and Macon Counties, IL, Due: July 27, 1992, Contact: Frederick H. Downs (217) 492-4600.

EIS No. 920238, DRAFT EIS, BLM, UT, Castlegate Coalbed Methane Gas Production Project, Construction, Operation, Maintenance and Abandonment, Approval, Drilling Control, Temporary Use, Federal Antiquities, COE Section 404 and DOT Federal Pipeline Safety and Operations Permits and Right-of-Way Grants, Carbon County, UT, Due: August 19, 1992, Contact: Daryl Trotter (802) 259-2100.

EIS No. 920239, DRAFT EIS, COE, NC, Great Coharie Creek Flood Damage Reduction Plan, Implementation, Sampson County, NC, Due: August 10, 1992, Contact: Mr. Charles R. Wilson (919) 251-4746.

EIS No. 920240, DRAFT EIS, UAF, GA, Moody Air Force Base Beddown of a Composite Wing for F-16, A/OA-10 and C-130 Aircraft, Implementation, Lowndes and Lanier Counties, GA, Due: August 24, 1992, Contact: Stephanie Stevenson (804) 764-7844.

EIS No. 920241, FINAL EIS, AFS, UT, Roundy Reservoir Area Timber Sale and Road Construction, Implementation, Dixie National Forest, Aquarius Plateau, Escalante Ranger District, Garfield County, UT, Due: July 27, 1992, Contact: Kevin R. Schulkoski (801) 826-5400.

EIS No. 920242, DRAFT EIS, FHW, NC, US 421 Highway Improvements, East of Secondary Road 2433 to West of I-77, Funding and Possible COE Section 404 Permit, Wilkes and Yadkin Counties, NC, Due: August 14, 1992, Contact: Nicholas L. Graf (919) 856-4346.

EIS No. 920243, DRAFT EIS, BLM, WY, Methel Hanna Basin Coalbed Methane Gas Production Project, Construction, Operation, Maintenance and Abandonment, Approval, Drilling Control, COE Section 404 and EPA RCRA Permits and Right-of-Way Grants, Carbon Couny, WY, Due: August 22, 1992, Contact: Bob Tignar (307) 324-4841.

EIS No. 920244, DRAFT EIS, TVA, TN, AL Tennessee River Chip Mill Barge Terminals, Construction and Operation, Issuance of Barge Terminal Permit, Section 10 and 404 Permits, Several Counties, AL and TN, Due: August 21, 1992, Contact: M. Paul Schmierbach (615) 632-6578.

Amend Notices

EIS No. 920175, DRAFT EIS, GSA, TX, Del Rio Border Station Facilities Expansion, Funding, Val Verde County, TX, Due: June 29, 1992, Contact: Bobby Shelton (817) 334-2095.

Published FR 5-22-92—Correction to Comment Period.

EIS No. 920223, FINAL EIS, COE, CA, Sacramento River Flood Control System and Flood Protection, Phases II-V, Implementation, Red Bluff to Collinsville, CA, Due: August 03, 1992, Contact: Cynthia Adornetto (916) 557-6738.

Published FR—06-19-92—Retracted due to noncompliance to Section 1506.9 of Council on Environmental Quality Regulations.

Dated: June 23, 1992.

William Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-15088 Filed 6-25-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4147-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 08, 1992 Through June 12, 1992 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) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-DOE-K80030-CA Rating EC1, Lawrence Livermore National (LLNL) and Sandia National (SNL) Laboratories, Continued Operation and Construction, Funding, Livermore Valley, City of San Francisco, Alameda and San Joaquin Counties, CA.

Summary

EPA expressed environmental concerns with the proposed action and urged the Department of Energy to implement the widest array of feasible pollution prevention measures, to discuss the applicability of DOE's recent adherence to EPA's 33/50 toxics generation program, and to adopt air and water quality mitigation measures.

ERP No. D-FHW-B40072-CT Rating EO2, Prospect Street Bypass Improvement, Mixmaster exit No. 55 from I-84 onto Governor Street to US 5 in the vicinity of Goodwin Brook, NPDES, Section 10 and 404 Permits and Funding, Town of East Hartford, Hartford County, CT.

Summary

EPA identified a number of wetland concerns and recommended elimination of one alternative which it believed did not satisfy requirements under the Clean Water Act. EPA also identified the need for further information on air quality, noise and cumulative impacts.

ERP No. D-GSA-D81020-MD Rating EC2, Internal Revenue Service National Office Consolidation and Construction, Site Selection, First Capital Realty Site, Meridan Site, Riverside Site or Metroview Site, Prince George's, MD.

Summary

EPA had no objections to the preferred Metroview site but raised concerns with the alternative site.

Final EISs

ERP No. F-AFS-J65168-MT, Upper Ruby Cattle and Horse Allotment Management Plan, Centennial Divide Road No. 100 Reconstruction and Management Area Designation for portions of the Ruby River, Implementation, Beaverhead National Forest, Sheridan.

Summary

EPA believed that the preferred alternative would not facilitate rapid restoration/recovery of the over-grazed areas in the Upper Ruby drainage. EPA recommended that the Forest Service reconsider development of a new proposal to reduce or remove use of the driveway and select a grazing system to accomplish a more rapid improvement

to riparian areas/streams in this drainage. The implemented alternative should include explicit monitoring procedures to adjust livestock management to ensure stream recovery.

ETP No. F-MMS-A02234-00, Mid 1992 thru Mid 1997 Outer Continental Shelf (OCS) Comprehensive Gas and Oil Resources Management Program, Schedule of Sales Adoption, Leasing, Offshore Coastal Counties of AL, AK, CA, DE, FL, GA, LA, MD, NJ, NY, NC, OR, RI, SC, TX, VA and WA.

Summary

EPA found that the final statement did not provide sufficient information concerning issues identified by EPA when reviewing the draft statement. These concerns include cumulative and synergistic impacts, oil spill effects, water quality issues, and impacts on habitats and species.

ERP No. FS-AFS-L65150-ID, . Accelerated Engelmann Spruce Harvest and Reforestation in Brush Creek, Hendricks Creek and Copet Creek Salvage Timber Sales, Additional Information, Implementation, Payette National Forest, McCall Ranger District, Idaho and Valley Counties, ID.

Summary

EPA had no objections to the EIS. No formal letter was sent to the agency.

Dated: June 23, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-15089 Filed 6-25-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-60036; FRL-4074-6]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This notice, pursuant to section 6 (f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notice(s) of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The notice(s) were issued following issuance of Data Call-In Notice(s) by the Agency and the failure of registrant(s) subject to the Data Call-In Notice(s) to take appropriate steps to secure the data required to be submitted to the Agency. This notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this notice further identifies the registrant(s) to whom the Notice(s) of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration number(s) and name(s) of the registered product(s) which are affected by the Notice(s) of Intent to Suspend. Moreover, Table B of this notice identifies the basis upon which the Notice(s) of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notice(s) of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notice(s) of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the 3(c)(2)(B) Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registration(s) listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registration(s) of your product(s) is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call-In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product(s).

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registration(s) for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the

objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call-In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirement(s) that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registration(s) of your product(s) listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call-In Notice or Section 4 Data Requirement Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered product(s) and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject 3(c)(2)(B) Data Call-In Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

II. Registrant(s) Receiving and Affected by Notice(s) of Intent to Suspend; Date of Issuance; Active Ingredient and Product(s) Affected

A letter of notification has been sent for the following product(s):

TABLE A.—PRODUCT LIST

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Aceto Chemical Company Inc.	00274900152	Dodine	Dodine 65-W Fungicide	6/11/92
Wilbro, Inc.	05561500002	Oryzalin	Green Turf Weeder 60 Plus	6/11/92
	05561500003	Oryzalin	Green Turf Weeder 75 Plus	6/11/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following registrant(s) failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Original Due-Date
Oryzalin	Wilbro, Inc.	90-Day Response	5/5/91
Dodine	Aceto Chemical Company Inc.	90-Day Response	3/16/92

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Dodine

On December 9, 1991, EPA issued a Data Call-In Notice (DCI) under authority of FIFRA section 3(c)(2)(B) which required registrants of products containing dodine used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the requirements of a Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Dodine Data Call-In Notice required each affected registrant to submit materials relating to the election of the options to address the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the DCI. Because the Agency has not received a response from you as a dodine registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

B. Oryzalin

On March 1, 1991, EPA issued a Data Call-In Notice (DCI) under authority of FIFRA section 3(c)(2)(B) which required registrants of products containing oryzalin used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the requirements of a Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Oryzalin Data Call-In Notice required each affected registrant to submit materials relating to the election of the options to address the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the DCI. Because the Agency has not received a response from you as an oryzalin registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

V. Conclusions

EPA has issued Notice(s) of Intent to Suspend on the dates indicated. Any further information regarding the Notice(s) may be obtained from the contact person noted above.

Dated: June 18, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92-14975 Filed 6-25-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-60035; FRL-4074-5]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy

are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e.,

all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A.—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Hobby's Rat & Mouse Bait, Inc.	00753700002	Warfarin/Warfarin Salt	Hobby's Ready to Use Rat and Mouse Bait	6/11/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
Warfarin/Warfarin Salt	Hobby's Rat & Mouse Bait, Inc.	Beginning Materials & Manufacturing Process	61-2	2/26/92
		Certification of Ingredient Limits	62-2	2/26/92
		Preliminary Analysis of Product Samples	62-1	2/26/92
		Analytical Method to Verify Certified Limits	62-3	2/26/92
		Color	63-2	2/26/92
		Physical State	63-3	2/26/92
		Odor	63-4	2/26/92
		Density, Bulk Density, or Specific Gravity	63-7	2/26/92
		Storage Stability	63-17	2/26/92
		Corrosion Characteristics	63-20	2/26/92
		Chemical Identity	61-1	2/26/92

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

Warfarin/Warfarin Salt

On June 6, 1991, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing warfarin to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice is a basis for suspension under sections 3(c)(2)(B) and 4(g)(2)(B) of FIFRA.

The Warfarin Phase 5 Reregistration Data Requirements Notice dated June 6, 1991, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: June 18, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92-14976 Filed 6-25-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission

hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et seq.), as amended. Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the Federal Register in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR 510 and Form FMC-18

FMC requests an extension of clearance for this part which sets forth regulations providing for the licensing of ocean freight forwarders in the U.S. foreign export commerce. The Commission estimates that approximately 1600 respondents are annually affected at an estimated cost of $145,000. The annual manhour burden has been estimated as follows: 46 CFR 510-400 manhours recordkeeping and 915 manhours for the rest of the regulation; Form FMC-18-3971 manhours. The estimated annual cost to the Federal Government is $340,000.

Form FMC-12—Application for Admission to Practice Before the Federal Maritime Commission

FMC requests an extension of clearance for this form which implements the provisions of 46 CFR 502.27. That section requires persons who are not attorneys at law to be admitted to practice before the Commission if they are U.S. citizens and file proof to the Commission's satisfaction that: (1) They have the necessary legal, technical, or other qualifications to enable them to render a valuable service before the Commission, and (2) are otherwise competent to advise and assist in the presentation of matters before the Commission. The Commission estimates approximately 10 annual respondents will incur a manhour burden of 10 manhours, with an estimated cost of $450. The approximate cost to the Federal Government is estimated at $496.

46 CFR 582—Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States

FMC requests a continuing clearance for 46 CFR 582 which requires that the Chief Executive Officer of every common carrier and ocean freight forwarder in the U.S. foreign commerce file a written certification with the Commission attesting to the company's prohibition against receiving or paying rebates by December 31 of each year. Ocean common carriers and ocean freight forwarders, respectively, will also have to file a certification with their initial tariff or license application. The Commission estimates that approximately 1,700 NVOCCs, 500 VOCCs, and 1,650 freight forwarders will have to file initial and annual antirebate certifications for an estimated annual 1925 manhour burden. Total estimated annual cost to the Federal Government, including overhead, is $4,100; total estimated cost to respondents, including overhead is $46,000.

Joseph C. Polking,

Secretary.

[FR Doc. 92-15045 Filed 6-25-92; 8:45 am]

BILLING CODE 6730-01-M

Port of New Orleans/NOMC Terminal; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003829-005.

Title: Port of New Orleans NOMC Terminal Agreement.

Parties: The Port of New Orleans ("Port") N.O.M.C., Inc.

Synopsis: The amendment provides that steamship lines may cumulate vessel calls at the Berths 5 and 6 facility with calls made at the Port's public wharves on the Mississippi River in order to take advantage of the Port's "Incentive Dockage Rate."

Agreement No.: 202-008650-017.

Title: Calcutta, East Coast of India and Bangladesh/U.S.A. Conference Agreement.

Parties: The Bangladesh Shipping Corporation The Shipping Corporation of India, Ltd. Waterman Isthmian Line.

Synopsis: The proposed amendment will expand the scope of the Agreement to include Sri Lanka. It will also restate the Agreement.

Dated: June 23, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-15073 Filed 6-25-92; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 92-39]

United States/Central America Liner Association v. Interlatin Produce Co., Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by United States/Central America Liner Association ("Complainant") against Interlatin Produce Co., Inc. ("Respondent") was served June 22, 1992. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to pay charges lawfully assessed pursuant to the applicable service contract, specifically, failing to pay the amount due as a result of Respondent's failure to ship the minimum volume required by the service contract.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 22, 1993, and the final decision of the

Commission shall be issued by October 20, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 92-15072 Filed 6-25-92; 8:45 am]

BILLING CODE 6730-01-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. Hill-Burton Community Service Assurance Report—One Year Extension with No Change—0990-0096—The Community Service Assurance Report provides information on community services provided by Hill-Burton recipients. The Public Health Service Act (Titles VI and XVI) requires that this information be obtained periodically to enable assessment of the compliance of recipient Hill-Burton health facilities with their community services assurances. Respondents: State or local governments, non-profit institutions; Total Number of Respondents: 6,300; Frequency of Response: once every three years; Average Burden per Response: 52.5 hours; Estimated Annual Burden: 110,250 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. 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: June 16, 1992.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 92-15194 Filed 6-25-92; 8:45 am]

BILLING CODE 4150-04-M

Availability of Grants for Community Projects To Support Health and Human Service Needs of Minority Males

ACTION: Notice of availability of funds and request for applications.

AUTHORITY: These programs are authorized under title XVII section 1707 of the Public Health Service Act and sections 426(a)(1) and 1110 as amended (42 U.S.C. 1310) of the Social Security Act.

SUMMARY: The Department of Health and Human Services (HHS) announces the availability of funds to provide support for projects focusing on ways to improve health and human services to minority males at high risk of: (1) Health problems such as substance abuse and chemical dependency, homicide, suicide, and unintentional injuries, HIV infection and sexually transmitted diseases, and mental health problems; and, (2) social problems such as unemployment, undereducation, child abuse and neglect, criminal backgrounds, homelessness, teenage pregnancy and fatherhood, family dysfunction, and violence. The Community Males Grant Program, commonly referred to as the Minority Male Grant Program, is the centerpiece of the Minority Male Initiative, a special project of Health and Human Services' Secretary, Louis W. Sullivan, M.D. The Minority Male Grant Program is a jointly funded effort of the four HHS operating divisions—Administration on Children and Families, Health Care Financing Administration, Public Health Service, and Social Security Administration. In Fiscal Year (FY) 1992 funds are available for grants to: (1) Hold conferences on minority male health and human service issues; (2) develop community coalitions to meet health and human service needs of minority males; and, (3) support community coalition intervention demonstration projects.

ADDRESSES/CONTRACTS: Applications must be prepared on form PHS 5161. Requests for application kits and completed applications should be directed to Mrs. Carolyn Williams, Grants Management Officer, Office of Minority Health, suite 1102, 5515 Security Lane, Rockville, MD 20852, telephone (301) 227-8758. In addition, technical assistance on issues involving business or administrative management should be directed to the Grants Management Officer. Technical assistance on the programmatic content of the application may be obtained from Project Officer, Office of Minority Health, suite 800, 5515 Security Lane, Rockville, MD 20852, telephone (301) 227-8858. Data and referral for additional information which might be useful in preparation of grant applications can be obtained from the Office of Minority Health Resource Center, 1(800) 444-6472).

DEADLINE: The deadline for receipt of applications for conference grants, community coalition development grants, and intervention demonstration grants is 5 p.m. (E.T.) on July 29, 1992. Applications will be considered as meeting the deadline if they are either: (1) Received at the above address on or before the deadline date and time; or, (2) sent to the above address on or before the deadline date and received in time for submission to the review panel. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late and will be returned to the applicant.

AVAILABILITY OF FUNDS: It is anticipated that the Department of Health and Human Services will have approximately $2.0 million available in FY 1992 to support conference, coalition development, and intervention demonstration projects under this announcement. Approximately $400,000 will be available to support about 20 conference grants (up to $20,000 per grant). Approximately $600,000 will be available to support about 12 community coalition development grants (up to $50,000 per grant). Approximately $1,000,000 will be available to support about four community coalition intervention demonstration grants (up to $250,000 per grant). The specific amount expended will depend on the total funds available. It is anticipated that the grants will be awarded by September 30, 1992.

PERIOD OF SUPPORT: The period of support for conference and coalition development grants is one year. Support for coalition intervention demonstration grants may be requested for a total project period of up to three years. Non-competing continuation awards for years two and three will be made subject to the continued availability of funds and the applicant's satisfactory performance during the prior year. Non-competing continuation budgets may not exceed a total federal request of $250,000 (direct and indirect costs).

SUPPLEMENTARY INFORMATION: This program announcement consists of this introductory section that applies to all portions of the grant program followed by three sections that detail the purpose and review criteria of the three portions

of the grant program. Part I concerns conference grants, Part II concerns coalition development grants, and Part III concerns coalition intervention demonstration grants.

Program Background

There are a multitude of health and social problems affecting minority males in America today. For example, at a time when life expectancy for most Americans is increasing, it is not improving for Black men, declining from 65.6 years in 1984 to 65.2 years in 1987. Age-specific death rates for Black males are higher at all ages than for white males. The disparities in health status are not limited to Black males. While data tend to be more extensive on Black males, similar problems confront Hispanics, Native Americans, and some Asian American and Pacific Islanders. Problems confronting minority males are those particularly associated with poverty, violence, single parent households, school drop-out rates, delinquency, unemployment, and health status.

Minority males have a disproportionately higher rate of AIDS than the general U.S. population. In an overall population in which Blacks and Hispanices represent 12% and 8%, respectively, 26.1% of AIDS-related deaths among males during 1984–1990 were Black males and 12.6% were Hispanic males. Hawaiian, American Indian, Chinese, Filipino, and Black males have significantly lower 5-year relative cancer survival rates than white males from the same geographic area.

Although the leading cause of death for all race and ethnic orgin groups is cardiovascular disease, there are some differences in the subsequent leading causes of death. For example, the role of alcohol in mortality for American Indians is demonstrated by the fact that the second leading cause of death in 1988 for American Indian males was accidents and adverse effects. Chronic liver disease and cirrhosis was the fourth leading cause of death; suicide was the fifth leading cause; and homicide was the sixth leading cause. The age-adjusted death rate for homicide and legal intervention for Hispanic males during 1979–81 was six times greater, and for non-Hispanic Black males was almost ten times greater, than for non-Hispanic white males.

Minority males have the highest rates of contact with the criminal justice system of any group in the nation. In 1987, more than half of all prison inmates in the nation were Black or Hispanic males. Rates of illiteracy are much higher for Black, Hispanic, and Native American males than for white males. Minority males are more likely to drop out of high school and less likely to enroll in college if they have graduated from high school. Earnings of Blacks and Hispanics are less than 70 percent of comparable white earnings.

These factors suggest that communities with minority populations subject to such combinations of severe health and social problems could benefit considerably from focused outreach efforts, involving both health and social service providers, that make special efforts to reach at-risk minority males.

The 1985 Report of the Secretary's Task Force on Black and Minority Health included a nationwide survey to elicit information on ways the Department might improve the health status of minority Americans. As part of the survey, respondents highlighted specific examples of successful community programs and identified key elements of that success. The key elements cited were: comprehensive services; program ability to improve minority access to health and social services; and cultural sensitivity to the group being served. Other elements of success included networking with other agencies in the community and control of these programs by community boards.

The problems confronted by minority males are highly complex and interwoven, and include attitudes, behaviors, and perceptions on the part of both men and women and minorities and non-minorities. These problems have attracted the attention of a wide range of governmental and non-governmental bodies, including foundations and other private-sector organizations. No single solution or intervention, whether job training, education, or an anti-drug activity, is likely to be as effective by itself as it would in combination with others. Not only are multiple resources necessary to support the health and development of minority males, but no single program or complex of programs is likely to be effective without the support of family, community, or an interested individual willing to serve as a mentor or role model.

Thus, in addition to outreach and service activities mounted by governmental and voluntary agencies, an effective program should seek opportunities to empower community residents and local organizations to be active participants in creating solutions to these problems. Such an approach would not only improve the lives of individuals, but the vitality and capacity for self-determination of the entire community.

In order to address the range of complex problems, these grant programs have been devised to allow maximum flexibility in developing community solutions. They would support innovative projects that are fashioned by the community and build upon existing groups and institutions established in the community that can provide support to high-risk minority males.

Linkages among a variety of types of public and private organizations will be encouraged in the conduct of these activities in combinations appropriate to the needs of populations targeted by the community for support. Possible participants in activities directed toward minority male service needs may include, among others:

- Pre-school, Head Start, or elementary and secondary educational programs;
- Counseling programs, including those involving male mentors, role models, or peer counselors;
- Religious institutions;
- Civic, fraternal, community-based, and other volunteer organizations;
- Payors for health care services;
- Community hospitals, clinics, health centers, mental health centers, and health care providers;
- Runaway and homeless youth services;
- Child welfare services, including foster care and adoption services;
- Collegiate, graduate, and postgraduate educational programs in health or social sciences;
- Business enterprises or organizations;
- Job training programs;
- State, county, or local health or social service agencies;
- Criminal justice and law enforcement organizations, including juvenile justice agencies and family courts.

Relation to National Goals for the Year 2000: The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Community Coalition to Support Health and Human Service Needs of Minority Males Grant Program, is related to all of the 22 priority areas: (1) Physical activity/fitness; (2) nutrition; (3) tobacco; (4) alcohol and other drugs; (5) family planning; (6) mental health and mental disorders; (7) violent and abusive behavior; (8) educational and community-based programs; (9) unintentional injuries; (10) occupational safety and health; (11) environmental

health; (12) food and drug safety; (13) oral health; (15) maternal and infant health; (15) heart disease and stroke; (16) cancer; (17) diabetes and chronic disabling conditions; (18) HIV infection; (19) sexually transmitted diseases; (20) immunization and infectious diseases; (21) clinical preventive services; and, (22) surveillance and data systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-0473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9352 (Telephone 202-783-3238).

To the extent possible, applicant should link activities to other Federally supported health and human service projects serving the same targeted populations and geographical areas as the applicant.

These grants programs are part of a National and Department-wide effort to focus public and private resources on the multiple health and human service needs of minority males.

Definitions: For the purpose of this grant program, the following definitions are provided:

(1) *Health Problem*—Selected priority issue areas identified in the Secretary's Task Force report or by the Office of Minority Health: (a) Substance abuse and chemical dependency; (b) homicide, suicide, and unintentional injuries; (c) HIV infection and sexually transmitted diseases; and (d) mental health problems.

(2) *Human Service Problem Area*—Selected priority issue areas identified by OMH: (a) Unemployment and underemployment; (b) undereducation and school dropout; (c) child abuse and neglect; (d) criminal backgrounds; (e) homelessness, runaway, and "throwaway" status; (f) teenage pregnancy and fatherhood; (g) family dysfunction; and, (h) violence.

(3) *Risk Factors*—The environmental and behavioral influences capable of causing ill health with or without previous predisposition. The term "risk factor" is also used to denote an aspect of personal lifestyle and behavior known, on the basis of epidemiological evidence, to be associated with one or more diseases or health conditions considered important to prevent. These include poor dietary habits, obesity, severe emotional stress, depression, poor conflict resolution skills, abuse of alcohol, tobacco, and drugs, high risk sexual practices, (e.g., unprotected intercourse with multiple partners), and others.

(4) *Community*—A defined geographical area in which persons live, work, and recreate characterized by: (1) formal and informal communication channels; (b) formal and informal leadership structures for the purpose of maintaining order and improving conditions; and, (c) its capacity to serve as a focal point for addressing societal needs including health needs.

(5) *Community Coalition*—The coming together of various types of organizations in a community for the purpose of collaborating on specific community concerns, and seeking resolution of those concerns. For purposes of this grant program, a community coalition is characterized by the five elements listed below.

- Requires resource participation. Each member organization brings certain resources to the coalition to enable the coalition to accomplish its mission.
- Requires that each member organization has a specific role within the coalition. This role, defined by the individual member and the coalition, is distinctive among the other members.
- Requires that each member organization establish both a relationship with the coalition as an entity (vertical relationship) and with other members of the coalition (horizontal relationship). Formalizing these relationships to make explicit the specified roles must be achieved through development of memoranda of understanding/agreement between each member organization and the coalition, and between members as necessary.
- Requires a long-term commitment on the part of each member organization to participate, at a minimum, over the life of the funded project. We encourage coalitions to demonstrate a commitment to work together for a much longer period than that for which funding is available under this announcement.
- Must document is activities to ensure a written history of and a continuity to its work that is not dependent upon the active participation of any member organization.

(6) *Intervention*—The process of carrying out an action(s) so as to alter or modify the condition or outcome. Risk reduction interventions typically are a set of planned activities designed to change behavior so as to lower the likelihood that a preventable health or human service problem will occur or progress further.

(7) *Minority Populations*—As defined by the "Report of the Secretary's Task Force on Black and Minority Health", they include: Asian/Pacific Islanders, Blacks, Hispanics, and American Indians/Alaska Natives (which include Native Hawaiians).

Relationship between the Grant Program's three components: Each component of the grant program (conference, coalition development, and coalition intervention) is autonomous. Applicants may apply for one, two, or all three components of the program. However, receipt of one grant in no manner implies the receipt or future receipt of any other grants through this program.

Applicant Eligibility: For all grants made under this announcement, eligible applicants are public and private non-profit organizations, Indian tribes, and Indian tribal organizations. The applicant is responsible for management of the project and will serve as the fiscal agent for the Federal funds awarded.

For Coalition Development and Coalition Intervention Demonstration grants, eligible applicants may be community coalitions, as described in this announcement. A single organization may apply for a grant on behalf of two or more entities, but it must provide documentation of each organization's commitment to carry out the prooposed project.

Preparation of the Application: Prospective applicants should request and complete application form PHS 5161-1. Applicants wishing to improve their chances for approval should pay particular attention to the general and supplemental instructions provided in the application kit to ensure that their applications are responsive. In the program narrative section, applicants should pay particular attention to the issues described under "review criteria". Applicants should not request Federal funds that exceed the stipulated budgetary limit: $20,000 (direct costs only) for conference grants; $50,000 (direct and indirect costs) for coalition development grants; and, $250,000 (direct and indirect costs) for coalition intervention demonstration grants. Applicants must submit an original and two copies of their complete application to the above address.

Application Review Process: Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive to the announcement, or non-conforming will be returned. Applications judged to be complete, conforming, and responsive will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by non-federal reviewers chosen for their technical expertise in the health and human services area, their experience with similar projects, and their

understanding and special knowledge of the problems confronting the target populations addressed by the proposals.

Award Criteria: Funding decisions will be based on the recommendations/ratings of review panels and program balance. Efforts will be made to achieve geographic and racial/ethnic distribution as well as cover the identified health and human service problems. Availability of funds will be a factor and will govern how many projects will be funded.

Use of Grant Funds: Grant funds must be used solely for the purpose described in the approved application. Grant funds may be used for personnel, equipment, supplies, domestic travel, and other costs directly related to the project described in the approved application, as provided for in the PHS Grants Policy Statement.

Grant funds may not be used for construction of facilities, including additions and extensions; acquisition of land; or any costs prohibited by the cost principles in 45 CFR, parts 74 and 92. Grant funds may not be used for sectarian instruction or any religious purpose.

Indirect costs cannot be paid out of Federal funds for conference grants; they must be paid for by non-Federal sources. Requests for federal funds for coalition development and coalition intervention demonstration grants may include indirect costs.

Contractual arrangements are allowable under this program announcement. This program, however, will not fund any application that can be interpreted as a "pass through" mechanism. Any contractual arrangements must be formalized in the form of a written agreement and should state the activities to be performed, by whom, a time schedule, the dollar amount, and references to applicable grant policies and regulations.

This grant program is not intended to support primarily the purchase of equipment. The proposed budget may include purchase of equipment that is reasonable and justified. Justification for such requested equipment and its importance to the conduct of the project should be provided in a section entitled Budget Justification.

Terms and Conditions of Support: An annual program performance report and an annual financial status report must be submitted by grantees. Instructions for completion of these reports will be provided upon award.

Executive Order 12372 (Intergovernmental Review): Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through Department of Health and Human Services regulations at 45 CFR part 100. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal assistance. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to determine the applicable procedure. A current listing of SPOCs will be included in the application kit. (Applicants should note that comments received from the State may be considered as a factor in the review of their applications.) SPOCs will have 60 days to provide comments. SPOC comments must be received by September 28, 1992 for the conference, coalition development, and coalition intervention demonstration grants. SPOC comments are to be sent to: Carolyn Williams, Grants Management Officer, Office of Minority Health, Suite 1102, 5515 Security Lane, Rockville, MD 20852, telephone (301) 227–8758.

The Catalog of Federal Domestic Assistance number for this program is 93.910.

Part I. Conference Grants

Purpose: This program will support meetings and conferences on health and human service problems confronting high-risk minority males. Applications are invited for conferences on these issues for information dissemination and education transfer involving local service organizations and the general public, and for developing strategies to meet the health and human service needs of high-risk minority male populations in targeted communities identified by the applicant.

For purposes of this grant program, a conference is defined as a symposium, seminar, workshop, or any other organized and formal meeting lasting one or more days in which persons assemble to exchange information, strategies, or program development ideas in such areas as sharing new technologies, problem-solving, network-building, private sector activity, or financing of proposed initiatives.

Application Characteristics: The application narrative, excluding the budget justification and the appendices, should not exceed 5 pages. The reporting requirements for the narrative portion of application form PHS 5161–1 are approved under OMB Approval Number 0937–0189. The narrative should contain:

(1) A brief Minority Health and Human Services Impact Statement that includes a discussion of how the proposed project will make a difference in the health and social condition of the targeted minority male population and those closely associated with them. It should note what unmet needs will be addressed through the proposal and what the expected outcomes are. In addition, the Statement should discuss how the proposed project links with other services and organizations within the community.

(2) A time-based action plan that sets out project goals, objectives, and milestones.

Review Criteria: Applications will be reviewed and evaluated in terms of the evidence presented in the application demonstrating the ability of the applicant to meet the following criteria. (A quantitative indicator of each review criterion appears in parenthesis.)

Project Objectives: (30 points)

- Potential significance of the conference for the plight of high-risk minority males, and its relation to relevant conferences or activities conducted in the past 3 years; and
- Clarity and justification of overall objectives, aims, and goals of the conference, the problems it intends to clarify and the developments it may stimulate.

Conference Plan: (30 points)

- Manner in which the conference is planned and organized, and presence of an administrative and organizational structure that will facilitate attainment of the proposed objectives of the conference;
- Participation of appropriate speakers or presenters; and
- Plans to ensure a specific outcome of the conference, such as an action plan or strategy document to be developed at the conference.

Project Management and Staffing: (15 points)

- Qualifications and experience of project staff, conference director, and other key personnel; and
- Appropriateness of the budget, staffing plan, and time frame to complete the conference.

Resources: (15 points)

- Adequacy of proposed facilities and resources; and
- Support from other community organizations and letters of commitment from these organizations, if any.

Evaluation: (10 points)

- Adequacy of plan to identify and measure conference outcomes against stated project objectives.

Part II. Community Coalition Development Grants

Purpose: This program is designed to provide limited resources to plan and develop a coalition to address the specific health and human services needs of a defined population of high-risk minority males in a specified community. These grants are intended to provide support for: (1) Developing a formal coalition of community organizations which will address health and human services important to the target population; or, (2) enabling an existing community coalition to modify its organizational structure, purpose, policies, or practices to demonstrate an effective and efficient way of addressing the health and human service needs of the target population.

Application Characteristics: The application narrative, excluding the budget justification and the appendices, should not exceed 20 pages. The reporting requirements for the narrative portion of application form PHS 5161-1 are approved under OMB Approval Number 0937-0189. The narrative should contain:

(1) Documentation of the need for developing a community coalition which will address health and human service issues related to high-risk minority males;

(2) *Either:* (a) A description of a proposed community-based coalition, that will link entities such as community-based organizations, educational institutions, local schools, churches, or health and human service organizations, to address minority male health and human service issues (include roles and responsibilities of each coalition member); or,

(b) A description of ways in which an existing coalition will review and modify its structure, purpose, policies, practices, etc., to demonstrate improvements in outreach, screening, and delivery of health and human services to these minority males (include roles and responsibilities of each coalition member); and,

(3) A brief Minority Health and Human Services Impact Statement that includes a discussion of how the proposed project will make a difference in the health and social condition of the targeted minority male population and those closely associated with them. It should note what unmet needs will be addressed through the proposal and what the expected outcomes are. In addition, the Statement should discuss how the proposed project links with other services and organizations within the community.

(4) A time-based action plan that sets out the goals, objectives, and milestones of the coalition development project that might include such intended accomplishments as: recruit coalition members; develop organizational policies and procedures; staff the coalition; hold regularly scheduled meetings; plan the first coalition initiative; plan for ongoing operations, including long-term funding.

Review Criteria: Applications will be reviewed and evaluted in terms of the evidence presented in the application demonstrating the ability of the applicant to meet the following criteria. (A quantitative indicator of each review criterion appears in parenthesis.)

Project Objectives: (25 points)

- Description of and justification for the choice of the target population and the targeted community's health and human service needs/problems.
- Demonstration of ties with and credibility with the target population as evidenced by previous service to that population.
- Consistency of the coalition's developmental goals and objectives with those of the Community Coalition Development Grant Program and the extent to which such goals and objectives are measurable.
- Description and justification of why the proposed coalition is the appropriate strategy to address the community's needs and circumstances.

Operation Plan: (30 points)

- Description and justification of the process for effective development of a new coalition or modification of an existing coalition.
- Coherence, feasibility, and realistic approach of the time-based action plan that sets out project goals, objectives, and milestones;
- Feasibility and adequacy of plans to involve the target population in carrying out the project;

Project Management and Staffing: (15 points)

- Description and justification of budget support requested, the coalition's organizational structure, and the management/staffing plan, delineating the roles and responsibilities of each proposed coalition member.
- Appropriateness of relevant experience and qualifications of the applicant to function as the lead entity in developing the coalition and the experience and qualifications of project director and other key project personnel.
- Appropriateness of relevant experience and qualifications of the managers of the applicant organization to provide administrative and fiscal management of the grant.

Resources: (15 points)

- Adequacy of the description of the proposed community coalition, documentation of endorsement by proposed coalition members and other organizations serving the target population, and degree of commitment of each proposed member to developing the coalition, including the amount of extent of support to be provided.
- Degree to which the composition of coalition members is a logical choice based on target population, target risk factor(s) and proposed intervention(s).
- Applicant's potential to develop financial and other support from and linkages with units of State, county, or local government or the private sector.

Evaluation: (15 points)

- Adequacy of the applicant's evaluation plan is describing the project's objectives in quantifiable terms.
- Adequacy of the proposed process evaluation in the collection of quantitative and qualitative data that permit not only a detailed description of the implementation of the project, but also a description of what conditions existed prior to receiving grant funds and in providing a useful description of who worked with whom, when, how often, in what settings and what were the results of those meetings.
- Adequacy of the proposed outcome evaluation in assessing whether the coalition was effective in meeting its goals and to what extent these effects can be attributed to the coalition's activities and in considering both intermediate (e.g. changes in community policies or practices) and long term outcomes (e.g. changes in knowledge, attitudes, and behavior).
- Adequacy of the evaluation plan in providing an approach for obtaining information on factors which facilitate or inhibit the development and sustainability of the coalition.
- Allocation of a sufficient amount of funds to carry out evaluation activities and explains and justifies the amount and purpose of these funds.
- Likelihood that the coalition will continue beyond the one year funded project period.

Part III. Community Coalition Intervention Demonstration Grants

Purpose: These projects are intended to demonstrate methods of implementing community coalition activities involving multiple organizations that can effectively

intervene with high-risk minority males to address selected public health, social, and other related human service problems that contribute significantly to premature death and poor quality of life for this population. The program is intended to support proposed intervention projects that will be implemented by viable multifaceted community-based coalitions which can demonstrate their capability and capacity to go beyond planning to actual program conduct. It is also expected that a coalition will be maintained throughout the grant project period and beyond since the intent of this effort is to assist communities in institutionalizing solutions to the minority male crisis. Grant applicants should engage both health and human service components in their intervention strategies. As demonstration efforts, each funded project will include an evaluation component that will assess both the efficacy of the interventions used with the target populations and the potential for replicability of the project in similar communities.

Non-Federal Share Requirements for Demonstration Projects: It is expected that in addition to the Federal funds requested (up to $250,000), a portion of the program's costs will be borne by coalition members or by other non-Federal sources such as business, labor, local government, or community funds. Cost participation, i.e., grantee-incurred direct costs, indirect costs, or third-party in-kind contributions, of at least 25 percent of the requested amount for year one, 40 percent of the requested amount for year two, and 50 percent of the requested amount for year three, is a requirement under this program. A maximum of $25,000 (direct and indirect costs) of federal funds can be requested each year.

Application Characteristics: The reporting requirements for the narrative portion of application form PHS 5161-1 are approved under OMB Approval Number 0937-0189. The narrative should contain:

(1) A needs assessment, including epidemiological and other evidence, of the health and human service problem(s) and risk factor(s) of the minority male population(s) who are the targets of the applicant's proposal.

(2) A sound organizational scheme for the coalition which assures adequate involvement, representation, and commitment of both coalition members and community leaders.

(3) A brief Minority Health and Human Services Impact Statement that includes a discussion of how the proposed project will make a difference in the health and social condition of the targeted minority male population and those closely associated with them. It should note what unmet needs will be addressed through the proposal and what the expected outcomes are. In addition, the Statement should discuss how the proposed project links with other services and organizations within the community.

(4) Detailed and specific intervention methods for risk-factor reduction through the use of a community coalition targeted to specific minority population(s) and to identified risk factors.

(5) A time-based action plan that sets out project goals, objectives, and milestones that might include such intended accomplishments as: Staff the coalition; hold regularly scheduled meetings; plan the first coalition initiative; implement the initiative; plan for ongoing operations, including long-term funding.

(6) A plan for evaluating whether the proposed project achieved its objectives. The evaluation plan should: Provide a clear definition of the project's objectives, described in quantifiable terms; describe the process and outcome indicators which will be used to determine whether the project's objectives have been met; and, provide an approach for obtaining information on the merit of the intervention. At a minimum, the plan should identify how information will be obtained for the following areas: which interventions are being provided and to whom; factors which facilitate or inhibit the sustainability of the coalition; factors which facilitate or inhibit the implementation of the intervention; measures of the intervention's effectiveness; and, ways to improve the implementation and effectiveness of the coalition's interventions.

Grant funds are intended to supplement and not supplant existing funding for services to the targeted groups.

When preparing the budget, include reasonable costs (travel, lodging, meals, ground transportation) for the project director and one other key staff member to attend a required 2-day meeting with Federal program officials in Washington, DC, each year of the project.

The review criteria that appear in this announcement should be addressed in the application narrative. While the narrative must not exceed 35 pages, the lengths of the individual narrative components will vary. The next section suggests a page range for each of these narrative components.

(1) Project Objectives (suggested range—5 to 7 pages).

(2) Operation Plan (suggested range—8 to 10 pages).

(3) Project Management and Staffing (suggested range—6 to 8 pages).

(4) Resources (suggested range—3 to 5 pages);

(5) Evaluation (suggested range—3 to 5 pages).

Review Criteria: Applications will be reviewed and evaluated in terms of the evidence presented in the application demonstrating the ability of the applicant to meet the following criteria. (A quantitative indicator of each review criterion appears in parenthesis.)

Project Objectives: (20 points)

- Rationale and technical merit of the proposed project, consistency of the project's goals and objectives with those of the Community Coalition Demonstration Grant Program and the Office of Minority Health, and extent to which such goals and objectives are measurable.
- Description and justification for the choice of target population, health and human service problems and the associated risk factor(s) to be targeted, and their direct relationship to the epidemiologic and socioeconomic characterization(s) of the target minority population(s).
- Degree to which the approach will complement and integrate with the existing network of health and human service providers and payors.

Operation Plan: (30 points)

- Coherence and feasibility of the described intervention strategies that should address the broad concept of the application rather than just an analysis of medical or social service records of minority individuals, as in a limited clinical trial or case study.
- Coherence, feasibility, and realistic approach of the implementation methods described, including the specific efforts to be undertaken by each key component of the coalition. Timetables with responsible individual identified for accomplishing the objectives will be assessed. The specificity of the methods to address the target risk factor(s) in the target population(s) will be given significant weight in the review of the application.
- Extent to which materials used or to be developed for use in the interventions will be ethnoculturally sensitive and linguistically appropriate to the target population(s).

Project Management and Staffing: (25 points)

- Adequacy of the coalition's organizational structure and

management plan in clearly delineating each coalition member organization's area of responsibility and the process by which the specified member organization's representative will be accountable for carrying out his/her responsibility.

• Adequacy of qualifications and time allocations of proposed key staff in particular, and of regular staff in general, both paid and voluntary, and of any staff and consultant positions to be filled after award, based on review of documents such as resumes, curriculum vitae, and position descriptions.

• Appropriateness of relevant experience and qualifications of the managers of the applicant organization to provide administrative and fiscal management of the grant.

Resources: (10 points)

• Adequacy of the description of the community coalition, the documentation provided that such coalition exists, and that member organizations have worked together in the past, or with other organizations or agencies, on health or human service problems with the target population.

• Degree to which the composition of coalition members is a logical choice based on target population, target risk factor(s) and intervention(s) to be demonstrated.

• Degree of commitment of each coalition member to the coalition and to the proposed implementation plan, including the amount or extent of support indicated by coalition members to cover a portion of project needs.

• Applicant's potential to develop financial and other support from and linkages with units of State, county, or local government or the private sector.

Evaluation: (15 points)

• Adequacy of the evaluation plan in describing the project's objectives in quantifiable terms.

• Adequacy of the evaluation plan in describing the process and outcome indicators which will be used to determine whether the project's objectives will be met.

• Adequacy of the evaluation plan in providing an approach for obtaining information on the issues stated above in Part III, Application Characteristics, number 6 of the RFA.

• Allocates a sufficient amount of funds to carry out evaluation activities and explains and justifies the amount and purpose of these funds.

• Likelihood that the project will demonstrate whether or not community health coalitions can effectively promote risk factor reduction among minority populations.

• Likelihood that the project will continue beyond the three year funded project period.

Approved: June 2, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 92-15083 Filed 6-25-92; 8:45 am]

BILLING CODE 4160-17-M

Centers for Disease Control

[Program Announcement Number 251]

Biohazard Science/Occupational and Environmental Health and Safety Educational Program; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds for a cooperative agreement to develop and teach educational programs in Biohazard Science/Occupational and Environmental Safety and Management at the graduate level. This agreement will expand current occupational health and safety efforts by targeting relatively new and emerging problems to which more and more employees are being exposed. Such things as genetic engineering, HIV and blood-borne pathogens are all contributing to the need for this program. The CDC's National Institute for Occupational Safety and Health (NIOSH) is committed to conducting education programs to provide an adequate supply of personnel to carry out the purposes of the Occupational Safety and Health Act.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000 see the section Where to Obtain Additional Information.)

Authority

This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 670(a)].

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations are eligible for this cooperative agreement. Eligible applicants must be able to provide training at the master's and Ph.D. levels for a curriculum in biohazard science.

Availability of Funds

Approximately $260,000 will be available for Fiscal Year 1992 to fund one cooperative agreement. The award is expected to begin on or about September 30, 1992, for a 12-month budget period within a 5-year project period. Funding estimates may vary and are subject to change.

The continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

Purpose

This cooperative agreement is intended to assist a college or university in the development and implementation of a graduate biohazard training program.

The medical and industrial hygiene communities have shown that the problem of exposure to biohazards has been escalating over the past decade. This program will enhance the CDC/NIOSH commitment of supporting education programs designed to provide an adequate supply of personnel to carry out the purposes of the Occupational Safety and Health Act. This cooperative agreement will significantly strengthen the occupational/public health infrastructure by integrating resources for occupational safety and health research and public health prevention programs at the state and local level.

Program Requirements

The recipient must meet the following requirements:

1. The Graduate Training Program must be located within a medical school or a school of public health to take advantage of the health research and teaching ability of medical or public health faculty and staff.

2. The Master of Science curriculum shall include a 2-year academic and research program, with a minimum of 30 hours of core and elective coursework, a research prospectus and preliminary oral examination, a thesis, and the final oral examination.

a. Examples of core courses during year 1 (comprising a total of 25 credit hours) could include: Survey of Occupational Safety; Survey of Environmental Safety; Industrial Hygiene; Biostatistics; Biohazard Science; Laboratory Methods in Biohazard Science; Epidemiology; Prospectus Preparation; and Seminars.

b. Examples of electives during year 1 could include: Biochemistry; Microbiology; Mycology; Virology; Ecology; Aerosol Science; and other approved courses.

c. Examples of core courses during year 2 could include: Indoor Air Quality; Toxicology; Regulatory Affairs/Health Policy; and Ergonomics/Industrial Safety; Research and Thesis Preparation.

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC/NIOSH will be responsible for conducting activities under B., below.

A. Recipient Activities

1. Develop the biohazard graduate degree curriculum.
2. Develop faculty and staff to teach the program.
3. Integrate the program to provide opportunities for training to students in occupational medicine, industrial hygiene, occupational safety, environmental studies, and general public health.
4. Develop opportunities for collaborative studies and field investigations for the disciplines outlined above.
5. Develop plans for recruiting students into the program.
6. Develop syllabi for all courses and submit them to CDC.
7. Develop an evaluation tool to measure the impact of the training.

B. CDC/NIOSH Activities

1. Provide technical assistance and consultation through site visits and correspondence in the area of program development and implementation.
2. Provide scientific and technical collaboration in the development of the curriculum materials and their subsequent review.
3. Provide technical assistance in the evaluation of the results and efficacy of the program.
4. Assist in the dissemination of materials generated by the program.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including: (a) The applicant's understanding of the objectives of the proposed cooperative agreement; and (b) the relevance of the proposal to the objectives. (20%)
2. Feasibility of meeting the proposed goals of the cooperative agreement including: (a) The proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement; and (b) the proposed method for evaluating the accomplishment. (20%)
3. Strength and comprehensiveness of the training program plan which addresses the distinct characteristics and needs of the target audience, the proposed curriculum and course outlines, and the essential instructional strategies for planning, conducting, and evaluating training programs. (25%)
4. Training and experience of the Program Director and staff including: (a) Program Director with technical expertise, education, and research background in the biohazard science field; and (b) faculty with training and experience in the appropriate technical content areas. (25%)
5. The capability of accessing national user groups in order to ensure consistency in delivering training programs and credibility with Federal agencies and state and local educational institutions; and the ability to bring in adjunct faculty from an established network of biohazard science experts. (10%)
6. The budget will be evaluated to the extent it is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number for this program is 93.263.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, on or before August 20, 1992.

1. Deadline

Applications will be considered to have met the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 251. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305, (404) 842-6630. Programmatic technical assistance is available from Walter E. Ruch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 533-8278.

Please refer to Announcement Number 251 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001 00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone 202-783-3238.)

Dated: June 19, 1992.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control.

[FR Doc. 92-15051 Filed 6-25-92; 8:45 am]

BILLING CODE 4160-19-M

[Announcement Number 237]

Cooperative Agreement for Epidemiologic Evaluation of Childhood Leukemia and Paternal Exposure to Ionizing Radiation; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds for a cooperative

agreement to conduct an epidemiologic evaluation of childhood leukemia and paternal occupational exposure to ionizing radiation.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health and Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a)] and the Public Health Service Act, section 301(a) [42 U.S.C. 241(a)], as amended.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, state and local health departments and small minority and/or women-owned businesses are eligible for this cooperative agreement.

Note: Eligible applicants may enter into contracts and consortia agreements and understandings as necessary to meet the requirements of the program and to strengthen the overall application. The intent to use such mechanisms must be stated in the application and the nature and scope of work of these mechanisms require the approval of CDC.

Availability of Funds

Approximately $500,000 will be available in Fiscal Year 1992 to fund one or more applications, with the amount of each award dependent upon the number of awards made. Funding estimates may vary and are subject to change. It is expected that the award will begin on or about September 1, 1992, and will be awarded for a 12-month budget period within a project period of up to 3 years. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this cooperative agreement is to support an epidemiologic study, to be conducted in cooperation with CDC (specifically, the National Institute for Occupational Safety and Health [NIOSH] and National Center for Environmental Health and Injury Control [NCEHIC]) that will investigate the possible association between childhood leukemia and lymphoma and paternal occupational exposure to ionizing radiation.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. In collaboration with CDC, develop a research protocol for an epidemiologic investigation of childhood leukemia and lymphoma and paternal exposure to ionizing radiation. The nature of the study and the site to be evaluated should be selected in consideration of the following criteria:

- Appropriate radiation exposure levels;
- Availability of appropriate personnel and dosimetry records at the facility under evaluation;
- Availability of suitable regional cancer registry or other source of cancer cases; and
- Sufficient sample size (childhood leukemia is a very rare disease). Evidence must be provided that the recipient considered a number of Department of Energy (DOE) nuclear facilities in the selection process. Since workers may live near their place of employment, consideration should also be given to low-level radiation exposure directly to affected children as a risk factor in addition to parental risk factors.

2. In collaboration with CDC, implement study protocol, including development of data collection instruments, data collection, analysis, interpretation, and reporting.

B. CDC Activities

1. Identify and convene Peer Review Panel to review protocol and provide scientific guidance to the conduct, analysis, and reporting of the study.

2. Collaborate with the recipient in all stages of the project, including design of the protocol and data collection instruments, data analysis, interpretation of results, and preparation of written reports.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Identification of Appropriate Study Population (30%)

The applicant's ability to identify an appropriate study population with regard to the criteria listed in the PROGRAM REQUIREMENTS section, under Recipient Activities.

2. Proposed Study Design (25%)

The extent to which the applicant's proposal addresses:

(a) Rationale for the proposed study design;

(b) Identification of an appropriate comparison group;

(c) Proposed sample size;

(d) A plan for exposure assessment, identification of cases of childhood cancers, and assessment of confounding or modifying risk factors; and

(e) a general plan for the analysis of the data.

3. Program Personnel (20%)

The extent to which the proposal has described (a) the qualifications and commitment of the applicant, (b) detailed allocations of time and effort of staff devoted to the project, and (c) the qualifications of the support staff.

4. Understanding of the Problem (10%)

The applicant's ability to demonstrate an understanding of the nature of the problem to be addressed. This specifically includes description of the occupational and public health importance of the study to be undertaken.

5. Collaboration (15%)

The applicant should demonstrate ability to collaborate with other agencies or facilities necessary for the conduct of the study, including, but not limited to, medical facilities or cancer registries. The degree of commitment and cooperation of collaborating parties may be evidenced by letters detailing the specific nature and extent of involvement.

6. Budget Justification (not scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of cooperative agreement funds. The application will also be reviewed as to the adequacy of existing and proposed facilities and resources for conducting project activities.

Other Requirements

Paperwork Reduction Act

Projects involving the collection of information from 10 or more individuals

and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

This project involves research on human subjects; therefore, all applicants must comply with the Department of Health and Human Services Regulations (45 Code of Federal Regulations part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number (CFDA) for this project is 93.262.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Diseases Control, room 300, Mailstop E-14, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, on or before August 19, 1992.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 237. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E-14, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842-6630. Programmatic technical assistance may be obtained from: Paul Renard, Division of Environmental Hazards and Health Effects, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-29, Atlanta, Georgia 30333, (404) 488-4613. Scientific Assistance may be obtained from: (1) Dr. Anne T. Fidler, Division of Surveillance, Hazard Evaluations and Field Studies, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Mailstop R-44, Cincinnati, Ohio 45226, (513) 841-4400, or (2) Dr. Paul L. Garbe, Division of Environmental Hazards and Health Effects, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-28, Atlanta, Georgia 30333, (404) 488-4613.

Please refer to Announcement Number *237* when requesting information and submitting an application.

Potential applicants may obtain a copy of **Healthy People 2000** (Full Report, Stock No. 017-001-00474-0) or **Healthy People 2000** (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: June 22, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-15049 Filed 6-25-92; 8:45 am]

BILLING CODE 4160-18-M

[Program Announcement Number 265]

Cooperative Agreements for Fetal Alcohol Syndrome Prevention Research Programs; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for cooperative agreements to develop collaborative, multidisciplinary research and training programs to prevent fetal alcohol syndrome (FAS) and fetal alcohol effects (FAE). This cooperative agreement mechanism supports Fetal Alcohol Syndrome Prevention Research Programs (hereafter FAS Research Programs), which will conduct prevention research in order to increase the prevention knowledge base for FAS and FAE and to develop innovative and effective methods to prevent FAS and FAE.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Maternal and Infant Health. (For ordering a copy of Healthy People 2000 see the section Where To Obtain Additional Information).

Authority

This program is authorized under sections 301 and 317 of the Public Health Service Act [42 U.S.C. 241 and 247b], as amended.

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, and small, minority and/or women-owned businesses are eligible for these cooperative agreements.

Note: Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the essential requirements of this cooperative agreement program and to strengthen the overall application.

Applicants seeking funding for State Fetal Alcohol Syndrome Prevention Programs are referred to Announcement Number 264.

Availability of Funds

Approximately $450,000 is available in FY 1992 to fund up to three awards. It is expected that the average award will be

$150,000 ranging from $125,000 to $200,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of the FAS Research Programs is to develop methods for identifying women at high risk for having children with FAS, design primary prevention strategies for these women, and evaluate rigorously the effectiveness of these strategies. Awards under this cooperative agreement program are intended to assist researchers to conduct prevention effectiveness research related to FAS. It is expected that awards under this program will result in the assembling of multidisciplinary research teams to develop, implement, and evaluate population-based programs to identify women at high risk for having infants with FAS or other adverse alcohol effects, and prevent FAS among future children of these high risk women.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Assemble a multidisciplinary research team composed of professionals from relevant academic disciplines. Relevant disciplines include epidemiology, medicine, obstetrics, pediatrics, psychiatry, psychology, developmental and behavioral science, nursing, biostatistics or statistics, and education.

2. Develop, implement, and evaluate population-based programs to:

(a) Identify women at high risk of having infants with FAS or other adverse alcohol effects;

(b) Establish prevention projects in partnership with state and local public health agencies and other community agencies to develop models to offer primary prevention services for women at high risk for having children with FAS and other adverse alcohol effects; and

(c) Evaluate rigorously the effectiveness of such prevention programs, measured by changes in the risk of FAS among participants of the program relative to a suitable control group.

B. CDC Activities

1. Provide technical assistance through site visits and correspondence related to development, implementation, and evaluation of FAS epidemiologic surveillance and prevention methodologies.

2. Assist with development and dissemination of applicable FAS prevention research results.

3. Provide scientific collaboration.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Need and Purpose (10%)

Responsiveness to the objectives of the cooperative agreement program, including the applicant's understanding of the purpose of the proposed cooperative agreement and the relevance of the proposed project to the purpose of the agreement.

2. Project Description and Methods (35%)

a. Strength of the overall project design in describing the objectives of the proposed project in relation to overall objectives.

b. Strength of the project design in describing the proposed project, including components regarding identification of women at high risk for having infants with FAS; and implementation and evaluation of primary prevention strategies in cooperation with state and local public health agencies and other community agencies.

c. Strength of the project design in describing the population to be studied and reasons for selecting the population, including reasons why the selected population is appropriate for the needs of the proposed project.

d. Demonstration of ability to identify and to have access to women at high risk for having infants with FAS.

e. Demonstration of ability to acquire prevalence data on FAS for the population identified in the proposed project.

f. Demonstration of ability to acquire access to treatment services for women and relevant follow-up data.

g. Strength of the project design in describing the steps to be taken in planning and implementing the overall project.

3. Capability and Experience (25%)

a. Demonstration of capability to conduct a project of this nature, including reputation in the field, ability to access all necessary data and client information, and ability to demonstrate a pre-eminent position as an appropriate agency to carry out the project.

b. Demonstration of ability to identify, organize, and determine appropriate responsibilities among the applicant, CDC, and other participants.

c. Demonstration of applicant's successful experience and performance in conducting and evaluating similar projects, including the strength and value to the project of any collaborating organizations.

d. Demonstration of appropriate organization of the research group; appropriate plans for collaboration within the research group (including communicating research hypotheses, methods, progress, and outcomes to others in the research group); appropriate methods for disseminating findings outside of the research group; and appropriate relationship between the research group and state or local health departments in conducting research and communicating findings.

4. Staffing and Management Resources (30%)

a. Demonstration that proposed Project Director is knowledgeable regarding public health prevention methods and programs (preferably experienced in FAS or developmental disabilities clinical or prevention methods), and has management capabilities, scientific skills, and experience with prevention activities, as evidenced by publications, program summaries, or other materials that document prior work. Demonstration of a significant time commitment to the project by the proposed Project Director.

b. Demonstration that proposed Principal Investigator is knowledgeable in the area of FAS, and has management capabilities, scientific skills, and experience with prevention activities, as evidenced by publications, program summaries, or other materials that document prior work. Demonstration of a major time commitment to the project by the proposed Principal Investigator.

c. Demonstration that proposed professional staff are knowledgeable regarding public health prevention methods and programs (preferably experienced in FAS or developmental disabilities clinical or prevention methods) and have appropriate training and experience in the area of epidemiologic surveillance and epidemiologic evaluation, as evidenced by publications, program summaries, or other materials that document prior work. Demonstration of a time

commitment by the proposed professional staff that is sufficient to accomplish the project. Demonstration that research team represents relevant academic fields, including fields such as epidemiology, medicine, obstetrics, pediatrics, psychiatry, psychology, developmental and behavioral science, nursing, biostatistics or statistics, and education.

d. Demonstration of ability to provide facilities and other necessary resources.

5. Budget (Not Scored)

Extent to which the project budget is reasonable, clearly justified, and consistent with the intended use of funds. Extent of cost sharing between the applicant and collaborators relative to program operations.

Funding Priorities

Priority will be given to funding applicants that plan to collaborate with state health departments.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 Code of Federal Regulations 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and are funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadline

Applicants from academic institutions and the private sector should use Form PHS 398 (Rev. 9/91). State and local governments may use PHS Form 5161-1, however, PHS Form 398 is preferred. The original and two copies of the application must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, on or before August 19,1992.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 265. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 415, Atlanta, Georgia 30305, (404) 842-6630. Programmatic technical assistance may be obtained from Karen Hymbaugh, M.P.A., Division of Birth Defects and Developmental Disabilities, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mail Stop F-37, Atlanta, Georgia 30333, (404)488-4226.

Please refer to Announcement Number 265 when requesting information or submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the introduction through the Superintendent of Documents, Government Printing Office, Washington, DC, 20402-9325, Telephone (202)783-3238.

Dated: June 22, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-15048 Filed 6-25-92; 8:45 am]

BILLING CODE 4160-18-M

[Program Announcement 264]

Cooperative Agreements for State Fetal Alcohol Syndrome Prevention Programs; Notice of Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for cooperative agreements to coordinate programs to prevent fetal alcohol syndrome (FAS) and fetal alcohol effects (FAE). This cooperative agreement mechanism supports State Fetal Alcohol Syndrome Prevention Programs (hereafter State FAS Prevention Programs), which will plan, coordinate, implement, and evaluate FAS and FAE prevention programs using all appropriate resources available.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Maternal and Infant Health. (For ordering a copy of Healthy People 2000 see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 301 and 317 of the Public Health Service Act (42 U.S.C. 241 and 247b), as amended.

Eligible Applicants

Eligible applicants are the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Note: Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the essential requirements of this cooperative agreement program and to strengthen the overall application, provided that the lead organization is a state.

Applicants seeking funding for Fetal Alcohol Syndrome Prevention Research Programs are referred to Announcement Number 265.

Availability of Funds

Approximately $450,000 is available in FY 1992 to fund up to three awards. It is expected that the average award will be $150,000 ranging from $125,000 to $200,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement program is to help state health agencies to create statewide or community-wide FAS prevention programs; to implement projects, in partnership with local public health agencies and other community agencies, to find women at risk of having infants with FAS and initiate strategies of primary prevention; to improve epidemiologic surveillance and availability of data necessary for FAS prevention; and to evaluate the effectiveness of their FAS prevention programs.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Provide for a State FAS Coordinator who will:

(a) Coordinate and mobilize state resources to prevent FAS;

(b) Develop programs to prevent FAS through school, public, and professional education;

(c) Make FAS a visible health priority in the state;

(d) Develop plans for the prevention of FAS using all appropriate agencies and resources in the state; recipient is encouraged to collaborate with community-based organizations, particularly health centers such as community and migrant health centers and healthcare for the homeless that are funded by the Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Public Health Service; and

(e) Stimulate and assist in the implementation of community prevention projects.

2. Provide FAS epidemiologic surveillance in the state to determine birth prevalence rates.

3. Develop programs to identify women at high risk for having infants with FAS, and design, implement, and evaluate strategies of primary prevention.

4. Evaluate the effectiveness of FAS prevention efforts in the state.

5. Collaborate with other appropriate state agencies with responsibilities for the prevention and control of alcohol and other drug abuse.

B. CDC Activities

1. Provide technical assistance through site visits and correspondence related to development, implementation, and evaluation of FAS epidemiologic surveillance and prevention methods.

2. Assist with development and dissemination of applicable FAS prevention program results.

3. Provide scientific collaboration.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Need and Purpose (10%)

Responsiveness to the objectives of the cooperative agreement program, including the applicant's recognition of the public health significance of the problem and the relevance of the proposed project to the purpose of the agreement.

2. Project Description and Methods (35%)

a. Strength of the project design in describing the objectives of the proposed project.

b. Quality of the project design in describing the technical approach, including: Identification of available state resources for FAS prevention; description of proposed or existing epidemiologic surveillance methods; and description of methods for evaluating program success.

c. Strength of the project design in describing the population to be served and rationale for choosing the population.

d. Demonstration of ability to identify and to have access to women at high risk for having infants with FAS. Demonstration of ability to protect the confidentiality of women who participate in the project.

e. Strength of the project design in describing the steps to be taken in planning and implementing the project.

3. Capability and Experience (25%)

a. Demonstration of capability to conduct a project of this nature, including reputation in the field, ability to access all necessary data and client information, and ability to demonstrate a pre-eminent position as an appropriate agency to carry out the project.

b. Demonstration of ability to identify, organize, and determine appropriate responsibilities among the applicant, CDC, and other participants. Evidence of collaboration with other appropriate state agencies with responsibilities for the prevention and control of alcohol and other drug abuse.

c. Demonstration of applicant's successful experience and performance in conducting and evaluating similar projects, including the strength and value to the project of any collaborating organizations.

4. Staffing and Management Resources (30%)

a. Demonstration that proposed Project Director is knowledgeable regarding public health prevention methods and programs (preferably experience in FAS or developmental disabilities clinical or prevention methods), and has management capabilities, scientific skills, and experience with prevention activities, as evidenced by publications, program summaries, or other materials that document prior work. Demonstration of a significant time commitment to the project by the proposed Project Director.

b. Demonstration that proposed State FAS Coordinator is knowledgeable in the area of FAS, and has management capabilities, scientific skills, and experience with prevention activities, as evidenced by publications, program summaries, or other materials that document prior work. Demonstration of a major time commitment to the project by the proposed State FAS Coordinator.

c. Demonstration that proposed professional staff are the appropriate mix of professional disciplines based on their training, experience, and expertise in their disciplines, as evidenced by publications, program summaries, or other materials that document prior work. Demonstration of a time commitment by the proposed professional staff that is sufficient to accomplish the project.

d. Demonstration of ability to provide facilities and other necessary management or administrative resources.

5. Budget (Not scored)

Extent to which the project budget is reasonable, clearly justified, and

consistent with the intended use of funds. Extent of cost sharing between the state and collaborators relative to program operations.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 C FR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and are funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372, as implemented by DHHS regulations in 45 CFR 100. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 30 days after the application deadline for new and competing continuation awards. [A waiver for the 60 day requirement has been requested.] The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, on or before August 4, 1992.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842-6630. Programmatic technical assistance may be obtained from Karen Hymbaugh, M.P.A., Division of Birth Defects and Developmental Disabilities, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mail Stop F-37, Atlanta, Georgia 30333, (404) 488-4226.

Please refer to Announcement Number 264 when requesting information or submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001 00473-1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone (202) 783-3238).

Dated: June 22, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-15050 Filed 6-25-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committees; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463 (5 U.S.C. App. 2)).

DATES: Authority for these committees will expire on the date indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Anesthetic and Life Support Drugs.	May 1, 1994
Blood Products	May 13, 1994
Pulmonary-Allergy Drugs	May 30, 1994
Drug Abuse	May 31, 1994
Science Advisory Board to the National Center for Toxicological Research.	June 2, 1994
Peripheral and Central Nervous System Drugs.	June 4, 1994
Psychopharmacologic Drugs.	June 4, 1994

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: June 22, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-15057 Filed 6-25-92; 8:45 am]

BILLING CODE 4160-01-F

Assuring Radiation Protection; Availability of Cooperative Agreement; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Devices and Radiological Health (CDRH), Office of Training and Assistance (OTA) is announcing the availability of up to $750,000 in total costs (including both direct and indirect costs) per year, for a period of 5 years, for the establishment of a cooperative agreement to support efforts to coordinate Federal and State actions to assure radiation protection. Federal funds are currently available for this program, but an award is subject to the condition that funds are transferred to FDA from other Federal agencies to support this program.

DATES: Applications must be received by 4:30 p.m. on August 10, 1992.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, Park Bldg., Rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170. Applications hand-carried or commercially delivered should be addressed to Park Bldg., Rm. 3-20, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding the administration and financial management aspects of the program: Robert L. Robins (address above).

Regarding the programmatic aspects of the research program: Richard E. Gross, Center for Devices and Radiological Health (HFZ-200), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3446.

SUPPLEMENTARY INFORMATION: FDA will support the efforts covered by this notice under section 532 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360ii). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity for setting priority areas. This request for application (RFA), Assuring Radiation Protection, is related to the priority area of "Healthy People 2000" Cancer Objectives (Chapter 16). Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202-783-3238).

I. Background

Since 1968, FDA, the Nuclear Regulatory Commission and its predecessor organizations, and the Environmental Protection Agency have provided financial support for a forum for the exchange of ideas and information among the States and the Federal Government and to study existing and potential problems of radiation control. Other Federal agencies, notably the Centers for Disease Control and the Federal Emergency Management Agency, have provided additional support for specific activities associated with the exchange of ideas. This forum has made it possible for State and Federal agencies to work together to study problems of mutual interest and to apply their limited resources with maximum effectiveness in seeking ways to control these public health problems.

Three major mechanisms have been used to achieve this coordination:

1. When certain radiation subjects warrant specific consideration, committees and other working groups composed of representatives of State radiation control programs and liaison members from the concerned Federal agencies have been formed to evaluate and offer solutions to the problems. The recommendations of the committees are evaluated by a central board and final recommendations are relayed to the appropriate Federal and State agencies.

2. Annual meetings of Federal and State officials are convened to present and discuss the results of the studies conducted. The annual meetings also include workshops to define new problems and areas of mutual concern in radiation control, and clinics to demonstrate mutually beneficial radiological health techniques, procedures, and systems.

3. Additional educational activities have been provided to members of the State radiation control programs and the general public to acquaint them with radiation related problems and the proposed solutions. Methods used have included videotapes, publications, and training courses.

II. Goals and Objectives

The objective of this cooperative agreement is to continue the Federal and State coordination activities with the goal of achieving effective solutions to present and future radiation control problems. The recipient of this agreement will be expected to continue the annual meetings and to obtain the cooperation of the individual States in maintaining the system of committees and working groups established to deal with individual problems. Areas for which groups may be needed include, but are not limited to, radiation problems in the environment, in the healing arts, in industry, and in or related to consumer products.

III. Reporting Requirements

A program progress report and an annual Financial Status Report (SF-269) are required. An original and two copies of these reports shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file the Financial Status Report (SF-269) in a timely fashion will be grounds to withhold continued support of the grant. A final program progress report and Financial Status Report (SF-269) must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

Program monitoring of grantees will be conducted on an ongoing basis, and written reports will be done at least every six months by the project officer.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a cooperative agreement award. This award will be subject to all policies and requirements that govern the research grant programs of PHS, including the provisions of 42 CFR part 52 and the appropriate provisions of 45 CFR parts 74 and 92. The regulations promulgated under Executive Order 12372 do not apply to this program.

B. Eligibility

This cooperative agreement is available to any public or private nonprofit organization (including State and local units of government) and to any for-profit organization. For-profit organizations must exclude fees or profit from their request for support.

C. Length of Support

This agreement is planned for 5 years. However, noncompetitive continuation of support beyond the first year will depend on: (1) Acceptable programmatic performance during the preceding year; and (2) the availability of Federal fiscal year appropriations.

D. Funding Plan

Federal funds are currently available for this program, but an award is subject to the condition that funds are transferred to FDA from other Federal agencies to support this program. FDA intends to fund an agreement at up to $750,000 in total costs (including both direct and indirect costs) a year for a period of up to 5 years conditional upon the availability of Federal funds in subsequent fiscal years.

V. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency and the other agencies providing additional support. Accordingly, FDA and the other agencies will have a substantive involvement in the programmatic activities of the project funded under this program. Substantive involvement includes, but is not limited to the following:

1. FDA will appoint a project officer who will actively monitor the FDA-supported program under this award. Priorities on issues to be addressed will be jointly agreed to by the recipient and FDA. The FDA project officer is to be invited to all planning meetings of the central board or committee of the recipient of the award. The project officer will participate in the making of the decisions with respect to the annual meeting (including the topics to be discussed), committee organization and mission, and other activities under this award.

2. FDA liaisons will be appointed to all committees and other working groups dealing with problems related to the agency mission. The liaison members will participate in the discussions leading to any recommendations developed by the committees and working groups. They will be primarily responsible for assuring that such recommendations are in accordance with Federal policy and regulations. The liaison members will also act as investigators, collaborators, or resource personnel, as appropriate.

3. FDA personnel will collaborate with the grantee on data analysis, interpretation of findings, and, where appropriate, co-author publications.

4. Other Federal agencies providing financial support under this agreement will similarly provide representatives to attend the planning meetings of the central board and liaisons to appropriate task forces. These representatives will participate in the decisionmaking and discussions in a way similar to the participation of FDA personnel.

VI. Review Procedures and Criteria

A. Review Methods

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness to this request for applications. If applications are found to be nonresponsive, they will be returned to the applicants without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by outside experts in the subject field of the specific application. This review will take the form of a review by a competitive review panel. The final funding decision will be made by the Commissioner of Food and Drugs.

B. Review Criteria

All applications will be reviewed according to the following criteria. The points indicated with each criterion represent the maximum score achievable in that category.

1. Request for financial support is adequately justified and fully documented (10 points);

2. Experience the applicant's organization has acquired in successfully conducting national meetings between personnel representing Federal, State, and local regulatory agencies (15 points);

3. Experience the applicant's organization has acquired in organizing and maintaining a system of committees or working groups of representatives of State governments for the purpose of evaluating and recommending solutions to specific radiological health or radiation safety problems (15 points);

4. Extent to which the experience described in response to criteria 2 and 3 is directly related to national meetings and committees or working groups addressing the major areas of radiation control concern. Such areas include, but are not necessarily limited to, the nuclear fuel cycle, electronic product radiation, environmental radiation, and the medical use of radiation. The number of State radiation control programs that participate in the activities organized by the applicant's organization, the extent of the managerial responsibilities in radiation control of the personnel representing these programs, and the number of radiation control areas considered will also be taken into account in evaluating the applicant's experience (30 points);

5. Extent to which the activities of the applicant's organization have influenced the practices and policies of the Federal and State radiation control programs (15 points); and

6. Evidence that demonstrates the applicant's ability to obtain the support of the radiation control programs of the 50 States for the activities to be conducted under this award, including the participation, without compensation except for travel expenses, of State personnel in the work of the committees and working groups (15 points).

A total of 100 points is available.

VII. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 9/91) or the original and two copies of Form PHS 5161 (Rev. 3/89) for State and local governments, with copies of the appendix for each of the copies, should be mailed or hand delivered to Robert L. Robins (address above). No supplemental material will be accepted after the closing date. The outside of the mailing package and item 2 of the application face page should be labeled "Response to RFA-FDA-CDRH 92-01."

Do not mail the application to the National Institutes of Health.

VIII. Method of Application

A. Submission Instructions

Applications will be accepted from 8 a.m. to 4:30 p.m., Monday through Friday, on or before August 10, 1992.

Applications will be considered received on time if sent on or before the closing date(s) as evidenced by a legible U.S. Postal Service date postmark or a legible dated receipt from a commercial carrier and received in time for processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for funding and will be returned to the applicant.

Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

B. Format for Applications

Applications must be submitted on Grant Application Form PHS 398 (Rev. 9/91) or Form PHS 5161 (Rev. 3/89) for State and local governments. The face page of the application must reflect the RFA number, RFA-FDA-CDRH 92-01.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information

Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

The collection of information requested on Form PHS 398 and instructions have been submitted by the Public Health Service (PHS) to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925-0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552), as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: June 2, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-15056 Filed 6-25-92; 8:45 am]

BILLING CODE 4160-01-F

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages 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 requests have been submitted to OMB since the list was last published on Friday, May 29, 1992.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Community and Migrant Health Center Emergency Preparedness Survey—New—The purpose of this survey is to identify existing emergency preparedness program linkages of Region VI community/migrant health centers with emergency preparedness organizations in their communities in an effort to improve provision of emergency treatment in the event of a disaster. Respondents: Non-profit institutions; Number of Respondents: 50; Number of Responses Per Respondent: 1; Average Burden Per Response: .33 hours; Estimated Annual Burden: 17 hours.

2. Requirement for Notice of Change in Status or Use of Titles VII and VIII Facilities—0915-0106—A health professions or nurse training facility assisted under Title VII or Title VIII of the PHS Act is required to file a Notice with the Department when the facility undergoes a change in status or use, so that the Secretary can calculate the recovery amount. Respondents: Business or other for profit, and non-profit institutions; Number of Respondents: 3; Number of Responses per Respondent: 1; Average Burden per Response: .10 hours; Estimated Annual Burden: 30 hours.

3. Pretest for a National Survey of Ambulatory Surgery—New—The purpose of this pretest is to field test, in selected hospitals and freestanding ambulatory surgery centers, all procedures, manuals, forms, instructions, training, and data collection methods developed for the National Survey of Ambulatory Surgery. *Respondents: Businesses or other for-profit, Non-profit; Number of Responses:* 80; *Number of Responses per Respondent:* 17.8; *Average Burden per Response:* 0.2137 hours; *Estimated Annual Burden:* 305 hours.

4. Application for the Pharmacology Research Associate Program—New—The Pharmacology Research Associate Program will use the applicant and referee information to award highly qualified individuals for research or clinical positions in one of the laboratories of the National Institutes of Health, the Alcohol, Drug Abuse, and Mental Health Administration, or the Food and Drug Administration.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Applicants	100	1	.667
Referees	300	1	.167

Total Annual Burden ..... 117 hours

5. Application and Related Forms for the Operation of the National Death Index—0920-0215—These forms are needed for the continued administration of the National Death Index, which provides health researchers with a central location for determining whether persons in their studies may have died and directs researchers to the appropriate state for more detailed death record data. *Respondents:* State or local governments; Businessess or other for profit; Federal agencies or employees; Non-profit institutions; *Number of Respondents:* 120; *Number of Responses Per Respondent:* 2.4; *Average Burden Per Response:* 788; *Estimated Annual Burden:* 227.

6. Weekly Morbidity and Mortality Reports—0920-0014—State and local health officials report weekly to CDC information on nationally notifiable diseases. CDC consolidates and publishes on a weekly basis this information to be used to detect and more effectively interrupt outbreaks or to recognize a resurgence of a disease. *Respondents:* State or local governments; *Number of Respondents:* 178; *Number of Responses Per Respondent:* .52; Average Burden Hours .37; *Estimated Annual Burden:* 3455 hours.

7. Evaluation of STD Clinic Flow and Utilization—New—Respondents will include Sexually Transmitted Disease (STD) clinic patients. The data from this study will provide insight into the effectiveness of public STD clinics in providing treatment to all individuals seeking care, and encouraging infected individuals in the community to seek care promptly. Its findings will support recommendations to alleviate clinic overburdening and improve the effectiveness of clinics in prevention and controlling the spread of STD. *Respondents:* Individuals or households; *Number of Respondents:* 1195; *Number of Responses Per Respondent:* 1; *Average Burden Per Response:* 0.31 hours; Estimated Annual Burden: 374.

8. Health Outcomes in a Community Adjacent to a Hazardous Waste Site—The Southbend Subdivision, Harris County, Texas—New—This request is for a one time symptom and illness prevalence study of residents living near a National Priority List hazardous waste site, Southbend subdivision, Harris County, Texas. A component will also examine reproductive outcomes of former and current women residents of the subdivision.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Households individuals	1,800	1	1.02
Medical providers	75	1	1

Total Annual Burden ..... 1,917 hours

9. The Intervention Activities Surveys for the Community Intervention Trial for Smoking Cessation (COMMIT)—0925-0364—The National Cancer Institute (NCI) has designed the Community Intervention Trial Smoking Cessation (COMMIT). This large-scale trial will test community-based strategies to produce long-term cessation among smokers, particularly heavy smokers.

Clearance is herein requested for fielding the final surveys to assess the impact of intervention activities on cessation resource providers, health care providers, worksites, schools, religious organizations, and continuing ongoing data collection and enrollment into the smokers' network.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Cessation Resource Providers Survey	434	1	.596
Smokers' Network	2,923	1	.0083
Health Care Providers: Office Survey	754	1	.075
Professionals Survey	1,077	1	.067
Worksite/School Survey	1,885	1	.327
Religious Organization Survey	628	1	.306

Total Annual Burden 1,220

10. National Pregnancy and Health Survey (NPHS)—0930-0149—NPHS will be conducted to determine prevalence and patterns of cigarette, alcohol, and drug use by pregnant women. It will be used to estimate the extent of the problem in the U.S. and to make policy decisions on prevention, intervention, and treatment. This reinstatement includes a reduced sample size and other refinements as a result of the feasibility study.

Respondents: Individuals or household; Number of *Respondents:* 2,693; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1.0 hours; *Estimated Annual Burden:* 2,693 hours.

11. 1992 Inventory of Mental Health Organizations and General Hospital Mental Health Services—New—NIMH requires the information to update longitudinal data bases for the United States and each State to support ongoing research, to provide staffing and financial characteristics of mental health organizations and to support intramural and extramural research. *Respondents:* State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Specialty Mental Health Organizations Form	3,920	1	1.02
General Hospital Survey Form	1,899	1	.09
General Hospital Screener Form	3,626	1	.24
Community Residential Organization Screener Form	1,147	1	.23

Total Annual Burden 6,840

Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: June 19, 1992.

Phyllis M. Zucker,

Acting Director, Office of Health, Planning and Evaluation.

[FR Doc. 92-14974 Filed 6-25-92; 8:45 am]

BILLING CODE 4160-17-M

Subcommittee of the National Vaccine Advisory Committee (NVAC); Public Meeting

AGENCY: Office of the Assistant Secretary for Health, PHS, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing the forthcoming meeting of the NVAC Subcommittee on Vaccine Licensure and Regulation.

DATES: Date, Time and Place: July 1, 1992, at 1 p.m. to 4 p.m., Parklawn Building, Potomac Conference Room, Thrid Floor, 5600 Fishers Lane, Rockville, Maryland 20857. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Kenneth J. Bart, M.D., M.P.H., Director and Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, 5600 Fishers Lane, Parklawn Building, room 13A-56, Rockville, Maryland 20857, (301) 443-0715.

Agenda: Open Public Hearing

Interested persons may formally present data, information, or views orally or in writing on issues pending before the Subcommittee or on any of the duties and responsibilities of the Subcommittee as described below. Because of limited seating, those desiring to make such presentations should make a request to the contact person before July 1, and submit a brief description of the information they wish to present to the Subcommittee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Subcommittee Discussion

The Subcommittee will evaluate and review specific licensing and regulatory processes and make recommendations on mechanisms, procedures, or legislation, if appropriate, to enhance and/or facilitate the licensing and other regulatory processes. There will be a presentation by the Food and Drug Administration on the review process. The full agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Subcommittee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: June 22, 1992.

Kenneth J. Bart,

Executive Secretary.

[FR Doc. 92-15084 Filed 6-25-92; 8:45 am]

BILLING CODE 4160-17-M

Office of Refugee Resettlement

Refugee Resettlement Program; Allocations to States of FY 1992 Funds for Refugee[1] Social Services and for Refugees Who Are Former Reeducation Center Detainees from Vietnam

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of allocations to States of FY 1992 funds for refugee social services and for refugees who are former reeducation center detainees from Vietnam.

SUMMARY: This notice establishes the allocations to States of FY 1992 funds for social services under the Refugee Resettlement Program (RRP). In order to help meet the special needs of former reeducation detainees from Vietnam, the Director has decided to add to the formula allocation $1,000,000 in funds previously set aside for social service discretionary projects.

EFFECTIVE DATE: June 26, 1992.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401-9250.

SUPPLEMENTARY INFORMATION: Notice of the proposed social service allocations to States was published in the **Federal Register** on February 5, 1992 (57 FR 4536). Adjustments have been made in the estimated refugee populations of six States as a result of evidence submitted by those States. In addition, an adjustment was made in the estimated refugee population in one State as a result of a reexamination of the State's FY 1991 arrival numbers.

I. Allocation Amounts

The Office of Refugee Resettlement (ORR) has available $82,952,000 in FY 1992 refugee social service funds as part of the FY 1992 appropriations for the Department of Health and Human Services (Pub. L. 102-170).

Of the total of $82,952,000, the Director of ORR will make available to States $70,509,200 (85%) under the allocation formulas set out in this notice. These funds will be made available for the purpose of providing social services to refugees. In addition, the Director of ORR is making available $1,000,000 from discretionary social service funds to be allocated under the formula in this notice for services to former reeducation detainees from Vietnam.

A. Discretionary Social Service Funds for Vietnamese Detainees

In recognition of the special vulnerability of refugees who are former reeducation center detainees from Vietnam, the Director of ORR has set aside $1,000,000 from discretionary social service funds to be allocated under the formula set forth in this announcement. This formula allocation is shown separately in Table 1 (cols. 7 and 8). States are required to use this allocation to provide special services, as described below, to recent arrivals from Vietnam who are former reeducation detainees to the extent possible.

Reflecting findings of a survey of FY 1990 ORR-funded detainee projects, allowable services for the above-cited funds for detainees include only the following: (1) Specialized orientation and adjustment services, including peer support activities; (2) referral/follow-up; (3) job counseling, job clubs, and job development; and (4) volunteer recruitment and training. Under no circumstances may these funds be used for direct cash payments or stipends, or for the purchase of advertising space or air time.

Because these funds are being provided specifically for services for former reeducation detainees from Vietnam, States which allocate social service funds to other local administrative jurisdictions, such as counties, shall do so for these funds, using a formula which reflects recent and anticipated arrivals of this targeted population only.

It should be noted that allowable services under this allocation for Vietnamese detainees are intended to supplement, not to supplant, those services provided to refugees in general under the social service formula allocation, discussed below.

B. Refugee Social Service Funds

The population figures for the social services allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through the non-discretionary funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

The Director will allocate $70,509,200 to States in the following manner:

- $67,009,200 will be allocated on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years of less as of October 1, 1991 (including a floor amount for States which have small refugee populations).

- $3,500,000 will be allocated on the basis of each State's proportion of the 3-year refugee population (including a floor amount of $5,000 for States with small refugee populations) in order to provide an incentive for States to fund refugee mutual assistance associations (MAAs). A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the formula allocation for social services is required by section 6(a)(3) of the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605) which amended section 412(c) of the Immigration and Nationality Act (INA) to require that the funds available for a fiscal year for grants and contracts (for social services) * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year.

As established in the FY 1991 social services notice published in the **Federal Register** on August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations will be calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) A base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) For a State with more than 50 refugees who have been in the U.S. 3

[1] In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96-422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100-202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100-461), 1990 (Pub. L. No. 101-167), and 1991 (Pub. L. No. 101-513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise. Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the States.

ORR has consistently supported floors for small States in order to provide sufficient funds to carry out a minimum service program. Given the range in numbers of refugees in the small States, we have concluded that a variable floor, as established in the FY 1991 notice, will be more reflective of needs than previous across-the-board floors.

The $12,442,800 in remaining social service funds (15% of the total funds available) will be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. The discretionary funds will primarily support specific program activities designed to: (1) Reduce welfare dependency in States with large numbers of refugees on welfare; and (2) address the needs of special populations who experience particular difficulty adjusting to life in the U.S. One announcement of the availability of funding and grant application procedures has been issued: Availability of Funding for Planned Secondary Resettlement of Refugees, 50 FR 20038, May 13, 1985. ORR expects to continue emphasis on discretionary grants to address problems of persistent welfare dependency and to promote favorable resettlement opportunities. Announcements will be made when discretionary initiatives are decided on. The amount set for discretionary use will enable valuable current efforts—such as the Key States Initiative, Job Links, Planned Secondary Resettlement, and services for Amerasians from Vietnam—to be continued as appropriate. At the same time, it will provide funds to enable ORR to address such additional needs as serious problems of dependency in areas not currently served by special projects.

The 15% being used for discretionary purposes is in accordance with the Conference Report on the FY 1992 appropriation, which states, "The conferees are agreed that not more than 15 percent of funding appropriated for social services may be used for discretionary grants." (H.R. Conf. Rep. No. 282, p. 36.)

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's length of residence, in accordance with the requirements of 45 CFR part 400, subpart I—Refugee Social Services, published in the **Federal Register** on February 3, 1989 (54 FR 5481).

While 45 CFR 400.147(b) requires that, in providing employability services, a State must give priority to a refugee who is receiving cash assistance, social service programs generally are not limited exclusively to refugees who are cash assistance recipients. Social services may be provided to any refugee in need of services, regardless of whether the refugee is receiving cash assistance.

ORR funds may not be used to provide services to Untied States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations Appropriations Act (Pub. L. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director expects States to insure that women have the same opportunities as men to participate in training and instruction. In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also strongly encourages States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are encouraged to make every effort to assure the availability of day care services in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. States, however, are encouraged to use day care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146 (54 FR 5481), if a State's cash assistance dependency rate for refugees (as defined in § 400.146(b)) is 55% or more, funds awarded under this notice for the basic and MAA incentive allocations are subject to a requirement that at least 85% of the State's award be used for employability services as set forth in section 400.154. ORR expects these funds to be used for services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs in less than one year as part of a plan to achieve self-sufficiency. This reflects the Congessional objective that employable refugees should be placed in jobs as soon as possible after their arrival in the United States and that social service funds be focused on employment-related services, English-as-a-second-language training (in non-work hours where possible), and case-management services. (INA, section 412(a)(1)(B).)

Since current welfare dependency data are not available, those States that historically have had dependency rates at 55% and above are invited to submit a request for a waiver of the 85% requirement if they can provide reliable documentation that demonstrates a lower dependency rate.

ORR will consider granting a waiver of the 85% provision if a State meets one of the following conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that the dependency rate of refugees who have been in the U.S. 24 months or less is below 55% in the State.

2. The State demonstrates to the satisfaction of the Director that (a) less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees and (b) there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. Or

3. In accordance with section 412(c)(1)(C) of the INA, as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative

projects. The Continuing Resolution for FY 1985 (Pub. L. 98-473) amended section 412(e)(7)(A) of the INA to provide that: The Secretary (of HHS) shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support (social) services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. This belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore additional funds which would be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official must provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency in using funds made available to the State under this special allocation:

1. That such funds will be used to fund refugee mutual assistance associations for the direct provision of services to refugee clients.

2. That the MAA incentive allocation is subject to and included under ORR's expectation that the majority of the total amount of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

3. That the State agency will observe the following definition of a mutual assistance association:

a. The organization must be legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees or former refugees and must include both refugee men and women by August 29, 1992, as specified in the FY 1991 final social service notice.

4. That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services for refugee clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447. States must respond by 30 days from the date of this notice in order to avail themselves of this special allocation.

II. Discussion of Comments Received

We received 3 letters of comment in response to the notice of proposed FY 1992 allocations to States for refugee social services. The comments are summarized below and are followed in each case by the Department's response.

Comment: Two commenters objected to the statement that "Social services may be provided to any refugee who is unemployed, regardless of whether the refugee is receiving cash assistance." One of the commenters recommended that the statement be amended by deleting the word "unemployed" so as not to exclude service provision to marginally employed refugees who may still be in need of services. Another commenter felt that the statement will give States the wrong impression that they need not place as much emphasis on serving cash assistance recipients. This commenter recommended deleting the statement.

Response: The intent of the statement was to clarify that while ORR requires that States give priority in the provision of social services to refugee cash assistance recipients, social services need not be limited exclusively to that population, but may be provided to non-cash assistance clients as well. We do not feel that this statement in any way implies that States do not need to place emphasis on serving cash assistance clients. However, we agree that the term "unemployed" should be deleted in order to allow the provision of services to any refugee, such as marginally employed refugees, who may still be in need of services. We have amended the statement accordingly.

Comment: One commenter objected to the use of a minimum allocation floor for small States, stating that the use of a floor will result in nine States receiving a larger average per capita in social services than States receiving funds based solely on the 3-year refugee population formula. The commenter recommended that funds be distributed on an equitable basis and that the minimum floor, therefore, be eliminated. As an alternative, the commenter recommended that ORR use its discretionary funds to maintain a minimum level of funding to small States.

Response: We continue to believe that a minimum allocation for social services is necessary to cover basic costs which a State incurs in providing services, regardless of the number of refugees. Therefore, we view the establishment of a floor as a reasonable approach to allocating funds to States with small refugee populations, where the use of the formula alone would yield too small an amount to be practical.

Comment: One commenter recommended that Private Sector Initiative (PSI) refugees be included in the third-year arrival numbers in the social services allocation formula, since PSI refugees are usually eligible for refugee services after two years in the U.S.

Response: We have considered this recommendation and have decided not to include PSI refugees in the social service population estimates since most PSI refugees become self-sufficient within the first year.

Comment: One commenter objected to the use of a formula based on the number of refugees who have been in the U.S. for 36 months or less, stating that it ignores the large numbers of refugees on assistance who have been here more than 36 months and continue to need services.

Response: The 36-month formula used by ORR was established by law and cannot be modified to take into account a longer period of arrivals without a change in legislation.

Comment: One commenter objected to the statement in the notice that ORR expects social service funds to be used for services designed to enable refugees to obtain jobs in less than one year as part of a self-sufficiency plan. Objections were based on the belief that services aimed at removing pre-employment barriers would be precluded from funding, that ORR's policy is in conflict with the philosophy and policies of the Federal Job Opportunities and Basic Skills (JOBS) Training program, and that there is no statutory basis for predicating the use of social service funds on placing a refugee in a job within a specific time period.

The commenter recommended elimination of ORR's policy regarding the one-year job placement requirement.

Response: We wish to clarify, as we did in the FY 1991 final notice on social service allocations, that ORR expects, but does not require, the use of social service funds to result in job placements within one year. We have used the term "expects" rather than "requires" in order to make that distinction.

III. Allocation Formula

Of the funds available for FY 1992 for social services, $67,009,200 is allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1991, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State. Minimum allocations for small States are taken into account.

MAA Incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

Allocations for detainees are based on FY 1991 detainee arrival numbers in each State from the Refugee Data Center and are limited to States with 200 or more detainee arrivals. We have limited the population base to FY 1991 detainee arrival numbers because these funds are intended to serve recent arrivals. We have not included States with less than 200 detainees in the detainee allocations formula because the resulting level of funding would be insignificant. In these States, we believe the small number of detainees could be served under the State's refugee social services program.

IV. Basis of Population Estimates for the Social Service Formula Allocation

The population estimates for the formula allocation of social service funds in FY 1992 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1991, for estimated secondary migration. The data base includes refugees of all nationalities and Amerasians from Vietnam. Figures on the number of Cuban and Haitian entrants resettled are obtained from several sources, including the ORR Florida office and the Immigration and Naturalization Service.

For fiscal year 1992, ORR's formula allocations for the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1989, 1990, and 1991. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1988, and September 30, 1991, who are thought to be living in each State as of October 1, 1991. Refugees admitted under the Federal Government's private-sector initiative are not included since their assistance and services are to be provided by the private sponsoring organizations under an agreement with the Department of State.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR-11. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate. Because the reporting period covered on Form ORR-11 was a maximum of only 12 months as of June 1991 for the majority of States whose reporting base was their cash/medical assistance caseload, extra weight was given to the secondary migration reported by those States to arrive at estimates of secondary migration over a 36-month period. No count of recently-arrived refugee children was available from the Department of Education for use as a comparison.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1991, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); the total allocation amounts after allowing for the minimum amounts (col. 5); the amounts available as an incentive to States to use MAAs as service providers (col. 6). Table 1 also shows the total number of former reeducation detainee arrivals in FY 1991 (col. 7); and the allocation amounts for services to detainees (col. 8).

V. Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submittal and approval of a State annual services plan as required by 45 CFR 400.11(b)(2). The following amounts are allocated for refugee social services in FY 1992:

TABLE 1. ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1992; AND FORMER REEDUCATION DETAINEE POPULATIONS AND ALLOCATIONS FOR FY 1992

State	Refugee (1)	Entrants (2)	Total population (3)	Formula amount (4)	Allocation (5)	MAA incentive allocation (6)	Former reeducation center detainee arrivals FY 1991 (7)	Former reeducation center detainee allocation (8)
Alabama	775	0	775	$151,985	$151,985	$7,929	15	$0
Alaska [1]	117	1	118	23,141	75,000	5,000	0	0
Arizona	3,843	6	3,849	754,828	754,828	39,378	448	25,221
Arkansas	434	0	434	85,112	100,000	5,000	54	0
California [2]	95,668	237	95,905	18,807,955	18,807,955	981,164	8,203	461,803
Colorado	3,480	4	3,484	683,248	683,248	35,643	200	11,259
Connecticut	3,797	11	3,808	746,788	746,788	38,958	179	0

TABLE 1. ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1992; AND FORMER REEDUCATION DETAINEE POPULATIONS AND ALLOCATIONS FOR FY 1992—Continued

State	Refugee	Entrants	Total population	Formula amount	Allocation	MAA incentive allocation	Former reeducation center detainee arrivals FY 1991	Former reeducation center detainee allocation
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Delaware	132	0	132	25,887	75,000	5,000	0	0
District of Columbia	2,088	22	2,108	413,400	413,400	21,566	137	0
Florida	11,801	8,519	20,320	3,984,961	3,984,961	207,886	504	28,374
Georgia	6,177	18	6,195	1,214,903	1,214,903	63,378	574	32,314
Hawaii	883	0	883	173,165	173,165	9,034	95	0
Idaho	818	0	818	160,418	160,418	8,369	4	0
Illinois	13,467	17	13,484	2,644,351	2,644,351	137,949	246	13,849
Indiana	808	2	810	158,849	158,849	8,287	86	0
Iowa	2,724	0	2,724	534,204	534,204	27,868	167	0
Kansas	1,976	0	1,976	387,514	387,514	20,216	191	0
Kentucky	1,449	0	1,449	284,164	284,164	14,824	205	11,541
Louisiana	1,977	8	1,985	389,279	389,279	20,308	309	17,396
Maine	755	1	756	148,259	148,259	7,734	7	0
Maryland	6,725	172	6,897	1,352,573	1,352,573	70,560	316	17,790
Massachusetts	12,117	18	12,135	2,379,798	2,379,798	124,148	486	27,360
Michigan	5,934	13	5,947	1,166,268	1,166,268	60,841	333	18,747
Minnesota	6,901	1	6,902	1,353,553	1,353,553	70,612	229	12,892
Mississippi	289	0	289	56,676	96,870	5,000	45	0
Missouri	3,902	18	3,920	768,752	768,752	40,104	253	14,243
Montana	244	0	244	47,851	88,045	5,000	3	0
Nebraska	1,869	2	1,871	366,922	366,922	19,141	326	18,353
Nevada	861	81	942	184,736	184,736	9,637	44	0
New Hampshire	713	0	713	139,827	139,827	7,294	53	0
New Jersey	6,710	1,109	7,819	1,533,386	1,533,386	79,993	204	11,485
New Mexico	892	0	892	174,930	174,930	9,126	120	0
New York	55,378	168	55,546	10,893,141	10,893,141	568,268	378	21,280
North Carolina	3,307	5	3,042	596,567	596,567	31,121	213	11,991
North Dakota	433	0	433	84,916	100,000	5,000	18	0
Ohio	4,815	7	4,822	945,644	945,644	49,332	153	0
Oklahoma	1,269	2	1,271	249,256	249,256	13,003	211	11,879
Oregon	6,185	0	6,185	1,212,942	1,212,942	63,276	240	13,511
Pennsylvania	10,753	9	10,762	2,110,539	2,110,539	110,102	413	23,251
Rhode Island	1,514	1	1,115	297,107	297,107	15,499	15	0
South Carolina	281	0	281	55,107	95,301	5,000	30	0
South Dakota	826	0	826	161,987	161,987	8,450	19	0
Tennessee	2,522	0	2,522	494,590	494,590	25,802	257	14,468
Texas	15,234	111	15,345	3,009,312	3,009,312	156,988	1,776	99,983
Utah	1,935	0	1,935	379,473	379,473	19,796	118	0
Vermont	622	2	624	122,373	122,373	6,384	6	0
Virginia	5,345	4	5,349	1,048,994	1,048,994	54,723	702	39,520
Washington	14,260	0	14,260	2,796,532	2,796,532	145,888	737	41,491
West Virginia	82	0	82	16,081	75,000	5,000	0	0
Wisconsin	4,340	2	4,342	851,511	851,511	44,421	46	0
Wyoming	52	0	52	10,198	75,000	5,000	0	0
Total	329,207	10,571	339,778	$66,633,953	$67,009,200	$3,500,000	19,368	$1,000,000

[1] The Alaska allocation has been awarded for a Wilson/Fish demonstration project.
[2] A portion of the California alloction is expected to be awarded for the continuation of a Wilson/Fish project in San Diego.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.026 Refugee Assistance State Administered Programs)

Dated: June 18, 1992.

Chris Gersten,

Director, Office of Refugee Resettlement.

[FR Doc. 92-14894 Filed 6-25-92; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-84]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 26, 1992.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

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, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 19, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 92-14909 Filed 6-25-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Aleutian Shield Fern for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a draft Aleutian Shield Fern Recovery Plan for public review. This species is known to occur in the Aleutian Islands, Alaska. The Service is soliciting review and comments from the public on this draft plan.

DATES: Comments from all interested parties on the draft recovery plan will be considered by the Service if received on or before August 25, 1992.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Ecological Services Anchorage Field Office, U.S. Fish and Wildlife Service, 605 W. 4th Avenue, Room 62, Anchorage, Alaska 99501. Written comments or materials should be addressed to Mr. Brian Anderson at the above address. Comments and materials received are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Anderson at the above Anchorage, Alaska address (telephone 907/271-2888).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plans to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. The Service also periodically revises approved recovery plans to incorporate new information and any change in status. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate the time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Aleutian shield fern (*Polystichum aleuticum* C. Chr. in Hulten) was originally described from the 1932 type specimen collected on Atka Island of the Aleutian Islands, Alaska. The species was listed as endangered in 1988 (53 FR 4626). Currently, the known population consists of approximately 112 plants inhabiting a small area at the upper elevations of Mt. Reed, on neighboring Adak Island. *P. aleuticum* is a well-marked and extremely narrow endemic which is not closely related to any other species in North America. The causes of its rarity are poorly understood, but it has been suggested that it is a relict species surviving from Tertiary or early Pleistocene times. It is possible that the species is threatened by grazing of introduced reindeer and caribou on Atka and Adak islands, respectively.

The Aleutian Shield Fern Recovery Plan has provisions for protection of the existing population; conducting research on the reproductive biology and causes of rarity; and searching for new populations. Several public and private entities are cooperating in the Aleutian shield fern recovery program, including the University of Alaska, and the Alaska Natural Heritage Program.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 13, 1992.

Rowan W. Gould,

Acting Regional Director.

[FR Doc. 92-15053 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[UT-040-4920-10-4297]

Intent To Prepare an Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to Prepare an EIS on a Dam and Water Storage Reservoir, North Creek project, in southwestern Utah, and to amend the Virgin River MFP, Dixie Resource Area, Cedar City District.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the BLM, Cedar City District, will be directing the preparation of the EIS to be prepared by a third party contractor on the impacts of the North Creek project.

DATES: Dates, times and locations of public scoping meetings will be announced by **Federal Register** publication at a later date.

ADDRESSES: Comments should be sent to Robert Zundel, BLM, 176 East D.L. Sargent Drive, Cedar City, Utah 84720, ATTN: North Creek Project.

FOR FURTHER INFORMATION CONTACT: Robert Zundel (801) 586-2401.

SUPPLEMENTARY INFORMATION: The North Creek project would be owned by Washington County Water Conservancy District (WCWCD).

Potential issues include, but may not be limited to social and economic impacts, surface water quality and quantity, wildlife, threatened and endangered species, recreation, wetland and riparian resources, Virgin oil field, wild and scenic rivers, cultural resources, and land tenure adjustments.

The proposal includes construction of a 20,000 acre-foot reservoir involving a dam and dike with a maximum height of the dam at 130 feet and the length of the dam and dike at 4850 feet. Options for construction methods of the dam and dike include earthen, rockfill, and roller compacted concrete. The reservoir behind the dam on the North Creek drainage would be located about 1.1 miles northeast of the town of Virgin, Utah. Water to be stored in the reservoir would come from natural flows of North Creek, and water may be pumped from the Virgin River to be stored in the reservoir.

The project will involve about 1120 acres of public, state and private lands. Authorization to use public lands would be by a right-of-way from the BLM. Appropriate alternatives will be analyzed.

Dated: June 17, 1992.

Ronald A. Montagna,

Acting District Manager.

[FR Doc. 92-15017 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-050-02-4333-10; 8322]

Arizona: Availability of the Draft Parker Strip Recreation Area Management Plan and Environmental Assessment, Yuma District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Draft Parker Strip Recreation Area Management Plan and Environmental Assessment, Yuma District.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Draft Recreation Area Management Plan and Environmental Assessment for the Parker Strip Special Recreation Management Area. The plan involves approximately 25,400 acres of land along the Colorado River in western Arizona and southeastern California. The land lies within La Paz County, Arizona, and San Bernardino County, California. The plan describes the recreation management practices the Bureau of Land Management intends to implement on the Parker Strip Special Recreation Management Area.

Among the management actions prescribed in the draft plan are off-highway vehicle area and route designations, use authorization for concessions and noncommercial leases, and 16 Bureau of Land Management project plans for redevelopment of current facilities and development of new facilities. The new facilities include a boat ramp, two off-highway vehicle areas, two trail systems, a visitor center, maintenance yard, and fishing access. The plan also recognizes the need for open space and wildlife habitat.

DATES: The review period will begin on June 26, 1992 and will run until July 27, 1992. After the review period, the comments received will be incorporated into a final plan and environmental assessment. Comments may be offered in person at the public meetings listed below or in writing to the Havasu Resource Area Office.

FOR FURTHER INFORMATION CONTACT: Les Allert, Outdoor Recreation Planner, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, (602) 855-8017.

SUPPLEMENTARY INFORMATION: There will be two open-house public meetings to obtain input on the draft plan and environmental assessment. These meetings will be held in Parker and Lake Havasu City, Arizona, at the following times and locations:

1. July 22, 1992, 7:30 p.m. to 9:30 p.m., at Arizona Western College, Classroom No. 1, 1120 16th Street, Parker, Arizona.
2. July 23, 1992, 7:30 p.m. to 9:30 p.m., Lake Havasu City Council Chambers, 1795 Civic Center Boulevard, Lake Havasu City, Arizona.

A limited number of copies of the Draft Parker Strip Recreation Area Management Plan and Environmental Assessment are available, upon request, from the Havasu Resource Area Manager, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403.

Dated: June 18, 1992.

Herman L. Kast,

District Manager.

[FR Doc. 92-15014 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-32-M

[WY-060-02-4120-09) WYW122586]

Environmental Statements; Availability; West Rocky Butte Coal Lease, WY

AGENCY: Bureau of Land Management, Interior, Wyoming.

ACTION: Notice of availability of a final environmental impact statement (FEIS) pursuant to 40 CFR parts 1500-1508 for the West Rocky Butte Federal coal Lease Application (WYW122586) in the Powder River Basin, Campbell County, Wyoming.

SUMMARY: Northwestern Resources Co. (NWR) has applied for a Federal coal lease west of and adjacent to the existing Rocky Butte Federal Coal Lease (WYW78633) in Campbell County, Wyoming, which NWR recently acquired. The proposed West Rocky Butte tract, as modified by the BLM, covers 463.4 acres with an estimated 59 million tons of recoverable coal. The BLM has prepared an EIS to evaluate the environmental impacts of: (1) Issuing a competitive Federal coal lease, and (2) subsequent approval of a logical mining unit (LMU) request to be filed for the Rocky Butte and West Rocky Butte leases, assuming NWR is determined to be the successful high bidder for the West Rocky Butte Tract. Currently, there are no mining facilities or operations on the existing Rocky Butte Federal coal lease, so a new mine start would be necessary to begin production. The area is located about 10 miles southwest of the city of Gillette, Wyoming.

DATES: The public comment period will begin on July 3, 1992, and will end on August 3, 1992. Public comments will be accepted on the FEIS, on the fair market value (FMV) of the tract, and on maximum economic recovery (MER) of coal on the tract. In order to assure that comments are considered in the Record of Decision (ROD) for the West Rocky Butte Tract, WYW122586, they must be received no later than c.o.b. on Monday, August 3, 1992.

ADDRESSES: Comments, concerns and requests for copies of the FEIS should be addressed to the Casper District Office, Bureau of Land Management, Attention: Nancy Doelger, 1701 East "E" Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs, phone (307) 261-7600, or contact the address listed above.

SUPPLEMENTARY INFORMATION: This Federal coal lease application was made to the BLM pursuant to provisions of 43 CFR 3425.1 as a lease by application. The holding of a lease sale would allow NWR to acquire the West Rocky Butte Tract (if they are determined to be the successful high bidder), apply for the formation of an LMU with the existing Rocky Butte lease, and open a new mine. This would be a major Federal action, and the BLM has determined that the action requires the preparation of an EIS.

The FEIS analyzes the impacts of developing and operating a surface coal mine on the combined Rocky Butte (WYW78633) and West Rocky Butte (WYW122586) Tracts. A Draft Environmental Impact Statement (DEIS) was issued on January 17, 1992, and comments were accepted on the DEIS

through the end of March 1992. Thirty-six comments were received on the DEIS. A public hearing was held in Gillette, Wyoming, on February 26, 1992. Eight people made statements for the record during the hearing. Revisions have been made to this FEIS in response to the comments received on the DEIS.

Two alternatives are analyzed in the EIS. The Proposed Action is to lease the West Rocky Butte Tract, as modified by the BLM.This is the Preferred Alternative of the BLM. The second alternative is the No Action alternative, which assumes that a lease for the West Rocky Butte Tract would not be issued, and a new mine would not be opened at this time. The major concerns with opening a new mine which were identified during scoping, and in comments on the DEIS involve air quality, hydrology, reclamation, and impacts to nearby residents.

The West Rocky Butte tract does not contain enough coal to open a new mine. It would be logically mined with the existing Rocky Butte lease. The existing Rocky Butte lease was purchased in the 1982 Powder River Coal Sale. It will be terminated on February 1, 1993, due to noncompliance with the diligence requirements of section 2(a)(2)(A) of the Mineral Leasing Act unless the two tracts are combined into an LMU. Combining the two leases would extend the diligence period of the existing Rocky Butte lease, WYW78633, to the same diligence date as the West Rocky Butte Lease, WYW122586, i.e., 10 years after issuance of the West Rocky Butte Lease.

Ray Brubaker,

State Director.

[FR Doc. 92-15047 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-22-M

[AZ-040-02-4333-02]

Meeting for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR part 1780 that two meetings of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: August 18, 1992, 10 a.m.–4 p.m., Safford District Office, September 1, 1992, 10 a.m.–4 p.m., Safford District Office.

ADDRESSES: BLM Safford District Office, 425 E. 4th Street, Safford, Arizona.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by the Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Committee is continuing work on the Gila Box Interdisciplinary Activity Plan, which must be completed by November 28, 1992. The plan is being written using the Limits of Acceptable Change (LAC) planning process.

The agenda for each meeting includes: (1) Refine management actions and continue to develop preferred alternative at the August 18 meeting; (2) finalize preferred alternative at the September 1 meeting.

All meetings are open to the public. Interested persons may make oral statements to the Committee between 10:30 and 11 a.m., or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Resource Area Manager at least two working days prior to the meeting. Written statements are also accepted at any time during preparation of the draft plan, and will be reviewed by the committee.

Statements should be mailed to Jonathan Collins, Team Leader, Gila Resource Area, 425 E. 4th St., Safford, Arizona 85546.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days after each meeting.

FOR FURTHER INFORMATION: Meg Jensen, Gila Resource Area Manager, or Jonathan Collins, Team Leader, 425 E. 4th St., Safford, Arizona 85546, Telephone (602) 428-4040.

Dated: June 16, 1992.

Ray A. Brady,

District Manager.

[FR Doc. 92-15013 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-32-M

[AZ-040-01-4351-02]

Meeting of the San Pedro Riparian National Conservation Area Advisory Committee

AGENCY: Bureau of land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 100-696 and 43 CFR part 1780, that a meeting of the San Pedro Advisory Committee will be held.

DATES: Tuesday, July 21, 1992, at 1 p.m.

ADDRESSES: Oscar Yrun Community Center, 3020 Tacoma, Sierra Vista, Arizona.

SUPPLEMENTARY INFORMATION: The agenda for the Advisory Committee meeting includes, but is not limited to, the following items:

1. Update on San Pedro visitor center.
2. Terrenate Recreation Project Plan/ Quincentenary tour.
3. San Pedro Habitat Management Plan (HMP).
4. Land Acquisition Coordinated Resource Management (CRM) process.
5. San Pedro Water Rights/Certificate for Instream Flow.
6. Introduction of new Tucson Resource Area Manager.

The meeting is open to the public. Interested persons may make oral statements to the Advisory Committee between 2 p.m.–2:30 p.m. or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM San Pedro Conservation Area Manager by Friday, July 17, 1992.

Summary minutes of the meeting will be maintained in the San Pedro Conservation Area and Tucson Resource Area offices and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Greg Yuncevich, San Pedro Conservation Area Manager, Bureau of Land Management, Box 9853, Rural Rte. 1, Huachuca City, Arizona 85616. Telephone (602) 457-2265; or Diane Drobka, Public Affairs Officer, Safford District, 425 E. 4th Street, Safford, Arizona 85546. Telepnone (602) 428-4040.

Dated: June 16, 1992.

Frank Rowley,

Assistant District Manager for Resources.

[FR Doc. 92-15018 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-12-M

[AK-070-08-4230-23; F-167]

Lease of Public Land, Salmon Lake, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal to renew an airport lease issued to the State of Alaska. The lease is intended to authorize improvement, maintenance and

operation of an aircraft landing strip for 20 years.

DATES: Comments must be received by August 10, 1992.

ADDRESSES: Comments must be submitted to the Kobuk District Manager, 1150 University Avenue, Fairbanks, Alaska 99709-3844 and include a reference to this notice.

FOR FURTHER INFORMATION CONTACT: Betsy Bonnell, Realty Specialist, (907) 474-2336.

SUPPLEMENTARY INFORMATION: The site examined and found suitable for leasing under the provisions of the Act of May 24, 1928, as amended, 49 U.S.C. appendix 211-213, and 43 CFR part 2911, is described as near Slamon Lake within:

Secs. 5 & 6, T. 7 S., R. 31 W., Kateel River Meridian. Annual rental shall be $100.00 or one-half the fair market value as determined by appraisal, whichever is greater.

Dated: June 15, 1992.

Helen M. Hankins,

Kobuk District Manager.

[FR Doc. 92-15019 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-JA-M

[ES-030-2-4212-14; MOES-42115]

Realty Actions, Sales, Leases, etc.; MO

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public land in Ozark County, Missouri—modified competitive method.

SUMMARY: The following public land has been found suitable for sale under section 203(a)(1) and section 209(b)(1) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), at not less than the appraised fair market value (FMV) of $8,000.00 and a $50.00 non-refundable filing fee for the mineral estate. The public land will not be offered for sale at least 60 days following the date of this notice. The public land is described as follows:

MOES-42115

T.24N., R.13W., Sec. 31, S½ Lot 1 NW¼, (SE¼NW¼) 5th Principal Meridian, Ozark County, Gainesville, Missouri (containing approximately 41.00 acres);
Appraised Fair Market Value: $8,000.00 and an additional Mineral Estate fee of $50.00

The public land described above is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice in the Federal Register, whichever occurs first.

The public land will be offered for sale at a public auction beginning at 10 a.m., c.s.t., on August 24, 1992 at the Reuss Federal Plaza, Suite 225, West Tower, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203. This sale will be my modified competitive bidding procedures. Mr. David Bramer will be given the opportunity to meet the highest bid received at public auction. Sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Milwaukee District Office at the Reuss Federal Plaza, suite 225, West Tower, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, no later than 3 p.m. c.s.t. on August 21, 1992. Sealed bid envelopes must be clearly marked on the lower left front corner with "Public Sale MOES-42115". Bids must be for not less than the appraised fair market value specified in this notice. Each sealed bid shall be either in the form of a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than the appraised fair market value specified in this notice. Each sealed bid shall be either in the form of a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent of the amount bid. Example: You bid $8,000.00 you must submit 10% ($800.00) + $50 for a total of $850.00.

Federal law requires that all bidders be U.S. citizens, 18 years order, or in the case of corporations, be subject to the laws of any State of the United States. Proof of these requirements must accompany the bid.

Under modified competitive sale procedures, an apparent high bid will be declared at public auction. The apparent high bidder and the designated bidder (Mr. David Bramer) will be notified. The designated bidder shall have fifteen (15) days from the date of notification to exercise the preference consideration given to meet the high bid. Should the designated bidder fail to submit a bid that matches the apparent high bid within the specified time period, the apparent high bidder shall be declared the high bidder. The total purchase price for the land shall be paid within 180 days of the date of the sale.

Detailed information concerning the sale and the planning and environmental documents, are available at the Milwaukee District Office.

DATES: On or before August 10, 1992 interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631. In the absence of objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Realty Specialist/Appraiser, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631; telephone 414-297-4413.

Leon R. Kabat,

Acting District Manager.

[FR Doc. 92-15015 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-GJ-M

[MT-030-01-4212-14]

Realty Actions, Sales, Leases, Etc.; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Land in North Dakota.

SUMMARY: The following lands have been found suitable for sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C., 1713), at no less than the estimated fair market value (FMV). These lands have highly saline soils; are submerged or are dry alkali lake beds.

DATES: September 1, 1992.

ADDRESSES: 2933 Third Avenue West; Dickinson, North Dakota 58601.

FOR FURTHER INFORMATION CONTACT: William C. Monahan, Dickison District Office, 701-225-9148.

SUPPLEMENTARY INFORMATION:

Parcel	Legal Description, Fifth Principal Meridian
NDM80024...	T. 143 N., R. 74 W., sec. 4: Lot 2, 26.4 acres, Kidder County, FMV $50.
NDM80025...	T. 163 N., R. 95 W., sec. 25: SWSW, 40.0 acres, Divide County, FMV $50.
NDM80026...	T. 163 N., R. 95 W., sec. 26: SESE, 40.0 acres, Divide County, FMV $50.
NDM80027...	T. 160 N., R. 99 W., sec. 5: SWSE, 40.0 acres, Divide County, FMV $50.
NDM80028...	T. 160 N., R. 100 W., sec. 22: SWNE, 40.0 acres, and NWSE, 40.0 acres, Divide County, FMV $50.
NDM80029...	T. 162 N., R. 102 W., sec. 8: SWNW, 40.0 acres, and N2SW, 80.0 acres, Divide County, FMV $50.
NDM80030...	T. 160 N., R. 103 W., sec. 15: W2NW, 80.0 acres, and NWSW, 40.0 acres. Divide County, FMV $50.
NDM80031...	T. 160 N., R. 103 W., sec. 21: NENW, 40.0 acres, Divide County, FMV $50.
NDM80034...	T. 161 N., R. 103 W., sec. 23: NENE 40.0 acres, and SESE, 40.0 acres, Divide County, FMV $50.
NDM80035...	T. 161 N., R. 103 W., sec. 24: SWSW, 40.0 acres, Divide County, FMV $50.

Parcel	Legal Description, Fifth Principal Meridian
NDM80036...	T. 163 N., R. 103 W., sec. 14: S2SE, 80.0 acres, Divide County, FMV $50.
NDM80038...	T. 135 N., R. 74 W., sec. 6: Lot 1, 45.13 acres, Emmons County, FMV $50.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first.

The lands will be offered for sale at public auction beginning at 10 a.m., m.d.t., on September 1, 1992, at 2933 Third Avenue West, Dickinson, North Dakota 58601. The sale will be by modified competitive procedures. Tract lessees or adjoining land owners must submit a bid the day of sale to retain preference rights. The sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Dickinson District Office at 2933 Third Avenue West, Dickinson, North Dakota 58601, no later than 4:30 p.m., m.d.t., on August 31, 1992. Bid envelopes must be marked on the left front corner with the parcel number and the sale date. Bids must be for not less than the appraised FMV specified in this Notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the United States Department of the Interior, BLM, for not less than 10 percent of the amount of the bid. However, it is possible to submit the full amount of the bid on the day of the sale.

Bids on unsold parcels will be opened each Tuesday after the date of the sale at 10 a.m., m.d.t., until the parcels are sold. The terms and conditions applicable to the sale are:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this office.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890, (26 Stat. 291; 43 U.S.C. 945).

3. The patents will be subject to all valid existing rights including rights-of-way.

Federal law requires that all bidders must be U.S. citizens 18 years old or older, or in the case of corporations, be subject to the laws of any State of the U.S. Proof of these requirements must accompany the bid.

Under modified competitive sale procedures, an apparent high bid will be declared at the public auction. The apparent high bidder, lessees and adjoining land owners will be notified. Lessees and adjoining land owners will be given the right to meet the highest bid. Lessees and adjoining landowners will have five (5) working days from the date of the sale to exercise the preference consideration given to meet the high bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions. Once the qualified high bidder is determined, the balance of the purchase price shall be paid within 180 days of the date of the sale.

Detailed information concerning the sale, including the reservations, procedures for conditions of sale, and planning and environmental documents, is available at the Dickinson District Office, Bureau of Land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601.

Comments

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Dickinson District, at the above address. In the absence of objections, this proposal will become the final determination of the Department of the Interior.

Dated: June 18, 1992.

Tom Steger,

Acting District Manager.

[FR Doc. 92-15016 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-DN-M

National Park Service

National Register of Historic PLaces; Waiver of Commenting Period for Nomination

In order to assist in the preservation of the following property, the commenting period has been waived:

CALIFORNIA

Placer County

Michigan Bluff—Last Chance Trail From Michigan Bluff NE to Last Chance, Michigan Bluff vicinity, 92000854

Carol D. Shull,

Chief of Registration, National Register.

[FR Doc. 92-15192 Filed 6-25-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

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. Parent corporation and address of principal office: Dean Foods Company, 3600 North River Road, Franklin Park, Illinois 60131, A Delaware Corporation.

Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

1. Aunt Jane Foods, Inc., Michigan Corporation
2. Bell Dairy Products, Inc., Texas Corporation
3. Bellingham Frozen Foods, Inc., Washington Corporation
4. Bowman Dairy Company, Delaware Corporation
5. Chas. F. Gates & Sons, Incorporated, North Carolina Corporation
6. C.O.W. Transport, Inc., Utah Corporation
7. Creamland Dairies, Inc., New Mexico Corporation
8. Cream O'Weber Dairy, Inc., Utah Corporation
9. Dean Dairy Products Company, Pennsylvania Corporation
10. Dean Foods International Corp., Delaware Corporation
11. Dean Foods Products Company, Tennessee, Corporation
12. Dean Milk Company, Inc., Kentucky Corporation
13. DFC Transporation Company, Delaware Corporation
14. DFC Transportation Systems International, Inc., Illinois Corporation
15. Elgin Blenders, Incorporated, Illinois Corporation
16. Fairmont Products, Inc., Delaware Corporation
17. Farmers Processing, Inc., California Corporation
18. Frio Foods, Inc., Texas Corporation
19. Gandy's Diaries, Inc., Texas Corporation
20. Gilt Edge Farms, Inc., Oklahoma Corporation
21. Green Bay Food Company, Wisconsin Corporation
22. Henry's Pickle Company, Inc., Indiana Corporation
23. JS Management, Inc., Rhode Island Corporation
24. The Larsen Company, Wisconsin Corporation

25. Larsen Factory Services, Inc., Wisconsin Corporation
26. Larsen Farm Services, Inc., Wisconsin Corporation
27. T.G. Lee Foods, Inc., Florida Corporation
28. Library Dairy Company, Michigan Corporation
29. Mayfield Dairy Farms, Inc., Tennessee Corporation
30. McArthur Dairy, Inc., Florida Corporation
31. Meadow Brook Dairy Company, Pennsylvania Corporation
32. Meadow Brook Dairy Company, Inc., New York Corporation
33. Park-It Market Corporation, Delaware Corporation
34. Pilgrim Farms, Inc., Delaware Corporation
35. Rancho Del Mar Food Brokerage, Inc., California Corporation
36. Ready Food Products, Inc., Pennsylvania Corporation
37. Reiter Dairy, Inc., Ohio Corporation
38. Ryan Milk Company, Inc., Kentucky Corporation
39. Ryan Milk of Pa., Inc., Pennsylvania Corporation
40. Richard A. Shaw, Inc., California Corporation
41. Verifine Dairy Products Corporation of Sheboygan, Inc., Wisconsin Corporation

B. Parent corporation and address of principal office:

Worthington Industries, Inc., 1205 Dearborn Drive, Columbus, Ohio 43085.

Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Wholly owned subsidiaries	State of incorporation
Worthington Industries, Inc	Ohio.
The Worthington Steel Co	Indiana.
The Worthington Steel Co	Kentucky.
The Worthington Steel Co	Maryland.
The Worthington Steel Co	North Carolina.
The Worthington Steel Co	Pennsylvania.
Worthington Steel of Michigan, Inc.	Michigan.
NRM Trucking Co	Delaware.
Worthington Cylinder Corporation.	Ohio.
Worthington Acetylene Cylinders, Inc. (d/b/a North American Cylinders, Inc.).	Alabama.
I.H. Schlezinger, Inc	Ohio.
Buckeye Steel Castings Co	Ohio.
Worthington Custom Plastics, Inc.	Ohio.
Worthington Precision Metals, Inc.	Tennessee.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-15081 Files 6-25-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1381-92]

Rescission of Alien Registration Receipt Card; Form I-151

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (the Service) is announcing the expiration of validity of Form I-151, Alien Registration Receipt Card, as evidence of lawful admission for permanent residence and identity and eligibility for permanent employment authorization in the United States. During the period July 31, 1992, through August 2, 1993, aliens in possession of the Form I-151, and all prior documentation such as Forms AR-3 and AR-103, must apply for replacement of such documentation with the more secure, machine-readable Form I-551, Alien Registration Receipt Card. On August 2, 1993, Form I-551 shall serve as the exclusive Alien Registration Receipt Card for use by aliens lawfully admitted for permanent residence. The Service objective is to reduce the number of Service documents that evidence identity and eligibility for employment for employment authorization for aliens granted lawful permanent resident status.

FOR FURTHER INFORMATION CONTACT: Lois Luczai, Senior Immigration Examiner, Immigration and Naturalization Service, room 7215, 425 I Street, NW., Washington, DC 20536, telephone: (202) 514-5014.

SUPPLEMENTARY INFORMATION: The Service estimates that there are 1.5 million of the less secure Form I-151 in circulation. Because Service documents play an essential role in a viable employer sanctions program, the Service recall objectives are to reduce the number and enhance the security of Service documents that evidence identity and eligibility for employment for aliens granted lawful permanent resident status, and also to provide a secure document to permanent residents that is more widely accepted as definitive evidence of status and identity. The I-151 was last validly issued in 1977. Because of its lack of security features, it presents more opportunities for fraud than other documents. This notice will have the initial benefit of clearly invalidating documents that are vulnerable to abuse.

Lawful permanent residents in possession of Form I-151, who are eligible candidates for naturalization, may choose to apply for naturalization in lieu of replacing their Alien Registration Receipt Card (Form I-151). Failure to get a new card will not penalize a lawful permanent resident in the naturalization process. However, filing for naturalization does not extend the validity of the card.

During the period July 31, 1992, through August 2, 1993, all lawful permanent residents of the United States in possession of a Form I-151 which shows evidence of lawful permanent residence status must apply for a replacement Alien Registration Receipt Card, Form I-551. On August 2, 1993, Form I-151 will no longer be valid evidence of lawful permanent resident status.

Persons needing to replace Form I-151 with Form I-551 must apply on Form I-90, Application to Replace the Alien Registration Receipt Card. The Form I-90 may be obtained from a local Immigration and Naturalization Service office or by calling the published "Ask Immigration" number at your local INS office. Form I-90 must be filed in person at the Service office having jurisdiction over the applicant's place of residence. Ports of Entry will accept replacement applications from persons reentering the United States in possession of Form I-151.

The Form I-90 must be accompanied by two photographs meeting the Alien Documentation, Identification and Telecommunication (ADIT) specifications as outlined in the instructions to Form I-90, and the required $70.00 fee. The applicant's signature and fingerprint will be obtained on a separate card when the application is filed.

The applicant may retain his or her Form I-151 during the replacement application procedure. The Form I-551 will be mailed to the applicant's home address.

Dated: June 11, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-15069 Filed 6-25-92; 8:45 am]

BILLING CODE 4410-10-M

[INS No. 1459-92]

RIN 1115-AC30

Deferral of Enforced Departure for Salvadorans

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of deferral of enforced departure for Salvadorans.

SUMMARY: The President has directed that the Immigration and Naturalization Service (the Service) defer, until June 30, 1993, the enforced departure of Salvadoran nationals who have been granted Temporary Protected Status (TPS) under the provisions of section 303 of the Immigration Act of 1990. The Salvadoran TPS program will expire on June 30, 1992, as stipulated by the Act. This notice automatically extends until October 31, 1992, employment authorization previously granted to a Salvadoran who registered for the first period, and then re-registered for the second period, of TPS.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Pearl B. Chang or Marcela C. Moglia, Senior Immigration Examiner, Immigration and Naturalization Service, Examinations Division, 425 I Street, NW., room 7122, Washington, DC 20536, Telephone (202) 514-3240.

SUPPLEMENTARY INFORMATION: Section 303 of the Immigration Act of 1990, Public Law 101-649, dated November 29, 1990, designated El Salvador as a special TPS country for a period of eighteen (18) months beginning January 1, 1991, and ending June 30, 1992. Eligible Salvadorans who registered under this special TPS program were granted employment authorization in six-month increments. In accordance with the statute, the Service has served on the Salvadorans registering for the final period of TPS an order to show cause (OSC) which establishes a date for deportation proceedings after the TPS designation terminates.

However, because El Salvador cannot currently accommodate the repatriation of approximately 150,000 people granted TPS, President Bush has directed that the deportation of Salvadoran nationals who were granted TPS not be enforced before June 30, 1993. The deferred enforced departure (DED) is available to all of the Salvadorans who were granted TPS during the initial registration period between January 1, 1991, and October 31, 1991, and who have re-registered for the second period. Eligible Salvadorans who apply for benefits under DED will be granted employment authorization until June 30, 1993.

Eligible Salvadorans may request DED by mailing or submitting in person, depending on the practice of the District Office having jurisdiction over their place of residence, a completed Form I-765 any time before June 30, 1993. (Applicants should inquire about the filing procedures at the local INS office.) No fee is required for DED registration. Form I-765 will be filed with the required fee of $60 only if the alien is requesting employment authorization. The Service will adjudicate the I-765 and grant employment authorization on Form I-688B until June 30, 1993, as appropriate. DED applicants who have been issued an OSC pursuant to TPS bearing a hearing date of March 30, 1993, will be provided a notice that such hearing is canceled. A new hearing date will be scheduled at a later time.

The Service anticipates that the majority of the 150,000 eligible Salvadorans will seek to renew their employment authorization under DED on or about July 1, 1992, to avoid interruption in employment authorization. To allow the Service sufficient time to effect an orderly renewal of employment authorizations for this inordinately large group of applicants, the Service is granting an automatic extension until October 31, 1992, of the validity of any employment authorization document (EAD) which expires on or after December 31, 1991 and was previously issued to a TPS Salvadoran pursuant to 8 CFR 274a.12(a)(12). Affected Salvadorans should apply for renewal of their EADs at least three months before the expiration of the automatic extension (that is, no later than July 31, 1992) to ensure continuous employment authorization.

Employers of TPS Salvadorans whose employment authorization is automatically extended until October 31, 1992, pursuant to this notice, must accept for purposes of verifying or reverifying employment eligibility an Employment Authorization Document (EAD), Form I-688B, bearing an expiration date of December 31, 1991, or later and containing a notation "274a.12(a)(12)" on the face of the document under "Provision of Law."

Dated: June 19, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-15068 Filed 6-25-92; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Office of the Secretary

Use of Alternative Dispute Resolution and Negotiated Rulemaking Procedures by the Department of Labor

AGENCY: Office of the Secretary.

ACTION: Notice of amendment to interim ADR policy.

SUMMARY: This notice amends the Department's interim policy on the use of alternative dispute resolution (ADR) published February 28, 1992 (57 FR 7292). The change, which is based on experience to date in the Region III pilot test of mediation, will permit a wider range of cases to be included in the ADR pilot by allowing for the inclusion of civil cases involving violations that are or can be deemed "willful". In addition, this notice reemphasizes several aspects of the pilot to ensure that its results provide a full and fair picture of the value of in-house mediation.

FOR FURTHER INFORMATION CONTACT: Roland Droitsch, Deputy Assistant Secretary for Policy, U.S. Department of Labor. Telephone 202-523-6197.

SUPPLEMENTARY INFORMATION: On February 28, 1992 the Department published in the **Federal Register** (57 FR 7292) an interim policy on implementation of the Administrative Dispute Resolution Act (ADR Act), Public Law 101-552, and certain provisions of the Executive Order on Civil Justice Reform (E.O. 12778). The ADR Act authorizes and encourages agencies to use arbitration, mediation, negotiated rulemaking, and other consensual methods of dispute resolution. Executive Order 12778, among other things, requires agencies to consider ADR methods wherever appropriate in litigation cases. The Department issued its interim policy, in conjunction with a planned regional pilot test of ADR, recognizing that refinements likely would be needed based on the experience gained with these techniques. (In addition, the interim policy provided some initial information about how the Department intended to implement the Negotiated Rulemaking Act, Pub. L. 101-648, while it continues to develop a more complete policy for the conduct of negotiated rulemakings.)

Prior to the development of its ADR policy, the Department published a notice in the **Federal Register** on May 22, 1991 (56 FR 23599), indicating its intention to adopt a general policy that encourages greater use of alternative dispute resolution techniques whenever the parties involved agree to them and it is practical to do so in light of the requirements of other statutes. Interested parties were invited to submit comments on the Department's May 22 notice, and the comment period was subsequently extended (56 FR 28177, June 19, 1991) to August 23, 1991. A discussion of the comments received

was included in the February 28, 1992 notice on the interim ADR policy (57 FR 7292).

The Department's interim policy seeks to balance the desire to experiment with the use of ADR in as many program areas and types of cases as possible with the need to proceed with caution in the use of ADR until more experience is gained. The Department's first effort, which is now underway, is a pilot test of mediation in the Philadelphia Region (Region III). Specifically, the pilot is testing the use of in-house mediators, trained by the Federal Mediation and Conciliation Service, to assist in the resolution of the full range of cases to determine the extent to which this ADR technique can improve and enhance the fairness and effectiveness of the Department's actions.

The interim policy noted that ADR techniques are not appropriate in every situation and that the ADR statute itself provides (5 U.S.C. 582(b)) that:

An agency shall consider not using a dispute resolution proceeding if—

(1) A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) The matter significantly affects persons or organizations who are not parties to the proceeding;

(5) A full record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of the changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

The interim policy stated that the Department would not use ADR in cases in which the dispute is not suitable for ADR on consideration of the factors set forth in 5 USC 582(b). In addition, the interim policy included three other criteria that preclude the use of ADR:

(1) Where statutes or regulations preclude the use of such techniques;

(2) Where the responsible DOL program agency, in consultation with the Office of the Solicitor, believes a dispute involves a willful or criminal violation of law; or

(3) Where, for any reason, the responsible DOL program agency, in consultation with the Office of the Solicitor, believes it is necessary or preferable to proceed with traditional litigation in light of the facts of the case.

The Department's experience in the Region III pilot to date has now shown that there exists a broader range of civil cases than anticipated in different program areas that can be classified as "willful" violations. Many of these cases are amenable to resolution short of a final decision in administrative or civil litigation, and, in fact, are frequently resolved through traditional settlement negotiations. Early resolution is often desirable because of the serious nature of these cases. For example, the Department's Inspector General recently conducted an audit in which it concluded that OSHA egregious cases that were settled resulted in higher penalties and more extensive abatement than those that were ultimately decided by the Occupational Safety and Health Review Commission, while at the same time avoiding the expense of litigation.

Currently, these types of cases are excluded from consideration for mediation in the pilot. The Department now believes that the use of ADR in cases involving possible willful violations should be tested as part of the Region III pilot to determine if it can and should be available to aid in the resolution of such cases. The Department, therefore, is amending the interim policy to provide that the exclusion will only apply to cases in which the responsible DOL program agency (including the Office of the Inspector General where it is the responsible program agency), in consultation with the Office of the Solicitor, believes a dispute involves a criminal violation of law.

The Department will now consider using ADR in civil cases that are or could be deemed willful where the responsible program agency (including the Office of the Inspector General where it is the responsible program agency), in consultation with the Office of the Solicitor, believes that the use of mediation could lead to a satisfactory resolution of the case in a fair manner, in a quicker period of time, and with expenditure of fewer resources than current methods of resolution. The Department recognizes that these cases are by their nature more serious than other cases. As a result, in making a determination as to whether or not to proceed with ADR in a willful case, the Department will carefully examine whether the case is suitable for ADR on consideration of the factors set forth in the ADR statute, as listed above, and the additional factors included in the interim policy.

The Department would like to reemphasize several aspects of this pilot project to ensure that its results provide a full and fair picture of the value of in-house mediation:

First, the Department committed itself to a pilot test that would encompass both the full range of the Department's cases, and an adequate number of cases to ensure the results of the pilot were meaningful. Those commitments remain. Managers in the Philadelphia region have been trained about the pilot project and asked to evaluate their cases and refer appropriate ones to the regional steering committee, and the Department expects that these managers will do so. The results of this pilot test are very important to the Department's activities, and are a priority for the Philadelphia region.

Second, the Department's interim ADR policy stated that an important consideration in ADR is to assure that the designated representatives of the parties have full authority to settle the dispute without extensive supervisory review or concurrence. Moreover, to ensure that the representatives of the Department feel comfortable in undertaking such actions, the policy explicitly stated that no DOL staff who represent the Department in such proceedings shall be subject to any adverse action whatsoever, including any adverse performance evaluation, based solely or in part on the outcome of settlement negotiations entered into under the pilot test. In this regard, representatives of the Department are encouraged to approach the resolution of each dispute in a creative fashion that takes advantage of this opportunity to explore new and potentially better approaches that may exist for settling cases.

Third, the Department would like to clarify its decision not to "include in its regional pilot test of ADR those workers' compensation programs it administers." This should not be interpreted to mean that ADR efforts are inappropriate in such programs. To the contrary, these programs have a long history of case resolution without litigation. Under the Longshore and Harbor Workers' Compensation Act (LHWCA), for example, District Directors and claims examiners of the Office of Workers' Compensation programs routinely act as mediators between the private sector

disputants. In addition, the Department's Office of Administrative Law Judges uses calendar calls and related actions by assigned judges to encourage the parties to consider settlement prior to trial. The purpose of the Philadelphia pilot program is to determine whether ADR can be used to facilitate and expedite the resolution of cases involving the Department. Accordingly, it would not serve the purpose of the project to include the Department's workers' compensation programs in the pilot because a form of ADR is an integral component of these programs and its efficacy has been long established. The Department will, however, continue to look at ways in which enhancement of existing ADR mechanisms, or the use of other ADR opportunities or approaches, could promote the goals of the Department's workers' compensation programs. As with other aspects of this policy, public input in this regard is welcome.

Finally, the Department wants to reiterate that during the course of the regional pilot, the ADR Steering Committee will consider other invitations to participate in an ADR proceeding by another party, where requested by a court or other adjudicative authority, or where an agency otherwise believes that there is merit in initiating an alternative approach to resolving a particular dispute in which the Department is a party.

As indicated in the interim policy, the Department intends to closely evaluate the results of its pilot project and other ADR activities under that policy prior to nationwide implementation. Suggestions on the implementation of Department's interim ADR policy, particularly from those who participate in or are affected by activities undertaken pursuant to the interim policy, are welcome.

Suggestions on negotiated rulemaking should be directed to Marshall J. Breger, Solicitor of Labor, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Suggestions on the Philadelphia pilot project and other aspects of ADR should be directed to Nancy Risque Rohrbach, Assistant Secretary for Policy, U.S. Department of Labor, at the same address.

Signed at Washington, DC, this 18th day of June, 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-15020 Filed 6-25-92; 8:45am]

BILLING CODE 4510-23-M

Employment and Training Administration

[TA-W-26, 589, et al.]

Baroid Corp., et al.; Amended Certification Regarding Eligiblity To Apply for Worker Adjustment Assistance

In the matter of Baroid Corporation, Corporate Headquarters, Houston, Texas and Baroid Drilling Fluids Division, Headquartered in, Houston, Texas, and Operating at Various Locations in the Following States:

TA-W-26,589A Alaska
TA-W-26,589B Arizona
TA-W-26,589C Arkansas
TA-W-26,589D California
TA-W-26,589E Colorado
TA-W-26,589F Illinois
TA-W-26,589G Kansas
TA-W-26,589H Kentucky
TA-W-26,589I Louisiana
TA-W-26,589J Mississippi
TA-W-26,589K Missouri
TA-W-26,589L Montana
TA-W-26,589M Nevada
TA-W-26,589N New Mexico
TA-W-26,589O Ohio
TA-W-26,589P Oklahoma
TA-W-26,589Q Pennsylvania
TA-W-26,589R South Dakota
TA-W-26,589S Texas
TA-W-26,589T Utah
TA-W-26,589U West Virginia
TA-W-26,589V Wyoming
TA-W-26,589W Michigan
TA-W-26,589X Alabama

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligiblity to Apply for Worker Adjustment Assistance on January 31, 1992, applicable to all workers of Baroid Corporation, Houston, Texas and operating in the above mentioned States except Michigan and Alabama. The notice was publised in the **Federal Register** on February 14, 1992 (57 FR 5472). The certification was amended on March 23, 1992 to include the State of Michigan. The amendment was published in the **Federal Register** on March 31, 1992 (57 FR 10923).

New information received by the Department shows that the Baroid Drilling Fluids Division of the Baroid Corporation experienced worker separations and declines in sales and production in the State of Alabama in 1991 and 1992. The State of Alabama should be added to the subject certification.

The intent of the Department's certification is to include all workers of Baroid Drilling Fluids Division of Baroid Corporation who were adversely affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA-W-26,589 is hereby issued as follows:

All workers of Baroid Corporation, Corporate Headquarters Houston, Texas and Baroid Drilling Fluids Division, headquartered in Houston, Texas and operating at various locations in the following states who became totally or partially separated from employment on or after July 5, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

TA-W-26,589A Alaska
TA-W-26,589B Arizona
TA-W-26,589C Arkansas
TA-W-26,589D California
TA-W-26,589E Colorado
TA-W-26,589F Illinois
TA-W-26,589G Kansas
TA-W-26,589H Kentucky
TA-W-26,589I Louisiana
TA-W-26,589J Mississippi
TA-W-26,589K Missouri
TA-W-26,589L Montana
TA-W-26,589M Nevada
TA-W-26,589N New Mexico
TA-W-26,589O Ohio
TA-W-26,589P Oklahoma
TA-W-26,589Q Pennsylvania
TA-W-26,589R South Dakota
TA-W-26,589S Texas
TA-W-26,589T Utah
TA-W-26,589U West Virginia
TA-W-26,589V Wyoming
TA-W-26,589W Michigan
TA-W-26,589X Alabama

Signed in Washington, DC, this 15th day of June 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-15025 Filed 6-25-92; 8:45 am]

BILLING CODE 4510-90-M

[TA-W-26,530]

Cole Hersee Co., South Boston, MA; Negative Determination on Reconsideration

On May 8, 1992 the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 22, 1992 (57 FR 21829).

The union claims that sales and production of switches declined in 1991 compared to 1990 and that the Department should have conducted a customer survey since sales declined.

Workers at Cole Hersee produce switches for both the original equipment market (o.e.m.) and the aftermarket.

Findings on reconsideration show that the workers met both the decreased employment criterion and the decreased

sales and production criterion for switches in 1991 compared to 1990.

On reconsideration, the Department conducted a survey of major declining o.e.m. and aftermarket customers of Cole Hersee. All of the o.e.m. respondents to the survey indicated that they either do not import switches or had declining imports of switches in 1991 compared to 1990. The survey also showed that the purchasing patterns of the aftermarket customers mirrored the buying habits of the o.e.m. customers.

Other findings on reconsideration show that the company always purchased some switches from outside vendors. Some of these vendors subsequently moved to Mexico. However, these switches were not produced at South Boston during the relevant time period and were not competitive with the switches produced at South Boston.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of Cole Hersee in South Boston, Massachusetts.

Signed at Washington, DC, this 17th day of June 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92-15022 Filed 6-25-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 6, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 6, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 15th day of June 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
DS 2 Computer (Co)	Robbinsville, NJ	06/15/92	06/02/92	27,367	Computers.
Petro-Log, Inc. (Wkrs)	Lafayette, LA	06/15/92	05/31/92	27,368	Oil and Gas Service.
WM. F. Surgi Equipment Corp. (Wkrs)	Harahan, LA	06/15/92	06/01/92	27,369	Air Compressor Systems.
Colrick Trucking Co. (Co)	Hillside, NJ	06/15/92	05/22/92	27,370	Transports Computers & Equipment.
Yamato Lock Inspection Systems, Inc. (Wkrs)	Fitchburg, MA	06/15/92	06/02/92	27,371	Metal Detection Systems.
Tecumseh Products, Peerless Gear (Wkrs)	Clinton, MI	06/15/92	03/30/92	27,372	Transmission/transaxles.
DuPont Co, Grasselli Terminal (Co)	South Linden, NJ	06/15/92	02/04/92	27,373	Sulfuric Acid.
Marjo Fashions, Inc. (ILGWU)	Newark, NJ	06/15/92	06/01/92	27,374	Dresses.
Conemaugh & Blacklick Railroad (USWA)	Johnstown, PA	06/15/92	06/03/92	27,375	Rail Transportation for Bethlehem Steel.
J.S. Cutting, Inc. (Wkrs)	Port Griffith, PA	06/15/92	06/01/92	27,376	Ladies Dresses.
Dresser Industries (Co)	Wichita Falls, TX	06/15/92	05/12/92	27,377	Oil and Gas.
Glassboro Shirt Co. (Wkrs)	Glassboro, NJ	06/15/92	06/03/92	27,378	Children's Clothing.
Garrett Manufacturing, Inc. (Wkrs)	Deer Park, MD	06/15/92	05/30/92	27,379	Blouses.
M & Q Plastic Products Corp. (IBT)	Freehold, NJ	06/15/92	06/03/92	27,380	Automotive Products.
Mt. Fir Lumber Co., Inc. (Wkrs)	Independence, OR	06/15/92	06/03/92	27,381	Dimensional Lumber.
General Electric Co (IUE)	Linton, IN	06/15/92	06/05/92	27,382	Horse Power Electric Motor Parts.
Brown Shoe Co. (Wkrs)	Houston, MO	06/15/92	06/01/92	27,383	Ladies Shoes.
BTS (Co)	Salt Lake City, UT	06/15/92	04/21/92	27,384	Video and Broadcast Equipment.
Henson Kickernick (Wkrs)	Greenville, TX	06/15/92	05/11/92	27,385	Ladies Intimate Apparel.
Advanced Monobloc Co. Inc. (Co)	Cranbury, NJ	06/15/92	06/02/92	27,386	Aerosol Cans.
Coastal Oil and Gas Corp. (Wkrs)	Jackson, MS	06/15/92	06/06/92	27,387	Oil, Gas Exploration and Production.
H & M Dress (ILGWU)	Wilkes-Barre, PA	06/15/92	06/08/92	27,388	Children's Sportswear.
NOWSCO Well Service (Co)	Wooster, OH	06/15/92	05/18/92	27,389	Oil and Gas Well Services.
NOWSCO Well Service (Co)	Cottondale, AL	06/15/92	05/18/92	27,390	Oil and Gas Well Services.
NOWSCO Well Service (Co)	Clarksburg, WV	06/15/92	05/18/92	27,391	Oil and Gas Well Services.
NOWSCO Well Service (Co)	Brookville, PA	06/15/92	05/18/92	27,392	Oil and Gas Well Services.
NOWSCO Well Service (Co)	Dunbar, WV	06/15/92	05/18/92	27,393	Oil and Gas Well Services.
NOWSCO Well Service (Co)	Williamstown, WV	06/15/92	05/18/92	27,394	Oil and Gas Well Services.
NOWSCO Well Service (Co)	Gaylord, MI	06/15/92	05/18/92	27,395	Oil, Gas Well Services.
Frigidaire Co, Range Division (USWA)	Mansfield, OH	06/15/92	06/05/92	27,396	Gas and Electric Ranges.
Dresser Industries (Co)	Dallas, TX	06/15/92	05/12/92	27,397	Oil and Gas.

[FR Doc. 92-15024 Filed 6-25-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,910]

Dumore Corp., Racine, WI.; Negative Determination Regarding Application for Reconsideration

By an application dated June 3, 1992, the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 16, 1992 and was published in the **Federal Register** on May 5, 1992 (57 FR 19315).

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 states that aggregate import data on power driven hand-tools used by the Department in determining whether the increased import criterion was met did not reflect the type of tools produced at Dumore. The union states that Dumore produces customized specialty tools used in manufacturing and are not off-the-shelf power driven hand-tools which are generally available to the public especially in retail outlets.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade was not met for power driven hand-tools. U.S. imports of power driven hand-tools declined absolutely and relative to domestic shipments in 1991 compared to 1990.

However, other import data in the file show that U.S. imports as well as domestic shipments of metal cutting machine tools which include automatic drills and tap units and metal working grinding machines produced at Dumore declined in 1991 compared to 1990. Industry sources indicate that U.S. shipments declined in 1991 because of the recession.

Other findings show a corporate consolidation and restructuring that took place of Dumore. All of the production formerly done at Racine was transferred to another corporate plant in Wisconsin. A domestic transfer of production would not provide a basis for a certification.

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 17th day of June 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92-15023 Filed 6-25-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27, 158]

Smith International, Inc., Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 20, 1992 in response to a worker petition received on April 20, 1992 which was filed on behalf of workers at Smith International, Inc., Houston, Texas.

A negative determination applicable to the petitioning group of workers was issued on December 6, 1991 (TA-W-26, 311). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC on the 18th day of June, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-15021 Filed 6-25-92; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,989; The Stolle Corp., Sidney, OH

TA-W-27,061; Westbrook Wool & Worested, Inc., Westbrook, ME

TA-W-27,039; Microimage Display Mfg., Hartford, WI

TA-W-27,094; The Maple Gas Corp., Dallas, TX

TA-W-27,095; The Maple Gas Corp., Midland, TX

TA-W-27,105; The Maple Gas Corp., Pampa, TX

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,064; Western Company of North America, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,086; Axem Resources, Inc., Denver Co.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,229; Cheyenne Petroleum Co., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,183; Sandefer Oil and Gas, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,068 and TA-W-27,069; Mustang Fuel Corp., Oklahoma

City, OK and Mustang Transport Co., Okarche, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,075; Fiber Materials, Inc., Columbus, OH

U.S. imports of yarn declined absolutely and relative to domestic shipment in 1991 compared to 1990.

TA-W-27,145; Hercules, Inc., Kenvil, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-27,240; Intelligraphics, Inc., Waukesha, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,195; Bull Printing Systems, Inc., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,126, TA-W-27,127 & TA-W-27,128; Smith International, Alice, Victoria, & Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,041; General Dynamics Corp., Electro Dynamic Div., Avenel, NJ

The products manufactured at the subject facility are not subject to import competition under national security laws.

TA-W-27,116; Timex Corporation, Middlebury, CT

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,066; Babcock Industries, Acco Controls Group, Adrian, MI

The output of the subject plant goes almost entirely to other plants of the parent corporation. Corporate imports of products like or directly competitive with those manufactured at the subject plant declined during the relevant period.

Affirmative Determinations

TA-W-27,067; NEL Frequency Controls, Inc., Burlington, WI

A certification was issued covering all workers separated on or after March 18, 1991.

TA-W-27, 185; TGX Corp., Shreveport, LA

A certification was issued covering all workers separated on or after April 13, 1991.

TA-W-27,079 & TA-W-27,079A; Supreme Well Service Co., Woodward, OK & Dallas, TX

A certification was issued covering all workers separated on or after March 16, 1991.

TA-W-27,084; Rockwell International Corp., T/A Div., New Castle, PA

A certification was issued covering all workers of Department #33 amd #35 of Rockwell International Corp., T/A Div., New Castle, PA separated on or after March 27, 1991.

TA-W-27,119; Willrig (USA), Inc., Lafayette, LA

A certification was issued covering all workers separated on or after March 27, 1991.

TA-W-27,132; Teledyne Movible Offshore, Inc., Administrative Office, Lafayette, LA

A certification was issued covering all workers separated on or after March 31, 1991.

TA-W-27,136; Teledyne Movible Offshore, Inc., Drilling Div., New Iberia, LA

A certification was issued covering all workers separated on or after March 13, 1991.

TA-W-27,239; Dell-Mar Sportswear, Pittston, PA

A certification was issued covering all workers separated on or after April 30, 1991.

TA-W-27,015; Saft America, Inc., Valdosta, GA

A certification was issued covering all workers separated on or after March 5, 1991.

TA-W-27,051; Zenith Electronics Corp, Springfield, MO

A certification was issued covering all workers separated on or after March 20, 1991.

TA-W-27,140; Louis Clark, Inc., Philadelphia, PA

A certification was issued covering all workers separated on or after April 2, 1991.

TA-W-27,089; Brown Shoe Co., Piedmont, MO

A certification was issued covering all workers separated on or after March 24, 1991.

TA-W-27,176; Brady Apparel, Inc., Templeton, PA

A certification was issued covering all workers separated on or after April 14, 1991.

TA-W-27,168; Perry Manufacturing, Perryopolis, PA

A certification was issued covering all worker separated on or after April 7, 1992.

TA-W-27,122 & TA-W-27,123; Neese Industries, Inc., Gonzales and Livingston, LA

A certification was issued covering all workers separated on or after April 3, 1991.

TA-W-27,124, TA-W-27,125 & TA-W-27,125A; Computalog Wireline Services, Inc., Alice, Sequin and Forth Worth, TX

A certification was issued covering all workers separated on or after March 30, 1991.

TA-W-26,961; Bonney Forge Corp., Allentown, PA

A certification was issued covering all workers separated on or after July 1, 1991.

TA-W-27,141; Stride Rite Footwear of Missouri, Inc., Molding Facility, Tipton, MO

A certification was issued covering all workers separated on or after January 1, 1992.

I hereby certify that the aforementioned determinations were issued during the month of June 1992. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 16, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-15026 Filed 6-25-92; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Wage and Hour Divisions; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

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. The 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-3014, 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:

Florida:	
FL91-9 (Feb. 22, 1991)	p. 121 p. 122
FL91-15 (Feb. 22, 1991)	p. 135 p. 136
FL91-17 (Feb. 22, 1991)	p. 141 p. 142
Kentucky, KY91-2 (Feb. 22, 1991).	p. 313 pp. 314-316
New York:	
NY91-7 (Feb. 22, 1991)	p. 837 pp. 841-856a
NY91-18 (Feb. 22, 1991)	p. 931 pp. 934-936 pp. 938-940
NY91-19 (Feb. 22, 1991)	p. 943 pp. 945, 947, 948
NY91-22 (Feb. 22, 1991)	p. 952i p. 952j

Volume II:

Illinois, IL91-9 (Feb. 22, 1991)	p. 153 p. 155
Indiana:	
IN91-3 (Feb. 22, 1991)	p. 279 p. 283
IN91-4 (Feb. 22, 1991)	p. 291 pp. 297-300
Minnesota, MN91-15 (Feb. 22, 1991).	p. 637 pp. 643-644
Missouri, MO91-9 (Feb. 22, 1991).	p. 721 pp. 722, 723
Ohio:	
OH91-2 (Feb. 22, 1991)	p. 821 p. 822
OH91-29 (Feb. 22, 1991)	p. 903 p. 905

Volume III:

Utah, UT91-7 (Feb. 22, 1991)	p. 425 p. 426

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 at 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 19th day of June 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-14898 Filed 6-25-92; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-336-OLA, Spent Fuel Pool Design; ASLBP No. 92-665-02-OLA]

Northeast Nuclear Energy Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Northeast Nuclear Energy Company

Millstone Nuclear Power Station, Unit No. 2
Facility Operating License No. DPR-65

This Board is being established pursuant to a notice published by the Commission on April 28, 1992, in the **Federal Register** (57 FR 17934) entitled, "Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination,

and Opportunity for Hearing." The proposed amendment would modify the existing two-region spent fuel pool design of Millstone, Unit No. 2, to a three-region configuration.

The Board is comprised of the following administrative judges:

Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 18th day of June, 1992.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92-15071 Filed 6-26-92; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2559; Amendment #1]

Declaration of Disaster Loan Area; California

The above-numbered Declaration is hereby amended in accordance with an amendment dated May 26, 1992, to the President's major disaster declaration of May 2, to establish the incidence period for this disaster as beginning on April 29 and continuing through May 26, 1992.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 2, 1992, and for economic injury until the close of business on February 2, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 8, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-15102 Filed 6-25-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2560; Amendment #1]

Declaration of Disaster Loan Area; California

The above-numbered Declaration is hereby amended in accordance with an amendment dated May 25, 1992, to the President's major disaster declaration of May 4, to establish the incidence period for this disaster as beginning on April 25 and continuing through May 25, 1992.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 6, 1992, and for economic injury will be the close of business on February 4, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 8, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-15105 Filed 6-25-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2558; Amendment #1]

Declaration of Disaster Loan Area; Illinois

The above-numbered Declaration is hereby amended in accordance with an amendment dated May 26, 1992, to the President's major disaster declaration of April 15, to establish the incidence period for this disaster as beginning on April 13 and continuing through May 22, 1992.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 15, 1992, and for economic injury until the close of business on January 15, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 8, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-15104 Filed 6-25-92; 8:45 am]

BILLING CODE 8025-01-M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings, Regions 1 Through 6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is hereby published for the Series 9 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. July 15, 9 a.m. to 12:30 p.m., Metairie (New Orleans), La., Region 2 Advisory Board.

2. July 16, 9 a.m. to 12:30 p.m., Houston, Texas, Region 4 Advisory Board.

3. July 21, 9 a.m. to 12:30 p.m., Atlanta, Ga., Region 1 Advisory Board.

4. July 23, 9 a.m. to 12:30 p.m., Denver, Co., Region 5 Advisory Board.

5. July 29, 9 a.m. to 12:30 p.m., Evanston (Chicago), Ill., Region 3 Advisory Board.

6. July 31, 9 a.m. to 12:30 p.m., Salt Lake City, Utah, Region 6 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Metairie, La.—Sheraton New Orleans North Hotel, 3838 North Causeway Blvd., Metairie.

2. Houston, Texas—Federal Reserve Bank of Dallas/Houston Branch, 1701 San Jacinto St.

3. Atlanta, Ga.—Inforum (Atlanta Market Center), room 15, 250 Williams St.

4. Denver, Co.—Sheraton Denver Tech Center, Plaza 6 Room, 4900 DTC Parkway.

5. Evanston (Chicago), Ill.—James L. Allen Center, Northwestern University, 2169 Sheraton Rd.

6. Salt Lake City, Utah—Salt Lake City Council Chambers, 3rd floor, Historic City & County Building, Fifth South & State Sts.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, 202/786-9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, 382-383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose

The regional advisory boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda

Topics to be addressed include RTC hard-to sell assets, nonperforming mortgages, local RTC real estate sales and holdings and RTC's affordable housing programs. A detailed agenda will be available at the meeting.

Statements

Interested persons may submit to an advisory board written statements, data, information, or views on the issues pending before the board prior to or at the meeting. The meeting will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested person may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: June 23, 1992.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 92-15074 Filed 6-25-92; 8:45 am]

BILLING CODE 2222-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice; Ezeiza International Airport, Beuenos Aires, Argentina

SUMMARY: The Secretary of Transportation has now determined that Ezeiza International Airport, Beunos Aires, Argentina, maintains and administers effective security measures.

Notice

By notice published at 57 FR 9585 (March 19, 1992), I announced that I had determined that Ezeiza International Airport, Buenos Aires, Argentina, did not maintain and administer effective security measures and that pursuant to section 1115 of the Federal Aviation Act (49 U.S.C. 1515), I was providing public notification of that determination. I now find that the security measures used at Ezeiza International Airport are effective. My determination is absed on a recent Federal Aviation Administration (FAA) assessment which reveals that security measures used at the airport now meet or exceed the Standards and Recommended Practices established by the International Civil Aviation Organization.

I have directed that a copy of this notice be published in the **Federal Register** and that the news media be notified of my determination. In addition, as a result of this determination, the FAA will direct that signs posted in U.S. airports relating to my March 12, 1992, determination be removed, and U.S. and foreign air carriers will no longer be required to provide notice of that determination to passengers purchasing tickets for transportation between the United States and Buenos Aires, Argentina.

Andrew H. Card, Jr.,

Secretary.

[FR Doc. 92-15061 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Environmental Impact Statement: Conversion of Bergstrom Air Force Base to Air Carrier Airport Austin, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice of intent to advise the public that a tiering document for an Environmental Impact Statement (EIS) will be prepared and considered for conversion of Bergstrom Air Force Base, Austin, Texas, to an air carrier airport including the possible construction of additional runways, taxiways, runway and taxiway lighting, instrument landing system, aprons, and terminal and support buildings.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Project Manager, ASW-651F, Texas Airport Development Office, Federal Aviation Administration, Southwest Regional Office, Fort Worth, Texas 76193-0650. Telephone (817) 624-5609.

SUPPLEMENTARY INFORMATION: The FAA will prepare a tier to the United States Air Force (USAF) EIS for the Closure and Reuse of Bergstrom Air Force Base. This tier will supplement the USAF EIS to provide additional environmental impacts information as required by the FAA.

The primary components of the proposed action would consist of the following items: (1) Construction of a new runway including lighting, associated taxiways, and instrument landing system; (2) a new terminal apron; (3) a new terminal and support buildings; (4) access roads; (5) and other construction as proposed by the airport master plan. The city of Austin intends to request Federal Airport Improvement Program funds for the development of the proposed airport.

The FAA intends to consult and 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. Scoping for Federal, state, and local agencies for the EIS will include meetings to be held at the city of Austin Department of Aviation Offices at Robert Mueller Municipal Airport, 3600 Manor Road, Austin, Texas, on August 6, 1992, at 10 a.m. Scoping for the general public to solicit input from identified interested parties concerning the range of actions, alternative, and impacts to be considered will be held on August 6, 1992, at the Montopolis Recreation Center, 1200 Montopolis Drive, Austin, Texas, at 6:30 p.m. A notice will be placed in local newspapers of general circulation announcing the intent to prepare an EIS and solicitating comments on the scope of the study.

Issued on: June 16, 1992.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 92-15060 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and use the revenue From a Passenger Facility Charge (PFC) at Killeen Municipal Airport, Killeen, TX

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at Killeen Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 27, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. William Perkins, Planning and Programming Branch, ASW-610D, Airports Division, Southwest Region, Fort Worth, Texas 76193-0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dave Roush, Director of Aviation, Killeen Municipal Airport, at the following address: Killeen Municipal Airport, 1525 Airport Drive, Box A, Killeen, Texas 76543.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Killeen, Killeen Municipal Airport, under 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. William Perkins, Federal Aviation Administration, Planning and Programming Branch, ASW-610D,

Airports Division, Southwest Region, Fort Worth, Texas 76193–0611, (817) 624–5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at Killeen Municipal Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 16, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of Killeen was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 13, 1992.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1992.

Proposed charge expiration date: September 30, 1994.

Total estimated PFC revenue: 243,399.00.

Brief description of proposed project(s):

Acquire passenger access lift
Construct inclined wheelchair ramp leading from departure gate area to aircraft boarding ramp
Construct departure gates and entrance way to departure gates
Reconstruct terminal ramp
Install runway and taxiway guidance signs
Purchase power sweeper equipment
Acquisition and installation of standby engine generator and installation of pilot controlled runway lighting system
Construct additional traffic lane, reconstruction of a airport access road to terminal building and installation of street lighting
Airpot drainage system improvements
Install security fencing
Construction of an all weather perimeter road
Crack seal and fog seal on taxiways

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air carriers enplaning less than one percent of the total number of passengers enplaned.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch ASW–610D, 4400 Blue Mound Road, Forth Worth, Texas 76193–0611.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the city of Killeen issued in Fort Worth, Texas on June 16, 1992.

Hugh W. Lyon,

Assistant Manager, Airports Division.

[FR Doc. 92–15059 Filed 6–25–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Waupaca County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed reconstruction and expansion of U.S. Highway 10 in Waupaca County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jacki Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin, 53705: Telephone: (608) 264–5967. You may also contact Ms. Carol Cutshall, Director, Office of Environmental Analysis, Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, Wisconsin, 53705; Telephone: (608) 266–9626.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to reconstruct and expand U.S. Highway 10 between Waupaca and Fremont in Waupaca County, Wisconsin, a distance of about 17 miles.

The expansion of USH 10 is being considered to improve the safety of the roadway and provide additional roadway capacity for present and future traffic volumes. Alternatives under consideration include: (1) No build; (2) widen U.S. Highway 10 to four lanes along its present alignment; (3) construct a bypass at Fremont including a new river crossing; (4) minor realignment at select locations.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have interest in the proposal. A series of public meetings will be held in the project corridor throughout data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. As part of the scoping process, an interagency coordination meeting will be held. Agencies having an interest in, or jurisdiction regarding, the proposed action will be contacted regarding the date and location of the meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 17, 1992.

Robert W. Cooper,

District Engineer, Madison, Wisconsin.

[FR Doc. 92–15012 Filed 6–25–92; 8:45 am]

BILLING CODE 4910–22–M

Orders in Motor Carrier Safety Enforcement Cases

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of orders.

SUMMARY: This document gives notice of the Orders served from October 17, 1990, through November 8, 1991, concerning motor carrier and hazardous materials proceedings conducted pursuant to 49 CFR Part 386. The Orders include both those issued by the Associate Administrator for Motor Carriers and those issued by Administrative Law Judges (ALJ) and adopted by the Associate Administrator.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Motor Carrier and

Highway Safety Law Division, (202) 366-1354, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The following Orders are being published:

Name	Docket No.
Compaction Systems Corp. of L.I.	R1-92-02
Capitol Chemical Industries, Inc.	R3-90-037
Gunther's Leasing Transport, Inc.	R3-90-104
R. Brown & Sons, Inc. (ALJ Decision).	R1-90-06
Mike Zachary (ALJ Decision)	R6-90-012
Allen Evilsizer	R5-89-110-D
Delta Transportation, Ltd. (ALJ Decision) Kerr Drug Stores, Inc.	R5-91-04 91-NC-008-SH
Robert Lee Carpenter	R9-91-204
Autotrans, Inc.	R1-90-10
Donald B. Turner d/b/a Turner Trucking Co.	R3-90-159
Tres Rios Cattle Co.	R10-90-39
Johnny Dean Secrest (ALJ Decision).	89-03D
Robert Hansen Trucking, Inc.	R5-89-174
Crossroads Freight Ways, Inc.	R1-90-014
Greater Syracuse Moving & Storage Co., Inc.	R1-90-285
All Time Transport, Inc.	90-FL-027-SF
Western Pnuematics Install, Inc.	R10-91-9
Autotrans, Inc.	R1-90-10
Delta Transportation, Ltd.	R5-91-04
Chincoteague Seafood Co., Inc.	R-90-139
Bill Cress Trucking	R3-90-241
Independent Food Co., Inc. (ALJ Decision).	R1-90-013
Swift Transportation Co., Inc.	R9-90-049
Trinity Transportation, Inc. (ALJ Decision).	R9-90-001
Wonder Chemical Co. (ALJ Decision).	R3-89-016
Wisconsin Protein Carriers, Inc.	R5-90-07
E.L. Thomas & Sons, Inc.	90-TN-028-SA
Ronald William Dreyer (ALJ Decision).	R5-89-137
Browning Services, Inc.	R3-90-08
Charles G. Newman Used Equipment Sales d/b/a U.E.S. Transport.	90-02D R1-91-03
Compaction Systems Corp. of L.I.	R1-91-02
Martin Paint Stores, Inc.	R1-91-01
Tres Rios Cattle Co.	R10-90-39
Autotrans, Inc. (ALJ Decision)	R1-90-10
Swift Transportation Co:, Inc.	R9-90-049
Chincoteague Seafood Co., Inc.	R3-90-139
H&D Hardwoods, Inc.	R3-90-123
Propane Transportation, Inc. (ALJ Decision).	R1-90-09
V.R. Mowry, Inc.	R3-89-011
Woodbury Horse Transportation (ALJ Decision).	R1-88-1
Independent Food Co., Inc.	R1-90-013
Wisconsin Protein Carriers, Inc.	R5-90-07
Crossroads Freight Ways, Inc.	R1-90-014
Browning Services, Inc.	R3-90-08
Feizy Import and Export Co.	R6-90-49
Alamo Distributing Service, Inc.	R6-89-63
Kenworth of Tennessee, Inc.	89-TN-031-SA
J.C. Road Transportation, Inc.	R9-90-026
Mike Zachary	R6-90-012
Universal Testing of Oklahoma	R6-90-04
V.R. Mowry, Inc.	R3-89-011
Atlantic Contracting & Materials Co.	R3-90-207

(23 U.S.C. 315; 49 CFR § 1.48)

Issued On: May 4, 1992.

T.D. Larson,

Administrator.

Office of Hearings

[FHWA Docket No. R1-92-02; Motor Carrier Safety]

Compaction Systems Corp. of L.I.

Order of Dismissal

Served November 8, 1991.

This proceeding was initiated by a Notice of Claim letter dated November 21, 1990 (amended February 25, 1991) from the Regional Director of Region One to Compaction Systems Corporation of L.I. (Respondent), seeking a penalty in the amount of $19,000. The Associate Administrator for Motor Carriers appointed an Administrative Law Judge by order dated January 24, 1991 (to be designated by the Chief Administrative Law Judge) to consider this matter.

The undersigned Judge was appointed by notice dated January 29, 1991. By letter dated October 7, 1991 Complainant states that a settlement has been reached with the Respondent and encloses a Consent Order and Settlement Agreement signed by the Complainant, Respondent and the Federal Highway Administration Regional Director, which provides for the payment by Respondent of $10,000 to the FHWA. Complainant's letter is read as a request to dismiss the proceeding on the basis of that settlement. We conclude that that request should be granted. Accordingly, settlement having been reached between the parties, and that settlement appearing to be in the interest of the parties and the U.S. Department of Transportation *It is ordered that* this case is dismissed upon the terms and conditions stated in the Consent Order and Settlement Agreement.[1]

[1] 49 CFR 386.54(b)(6) was amended effective January 26, 1988 (53 FR 2036), to specify that the Judge can "order and rule upon all procedural and other motions, including motions to dismiss, except motions which, under this part, are made directly to the Associate Administrator." Although 49 CFR 386.21 provides that the parties "may" execute an appropriate agreement for disposing of the case by consent "for the consideration of the Associate Administrator." It is now settled that the Judge can also enter an order dismissing a proceeding pursuant to a settlement subject to review by the Associate Administrator, where the application is made to the Judge. See, In the Matter of Fulton Packing Co., Inc., FHWA Docket No. RI-86-60, Order dated June 10, 1987; Rodgers Johnson/J and J Bus Service, FHWA Docket No. R3-89-02, Order dated May 4, 1989; In Matter of Real Ice Cream Distributors, Inc., FHWA Docket No. RI-86-13, Order dated October 26, 1987; In the Matter of Alfa Express Co., FHWA Docket No. 86-65G, Order dated December 28, 1987.

Dated: November 6, 1991.

Ronnie A. Yoder,

Administrative Law Judge.

Federal Highway Administration

[Docket No. R3-90-037]

In the Matter of Capitol Chemical Industries, Inc., Respondent.

Final Order

This matter comes before me upon request of the Regional Director, Region 3, for a final order finding the facts to be as alleged in the notice of claim letter dated November 29, 1990, and imposing a civil penalty of $4,900.

The notice of claim alleges that Capitol Chemical Industries, Inc., is responsible for three violations of § 395.8(a) of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR 395.8(a)), in that in three instances Capitol failed to require a driver to make and submit a record of duty status as required. The notice of claim further alleges that Capitol is responsible for four violations of § 177.817(a) of the Hazardous Materials Regulations (HMRs) (49 CFR 177.817(a)) in that Capitol transported shipments of hazardous materials which were not accompanied by shipping papers prepared in accordance with the requirements of the HMRs.

Capitol responded to the notice of claim by letter dated December 10, 1990. Capitol acknowledged receipt of the notice of claim letter, but neither admitted nor denied the violations alleged in the letter nor did Capitol request a hearing in accordance with the provisions of the Federal Highway Administration's (FHWA) Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (49 CFR part 386). See 49 CFR 386.14. Capitol expressed an interest in meeting with FHWA staff, but apparently this meeting never took place. Motion at 2. Capitol has made no reply to the Regional Director's motion for a final order.

The Regional Director has now asked that I issue a final order in this case. The Regional Director has submitted with his motion documentary evidence which supports the allegations contained in the notice of claim letter. There is no indication in the record before me that there are any material factual issues in dispute in this case. Capitol has offered no rebuttal of the Regional Director's claims. Finally, the Regional Director asserts in his motion, again unrebutted by Capitol, that he took into account in assessing a civil penalty those factors required to be considered by statute.

See 49 U.S.C. 521(b) and 49 U.S.C. App. § 1809.

Accordingly, *It is hereby ordered* that the Regional Director's request for a final order is hereby granted. Respondent Capitol Chemical Industries, Inc., is hereby directed to pay the full amount of the claim, $4,900, to the Regional Director within 30 days of the date of this Order.

Dated: October 25, 1991.

Richard P. Landis,

Associate Administrator for Motor Carrier Safety.

Federal Highway Administration

[Docket No. R3-90-104]

In the matter of Gunther's Leasing Transport, Inc., Respondent.

Order

On September 30, 1991, I issued an order in this case directing the parties to submit arguments and supporting material within 30 days addressing issues identified in that order. Rebuttal submissions were required to be submitted 15 days later. The purpose of this order was to afford the parties a final opportunity to address themselves to the substantive issues which I must decide in this case, and only those procedural issues which substantively affect the rights of the Respondent, with a view toward finally resolving this case.

The Regional Director has filed several new motions in this case, all of which are opposed by Respondent Gunther's Leasing Transport, Inc.

On October 3, 1991, the Regional Director moved for an expedited ruling in this case. This motion was withdrawn by the Regional Director on October 9. It is obvious to me that this motion of the Regional Director is moot in light of my order of September 30.

On October 4, the Regional Director filed two motions, one requesting an extension of time and one seeking clarification of the September 30 order. Gunther's opposes the request for additional time, in part, because it believes that Gunther's faces the "express threat of a follow-up compliance review."

Whether Gunther's is subject to a further review of the safety of its motor carrier operations is, in my view, irrelevant to the progress of this case. I am confidant that if a review of a motor carrier's operations during the pendency of an enforcement case reveals violations for which the carrier has already been cited, and for which the carrier asserts in good faith a defense (*e.g.*, its belief that such conduct does not in fact constitute a violation of the applicable safety regulations), then the Regional Director will take that defense into account in determining whether to proceed with a new enforcement case. Clearly, a regulated entity which continues conduct which it has already been advised constitutes a violation of law does so at its own risk. If the regulated entity prevails in the original case, it is then a simple matter to defend any subsequent case. I simply address this point at some length here, however, least a motor carrier erroneously believe that the initiation of an enforcement case automatically stays any future investigation of its motor carrier activities pending completion of the enforcement case, no matter how long it may take to complete it.

I am today granting the Regional Director's motion for an extension of time for two reasons. First, I believe that counsel for the Regional Director has established good cause for the extension based on counsel's workload. Second, the Associate Administrator's other responsibilities have precluded a more timely response to the Regional Director's motions and I wish to ensure that Respondent has no doubts about the posture of this case, discussed *infra*.

The Regional Director has asked for a clarification of my previous order. Specifically, the Regional Director wishes to know whether evidence already submitted must be resubmitted. Evidence already submitted need *not* be resubmitted. In my September 30 order I outlined the numerous pleadings already filed in this case. Admittedly, I devoted more attention there to the multiplicity of filings which, in my view, either addressed subsidiary procedural matters or otherwise tended more to obscure matters rather than make them clearer. However, the parties to this proceeding should be aware that the Regional Director has already submitted documentary evidence establishing a *prima facie* case of the violations alleged in the notice of claim letter. One of the chief purposes of my September 30 order as to afford Respondent Gunther's an additional opportunity to submit argument and evidence to overcome the Regional Director's *prima facie* case. To date, I have not received anything from Gunther's which accomplishes that objective.

In order to accommodate Regional Counsel's immediate scheduling and workload constraints, and to ensure that Respondent Gunther's has a full opportunity to met its burden to produce something to substantiate its asserted defenses and to overcome the Regional Director's *prima facie* case, I am granting both parties until November 15, 1991, to submit argument and evidence not already submitted to me. Rebuttal argument must be filed by December 2, 1991. The page limitations set out in my September 30 order must be adhered to.

Finally, the Regional Director moved for reconsideration of my September 30 order. The Regional Director makes three points. First, he asserts that there is a difference of opinion among transportation attorneys and Regional Directors about my authority to grant a hearing in cases where the respondent has not requested a hearing or has done so in an ultimately fashion. My view on this matter has been stated in my September 30 order, at page 6, and nothing in the Regional Director's motion suggests to me that I must reconsider this view.

The second and third points raised by the Regional Director in this motion for reconsideration relate to the practice elsewhere to consider notices of claim as final agency orders in 25 days if the only response received from a respondent consists of a request to discuss settlement. Gunther's October 11 reply to this motion does not clearly address the Regional Director's suggestion that the Regional Director has or had the possibility of considering the notice of claim letter a final order which could be taken directly to Federal District court for enforcement without further review by the Associate Administrator. I believe that the course followed by the Regional Director in this case comports more closely with the language of the applicable regulation, 49 CFR 386.14(e). However, I recognize that the Regional Director raises a significant issue, the resolution of which might not only dispose of this case but could affect many other pending cases. In view of Gunther's failure to expressly address this issue directly, and mindful of the ramifications of a ruling on this point, I am deferring for the time ruling on it. The parties are invited to brief this matter as part of their submissions now due on November 15 and December 2.

Accordingly, *It is Hereby Ordered* that the Regional Director and Gunther's Leasing Transport, Inc., shall submit by November 15 arguments and supporting material addressing the issues identified in the orders of September 30 and this date. Submissions will be served in accordance with 49 CFR 386.31. Rebuttal submissions must be submitted by December 2, 1991.

Dated: October 24, 1991.

Richard P. Landis,

Associate Administrator for Motor Carrier Safety.

Office of Hearings

[FHWA Docket No. RI-90-06; Motor Carrier Safety]

R. Brown & Sons, Inc.

Decision of Administrative Law Judge Burton S. Kolko

Served September 16, 1991.

Complainant Assistant Regional Counsel, Federal Highway Administration (FHWA), has charged Respondent R. Brown & Sons, Inc. (R. Brown), a motor carrier, with sixteen violations of the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR part 350 *et seq.* The FMCSRs are issued under the authority of 49 U.S.C. 3102 of the Motor Carrier Safety Act of 1984 (the Act), Public Law 98-554, 98 Stat. 2829. Upon careful consideration of all matters raised by the complaint, I find ten violations and assess R. Brown a civil penalty in the amount of $3,250.

A. Background

R. Brown & Sons is a motor carrier based in Colchester, Vermont, that has been doing business since May 1, 1974. Primarily it buys and sells crushed cars, bundles of tin, and loose tin. It also hauls these materials and transports steel and lumber (Tr. 90, 92, 124). At the time of the matters giving rise to the Notice of Claim, the carrier employed 15 or 16 people, including six drivers (Tr. 90-91).

Robert E. "Rob" Brown is a driver and R. Brown's President (Tr. 89-90; Exh. 1). Rob Brown's father, Robert B. Brown, is also a driver for the company and conducts company business. He is a former president of R. Brown (Exh. 1; Tr. 15, 218).

This proceeding was initiated by investigator Judith Hinds' Compliance Review of March 8, 1990 (Exh. 1; Tr. 10). A Compliance Review is an in-depth audit of carrier safety records in order to determine compliance with the FMCSRs. It examines aspects of motor carrier operations such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, and other relevant records (49 CFR 385.3; Tr. 10, 51). As a result of the Compliance Review, as amended on April 10, 1990, the Regional Director issued a Notice of Claim against the Respondent on May 7, 1990 (Exh. 0; Tr. 17; see 49 CFR 386.11(b)).

The Notice cited R. Brown for violations of three rules under the FMCSRs. It set out seventeen counts: one violation of 49 CFR 391.51, failing to maintain a complete driver qualification file; ten violations of 49 CFR 395.8, requiring or permitting drivers to make false entries upon daily records of duty status (which are also known as logs); and six violations of 49 CFR 396.11, failing to certify on vehicle inspection reports that repairs were made or were not necessary (Exh. 0; Tr. 6). Complainant later withdrew one of the false-log charges, count 6 (Tr. 30-31), leaving nine such charges and sixteen altogether.

Under the penalty provisions of the Act, 49 U.S.C. 521(b), FHWA can assess a maximum of $500 per violation of "recordkeeping" requirements such as the charges before me. It seeks a civil penalty of $400 per charge, or a total assessment of $6,400 (Exh. 0, p. 1).

Respondent denied each allegation of the claim and requested a hearing (Exh. R-12). By Order dated July 19, 1990, the Associate Administrator for Motor Carriers appointed an Administrative Law Judge to preside over the action in accordance with 49 CFR 386.54. The hearing was held on January 8, 1991, in Burlington, Vermont, and the parties filed briefs on February 15. In addition, Complainant filed a reply brief on February 27, 1991, in response to alleged new matters contained in Respondent's brief.[1]

B. Summary of Conclusions

I find and conclude that Respondent failed to maintain a complete qualification file for driver Allan Lampmon, as alleged in count 1, and assess a penalty of $400.

I also find and conclude that Respondent required or permitted driver Allan Lampmon to make false entries upon a record of duty status on November 28 and 29, 1989, as alleged in counts 4 and 5, respectively. I assess a penalty of $400 per violation. Additionally, I find and conclude that Respondent permitted driver Robert E. Brown to make a false entry upon his January 19, 1990 record of duty status concerning his vehicle inspection (count 9). I assess a penalty of $400 for this violation as well. The total civil penalty for the false-log violations is $1,200. As to the remaining false-log counts, I conclude that Complainant failed to prove a violation. Therefore, I find for Respondent as to counts 2, 3, 7, 8, 10 and 11 of the Notice of Claim, and that portion of count 9 relating to a four-hour period spent in St. Catherine, Quebec.

Finally, I find and conclude in each instance alleged by Complainant that Respondent failed to certify on its vehicle inspection reports that repairs were made or were not necessary (counts 12-17). With respect to counts 12-15 and 17, I assess a penalty of $250, and with respect to count 16, a penalty of $400, for a total civil penalty of $1,650 for this group of violations.

C. Driver Qualification Charge

Investigator Hinds determined that the driver qualification file for driver Allen Lampmon was missing the following documents required under 49 C.F.R. 391.51: (1) A medical examiner's certificate of his physical qualification to drive; (2) the certificate of driver's road test; (3) the written examination questions and answers and the certificate of written examination; and (4) written results of a past employment check (Exh. 1; Tr. 19).

In response, Respondent produced what it characterized as Lampmon's driver's file (Tr. 115). The file contained, *inter alia*, the results of a road test administered and signed by Robert E. (Rob) Brown, and a form entitled "Inquiry to Past Employers" (Exh. R-5, pp. 3, 7). Rob Brown also testified that he made inquiries of a past employer (Tr. 114). He also stated that he had observed Lampmon's valid medical certificate and asked Lampmon for a copy, but had not obtained it by the time Lampmon left the company (Tr. 114, 117-120, 148). Rob Brown also submitted a document which contained Lampmon's driving infractions and some license data (Tr. 115; Exh. R-5, p. 4).

I find the violation. I credit investigator Hinds' assertions that she failed to find the enumerated items in Lampmon's file (Exh. 1; Tr. 19). Respondent made no showing that the items were in the file or even in the possession of Respondent when the Compliance Review took place. Further, Rob Brown never secured Lampmon's medical certificate. Nor did Respondent produce his certificate of written examination or examination questions and answers. The form requesting information from past employers was blank. Respondent offered no other documents responsive to the regulation.[2]

[1] Complainant had moved on February 18 to submit a reply brief confined solely to the issue of the 100-mile-radius exemption to the requirement to keep daily logs discussed in Respondent's brief, pp. 20-21. See 395.8(l)(1). Respondent made no objection. On February 19, I granted by telephone Complainant's motion.

[2] In addition to the referenced submissions, Respondent produced Lampmon's employment application, his IRS Form W 4 and a form generated by the Vermont Department of Employment and Training. Exh. R 5, pp. 1 2, 5 6; Tr. 115 16.-

D. The False-Log Charges

1. Findings of Violations

Respondent was charged with nine counts of requiring or permitting a driver to make false entries upon records of duty status (false logs) pursuant to § 395.8.[3] I find the violation with respect to counts 4, 5, and part of 9.

Two allegations concern an accident that driver Lampmon was involved in on November 28, 1989. Count 4 indicates that Lampmon logged off-duty at 9 p.m., although the police report of the accident and the traffic tickets issued to Lampmon at that time show that the accident took place at 9 p.m. (Exh. 10; Tr. 24-25, 138, 203). The FMCSRs specifically require that driver time relating to accidents be recorded as on-duty time.[4] In these circumstances, I find the violation. Count 5 relates Lampmon's activities on the day following the accident. Lampmon logged off-duty during a period when he was receiving traffic tickets (Tr. 27; Exh. 13). Rob Brown conceded that the log was not accurate (Tr.145–47). I find the violation.

I also find the count 9 violation which charges that Robert E. Brown improperly logged off-duty when he was undergoing a vehicle inspection at a customs station on January 19, 1990 (Tr. 36-37; Exh. 17). That time is properly on-duty not driving, because drivers are required to remain with their vehicles during such inspection (Tr. 37). R. Brown did not dispute this charge (Resp. Br., p. 18). In these circumstances I find the violation.

2. Findings of No Violation

I find no violation with respect to the remaining false-log charges (counts 2, 3, 7, 8, 10 and 11, and the second part of count 9). In each of these instances, Respondent was charged with improperly logging on-duty, not-driving time as off-duty in the course of delivering or receiving goods from customers.

Pertinent provisions of the regulations require that on-duty time include [a]ll time * * * attending a vehicle being loaded or unloaded [or] remaining in readiness to operate the vehicle, * * * § 395.2(a)(5). In addition, FHWA relies on published agency interpretations providing, *inter alia*, that a driver waiting for his equipment at a terminal generally will be considered to be off-duty if he or she is "notified that he is relieved from duty for a specific predetermined period, and that the driver have a suitable facility available for rest and relaxation during that period"(42 Fed. Reg. 60078, 60095, November 23, 1977). Further, "routine en route stops," including meal stops, may be logged as off-duty time only when (1) the driver is relieved of all duty and responsibility for the vehicle pursuant to employer-generated written instructions issued prior to the driver's departure; (2) the driver is at liberty to pursue independent activities away from the terminal; and (3) the stop is for a definite period of time sufficient to ensure that "accumulated fatigue * * * will be significantly reduced" (42 Fed. Reg. 60097).

The evidence showed that during the periods cited by Complainant as improper logging of on-duty not-driving time as off-duty, Respondent's drivers weighed in at customer or supplier terminals, picked up or dropped off materials such as tin or crushed cars, and pursued activities of their own choosing for extended periods. At times they stayed on the grounds, and at other times they went elsewhere. While in one instance Respondent's drivers were not permitted to eat at the employee canteen (Tr. 179), generally no company or terminal official told them where to go or what to do. However, Respondent issued no written instructions to its drivers. Rob Brown testified that his drivers were orally advised that all time spent away from the truck and not in readiness to work was to be considered off-duty (Tr. 123–25, 132, 134, 136, 201–02).

More specifically, several of the false-log counts under discussion—2, 3, 7, 9 (in part), 10, and 11—concerned driver time at the facilities of Associated Steel in St. Catherine, Quebec (Exh. 0, p. 4; *see* Exhs. 11, 12, 15, 17, 18, and 19). The evidence showed that the normal procedure at that terminal is for the driver, upon entry, to weigh his vehicle; unload or be present at unloading; park the truck to one side; and obtain the truck's tare, or empty, weight. These matters might take a total of 15 minutes to one hour to complete (Tr. 83, 173-76, 184). Aside from these requirements, drivers are under no obligation to stay with the truck. They may, and do, engage in independent activities for extended periods. Further, the required procedures need not be completed at one time. Drivers often wander off after weighing in or after unloading, for example (Tr. 20–21, 66–72, 83, 125–28, 167–70, 173–94, 205).

FWHA allegations involved driver activities at other locations as well. Count 8 cited in part driver Dale Terrier's log at Superior Design, a welding shop in Westbrook, Maine where R. Brown delivers new steel (Tr. 34–25). At that facility, the driver is free to pursue independent activities after removing the trailer's chains and backing in—a procedure taking just a few minutes (Exh. 4; Tr. 74–75, 158–60; see Exh. 16, p. 4; Exh. 18, p. 1). Drivers might also be present at the truck's unloading, which might take another 15–20 minutes (Tr. 63–64). Respondent's delivery of new steel at Greenland, N.H., also cited in count 8, follows a similar pattern (Tr. 160–61; Exh. 4; see Exh. 16, p. 4; Exh. 18, p. 1). Count 11 cited a stop at the facilities of Royalcor Steel in Laval, Quebec. At that terminal, where R. Brown picks up steel, the driver similarly has no responsibilities following removal of the chains (Tr. 73–74; see also Exh. 4). He is not permitted even to remain with the truck while it is being loaded (Tr. 128–30; see Tr. 38; Exh. 19). Finally, Rob Brown testified that his logging of off-duty time at Moretown, Vt., and Georgia, Vt. (Count 7; Exh.—yards where Respondent crushes cars reflected time at leisure (Tr. 150).

I conclude that Complainant has not proven that R. Brown violated the FMCSRs with respect to these false-log charges. FHWA did not show that Respondent's drivers were engaged in on-duty not-driving activities improperly logged as off-duty for 15 minutes or more at a time. While on-duty activities at these terminals might have consumed as much as an hour of the driver's time, the record showed that the required procedures might have been undertaken in smaller blocks of less than fifteen minutes—*i.e.*, increments not cognizable under hours-of-service rules (Tr. 72). R. Brown's drivers could not recall their activities or the sequence in which they were undertaken on the days cited in the complaint. Additionally, the drivers testified that the "off-duty" designations on their logs indicated they were engaged in off-duty activities. Investigator Hinds did not personally observe the drivers on the days in question, and could produce no evidence refuting these contentions (Tr. 55–57). The record, then, does not establish that the cited drivers violated the relevant FMCSRs. Further, the evidence was insufficient to show that the drivers' notations of off-duty were

[3] Counts 2–5 and 7–11. *See* Exh. 0. The complaint sets out ten false-log counts, but as I noted earlier, count 6 was withdrawn by FHWA at the hearing. See p. 2.

[4] § 395.2(a)(6). Rob Brown suggested that the accident had occurred somewhat earlier than 9 p.m. because "[t]he cop had to get there" (Tr. 204). I see no reason not to presume that the police accounted for their travel time in drafting the accident report. I conclude that the report is accurate.

improper.[5] Against this background, I find no violation of the FMCSRs.[6]

E. Vehicle Inspection Charges

1. The Agency's Charges

Respondent was cited for six instances of failing to certify on a vehicle inspection report that repairs either were made or were unnecessary, a violation of § 396.11 (counts 12 through 17). The counts alleged the following:

(1) Count #12—Driver Cheyanne Jennings' right turn signal was inoperative on November 6, 1989, but the vehicle inspection report does not indicate that a repair was made (Exh. 20; Tr. 39).

(2) Count #13—Robert B. Brown's vehicle inspection report for November 8, 1989, mentions a defective tire, but the report does not show that the repair was made (Exh. 21; Tr. 40).

(3) Count #14—Allen Lampmon noted a broken spring and slack adjuster on his vehicle inspection report of November 10, 1989. This is no notation that the repair was made (Exh. 22; Tr. 40).

(4) Count #15—On November 17, 1989, Allen Lampmon indicated that his tractor's turn signals did not work. Yet the vehicle inspection report does not show that the repair was made (Exh. 23; Tr. 40).

(5) Count #16—Cheyanne Jennings' November 29, 1989 vehicle inspection report noted that three marker lights did not function, but the report does not indicate that the repairs were made (Exh. 24; Tr. 40.[7]

(6) Count #17—Cheyanne Jennings' taillight and turn signal were inoperative on December 18, 1989, but the vehicle inspection report does not show that the repairs were made (Exh. 25; Tr. 40–41).

2. R. Brown's Responses

R. Brown answered the charges as follows:

(1) Count #12—Rob Brown testified that a check of his daily diary, which he keeps in the regular course of business, shows that he repaired the turn signal the next day (Tr. 98–101; Exh. R–1). Jennings testified that she would have checked the vehicle before next driving it in order to determine if the repair had been made, and that if it had not, she would not have driven the truck (Tr. 209–210).

(2) Count #13—Rob Brown stated that his diary shows that he replaced the defective tire that same day (Tr. 103–04; Exh. R–2).

(3) Count #14—An invoice from Alco Equipment, one of three repair shops with whom R. Brown had a standing account, indicated that the problems were fixed that same day (Tr. 95, 105–07, 228–31; Exh. 22).

(4) Count #15—Rob Brown testified that his daily log noted that the defect had been repaired two days later (Tr. 107–109; Exh. R–3).

(5) Count #16—Rob Brown was sure that these repairs were made, either by Jennings or himself, but he could find no written indication confirming that (Tr. 109–110). Jennings did not know if these repairs had been made (Tr. 211–13).

(6) Count #17—While Rob Brown testified that his diary showed that the repairs were made two days later (Tr. 110–12; Exh. R–4), Jennings, who drove the truck, had no such knowledge. She stated, however, that it was her custom to check her vehicle before she drove it and, if the defects remainded, she would have undertaken to drive it (Tr. 211–12).

3. Conclusions

I find the violation as to each of the vehicle-inspection counts. In each instance, Respondent failed, as required, to certify on the vehicle inspection report that repairs either were made or were unnecessary. Indeed, Respondent acknowledged as much (Resp. Br., pp. 22–23). Rob Brown simply stated that the reports were not completed "[p]robably because I didn't take time to do it" (Tr. 199).

F. Penalty

The determination of the amount of civil penalty is based on the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance. 49 U.S.C. 521(b)(2)(C).

Complainant requested that R. Brown be assessed a civil penalty of $400 per violation (*see* p. 3). In support of its proposal, Federal Program Manager Fred Gruin, Jr. testified that he determined the level of suggested penalty based on the elements cited above—noting that the carrier had undergone previous audits in 1979 and 1981 (Exhs. 8 and 9)—and, further, that he basically agreed with the recommendation of the officer in charge (Tr. 85–87). Respondent made no claim of inability to pay.

1. Driver Qualification Charge

I will assess a penalty of $400 on this charge (*see* pp. 4–5). Respondent lacked several of the documents necessary for a complete driver qualification file for driver Lampmon. As a result, one could not independently determine whether he was medically fit or otherwise competent to operate a vehicle. Safety considerations undergirding the FMCSRs were thus seriously compromised. I conclude that these circumstances warrant an assessment of $400.

2. False Logs

I have concluded that in three instances Respondent required or permitted a driver to make false entries upon records of duty status (*see* pp. 5–6). I conclude that these violations also warrant a civil penalty assessment of $400 per charge. The Associate Administrator has stated that violations of records of duty status are serious.[8] Improper logging—particularly false claims of off-duty status—increases the risk of driver fatigue and undermines the Congressional purpose of promoting safety in highway transportation. Under these circumstances I conclude that an assessment of $1,200 for the three false-log counts for which I have found the violation is appropriate.[9]

[5] Complainant argues that the violations charged nonetheless should be found because Respondent failed to adhere to FHWA interpretations requiring the company to issue written instructions to its drivers relieving them of responsibility for their vehicles for a definite period (Compl. Br., p. 14, see p. 7). These interpretations enlarge the duties spelled out in the statute and the regulations by making a written employer-generated instruction a precondition of logging "off duty." But since this requirement is not a part of the regulations have been issued after notice-and-comment-rulemaking, I do not consider them binding in a case as this, where known customer practice had created an information custom of the Respondent and its drivers to be de facto off-duty in recurring situations.

[6] Respondent also argues on brief that counts 7, 9 and 10 should be dismissed under the 100-mile exemption provided in section 395.8(l)(1) of the regulations (Resp. Br., pp. 20–21). The regulation states in pertinent part that a driver is exempt from its requirements if he or she "operates within a 100 air-mile radius of the normal work reporting location," conforms to certain other requirements, and maintains "accurate and true time records showing * * * [t]he total number of hours the driver is on duty each day." Respondent's argument misses the mark. As the regulation plainly shows, the accuracy of Respondent's records remains in issue regardless of the distress travelled by its drivers.

[7] With my consent the parties agreed that any part of this vehicle inspection report related to Jennings' tractor was not part of the complaint. Tr. 43. Therefore, the report's reference to the muffler will not be considered. *See* Tr. 40; Exh. 24.

[8] *In the matter of Alamo Distributing Service, Inc.*, Docket No. R6–89–63, Order dated July 23, 1990.

[9] The fact that I have dismissed the second part of count 9 (*see* p. 6) does not warrant a lesser civil

Continued

3. Vehicle Inspection

With respect to these charges (*see* pp. 12–13), I will set the penalty at $250 in all but one instance. In that instance I will assess a $400 penalty.

Properly completed vehicle inspection reports are mandated for reasons of safety. They enable an independent verification that identified defects either have been repaired or that a repair was unnecessary. The reports, which stay in the truck, also represent a snapshot of the repair history of the vehicle. If the required certification is incomplete or absent, then an enhanced risk exists that the vehicle will be driven in an unsafe condition. The regulation attempts to minimize that risk.

While Respondent clearly contravened the FMCSRs, in five of the six instances cited by Complainant a trustworthy written record showed that the repairs were in fact made. I do not condone the Respondent's conduct, and I believe it should be assessed a substantial civil penalty for the reasons given. Yet I do not believe that the $400 amount suggested by the Regional Director—80% of the maximum—is warranted when a reliable record, although not the required one, shows that the defects were repaired soon after detection. I conclude that a fine of $250 per count, or one-half the maximum assessable, is more appropriate to the circumstances. As to the last count (#16), it could not show that the three broken market lights were repaired. No evidence established that the vehicle could be operated in a safe condition. In this instance I conclude that a fine of $400 is warranted.

G. Assessment

R. Brown & Sons, Inc. is hereby ordered to pay a civil penalty in the amount of $3,250 for violating Federal Motor Carrier Safety Regulations 49 CFR 391.51, 395.8, and 396.11.

This decision is issued pursuant to 49 CFR 386.61. This decision becomes the final decision of the Associate Administrator 45 days after it is served unless a petition or motion for review is filed under 49 CFR 386.62.

Burton S. Kolko,

Administrative Law Judge.

penalty for the first part. Although both parts concern allegations of false logs on the same day, the facts underlying the charges are discrete and involve separate occurrences.

Office of Hearings

[FHWA Docket No. R6–90–012 Motor Carrier Safety]

Mike Zachary

Decision of Administrative Law Judge Robert L. Barton, Jr.

Served August 21, 1991.

Appearances

Charlene Sanders Bassel, Attorney, Federal Highway Administration, Region 6, room 8A00, 819 Taylor Street, Fort Worth, Texas 76102, for Complainant.

John L. Gamboa, Attorney at Law, 3880 Hullen Street, suite 310, Hulen Towers, Fort Worth, Texas 76107, for Respondent.

Pursuant to the Order Reassigning Proceeding herein, dated December 17, 1990, and the Notice of Claim in this matter dated July 13, 1990, this is the Administrative Law Judge's decision under Rule 386.61 of the Federal Highway Administration's rules of practice and procedure, 49 CFR 386.61.

The Notice of Claim in this matter charges Respondent, Mike Zachary, with the following violations: Nine instances where Respondent aided and abetted a motor carrier by requiring the preparation of false records of duty status in connection with duty activities in violation of 49 CFR 390.13/395.8(e).

This decision is based upon the entire record of this proceeding, including: the parties' agreed statement of facts submitted prior to the hearing; the parties' joint statement of issues not in dispute submitted prior to the hearing; the evidentiary record compiled at the hearing; and the parties' proposed findings of fact and conclusions of law. I have also taken into account my observation of the witnesses who appeared before me and their demeanor. Proposed findings not herein adopted, either in the form submitted or in substance, are rejected either as not supported by the evidence or as involving immaterial matters.

My findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony and exhibits supporting the findings of fact. They do not necessarily represent complete summaries of the evidence supporting each finding.[1]

I. Regulatory Requirements

49 CFR 390.13 of the Federal Motor Carrier Safety Regulations (the "Regulations") provides that:

> No person shall aid, abet, encourage, or require a motor carrier or its employees to violate the rules of the Federal Highway Administration provided in Chapter III of Title 49 of the Code of Federal Regulations ("Chapter III").

49 CFR 395.8 of the Regulations deals with a driver's record of duty status. Section 395.8(e) of the Regulations provides that:

> Failure to complete the record of duty activities of this section or section 395.15,[2] failure to preserve a record of such duty activities, or making of false reports in connection with such duty activities shall make the driver and/or the carrier liable to prosecution.

II. Findings of Fact

A. The Violations Charged

1. Respondent Mike Zachary is president of Lone Star Van Lines, Inc. ("Lone Star"), a Texas corporation incorporated in 1981 and having its principal place of business at 4011 East Loop 820 South, Fort Worth, Texas, 76119. (Tr. 12, 13; ASF, 1, 2, 3, 6; CPF 2, 3, 4).[3]

2. Lone Star operated as an agent for Security Van Lines, Inc., an interstate carrier of household goods with its principal place of business at 100 West Airline Highway, Kenner, Louisiana, 70063 ("Security") during the month of December, 1989.[4] (CX–22; ASF 5; SOI 1; CPF 4).

3. Under an agency relationship in the household goods industry, a primary carrier obtains Interstate Commerce Commission operating rights and then employs one or more secondary carriers who perform transportation utilizing the

[1] The following abbreviations are used in this decision: Tr.—Page of hearing transcript, usually preceded by name of witness. ASF—Parties' agreed statement of facts. SOI—Parties' statement of issues not in dispute. CX—Complainant's exhibit. CPF—Complainant's proposed finding of fact. RPF—Respondent's proposed finding of fact. CCL—Complainant's conclusion of law. RCL—Respondent's conclusion of law.

[2] 49 CFR 395.15 deals with automatic on-board recording devices and provides that a motor carrier may require a driver to use an automatic on-board recording device to record the driver's hours of service in lieu of complying with the requirements of 49 CFR 395.8.

[3] The Office of Motor Carrier Safety, Federal Highway Administration, Department of Transportation, pursuant to 49 U.S.C. 3102, has jurisdiction over Respondent's interstate trucking operations (ASF 10; CCL 4); Pursuant to 49 CFR 390.3, Respondent is subject to the Regulations. (ASF 12; CCL 6).

[4] The Office of Motor Carrier Safety, Federal Highway Administration, Department of Transportation, has jurisdiction over the interstate trucking operations of Security. (ASF 11; CCL 5).

primary carrier's operating authority. (Friesen, Tr. 24; CPF 26).

4. Pursuant to a complaint that the Office of Motor Carrier Safety, Federal Highway Administration, in Baton Rouge, Louisiana received against Security and Lone Star, George T. Walker, a safety investigator, conducted a compliance review of Security in April, 1990. (Walker, Tr. 65; CX-1.).

5. A compliance review is a procedure whereby the Office of Motor Carrier Safety examines a motor carrier's records to determine the motor carrier's level of compliance with the Regulations. (Friesen, Tr. 22; CPF 24.)

6. The compliance review of Security indicated that there were eighteen instances where Security accepted false records of duty status in violation 49 CFR 395.8(a)/395.8(e). (CX-2).

7. During his investigation of Security, Mr. Walker did not receive any documentation or statements indicating that Respondent had told Security to accept false documents. (Walker, Tr. 90, 91.).

8. A Notice of Claim was issued to Security on June 22, 1990, alleging these eighteen violations and stating that the Federal Highway Administration had set the civil forfeiture penalty as $300 for each violation of 49 CFR 395.(8)(a)/395.8(e), for a total amount of $5,400. (CX-2).

9. The claim against Security was settled during July, 1990. (CX-3).

10. The Louisiana Division Office of Motor Carrier Safety had requested assistance from the Dallas, Texas Office of Motor Carrier Safety in obtaining information regarding the case against Respondent. At its request, Laura Jane Wilfong, a safety investigator in the Dallas, Texas Office of Motor Carrier Safety, went to the office of Lone Star and looked at the documents which were available, which included some drivers' records of duty status and time cards. (Wilfong, Tr. 92).

11. Security would not pay Lone Star for transportation services until Security had received from Lone Star all paperwork, including drivers' records of duty status. (Walker, Tr. 69, 90; CX-22; CX-23; CPF 16).

12. During Ms. Wilfong's investigation of Lone Star, Respondent told her that Lone Star had had trouble obtaining logs from its drivers so Respondent directed his wife, Sharion Zachary, to reconstruct trips on log sheets to turn into Security. (CX-22).

13. Gary Mitchell was employed by Lone Star as an interstate driver during the month of December, 1989. (SOI 3; CPF 7).

14. Gary Mitchell failed to submit to Lone Star records of duty status for interstate trips driven by him for Lone Star during the period of 12/4/89 through 12/12/89. (SOI 4; CPF 8).

15. Ms. Zachary prepared records of duty status for Gary Mitchell for interstate trips driven by him for Lone Star during the period of 12/4/89 through 12/12/89. (CX-22; SOI 5; CPF 9).

16. The 12/4/89 through 12/12/89 records of duty status prepared by Ms. Zachary for interstate trips driven by Gary Mitchell for Lone Star were submitted to Security as true and correct records of duty status for Gary Mitchell for that time period. (SOI 6; CPF 10).

17. A Notice of Claim was issued to Respondent on July 13, 1990, alleging that as a result of the safety investigation of Lone Star, nine violations of the Regulations were documented. The claim provided that these violations constituted instances in which Respondent aided and abetted a motor carrier by requiring the preparation of false records of duty status in connection with duty activities. The Notice of Claim also stated that the Federal Highway Administration had set the civil forfeiture penalty as $350 for each violation of 40 CFR 390.13/395.8(e), for a total amount of $3150.

B. Other Indications of False Records

18. Mr. Lester D. Friesen, Regional Director, Office of Motor Carrier Safety, Region 6, U.S. Department of Transportation, testified that a comparison of the daily logs for Lone Star drivers Gary Mitchell (CX 27) and Danny Wexler (CX 28) for the time period of 12/4/89 through 12/12/89 indicated that both drivers claimed to have been driving the same truck (#804) at the same time. (Friesen, Tr. 28, CX-27; CX-28; CPF 30).

19. Mr. Friesen stated that CX-27 and CX-28 were false because it was unreasonable to assume that two adults could drive the same tractor-trailer at the same time. (Friesen, Tr. 57, 58; CPF 30).

20. Mr. George T. Walker, the safety investigator in the Office of Motor Carrier Safety, Baton Rouge, Louisiana, who conducted the compliance review of Security in April, 1990, testified that he reviewed certain documents (which are now contained within CX-10) relating to a shipment of household goods originating in Hanover, New Jersey on 11/30/89 and having a final destination of Pensacola, Florida on 12/12/89, which indicated that the records of duty status of the drivers were false. (Walker, Tr. 67, 68, 69; CX-10).

21. The dispatch record in CX-10 relating to the trip described in Finding of Fact Number 20 indicates that Gary Mitchell was the driver. (Walker, Tr. 69, 82; CX-10).

22. The household goods descriptive inventory sheet dated 12/4/89 in CX-10 relating to the trip described in Finding of Fact Number 20 above indicates that Danny Wexler picked up the load on 12/4/89 from Woodbridge Moving & Storage located in Avenel, New Jersey. (Walker, Tr. 67, 69, 82, 83; CX-10).

23. The records of duty status dated 12/4/89 through 12/12/89, which were submitted by Lone Star to Security to represent the trip described in Finding of Fact Number 20 indicate that the trip was made by Gary Mitchell and that he had no co-driver with him. (Walker, Tr. 68; CX-10).

24. Mr. Walker does not recall seeing any logs or records of duty status for the trip described in Finding of Fact Number 20 on file at Security for Danny Wexler. (Walker, Tr. 70).

C. Other Factors Considered

25. One of the purposes of the Regulations is to promote the safe operations of commercial vehicles engaging in interstate commerce on public highways. (Friesen, Tr. 18; CPF 22).

26. The Regulations require that a driver maintain a record of duty status or log of his hours of work so as to prevent driver fatigue and so as to promote driver alertness. (Friesen, Tr. 19; CPF 23; RPF 1).

27. The purpose of requiring that the log be in the driver's own handwriting and signed by the driver is to facilitate the Office of Motor Carrier Safety in monitoring a driver's compliance with the hours of service regulations, which are directed at promoting safety, and to prevent an individual from making false allegations about a driver's presence at any particular location. (Friesen, Tr. 60; CPF 10; RPF 1).

28. The Regulations are totally silent as to what to do when a driver refuses to sign his logs. (Friesen, Tr. 52; RPF 6).

29. Mr. Friesen testified that if a driver refuses to sign his logs, the Office of Motor Carrier Safety would expect the agency and/or the motor carrier to make a reasonable effort to obtain the logs, and if such logs were impossible to obtain, the Office of Motor Carrier Safety would expect the agent and/or motor carrier to document that they tried to obtain such logs. (Friesen, Tr. 54).

30. Mr. Friesen testified that he did not know whether Respondent tried to get drivers' signatures on their logs. (Friesen, Tr. 86; RPF 9).

III. Opinion

A. Liability

The Notice of Claim issued to Respondent on July 13, 1990, by the U.S. Department of Transportation, Federal Highway Administration, Forth Worth, Texas (the "Government") charges Respondent with nine violations of 49 CFR 390.13/395.8(e).The basis of the Government's charge against Respondent is that Respondent aided and abetted Security to violate the rules of Chapter III by submitting false records of duty status to Security, while Security accepted those documents as true and correct copies of duty status for particular drivers. The rules of Chapter III include a requirement that a driver record his duty status for each 24-hour record.

In examining the Government's allegation of Lone Star's submission of false records to Security, it is essential to note that the Regulations provide that all entries relating to a driver's duty status must be legible and in the driver's own handwriting.[5] The Regulations further provide that a driver shall certify to the correctness of all entries by signing the form containing the driver's duty status record with his/her legal name or name of record and that the driver's signature certifies that all entries made by the driver are true and correct.[6] Here, Respondent readily admitted that he directed his wife, Sharion Zachary, to reconstruct trips on log sheets to turn into Security, and more specifically, that Ms. Zachary prepared and signed Gary Mitchell's name to records of duty status for Gary Mitchell for interstate trips driven by him during the period of 12/4/89 through 12/12/89. (Findings 12, 15, 16).

Although the logs which Ms. Zachary prepared may have been completed from all available documentation which would have been used by the driver, the mere fact that Ms. Zachary prepared and signed log sheets for Gary Mitchell establishes that such logs, which were turned into Security, were falsified. By Gary Mitchell's not preparing and signing his own logs, there has been no certification that the entries contained in his logs were true and correct.

Respondent's contention that he was unable to acquire records of duty status from Gary Mitchell and the fact that Security would not pay Lone Star for transportation services until Security had received from Lone Star all paperwork, including driver's records of duty status (Findings 11, 12, 14), alone do not justify Respondent's action in creating and signing records of duty status for its drivers, and thereby, circumventing the requirements of the Rules. See Finding 29.

It is important to note that one of the purpose of the Regulations is to promote the safe operations of commercial vehicles engaging in interstate commerce on public highways. (Finding 25). In an effort to prevent driver fatigue and promote driver alertness, the Regulations require drivers subject to the Regulations to maintain records of duty status. (Finding 26). The purpose of the record of duty status is to allow FHWA field staff and state and local enforcement agencies to monitor an individual's compliance with the hours of service regulations.[7] Respondent's act of directing his wife to complete and sign records of duty status for Gary Mitchell created a situation whereby the Office of Motor Carrier Safety was prevented from monitoring Gary Mitchell's compliance with the hours of service regulations. The ultimate effect of such situation is that the Office of Motor Carrier Safety has been hindered in its goal of promoting safety on public highways.

Insofar as inconsistencies exist between the daily logs of Lone Star drivers Gary Mitchell and Danny Wexler for the time period between 12/4/89 through 12/12/89, it is reasonable to assume that two adult males could not operate a tractor-trailer simultaneously, and insofar as inconsistencies exist in documents contained in CX–10 with regard to whether Gary Mitchell had a co-driver with him during the time period of 12/4/89 through 12/12/89, I find that there is further evidence in the record to indicate that Respondent submitted false records of duty status for Gary Mitchell to Security. (Findings 18, 19, 20, 21, 22, 23, 24).

Here, I find that Respondent committed a violation of 49 C.F.R. 395.8(e) by making false reports in connection with the duty activities of Gary Mitchell. By preparing and submitting to Security false records of duty status for Gary Mitchell, Respondent created a situation whereby the Office of Motor Carrier Safety was prevented from monitoring Gary Mitchell's compliance with the hours of service regulations and a situation whereby the Office of Motor Carrier Safety was hindered in its goal of promoting safety on public highways.

While I have found that there is sufficient evidence in the record to indicate that Respondent submitted false records of duty status to Security, I now will consider whether by submitting false records of duty status to Security, Respondent aided, abetted, encouraged or required Security to violate the rules of Chapter III.[8]

I find that there is no evidence to indicate that Respondent "aided and abetted," encouraged, or required Security to violate the rules of Chapter III. In contrast, there is unrefuted evidence which indicates that Respondent totally cooperated with the Office of Motor Carrier Safety and in no way attempted to mislead it. Respondent readily admitted that he directed his wife to prepare records of duty status for Gary Mitchell to turn into Security in order to get paid. (Findings 12, 14, 15, 16). Mr. Walker, the safety investigator who conducted the compliance review of Security, testified that during his investigation of Security, he did not receive any documents or statements indicting that Respondent had told Security to accept false documents. (Finding 7). Furthermore, there is no evidence to indicate that Security knowingly violated 49 CFR 395.8(e); therefore, it cannot be said that Respondent was an "aider and abettor" since Respondent and Security did not have a common design or purpose of violating 49 CFR 395.8(e).

B. Penalty

In connection with the nine instances with which Respondent was charged concerning the falsification of logs in violation of 49 C.F.R. 395.8(e), I find that there are mitigating circumstances which must be taken into account. First, the Regulations are totally silent as to what to do if a driver, for whatever reason, refuses to sign a log. (Finding 28). Here, Lone Star found itself in a situation where it had trouble obtaining logs from its drivers and in a situation where it could not get paid for transportation services which it had rendered until Security had received from Lone Star all paperwork including drivers' records of duty status. (Findings 11, 12). Second, Mr. Friesen, Regional Director of the Office of Motor Carrier Safety for Region 6, acknowledged that the Regulations are silent as to what to do when a driver refuses to sign his logs

[5] 49 CFR 395.8(f)(2).

[6] 49 CFR 395.8(f)(7).

[7] 52 FR 41,718 (1987).

[8] Black's Law Dictionary defines "aid and abet" as to help, assist, or facilitate the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about, encourage, counsel, or incite as to its commission. Furthermore, Black's defines an "aider and abettor" as one who assists in the accomplishment of a common design or purpose. Black's states that an "aider and abettor" must be aware of and consent to such design or purpose. Black's Law Dictionary 91 (4th ed. 1968).

and testified that if a driver refuses to sign his logs, the Office of Motor Carrier Safety would expect the agent and/or the motor carrier to make a reasonable effort to obtain the logs and if such logs were impossible to obtain, the Office of Motor Carrier Safety would expect the agent and/or motor carrier to document that they tried to obtain such logs. (Finding 29). However, this requirement is neither contained in the Regulations nor is there record evidence that carriers have been advised of this procedure. It is arguable that Respondent should have documented that it tried to obtain records of duty status from Gary Mitchell but was unable to do so before turning into Security the records of duty status prepared by Sharion Zachary. Mr. Friesen, however, testified that he did not know whether Respondent had tried to get drivers' signatures on logs before turning them into Security. (Finding 30).

In the absence of any evidence indicating that Respondent violated 49 CFR 390.13 by aiding, abetting, encouraging or requiring Security or its employees to violate the rules of chapter III, I find that Respondent's violation of 49 CFR 395.8(e) is a technical violation which should not subject Respondent to the full amount of the $3150 penalty sought by the Government, which is calculated on the basis of $350 for each violation of 49 CFR 390.13/395.8(e). Furthermore, because the Regulations are silent as to what to do when a driver refuses to sign his logs and because Mr. Friesen testified that he did not know whether Respondent had tried to get drivers' signatures before turning in their logs to Security, I will not assess a penalty of $3,150.

Because of the mitigating circumstances, I find that a penalty of $100 per violation is appropriate here, and therefore a total penalty of $900 is assessed against Respondent.

Robert L. Barton, Jr.,

Administrative Law Judge.

Federal Highway Administration

[Docket No. R5-89-110-D]

In the matter of Allen Evilsizer

Final Order Background

On April 5, 1991, I issued an Order in this case denying the Regional Director's Motion to Exclude certain documentary evidence, holding in abeyance the Regional Director's Motion Opposing Oral Hearing and For Final Agency Order, and directing the parties to further brief this matter to address certain questions. The parties have replied to my April 5 Order. For the reasons set forth below, I am today granting the Regional Director's Motion for a Final Order and I am affirming the Regional Director's conclusion that, based on the evidence as a whole, Mr. Evilsizer is not medically qualified to operate a commercial motor vehicle in interstate commerce because he does not meet the minimum vision standard of the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR 391.41(b)(10).

Discussion

The background of this proceeding is set forth in my Order of April 5, 1991. In his letter of April 12, 1991, to me, counsel for Evilsizer states that,

> * * * my client's position at the time of filing the petition was a simple one. That is, notwithstanding the eyesight requirements, he is qualified to drive his vehicle in Interstate Commerce, as evidenced by the Affidavits submitted in conjunction with his Petition, and further, that a re-examination of the eyesight requirements and/or waiver thereof in this case is in order.

(Emphasis in the original.) Counsel for Evilsizer repeats his view of this matter in his May 3, 1991, response to the Regional Director's motion of May 2, 1991, when he states that,

> Clearly, there is a need for oral testimony, not only with respect to Mr. Evilsizer's visual acuity at this time, but also from those other individuals who are prepared to testify as to the relationship between that visual acuity, including any limitations, and Mr. Evilsizer's ability to safely operate a motor vehicle in interstate commerce * * * Mr. Evilsizer simply wants the opportunity to demonstrate his ability to safely drive a motor vehicle in interstate commerce, through whatever means is available to him, including pursuing a waiver, if that is necessary.

Contrary to counsel's suggestion that I may have indicated that a waiver of the eyesight requirements may be in order, that is not the issue now before me. This matter is a driver qualification proceeding under 49 CFR part 386 initiated by the Regional Director's letter to Evilsizer advising him that he was not medically qualified to drive. This is not a proceeding in which I am considering a request for a waiver, nor am I now considering a petition for rulemaking to change the vision standard. See 49 CFR part 389, Rulemaking Procedures—Federal Motor Carrier Safety Regulations. In my April 5 Order I referred the parties to other proceedings in which a request for a waiver of the FMCSRs vision requirement was denied and a petition for rulemaking to review the standard was granted. *See* In the Matter of Charles A. Smart, FHWA No. R-90-13 (petition for waiver), and In the Matter of Walter C. Boyles, FHWA No. R-90-16 (petition for rulemaking). The agency's review of this vision standard continues, and is not presently before me as an issue in this proceeding.

As was stated in my Order of April 5, the issue before me in this proceeding is whether Evilsizer meets the minimum vision requirements of the FMCSRs. I indicated in that Order that I was not satisfied that the record before me was complete, primarily because I believed some exhibits might have been missing from the record. The parties, through their supplemental briefing, have assured me that the record was complete, because the parties in fact had been referring to the same exhibits.

The documentary evidence in this case includes several affidavits and copies of other documents relative to medical evaluations of Evilsizer, all but one of which indicates that Evilsizer's right eye has an irreversible "congenital abnormality" which precludes Evilsizer's meeting the visual acuity requirement of 49 CFR 391.41(b)(10). This documentary evidence includes Physical Examination of Drivers Report Form, Dr. Thomas P. Forrestal, Oct. 20, 1987; and Affidavits of Marilyn J. Huheey, M.D., a licensed and Board-certified ophthalmologist, Sept. 25, 1989, Thomas P. Forrestal, M.D., a medical doctor, Sept. 26, 1989, and J. S. Covert, a licensed optometrist, Sept. 26, 1989. This evidence indicates that Evilsizer's right eye has been tested at 20/70 Snellen, rather than 20/40 as required by the regulations.

The contrary evidence is a Physical Examination of Drivers Report Form by Thomas P. Forrestal, M.D., dated Feb. 12, 1990. This evidence was brought to my attention by the Regional Director, who also sought to exclude it from the proceeding on several grounds. I agree with counsel for the Regional Director that he was obliged to bring it to my attention. In my April 5 Order I declined to exclude the evidence from this proceeding, but I indicated that the Regional Director's arguments went to the weight which should be afforded this evidence. I also indicated that I believed that Evilsizer should have the opportunity to present argument regarding this evidence. In fact, Evilsizer could and should have addressed this evidence in response to the Regional Director's motion to exclude it. However, he has now had an additional opportunity to address this point in response to my April 5 Order. Nonetheless, I find that counsel for Evilsizer has simply reiterated his call for a hearing.

My review of the evidence in this case leads me to conclude that the overwhelming weight of the evidence supports the conclusion that Evilsizer

does not meet the minimum vision requirements of 49 CFR 391.41(b)(10). Dr. Forrestal's February 1990 report is outweighed by his earlier finding regarding Evilsizer's vision as evidenced by both Dr. Forrestal's Physical Examination of Drivers Report Form dated Oct. 20, 1987, and his Affidavit of Sept. 26, 1989, as well as by the medical opinions of Doctors Huheey and Covert, as evidenced by their affidavits. Moreover, Dr. Forrestal's letter of April 15, 1991 (Regional Director's May 2, 1991, Motion, Exhibit J), fails to adequately explain the discrepancies in his two Physical Examination of Drivers Report Forms.

In view of the weight of the evidence supporting the conclusion that Evilsizer is not medically qualified, and the repeated opportunities afforded Evilsizer to produce contrary evidence, I do not believe that a hearing is warranted. In my view, Evilsizer has failed to produce a scintilla of evidence to suggest that he is medically qualified. The only documentary evidence suggesting that he might be qualified was discovered by the Regional Director. Only the Regional Director secured a statement from Dr. Forrestal to explain the discrepancies in his evidence, and this explanation has proven to be inadequate.

Because of the history of this matter, as discussed in my April 5 Order wherein I expressed my concerns over Evilsizer's lack of recent participation in this proceeding, I do not believe that I should refer this matter to a hearing which will consume more time and further agency resources. The fact is, I do not believe that Evilsizer will produce any additional evidence at hearing that he meets the requirements of the regulations. In short, Evilsizer has failed to convince me that there is a material factual issue in dispute in this matter.

Insofar as he has requested a hearing to argue that he is able to safely operate a commercial motor vehicle notwithstanding his failure to meet the requirements of the regulations, that issue is not before me, and is not one that I would send to hearing. As I have stated, whether a waiver policy should be adopted, or some other modification should be made to the rule, should be the subject of rulemaking, which this agency has indicated it will undertake. Evilsizer is free to participate in that rulemaking and he may argue, in that proceeding, his view of whether there should be regulatory changes.

For the reasons stated above, and because I find that the overwhelming weight of the evidence before me indicates that Evilsizer has a "congenital abnormality" of the right eye which limits the visual acuity of that eye, a condition which is "uncorrectable" to better than 20/70 Snellen, I find that Evilsizer is not medically qualified to operate a commercial motor vehicle in interstate commerce.

Conclusion

On the record before me, I find that there is no material factual issue in dispute, and I therefore deny Evilsizer's request for a hearing. I also find that Evilsizer does not meet the minimum vision requirements of the FMCSRs, and is therefore not physically qualified to drive a commercial motor vehicle in interstate commerce. Thus, I affirm the Regional Director's determination that Evilsizer is not physically qualified to drive a commercial motor vehicle in interstate commerce.

Dated: July 18, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Office of Hearing

[FHWA Docket No. R5-91-04 Motor Carrier Safety]

Delta Transportation, Ltd.

Order to Dismiss

Served July 12, 1991.

This proceeding was initiated by a Notice of Claim letter dated January 28, 1991, from the Regional Director of Region 5 of the Office of Motor Carrier Safety to Delta Transportation, Ltd. (Respondent), seeking a penalty in the amount of $23,250.[1] The Associate Administrator for Motor Carriers appointed an Administrative Law Judge by order dated March 19, 1991 (to be designated by the Chief Administrative Law Judge) to consider this matter.

The undersigned Judge was appointed by notice dated April 1, 1991. After various prehearing procedures, by motion dated July 8, 1991, the Regional Director, with the concurrence of Respondent, requested that this proceeding be dismissed, based upon the settlement of the parties, which provides for payment by Respondent of $19,000 to the FHWA. We conclude that the motion should be granted and the proceeding dismissed on the basis of the settlement.[2]

Accordingly, settlement having been reached between the parties and that settlement appearing to be in the interest of the parties and the U.S. Department of Transportation,

It is ordered, That the above-styled matter is hereby dismissed.

Dated: July 11, 1991.

Ronnie A. Yoder,

Administrative Law Judge.

Federal Highway Administration

[Docket No. 91-NC-008-SH]

In the matter of Kerr Drug Stores, Inc.

Final Order Background

This matter comes before me on a Motion for Final Order filed by the Regional Director, Region 4 of the Federal Highway Administration. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

By Notice of Claim dated November 5, 1990, the Regional Director alleged that Kerr Drug Stores, Inc. (Kerr), committed two violations of 49 CFR 391.51(c), failing to maintain complete driver qualification files, and six violations of 49 CFR 177.817(a), transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper. These violations were discovered during a compliance review of Kerr's motor carrier operations which apparently took place on or about October 15, 1990. The Regional Director assessed civil penalties of $300 for each of the driver qualification file violations and $500 for each of the hazardous materials shipping paper violations, for a total civil penalty of $3,600.

Kerr responded to the Notice of Claim by letter dated November 16, 1990, admitting to the two driver qualification file violations, and agreeing to pay the assessed civil penalty for those two violations, but disputing "the fines charged for [the] hazardous materials violations * * *." Kerr asked for an oral hearing on these alleged violations.

In his Motion for a Final Order, the Regional Director has opposed Kerr's

[1] The settlement agreement incorrectly refers to this amount as $23,500.

[2] 49 CFR 386.54(b)(6) was amended effective January 26, 1988 (53 F.R. 2035), to specify that the Judge can "consider and rule upon all procedural and other motions, including motions to dismiss, except motions which, under this part, are made directly to the Associate Administrator." Emphasis added. Although 49 CFR § 386.21 provides that the parties "may" execute an appropriate agreement for disposing of the case by consent "for the consideration of the Associate Administrator," it is now settled that the Judge can also enter an order dismissing a proceeding pursuant to a settlement subject to review by the Associate Administrator, where the application is made to the Judge. See Rodgers Johnson/J and J Bus Service, Docket R3-89-02, Order dated May 4, 1989; In Matter of Real Ice Cream Distributors, Inc., FHWA Docket RI-86-13, Order dated October 26, 1987; In the Matter of Alfa Express Co., FHWA Docket No. 86-65G, Order dated December 28, 1987; Bower Tiling Service, Inc., FHWA Docket No. R5-90-03, Order dated June 18, 1990.

request for a hearing and has moved for a final order finding the facts to be as alleged in the Notice of Claim and assessing a civil penalty in the full amount of $3,600. No response to the Regional Director's motion has been received from Kerr.

For the reasons stated below, I find the facts to be as alleged in the Notice of Claim and the Regional Director's motion is granted.

Discussion

As noted above, Kerr has admitted to the two drive qualification file violations, and has agreed to pay the assessed civil penalties for these two violations, *i.e.*, $600. However, Kerr "disputes" the civil penalties assessed for the six hazardous materials shipping paper violations cited in the Notice of Claim. In this latter regard, Kerr raises four points.

First, Kerr states that, "When our initial safety review (attached) was performed in May of 1989, there were no specific hazardous materials found by the person doing the inspection. Therefore we did not provide shipping papers because they were not necessary." The initial safety review of May 1989, however, is not relevant to the violations discovered in October 1990, except insofar as it may bear in any way upon Kerr's knowledge of the applicable regulations. In this latter regard, I note that the May 1989 safety review report indicated to Kerr that, at that time, Kerr was carrying "ORM" material on its own trucks. Additionally, this review report expressly recommended that Kerr,

> Obtain a copy of the hazardous materials regulations manual. Give drivers training on the types of hazardous materials handled by your company. Obtain a safety data sheet from the manufactured of each hazardous material handled by your company. Shipping papers need to be given to drivers when hazardous material hauled.

My review of this May 1989 safety review report indicates that it is not relevant to the issue of whether Kerr violated the Hazardous Materials Regulations as alleged by the Regional Director, but that it is also evidence that Kerr was informed of the existence of these regulations and their application to Kerr's commercial motor vehicle operations before the violations cited by the Regional Director occurred.

Second, Kerr states in its November 16, 1990, reply that, "Our company has always strived to follow every safety and transportation regulation to the letter and we are not in the business of handling hazardous materials." The weight of the evidence before me, however, is to the contrary. Kerr's own records indicate that hazardous materials are transported by it, *e.g.*, invoices indicating cylinders of propane fuel were transported. Other evidence includes photographs of packages clearly marked with hazardous materials labels. The evidence is overwhelming and unrebutted that Kerr in fact transports hazardous materials. It is Kerr's responsibility to do so in compliance with applicable regulations.

Third, Kerr states that,

> We believe that your agency is unfair in assigning such a harsh penalty for the first violation of these regulations. Now that these materials have been brought to our attention we are making every effort to discontinue selling them in our stores and storing them in our distribution center.

The Regional Director assessed civil penalties of $500 for each of the six hazardous materials violations documented. I do not find this to be unduly harsh. Kerr was advised one year before these violations were discovered that it transported hazardous materials and certain steps were recommended by the agency which, if followed by Kerr, would have avoided these violations. Moreover, notwithstanding that the maximum civil penalty for hazardous materials violations at the time of the violations was $10,000 (now $25,000), the Regional Director assessed penalties of only $500 for each violation, apparently deciding to treat these violations for penalty purposes in line with recordkeeping violations of the agency's motor carrier safety regulations.

Kerr's November 16, 1990, reply contains no other information which would indicate that Kerr is unable to pay a penalty of $3,000 for the hazardous materials shipping paper violations, or the total assessed penalty of $3,600, or that such a penalty would have an adverse effect on Kerr's ability to continue to do business.

In view of the maximum penalty which could have been assessed in this case, coupled with the Office of Motor Carriers' previous efforts to secure compliance with the regulations, I find the penalty assessed by the Regional Director to be reasonable. Moreover, I find that a penalty of $3,600 for the recordkeeping violations cited in the Notice of Claim letter to be reasonably calculated to induce further compliance by Kerr with the applicable regulations.

Finally, in its November 16 reply, Kerr states that,

> When Special Agent Evans made her review in October, we cooperated with her in every way and our staff took time away from a very busy schedule to see that each document she requested was made available. We did this because of our desire to meet each required regulation.

Kerr's cooperative attitude during a compliance review, which followed an earlier safety review which resulted in a "conditional" rating, is appreciated, but it is obviously not a defense to the violations of the regulations discovered by the agency. While the agency appreciates a cooperative attitude, what it expects is compliance with applicable regulations.

In his Motion for Final Order, the Regional Director addresses the issue of whether Kerr was on notice as to the existence of the Hazardous Materials Regulations and their application to Kerr's operations. I agree with the Regional Director that the record makes clear that Kerr knew, or should have known, that the Hazardous Materials Regulations existed and that they apply to the types of transportation in which Kerr is involved.

In this case the agency has expended considerable effort to get Kerr to comply with the regulations. As a result of an initial safety review, certain weaknesses in Kerr's regulatory compliance program were identified and brought to its attention. Recommendations were also made to facilitate compliance. Approximately one year later, a subsequent compliance review indicated that Kerr's efforts to comply with the regulations has been inadequate. If Kerr had questions about the regulations, it should have availed itself of the opportunity which every motor carrier has to acquire information and assistance from the agency. A motor carrier cannot ignore applicable safety regulations, nor can it assign such a low priority to compliance with those regulations that, after a year, no significant progress has been made to comply with them. These regulations are designed to protect the public, and Kerr's continued noncompliance with them cannot be ignored.

Conclusion

Having considered Kerr's reply of November 16, 1990, I agree with the Regional Director that there are no material factual issues in dispute in this case and, accordingly, I hereby deny Kerr's request for an oral hearing in this matter.

Kerr has admitted that it violated the Federal Motor Carrier Safety Regulations as alleged in the Notice of Claim letter. Moreover, for the reasons discussed above, I find that the Regional Director has established a *prima facie* case that Kerr violated the Hazardous Materials Regulations cited in the Notice of Claim letter. I also find that the

penalty assessed in this case is reasonable and intended to induce compliance with the applicable regulations.

Accordingly, *It is hereby ordered* that Kerr Drug Stores, Inc., pay to the Regional Director, within 30 days of the date of this order, the amount of $3,600 in full satisfaction of the Notice of Claim dated November 5, 1990.

Dated: July 3, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R9-91-204]

In the matter of Robert Lee Carpenter

Final Order Background

This is a driver qualification proceeding which commenced with a letter from the Regional Director, Region 9 of the Federal Highway Administration (FHWA), to Robert Lee Carpenter advising Carpenter that he was not qualified to drive a commercial motor vehicle in interstate commerce because he did not meet the vision standard of the Federal Motor Carrier Safety Regulations (FMCSRs). See 49 CFR 391.11(b)(6) and 391.41(b)(10). This proceeding is governed by the FHWA's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (49 CFR part 386).

By letter dated February 7, 1991, the Regional Director advised Carpenter he was not medically qualified to operate a commercial motor vehicle because he had no vision in his left eye.

By letter dated March 6, 1991, Carpenter, through counsel, filed a "formal appeal" asserting that the Regional Director's "disqualification" of Carpenter was improper; that the "disqualification" constitutes a taking under the Due Process Clause of the United States Constitution and that Carpenter should be "compensated;" and, in the alternative, that Carpenter should be granted a waiver from the vision requirement of the FMCSRs because of his safe driving record. Carpenter also asked for an oral hearing.

On March 26, 1991, the Regional Director replied to Carpenter's request for a review of the Regional Director's February 7 letter, opposing the request for a hearing and moving for a final order finding Carpenter not qualified to drive. No reply to the Regional Director's motion has been received from Carpenter. See 49 CFR 386.35.

Discussion

The issue in this case is whether Carpenter meets the minimum vision requirements of the FMCSRs and, therefore, is physically qualified to drive a commercial motor vehicle in interstate commerce. The record before me includes a photocopy of a Medical Examination Report prepared by Dr. Merlo of Redding, Ca., dated May 18, 1989, which indicates that Carpenter is blind in his left eye "since childhood." Carpenter has not denied that he has no vision in his left eye. In his motion for a final order, the Regional Director opposes Carpenter's request for a hearing on the ground that there is no material factual issue in dispute. I agree, and for this reason I deny Carpenter's request for an oral hearing in this matter. See 49 CFR 386.16(b).

The facts in this case are not in dispute; Carpenter does not have any vision in his left eye. For this reason he does not meet the minimum vision standard of 49 CFR 391.41(b)(10) which requires, in part, distant visual acuity of 20/40 Snellen "in each eye." Drivers who cannot meet this standard are not medically qualified to drive a commercial motor vehicle in interstate commerce.

Carpenter has requested, alternatively, that he be granted a waiver from this vision requirement. The FHWA does not grant waivers from this physical qualification requirement. See Decision of the FHWA Administrator *In the Matter of Charles A. Smart*, Petition for Waiver, Case No. R-90-13 (Dec. 5, 1990) (copy attached). Moreover, the FHWA has determined that it will grant waivers for physical disabilities only in those cases involving limb limitations. See 49 CFR 391.49. However, the FHWA has determined that it will review its vision standard for possible amendment. See Decision of the FHWA Administrator *In the Matter of Walter C. Boyles, Jr.*, Petition for Rulemaking, Case No. R-90-16 (Dec. 5, 1990) (copy attached).

Carpenter also seeks compensation for a "taking" under the United States Constitution. I agree with the Regional Director that I have no jurisdiction over such a claim. I am constrained in this matter to apply the regulations as adopted by the FHWA to the facts before me.

Conclusion

On the record before me, I find that there is no material factual issue in dispute, and I therefore deny Carpenter's request for a hearing. I also find that Carpenter does not meet the minimum vision requirements of the FMCSRs, and is therefore not physically qualified to drive a commercial motor vehicle in interstate commerce. Thus, I affirm the Regional Director's determination that Carpenter is not physically qualified to drive a commercial motor vehicle in interstate commerce.

Dated: June 4, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Petition for Waiver Case No. R-90-13]

In the matter of Charles A. Smart, Petitioner.

Decision

Pursuant to section 206(f) of the Motor Carrier Safety Act of 1984 (MCSA) (49 U.S.C. 2505(f)), the petitioner seeks a waiver from the requirement of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 390-399) which prohibits a person from driving a commercial motor vehicle in interstate commerce unless that person can demonstrate certain visual acuity in both eyes. Section 206(f) of the MCSA authorizes the agency to "waive, in whole or in part, application of any regulation issued under (Section 206) with respect to any person or class of persons," it is determined that such action "is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles." The Federal Highway Administration (FHWA) has reissued the FMCSRs under the authority of the MCSA. This petition is, therefore, properly brought. For reasons stated below, the petition must be denied.

Mr. Smart has a permanent loss of vision of his left eye, and is unable to demonstrate the required visual acuity in that eye. Section 391.41(b)(10) of the FMCSRs provides in part, that a person must be able to demonstrate visual acuity of 20/40 Snellen in both eyes, separately measured, to be qualified to drive a commercial motor vehicle in interstate commerce. The FHWA's current waiver program, 49 CFR 391.49, does not cover vision impairments, and waivers from the vision standard have not been granted.

Through counsel and by letter dated May 3, 1990, Mr. Smart petitioned the FHWA for an exemption under 49 CFR 5.11. Receipt of Mr. Smart's petition was acknowledged by letter dated June 15, 1990.

Section 5.11 relates to petitions for rulemaking or exemption from any rule of the Secretary of Transportation. This section does not apply to rules issued by the FHWA. 49 CFR 5.1(a). As indicated above, however, section 206(f) of the MCSA authorizes the agency to waive, in whole or in part, application of any regulation issued under section 206, if it is determined that such action "is not

contrary to public interest and is consistent with the safe operation of commercial motor vehicles." This petition, therefore, will be considered to be properly brought under section 206(f).

In his petition, Mr. Smart argues that the FHWA's rule requiring certain visual acuity in both eyes unfairly discriminates against persons with monocular vision. Mr. Smart asserts that he lost the vision in his left eye as a result of a wound he received in 1963 while serving in the United States Armed Forces overseas during the Vietnam conflict. He further asserts that, despite his injury, he has safely driven a commercial motor vehicle on a full time basis from the time of his injury until 1987 when he stopped driving because of "difficulties with his back." Mr. Smart states that, if granted a waiver, he intends to resume driving using a vehicle that he will equip to alleviate his back problems.

Mr. Smart's petition, however, is unaccompanied by any evidence to support a determination that Mr. Smart is otherwise qualified to operate a commercial motor vehicle safely in interstate commerce. His submission lacks any evidence to indicate that Mr. Smart has been medically examined in accordance with 49 CFR 391.43 and that he meets the physical requirements of 49 CFR 391.41(b), except for his admitted vision condition, and that he meets the applicable driver qualification requirements specified in 49 CFR 391.11(b).

Mr. Smart has not shown how granting a waiver to him would be consistent with the safe operation of commercial motor vehicles and not contrary to the public interest.

Nor does Mr. Smart's petition explain how the granting of the requested waiver would be consistent with safety on the highways. The regulations have obvious safety purposes.

With respect to drivers, they are intended to assure that only qualified individuals are operating large commercial motor vehicles in interstate commerce where, because of their size, they are capable of causing extensive damage to life and property.

Based on the information provided in the petition and the foregoing discussion, I am unable to make a determination that granting the requested waiver is in the public interest and consistent with the safe operation of commercial motor vehicles.

Accordingly, the petition is denied.

Nothwithstanding this denial of Mr. Smart's request for an individual waiver at this time, the FHWA is concerned that its physical qualification requirements be based on sound medical, scientific, and technological grounds, and that individual determinations be made to the maximum extent possible consistent with the FHWA's responsibility to ensure that commercial motor vehicles are safely operated. Accordingly, the FHWA has initiated reviews of various driver qualification requirements. See *e.g.*, 55 FR 41,028 (Oct. 5, 1990) (notice of proposed rulemaking proposing to eliminate a blanket prohibition against insulin-using diabetics driving in interstate commerce).

Petitioner Smart is advised, therefore, that this same date I am granting a petition for rulemaking in *In the Matter of Walter C. Boyles, Jr.* In response to this rulemaking petition, the FHWA will prepare and publish in the **Federal Register** in the near future a rulemaking document in accordance with the agency's rulemaking procedures set forth in 49 CFR part 389 to review the FHWA's vision standard in 49 CFR 391.41(b)(10). A copy of Mr. Smart's petition, along with this Decision, shall be placed in the public docket opened for this rulemaking.

For the reasons set forth above, Mr. Smart's petition for a waiver from the requirements of 49 CFR 391.41(b)(10) is denied.

Dated: December 5, 1990, Washington, DC.

T.D. Larson,

Administrator.

Federal Highway Administration

[Petition for Rulemaking Case No. R-90-16]

In the Matter of Walter C. Boyles, Jr., Petitioner.

Decision

Petitioner Walter C. Boyles, Jr., through counsel, has petitioned the Federal Highway Administration (FHWA) for a change to 49 CFR 391.41(b)(10), which establishes minimum vision requirements for interstate drivers of commercial motor vehicles, to permit waivers in individual cases. The petition is hereby granted insofar as it requests the FHWA to initiate rulemaking to consider revising its vision standard.

Mr. Boyles has congenital glaucoma causing congenital blindness in his right eye. Because of this condition, it appears that Mr. Boyles does not meet the minimum vision requirements of 49 CFR 391.41(b)(10), and the evidence submitted does not indicate that he has been certified as qualified to drive a commercial motor vehicle in interstate commerce under the FHWA's safety regulations.

Failing to be certified as qualified to drive, Mr. Boyles requested by letter dated April 23, 1990, that the FHWA's Regional Director for Motor Carrier Safety in Region 5 (Homewood, Illinois) grant Mr. Boyles a waiver to permit him to drive a commercial motor vehicle in interstate commerce. By letter dated April 27, 1990, the Regional Director denied Mr. Boyles' request for a waiver, advising him that the FHWA's current waiver program does not cover vision impairments. See 49 CFR 391.49. On August 25, 1990, Mr. Boyles, through counsel, petitioned the FHWA to amend its regulations to permit "a waiver of visual defects when it can be shown that such defects in vision would not substantially impair an individual from safely operating a vehicle in interstate commerce." Petition at 2.

Mr. Boyles argues in his petition that individual determinations should be made to determine whether visually impaired persons can safely operate commercial motor vehicles. His petition, however, fails to cite any studies that would support a finding that FHWA's current vision standard impermissibly precludes individuals from driving. No does he propose a specific standard or guidelines for making determinations on an individual basis of a person's ability to compensate for any vision impairment.

Nevertheless, the FHWA is concerned that its physical qualification requirements be based on sound medical, scientific, and technological grounds, and that individual determinations be made to the maximum extent possible consistent with the FHWA's responsibility to ensure that commercial motor vehicles are safely operated. Accordingly, the FHWA has initiated reviews of various driver qualification requirements. See, *e.g.*, 55 FR 41,028 (Oct. 5, 1990) (notice of proposed rulemaking proposing to eliminate a blanket prohibition against insulin-using diabetics driving in interstate commerce).

It is therefore determined that Mr. Boyles' petition that the FHWA initiate rulemaking action to review its vision standard in 49 CFR 391.41(b)(10) should and hereby is granted. The FHWA hereby announces its decision to prepare and publish in the **Federal Register** in the near future a rulemaking document addressing this issue in accordance with the agency's rulemaking procedures set forth in 49 CFR Part 389. Copies of Mr. Boyles' petition and supporting documents, along with this Decision, shall be placed in the public docket opened for this rulemaking.

Accordingly, the petition is granted.

Dated: Washington, DC. December 5, 1990.

T. D. Larson,

Administrator.

Federal Highway Administration

[Docket No. R1-90-10 formerly R1-90-150]

In the matter of Autotrans, Inc.

Denial of Motion for Reconsideration

On March 19, 1991, I issued an Order Denying a Petition for Review in the matter of Autotrans, Inc. That Order directed the payment of $15,500.

Subsequent thereto, on March 23, 1991, Respondent filed a Petition for Reconsideration and Stay.

Upon reconsideration of the entire docket, I have determined that no convincing reasons have been put forth supporting the request for reconsideration.

Therefore, it is ordered, That Respondent's Request for Reconsideration and Stay is hereby denied and that the Order of the Administrative Law Judge issued on January 16, 1991, and my previous Order issued on January 22, 1991, are reaffirmed. Respondent is directed to pay the full amount of $15,500 to the Regional Director within 5 days of receipt of this Order.

Dated: June 17, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R3-90-159]

In the matter of Donald B. Turner d/b/a/ Turner Trucking Co.

Final Order

This matter is before me on a Motion for a Final Order filed by the Regional Director, Region 3, on March 5, 1991. The accompanying Certificate of Service indicates that a copy of this motion was served by U.S. Mail on Mr. Donald B. Turner, but no reply has been received.

The Regional Director asks in his motion that the Associate Administrator find the facts to be as alleged in the Notice of Claim and assess a total penalty of $4,200 against Turner.

Appendix A to the Regional Director's motion is a copy of the Notice of Claim dated May 21, 1990, alleging that Turner committed nineteen (19) violations of certain recordkeeping requirements of the Federal Motor Carrier Safety Regulations, specifically 49 CFR 391.31, 391.35, 391.51(c)(1), and 395.8. The Notice of Claim assessed a civil penalty of $300 for each violation, for a total penalty of $5,700.

Appendix C to the Regional Director's motion is a copy of a June 12, 1990, letter from Donald B. Turner to the Federal Program Manager of Region 3 in reply to the Notice of Claim letter. In this letter, Mr. Turner asserts that he had two records that the Regional Director alleged were missing from driver qualification files, and that the other violations were subsequently corrected. He asked the Regional Director to reconsider the amount of the penalty assessed. Turner did not request an oral hearing in this matter. It appears from the record before me that the parties to this matter discussed settlement of this case, but failed to amicably settle the matter.

Appendix B to the Regional Director's motion consists of a copy of an enforcement report prepared by the FHWA safety specialist who discovered and documented the violations alleged in the Regional Director's Notice of Claim, including documentary evidence supporting the allegations of violations.

In my view, the documents submitted by the Regional Director fully support a finding that the Regional Director has established a *prima facie* case of violations set out in the Notice of Claim. In view of Turner's failure to rebut this evidence, I conclude that Turner in fact violated the Federal Motor Carrier Safety Regulations as alleged in the Regional Director's Notice of Claim.

In this Motion for a Final Order, the Regional Director asks that a Final Order issue assessing a penalty of $4,200. This represents a reduction of $1,500 from the amount originally assessed in the Notice of Claim, including reductions of $150 for both of the violations in which Turner submitted some, but not all, of the missing records.

I find that the violations discovered and supported by the Regional Director's documentary evidence fully warrant a penalty of $4,200. Turner has submitted no information that would indicate that this penalty is beyond Turner's ability to pay or will adversely affect Turner's ability to continue to do business. I find that the penalty requested by the Regional Director will tend to induce Turner to comply with the applicable safety regulations.

Finally, the Regional Director asks that my Final Order in this matter permit Turner to pay the fine in three equal monthly installments of $1,400. I find that such an arrangement in this case may mitigate somewhat the effects of the requested penalty on Turner's ability to pay this penalty without significantly reducing the tendency to induce Turner's compliance with the regulations. Accordingly, I will agree to such an arrangement.

Therefore, it is ordered, That Donald B. Turner, doing business as Donald B. Turner Trucking Co., is hereby directed to pay to the Regional Director, Region 3, the amount of $4,200 in three equal monthly installments of $1,400, with the first payment of $1,400 due to the Regional Director, Region 3, not later than 30 days from the date of this order, the second payment due not later than 60 days from the date of this order, and the third and final payment due not later than 90 days from the date of this order. Failure to make any payment on time will make the entire remaining penalty payable to the Regional Director on demand.

Dated: June 12, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R10-90-39]

In the matter of Tres Rios Cattle Co.

Denial of Motion for Reconsideration

On January 22, 1991, I issued a Final Order in the Matter of Tres Rios Cattle Company. That Order denied the request for a hearing and directed the payment of $11,000 in full settlement of the claim. Respondent subsequently requested mitigation of this penalty.

Upon reconsideration of these findings, I have determined that no convincing reasons have been put forth supporting the request for reconsideration.

Therefore, it is ordered, That request for mitigation is denied.

Dated: June 11, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Johnny Dean Secrest

[FHWA Docket No. 89-03D Driver Qualification]

Decision of Administrative Law Judge Robert L. Barton, Jr.

Served May 28, 1991.

Appearances: Johnny Dean Secrest, 426 Walnut Street, Monticello, Indiana 47960, for the Petitioner *pro se.*

Charles Medalen, Office of the Chief Counsel, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, for the Respondent Director, Office of Motor Carrier Standards, Federal Highway Administration.

This case arises under 49 CFR 386.13(a) of the Federal Highway Administration (FHWA) Rules of Practice for Motor Carrier Safety pursuant to which Johnny Dean Secrest, petitioner, requested review of the Determination of Qualification issued by FHWA's Acting Director, Office of Motor Carrier Standards, on January 11, 1990, under 49 CFR 391.47. Pursuant to

the Order Appointing Administrative Law Judge (hereinafter, O.A.) dated May 31, 1990, and issued herein under 49 CFR 386.54(a) by the FHWA's Associate Administrator for Motor Carriers, this is the Administrative Law Judge's decision under 49 CFR 386.61.[1]

The O.A. states that there are material issues in dispute concerning (1) whether Petitioner's use of an Ocutech lens system will correct his vision to at least 20/40 in each eye; and (2) whether the Ocutech lens system constitutes "corrective lenses" within the meaning of 49 CFR 391.41(b)(10) and 392.9a.

The burden of proof in this case is on Petitioner, see 49 CFR 386.58(b) and 391.47(e), and after careful consideration of all the evidence of record, I conclude that Petitioner's use of an Ocutech lens system, or other bioptic telescopes, would not correct Petitioner's vision to the standard specified by 49 CFR 391.41(b)(10) and that such lens systems do not constitute "corrective lenses" within the meaning of 49 CFR 391.41(b)(10) and 392.9a.

This decision is based upon the entire record of the proceeding, including: the parties' stipulation submitted at the hearing; the evidentiary record compiled at the hearing; [2] the affidavit of Dr. Richard L. Windsor, O.D., and affiant's written answers to written interrogatories submitted by Respondent after the hearing; the parties' proposed findings of fact; and Respondent's proposed conclusions of law; [3] and the parties' written statements of position submitted prior to the hearing. I have also taken into account my observation of the witnesses who appeared before me and their demeanor. Proposed findings not herein adopted, either in the form submitted or in substance, are rejected either as not supported by the evidence or as involving immaterial matters.

My findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony and exhibits supporting the findings of fact. They do not necessarily represent complete summaries of the evidence supporting each finding.[4]

I. Procedural Background

On January 11, 1990, Respondent Director, Office of Motor Carrier Standards, Federal Highway Administration issued a Determination of Qualification (D.Q.) [5] finding that Petitioner Johnny Dean Secrest is medically unqualified to drive a commercial vehicle in interstate commerce (D.Q. at 15). Respondent concluded that:

(a) The uncorrected vision in Petitioner's left eye is less than 20/40 (D.Q. at 9–10);

(b) Petitioner requires the use of a bioptic telescope to meet the vision requirements in 49 CFR § 391.41(b)(10) (D.Q. at 15);

(c) Bioptic telescopes are not "corrective lenses" within the meaning of 49 CFR 391.41(b)(10) and 392.9a (D.Q. at 15); and

(d) The safety of bioptic telescopes for use by drivers of commercial motor vehicles has not been established (D.Q. at 15).

Petitioner sought review of the Determination of Qualification, primarily on the ground that the Federal Motor Carrier Safety Regulations should be changed or revised to permit interestate operation of commercial motor vehicles by low vision and monocular drivers. Petitioner also argued that:

(a) He would use an Ocutech lens system to bring his vision into compliance with the requirements in 49 CFR 391.41(b)(10); and

(b) An Ocutech lens system is not a bioptic or telescope type lens.

See Order Appointing Administrative Law Judge (O.A.) at 1–2.

In granting Petitioner's request for review, the Associate Administrator for Motor Carriers, Federal Highway Administration, held that changes in the Motor Carrier Safety Regulations are not to be considered in the proceeding. The Associate Administrator noted that the FHWA "will be considering changes to its regulations, including issues relating to low vision and monocular drivers." O.A. at 1.

The Associate Administrator determined that there are material issues in dispute about Petitioner's physical qualifications to operate a commercial motor vehicle, specifically (O.A. at 2):

(a) Whether Petitioner's use of an Ocutech lens system will correct his vision to at least 20/40 in each eye; and

(b) Whether the Ocutech lens system constitutes "corrective lenses" within the meaning of 49 CFR 391.41(b)(10) and 392.9a.

As to issue (a), the Associate Administrator expressed concern that there is confusion in the record underlying the D.Q. about different kinds of lens systems, for example, the Ocutech, bioptic, and telescope types; and that even the type of lens to be used by Petitioner is unclear (O.A. at 2).

Regarding issue (b), the Associate Administrator noted that although it appears to be more of a legal than a factual issue, issue (b) is invested with factual characteristics, and the Associate Administrator highlighted the need to determine whether the Ocutech lens system is "something different from glasses or contact lenses" or whether it is "merely a sophisticated or technologically advanced set of glasses" (O.A. at 2).

Pursuant to the O.A. issued on May 31, 1990, I was designated to hear the case. Prior to the hearing, Petitioner and Respondent provided written statements of position, on June 25, and July 9, 1990, respectively. The oral evidentiary hearing was held on October 19, 1990, in Indianapolis, Indiana. Testimony was taken from Petitioner; his wife, Carolyn Jean Secrest; and two expert witnesses, Dr. Eugene M. Helveston, M.D., Professor of Ophthalmology and Chief of the Section of Pediatric Ophthalmology and Strabismus at the Indiana University School of Medicine, for Petitioner, and Dr. Arthur H. Keeney, M.D., Dean Emeritus and Distinguished Professor of Ophthalmology, University of Louisville School of Medicine, for Respondent.

Dr. Richard L. Windsor, O.D., a private practitioner and Adjunct Assistant Professor of Optometry at the Indiana University School of Optometry,

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[1] Pursuant to 49 CFR 386.61, the decision of the Administrative Law Judge becomes the final decision of the Associate Administrator 45 days after it is served unless a petition for review is filed under 49 CFR 386.62. For the service list, see appendix A.

[2] See appendix B for corrections to the hearing transcript.

[3] Neither Petitioner nor Respondent numbered their proposed findings of fact and conclusions of law. In this decision, I have numbered the paragraphs in their submissions and cite the proposed findings and conclusions as follows: (a) Petitioner's proposed findings of fact ¶¶ 1 through 4 on page 1; ¶¶ 5 through 10 on page 2; ¶¶ 11 through 13 on page 3; ¶¶ 14 through 16 on page 4; and ¶ 17 on page 5 (hereinafter, CPF–1, CPF–2, etc.); (b) Respondent's proposed findings of fact ¶¶ 1 through 2 on page 1; ¶¶ 3 though 5 on page 2; ¶¶ 6 through 9 on page 3; ¶¶10 through 15 on page 4; ¶ 16 on page 5; ¶¶ 17 through 19 on page 6; and ¶ 20 on page 7 (hereinafter, RPF–1, RPF–2, etc.); and (c) Respondent's proposed conclusions of law ¶¶ 1 through 4 on page 7; ¶ 5 on page 8; and ¶¶ 6 through 7 on page 9 (hereinafter, RCL–1, RCL–2, etc.).

[4] The following abbreviations are used in the decision:

Tr.—Page of hearing transcript, usually preceded by name of witness

CX—Petitioner's exhibit

RX—Respondent's exhibit

Win. Aff.—Dr. Windsor's affidavit

Win. Ans.—Dr. Windsor's answer to Respondent's interrogatory

CPF—Petitioner's proposed finding of fact

RPF—Respondent's proposed finding of fact

RCL—Respondent's proposed conclusion of law

[5] The determination, at the time, was issued by the Acting Director, Office of Motor Carrier Standards.

specializing in low vision, was unable to appear for Petitioner at the hearing, but pursuant to agreement with Respondent, Dr. Windsor submitted for the record a notarized statement dated November 12, 1990, and Respondent filed written interrogatories for Dr. Windsor concerning the statement on November 21, 1990. Dr. Windsor responded by notarized answers dated December 2, 1990.

After the hearing, Petitioner submitted Proposed Findings of Fact on December 28, 1990. Respondent submitted Proposed Findings of Fact and Proposed Conclusions of Law on December 31, 1990.[6]

II. Regulatory Requirements

The Federal Motor Carrier Safety Regulations in 49 CFR Part 391 "establish minimum qualifications for persons who drive motor vehicles as, for, or on behalf of motor carriers," 49 CFR 391.1(a). Section 391.41(b)(10) provides that:

A person is physically qualified to drive a motor vehicle if that person—

> Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber * * *.

Section 392.9b, a related provision, requires that:

> A driver whose visual acuity meets any of the minimum requirements of § 391.41 of this subchapter only when he wears corrective lenses must wear properly prescribed corrective lenses at all times while he is driving. If a driver wears contact lenses while driving, he must have a spare lens or set of lenses on his person when he drives.

The vision standard in Section 391.41(b)(10) is written in the conjunctive and not in the alternative. The first three elements of the standard are separated by commas, and the fourth element is preceded by the word "and". In accordance with the normal canons of statutory interpretation, I conclude that a person is unqualified to drive a commercial vehicle in interstate commerce unless he meets all four elements of the vision standard (RCL–1).

There is no dispute that Petitioner has the ability to recognize colors, the fourth element of the standard. Questions are raised about Petitioner's visual qualification under the other three elements. With regard to these, I must emphasize at the outset that understanding and interpreting the regulations and the evidence in this case is a serious challenge because of the need to comprehend how a person sees and what the medical terms are that describe the process. Careful attention must be paid to terminology and potential confusion immediately arises with the language used in 49 CFR 391.41(b)(41) setting out the three elements in issue here.

Nevertheless, it is my view based on the record before me that the three elements and their minimum standards are intended to be measures of the following aspects of the vision process (leaving aside for the moment the question of what corrective lenses means).

A. Distant Monocular and Binocular Acuity

Monocular and binocular are terms used to describe, respectively, vision with only one eye and vision with both eyes at the same time. Acuity means sharpness or keenness of vision. Distant, when used in the context of vision, is the ability to see distant objects in contrast to the ability to see near objects. See Stedman's Medical Dictionary 885, 170, 20 (5th Lawyers' ed. 1982).

The first vision element in section 391.41(b)(10) reads:

> Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses * * *.

Although the term "monocular" is not expressly used, I find that the words "in each eye" and "acuity separately corrected" must mean that the 20/40 (Snellen) test level must be achieved for distant *monocular* acuity; in other words, it is the minimum level for a person's ability to see distant objects using one eye, tested by itself, to view the object. (The word "bilateral" is also used to mean the acuity of each eye measured separately (Win. Ans. 4).)

The second vision element in Section 391.41(b)(10) reads:

> [Has] distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses * * *.

The word "binocular" ought to make it clear that what is called for is the measure of 20/40 (Snellen) for a person's ability to see distant objects using both eyes, tested simultaneously, to view the object. However, the phrase "in both eyes", which follows the word binocular, seems to introduce the contradictory notion that this element requires a distant binocular test reading of 20/40 (Snellen) for *each* eye. I find that consistency with the concept of binocularity means that the measure of 20/40 (Snellen) is one test reading taken with both eyes open and looking at a distant object.

B. Field of Vision

The third vision element in Section 391.41(b)(10) reads:

> [Has] field of vision of at least 70° in the horizontal Meridian in each eye * * *.

The 70° requirement is a test reading for each eye and it is a measure of scope of each eye's vision from straight ahead to either side.

III. Findings of Fact

A. Expert Witnesses

1. Petitioner presented two witnesses as experts in the proceeding, Dr. Eugene M. Helveston and Dr. Richard L. Windsor. Respondent called one expert witness, Dr. Arthur H. Keeney. All three are well qualified to testify on the matters addressed to them regarding Petitioner's vision (Tr. 33–35, 74–77; Win. Aff. 1).

2. Dr. Keeney has never tested Petitioner's eyesight. Drs. Helveston and Windsor have examined Petitioner, but only Dr. Windsor tested Petitioner vision with an Ocutech lens system and only Dr. Windsor's eye examination results, with and without the Ocutech lens system, were submitted by Petitioner for the record (Win. Aff. 2; CX–O–1; Helveston, Tr. 47, 51–52, 62; Tr. 55–56; see CPF–8).

3. Dr. Helveston testified on cross-examination about his test results for Petitioner's eyes without the Ocutech lens system and the results are consistent with Dr. Windsor's comparable results (Helveston, Tr. 61–63).

4. Petitioner submitted as exhibits for the record, letters and reports from other doctors who have examined his eyes. With the exception of the examination report of Dr. Charles E. Heinsen (CS–A–1; see D.Q. at 2, 4–7, 9–10), their results are consistent with Dr. Helveston's results and with Dr. Windsor's non-

[6] Petitioner was employed as a truck driver by J.B. Hunt Transport, Inc., P.O. Box 130, Lowell, Arkansas 72745, from approximately September, 1986 to March, 1988 (Pet. Stat. at 1; CX–P–1), and it was Petitioner's termination by Hunt and the company's subsequent refusal to rehire him which resulted in the FHWA Determination of Qualification. See D.Q. at 2. Hunt filed a statement of position in the instant review proceeding on June 22, 1990, indicating that it considered Petitioner medically unqualified to operate a commercial motor vehicle pursuant to 49 CFR part 391 and that it supported the Determination of Qualification in issue. The company also stated that it would not participate in the hearing.

Ocutech lens system results, and their conclusions about the history and condition of Petitioner's eyes are consistent with the conclusions of Drs. Helveston and Windsor (CX-B-1; CX-C-1; CX-D-1; CX-E-1; CX-F-1; CX-G-1; CX-H-1; CX-I-1; CX-J-1; CX-K-1-2; CX-L-1; CX-M-1; CX-N-1).

B. History and Condition of Petitioner's Eyes

5. Petitioner was born with Duane's retraction syndrome type II affecting his left eye and the condition is described as an in-turning or crossed eye (esotropia) and deceased central vision in the eye (strabismic amblyopia) (CPF-12; Win. Aff. 2; Helveston, Tr. 35-37; CX-A-1; CX-B-1; CX-E-1; CX-G-1; CX-I-1-; CX-J-1; CX-K-1; CX-L-1; CX-N-1).

6. In August and December, 1988, when Petitioner was 36, Dr. Helveston operated on Petitioner's left eye regarding the esotropia condition: (a) to achieve the appearance of straight eyes; and (b) to enlarge Petitioner's binocular field of vision so that it would equal that of a person with straight eyes (Helveston, Tr. 37, 68-69; Pet. Stat. at 1-2). No attempt was made to correct the central vision acuity of Petitioner's left eye caused by strabismic amblyopia because there is no known surgical procedure for such correction (Helveston, Tr. 37-38, 60; Win. Aff. 2; CX-I-1; CX-K-1).

C. Petitioner's Eye Test Results After 1988 Surgery

7. Drs. Helveston and Windsor tested Petitioner's eyes after the surgery in 1988, and they found (without the Ocutech lens system) (Helveston, Tr. 37-38, 51, 61-63; CX-O-1; Win. Aff. 1; CPF-3; CPF-56; RPF-14; RPF-16; RPF-17):

(a) Distant monocular acuity—right eye ranging between 20/40 and 20/25 with correction (*see* Finding 8);

(b) Distant monocular acuity—left eye 20/240 without correction (*see* Finding 8);

(c) Distant binocular acuity ranging between 20/40 and 20/25; and

(d) Field of vision about 90° in each eye.

8. Petitioner's right eye has low farsightedness and low hyperopic stigmatism and, to correct these conditions, Petitioner wears regular glasses which have a prescription lens for the right eye; there is a flat or blank ("plano") glass with no refracting power for the left eye because there is no prescription-type lens which can correct the left eye's strabismic amblyopia (Petitioner, Tr. 19; Mrs. Secrest, Tr. 31, 61; Keeney, Tr. 105; CX-I-1; CX-K-1).

9. There is no dispute that Petitioner's *right eye distant monocular acuity* meets the standard in 49 CFR 391.41(b)(10) when Petitioner wears his regular glasses.

10. There is no dispute that Petitioner's *distant binocular acuity* meets the standard in 49 CFR 391.41(b)(10) when Petitioner wears his regular glasses.

11. There is no dispute that Petitioner's *field of vision* for each eye meets the standard in 49 CFR 391.41(b)(10) when Petitioner wears his regular glasses.

12. There is no dispute that Petitioner's *left eye distant monocular acuity*, with or without regular glasses, does *not* meet the standard in 49 C.F.R. § 391.41(b)(10) and there is no dispute that the only means of bringing Petitioner's left eye distant monocular acuity up to the regulation's standard would be some kind of telescopic system (Petitioner, Tr. 14; Mrs. Secrest, Tr. 28).

D. The Ocutech Lens System in General

13. Telescopic systems, also referred to as bioptic telescopes or devices, have been developed for use by people with a fixed vision loss in both eyes or in their one residual eye which is no longer amenable to surgical or conventional optical care; the Ocutech lens system is the trade name for a kind of bioptic telescope or device ("Bioptic" lens is also a trade name for one of these devices) (Keeney, Tr. 101-102, 108-109, 113; CX-Q-1-2; RX-A-132; RX-B-168).

14. Bioptic devices are essentially Galilian telescopes mounted in or above spectacle lens carriers (RX-A at 132; RX-B at 168-171; Keeney, Tr. 108-110). Bioptic devices basically do what looking through a pair of binoculars would do; namely, magnify the visual world. For this reason, the use of bioptic devices to enhance the vision in an impaired eye while at the same time using an essentially normal eye is impossible because the brain will not continuously integrate the artificially magnified picture with a normal picture of the same thing (Kenney, Tr. 101-102, 109). See Finding 28.

15. The term corrective lens is usually applied to the single simple lens system of myopic/hyperopic/astigmatic or presbyopic lenses, not to an Ocutech-type system which combines, into one unit system, presbyopic lenses and a periscopic/telescopic system; in other words, the Ocutech lens system incorporates mirrors and lenses (Win. Ans. 4; RPF-10).

16. Telescopic lenses or bioptic devices are not considered corrective lenses within the field of ophthalmology; they are considered to be a compound lens system or special low vision group of devices and not within the same frame of reference as, for example, bifocals or contact lenses which are the usual devices provided for people with vision capable of correction to normal levels (Keeney, Tr. 113-115; RPF-7; RPF-8).

17. On February 2, 1989, Dr. Windsor fitted Petitioner with an Ocutech lens system; Petitioner has never used an Ocutech lens system other than in Dr. Windsor's office on February 2, 1989 (Win. Aff. 2; Petitioner, Tr. 18).

18. The Ocutech lens system used by Petitioner in Dr. Windsor's office on February 2, 1989 (in particular, a bioptic device manufactured under the name, "Ocutech Visual Enhancement System") has a four power (4x) telescope in a square device mounted above the spectacle lens carrier which is, in effect, Petitioner's regular prescription glasses (Win. Ans. 2, 4; Keeney, Tr. 109-110; RPF-16).

19. On February 2, 1989, Dr. Windsor found that distant monocular acuity for Petitioner's left eye was 20/40 when Petitioner used the Ocutech lens system (CX-0-1; Win. Aff. 2; Mrs. Secrest, Tr. 25; RPF-16).

E. How Petitioner Sees with Regular Glasses

20. Petitioner is not a person with monocular vision because he is not blind in one eye; Petitioner sees with two eyes, albeit with decreased central acuity in one eye and normal central acuity in the other eye as corrected by regular prescription glasses. He has normal peripheral vision in both eyes, *i.e.*, the side vision outside of the central 5° to 10° of the field of vision, (Helveston, Tr. 38-40, 68-69; Win. Aff. 2; Win. Ans. 4: Mrs. Secrest, Tr. 25-26; CPF-2; CPF-9).

21. In terms of binocular vision, when a person has normal central acuity in both eyes, the eyes do not function as a reinforcing factor for each other (for example, the room doesn't get twice as bright with both eyes open as opposed to only one eye open); there is, instead, a rapid and essentially equal alternation between the two eyes; thus, one eye receives the image stimulus for a split second and, reciprocally, the other eye receives the image stimulus for a split second, so that during the act of binocular vision, the normal person is using about fifty percent of the capacity of each eye at a given time; the process is called "retinal rivalry" (Helveston, Tr. 40-41).

22. In terms of binocular vision, when a person has normal central acuity in both eyes, the brain usually takes the straight ahead or central vision of the

left eye and fuses it with the straight ahead or central vision of the right eye; these are slightly different images of the same thing but integrated by the brain into a single image; the single-image vision which results is referred to as "stereopsis" or stereoscopic vision (Keeney, Tr. 86–88; see Stedman's Medical Dictionary 1337–1338 (5th Lawyers' ed. 1982)).

23. In terms of binocular vision, when a person has a problem with central acuity in one eye, an ambiguous picture is transmitted to the brain, a condition called "anomalous retinal correspondence", (Helveston, Tr. 36; Keeney, Tr. 86). There is a wide spectrum of ways in which people adapt to anomalous retinal correspondence; a person may physically close the poor eye or squint with it, or turn his head in such a way as to integrate the images coming from both eyes, or alternate using them, or suppress the image coming from the poor eye at brain level (Keeney, Tr. 85–87; RPF–15).

24. Because Petitioner has had decreased central acuity in his left eye caused by strabismic amblyopia since childhood, he has experienced anomalous retinal correspondence and apparently solved the problem by suppressing the image coming from his left eye while relying on his right eye (as now corrected by regular prescription glasses) for central vision acuity (Helveston, Tr. 36–37; Keeney, Tr. 86). This process of selective combination of the two images by Petitioner's brain creates one image of 20/40 or better distant binocular acuity, notwithstanding the 20/240 distant monocular acuity of Petitioner's left eye (Win. Ans. 4).

25. A person's brain uses the side or peripheral vision of both eyes, and Petitioner's peripheral vision, since the 1988 surgery, is not significantly different between his two eyes (Win. Aff. 2; Win. Ans. 4).

F. How Petitioner Would Use and See with the Ocutech Lens System

26. Dr. Windsor states that in almost all driving situations, Petitioner would be looking through the lower part of the Ocutech lens system when driving; *i.e.*, the spectacle lens carrier (Win. Ans. 2, 9). Dr. Windsor further states that Petitioner would use the Ocutech lens system's upper part, the 4x telescope, with his left eye for one to two second views to scan the distance and that this would be similar to the way Petitioner uses the rear view mirror (Win. Ans. 2, 9; RPF–16).

27. Although Petitioner's left eye distant monocular acuity tested 20/40 when using the Ocutech lens system in Dr. Windsor's office on February 2, 1989, this is not what 20/40 monocular acuity would be like for that eye without using this kind of telescopic device because:

(a) The image projected on Petitioner's left-eye retina when looking through the 4x telescope part of the Ocutech lens system is approximately four times the size of the right-eye retina image looking through the prescription lens part of the system (Helveston, Tr. 52).

(b) Therefore, 20/40 vision through the telescope is equivalent to saying that Petitioner can see the 20/40 line on the eye chart with his left eye at 5 feet from the chart, whereas normal 20/40 vision without the 4x telescope would be equivalent to his left eye seeing the 20/40 line on the eye chart at 20 feet; hence, the Ocutech lens system produces an artificially enlarged image for Petitioner's left eye (Helveston, Tr. 59; Keeney, Tr. 102–103).

28. When looking through any telescope, turning the head in either direction displaces the image optically in the opposite direction and the Ocutech lens system which Petitioner proposes to use, with its 4x telescope, is an unusually high powered device and will present the image jumping problem to an even higher degree (Keeney, Tr. 93; RX–B–168; Helveston, Tr. 54–55).

29. The artificially enlarged image produced by the Ocutech lens system means that, when Petitioner is using the 4x telescope to scan the distance with his left eye, and at the same time continuing to look through the spectacle lens carrier part of the Ocutech lens system with his right eye, his binocular vision is suspect because:

(a) Petitioner's brain cannot integrate into a single image, a left-eye image that is four times larger than the right-eye image because although the brain can integrate a size difference of four, five, or ten percent and achieve true stereopsis, it cannot compensate for a four hundred percent enlargement of an image from one eye versus the unenlarged image from the other eye (Keeney, Tr. 84–88; RPF–15).

(b) In this impossible visual situation, Petitioner's brain would reject the artificially enlarged or magnified picture and refuse to integrate it with the right-eye image, a situation not unlike his brain's reaction to the constantly low central acuity of his left eye vis-a-vis his right eye (Keeney, Tr. 87–88, 96–97, 101–102). See Finding 24.

30. Petitioner's use of the Ocutech lens system would block part of his existing (*i.e.*, with regular glasses) 90° field of vision in two respects (RPF–18):

(a) First, it would limit Petitioner's left-eye central field of vision to perhaps 10° to 12° at best because surrounding the magnified area that the Ocutech lens system provides through the 4x telescope, is an area of non-vision or "ring scotoma" which is generally wider than the magnified area and which occurs for two reasons: (1) because the magnified picture coming from Petitioner's left eye to his brain overlaps something in the space he is looking at and blocks it out; and (2) because the telescope body of the Ocutech lens system, itself, intrudes on the magnified picture (Helveston, Tr. 62–64; Keeney, Tr. 88–91, 96; RX–A–135 (Table 1); RX–B–168, 170).

(b) Second, it would limit Petitioner's field of vision for both eyes because the housing of the telescope, mounted above the Ocutech's spectacle lens carrier, intrudes on the upper portion of their field of vision like a curtain from above, or an awning effect, even when both eyes are looking underneath the housing and through the spectacle lens carrier (Keeney, Tr. 91–92, 109–110; RX–B–170).

31. There are motion and vibration problems normally associated with telescopic devices which would be significantly present if Petitioner used such a device, like the Ocutech lens system, while driving a vehicle.

(a) When the Ocutech lens system vibrates, even slightly, Petitioner will experience significant image decay (Keeney, Tr. 92–93; RX–B–168–169).

(b) Speed-smear, *i.e.*, obscuration of peripheral vision experienced by a person sitting in a moving vehicle, is a problem affecting all drivers, but for a driver using a telescopic device, the vehicle's acceleration can reach a point at which speed-smear in his peripheral vision equals the telescope's ring scotoma and the driver will be functionally blind (Keeney, Tr. 95–96; RX–B–173–174).

G. The Advisability of Petitioner's Use of the Ocutech Lens System When Driving

32. Dr. Windsor is of the opinion that Petitioner can drive with his vision as it currently exists with his regular prescription glasses because a person with reduced acuity in one eye may still function binocularly and, in any event, peripheral vision is the most important function for safe driving; Dr. Windsor emphasizes that central vision is much more of a spotting method for looking at signs and distant objects while peripheral vision is used to detect the sudden movement of objects or obstructions at the side (Win. Aff. 5; Win. Ans. 9).

33. Dr. Windsor would not prescribe the Ocutech lens system for Petitioner to use on a routine basis when driving; he

views the Ocutech lens system as a backup safety device for Petitioner in the rare circumstance when Petitioner might have to use his left eye for a short period of time for distant central vision because something prevents the use of his right eye for this function; Dr. Windsor believes that in that event, Petitioner would be able to see adequately through the spectacle lens carrier part of the Ocutech lens system in order to drive until he could safely stop, but that the system's telescope would also permit Petitioner to take one to two second sightings to scan the distance with his left eye as a backup precaution (Win. Aff. 3; Win. Ans. 9; RPF-10).

34. Dr. Helveston opines that Petitioner would be just as well or better off not using the Ocutech lens system when driving; that it would not enhance Petitioner's driving ability, safety, or functional performance; and, on the contrary, the Ocutech lens system might be detrimental to Petitioner's ability to drive (Helveston, Tr. 46, 51, 55, 59, 65, 70). Dr. Helveston would not, therefore, advise Petitioner to use the Ocutech lens system for anything other than static acuity testing to show that his left eye distant monocular acuity is 20/40 (Helveston, Tr. 53; RPF-8).

35. Dr. Keeney, testifying as an expert not only in ophthalmology but also in transportation-related visual problems (Tr. 77), states that he rarely prescribes bioptic telescopes except for static use at a desk or work place; he does not prescribe them for driving because a person cannot drive while looking through a pair of binoculars or telescope; furthermore, in his opinion, anyone attempting to do so would actually be using the telescopic device a very small percentage of the time and, in Petitioner's case, this would mean that Petitioner would be driving the vast majority of the time with his left eye distant monocular acuity at a 20/240 level (Keeney, Tr. 92, 104-106).

36. Petitioner believes that he should not have to use the Ocutech lens system in order to drive commercially, and further believes that the Ocutech lens system is going to be cumbersome to wear; will require training before it can be used; and, if used, may be confusing and possibly cause double vision (Mrs. Secrest, Tr. 25).

IV. Opinion

The FHWA has stated that "the public interest in motor vehicle safety requires * * * insuring that drivers of modern, more complex vehicles can safely withstand the increased physical and mental demands that their occupation now imposes," and 49 CFR 391.41 contains the "minimum physical requirements" for drivers of commercial motor vehicles operating in interstate commerce, 35 FR 6458 (Apr. 22, 1970); 43 FR 56900 (Dec. 5, 1978).

Petitioner was a commercial truck driver for about a year and a half, notwithstanding that he has had a physical condition since childhood causing decreased central vision in his left eye (see n. 6; Finding 1). Through a series of events not relevant to my decision (see D.Q. at 2), Petitioner underwent a physical examination which resulted in the conclusion by his employer, and eventually by Respondent, that he is not qualified to drive a commercial vehicle in interstate commerce because the low central vision in his left eye makes it impossible for him to comply with the vision standard in 49 CFR 391.41(b) (10) calling for distant acuity of 20/40 (Snellen) in each eye tested separately with or without corrective lenses.

Here, wholly apart from independent evidence in the record (Findings 5-6, 7(b), 8), Petitioner concedes that his left eye does not meet § 391.41(b) (10)'s distant monocular acuity requirement (Finding 12). Petitioner contends that the requirement can be met by using an Ocutech lens system (Findings 17, 19), which means that Petitioner looks through the telescopic part of the system with his left eye to achieve a 20/40 (Snellen) distant acuity level (Finding 18).

Although Petitioner asserted to the Associate Administrator for Motor Carriers, in seeking review of Respondent's Determination of Qualification which found that "bioptic telescopes" cannot be used to comply with § 391.41(b) (10)'s vision standard, that an Ocutech lens system is not a bioptic or telescope type lens, Petitioner has now, in effect, acknowledged that it is (Finding 12). Further, the record clearly shows that the Ocutech lens system is one kind of bioptic or telescope type lens system and that for purposes of evaluating what Petitioner proposes to use to bring the vision in his left eye up to the regulatory standard, all of these terms are essentially synonymous (Findings 13, 18). Accordingly, the term "bioptic telescopes" hereinafter in my decision includes all such lenses, including the Ocutech lens system.

Turning to the question of whether "bioptic telescopes" can bring Petitioner into compliance with § 391.41(b) (10), the record shows that in the circumstances of a static test given in a doctor's office, Petitioner can achieve a 20/40 (Snellen) left eye distant acuity result with an Ocutech lens (Finding 19). But, because using the Ocutech is the same as having Petitioner look through a telescope with one eye (Findings 14, 18), in this situation Petitioner's left eye is simply receiving an artificially enlarged image and the 20/40 (Snellen) result thus produced is not comparable to what is ordinarily meant by the 20/40 (Snellen) acuity standard (Finding 27). Nowhere in Part 391 of the regulations or in the remaking history is there any indication that the FHWA intended other than that the commonly accepted 20/40 (Snellen) acuity standard be used for the vision requirement in § 391.41(b) (10).

Furthermore, it is impossible to assume that "bioptic telescopes" would enable Petitioner to see with his left eye at even the Ocutech's "20/40" acuity level while driving a vehicle. Movement, vibration, and telescopes, unfortunately, combine to produce a number of problems; for example, image jumping (Finding 28), and image decay and speed-smear (Finding 31); and two of the three expert witnesses appearing in the proceeding (Finding 1), Drs. Eugene M. Helveston and Arthur H. Keeney, expressly point out that the use of "bioptic telescopes" is limited to static situations such as acuity testing (Helveston, Finding 34) or desk work (Keeney, Finding 35).

Respondent argues that the purpose of the FHWA's vision standard is to ensure that drivers have adequate vision while handling commercial motor vehicles on the highway and, consequently, to the extent that a test purporting to show a driver's compliance with any element of the standard cannot be replicated under actual highway conditions, it does not satisfy the requirements of § 391.41(b) (10) (RCL-2). I agree and conclude, therefore, that, in addition to the fact that bioptic telescopes do not bring distant monocular acuity for Petitioner's left eye up to the 20/40 (Snellen) standard within the meaning of § 391.41(b)(10) in a test situation, also, and more significantly, such lenses do not do so under driving conditions (Findings 28-32).

It is also clear from the record that even if a bioptic lens could provide Petitioner with 20/40 distant monocular acuity in his left eye while driving, it would not be doing so on a continuous basis. Petitioner's expert witness (Finding 1), Dr. Richard L. Windsor, who fitted Petitioner with the Ocutech (Finding 17), concedes that such lenses cannot be used routinely by Petitioner for driving; rather, the telescope part of the Ocutech can only be used for spot checking of distant objects by the left eye or as a safety precaution in rare circumstances when something might

happen to Petitioner's right eye making him dependent on the left eye for central vision for a very brief period (Findings 9, 26, 33).

Based on the foregoing, I must again conclude that a bioptic telescope lens does not bring distant monocular acuity for Petitioner's left eye up to the 20/40 (Snellen) standard contemplated by § 391.41(b) (10) under driving conditions because, when driving, Petitioner would not be using the telescope for the majority of the time but would, instead, be relying on his left eye's central vision at he distant monocular level it normally has and that level, at 20/240 (Snellen), is well below what the regulation requires (Findings 7(b), 8, 18, 35).

Finally, although it is undisputed that with his regular prescription glasses, Petitioner complies with § 391.41(b)(10)'s minimum standards for distant binocular acuity and field of vision (Findings 7(c)–(d), 10–11), Petitioner would be unable to maintain these standards when using a bioptic telescope.

Petitioner is still considered to have binocular, not monocular, vision despite the fact that he has decreased central vision in his left eye (Findings 20–25) and, as indicated above, his distant binocular acuity, with glasses, is acceptable under the regulations (Finding 7(c)). Expert testimony shows, however, that Petitioner's eyes would not continue to function binocularly when his left eyes uses the Ocutech's telescope and his right eye uses the Ocutech's spectacle lens carrier (Findings 21–22, 29). And, although when driving, as concluded above, Petitioner would not be using the Ocutech's telescope for the majority of the time, I must nevertheless still conclude that during the time it would be used, Petitioner would not be seeing binocularly and, accordingly, would not have distant binocular acuity at the level required by § 391.41(b)(10).

While Petitioner's 90° field of vision in each eye exceeds § 391.41(b)(10)'s minimum requirement of 70° (Finding 7(d)), expert testimony establishes that Petitioner's left-eye central field of vision will be decreased to 10° to 12°, or even less, when using the telescope because of the ring scotoma the telescope produces (Finding 30(a)). In this regard, Respondent argues that the purpose of the field of vision requirement in the FHWA regulations is to ensure that commercial drivers have a broad, unobstructed view of potential hazards on and to the side of the road. Thus, Respondent reasons that the 70° standard in Section 391.41(b)(10) is intended to be a continuous and uninterrupted 70° visual field for each eye (RCL–3). Respondent argues, therefore, that a driver may not compensate for the loss of 10° or 20° of central field width to a ring scotoma by having an additional 10° or 20° of field width at the periphery (RPF–19).

I find that the record does not show exactly how many degrees of central field vision will be lost to Petitioner's left eye when using the telescope (Findings 2–4, 7, 19), but it does show that the left eye's central field will only be about 10° to 12°, with the remaining central visual area affected by ring scotoma at least as much as that, or more (Finding 30(a)). The ring scotoma area of nonvision, also, clearly constitutes an interruption in Petitioner's left-eye field of vision. In the absence of evidence that the FHWA intended the contrary, I agree with Respondent's position that the 70° field of vision requirement means a continuous visual field from the center to the periphery and, here, while Petitioner may be able to demonstrate an overall left-eye field of vision somewhat in excess of 70° even when using the Ocutech, the field will not be continuous and uninterrupted from center to side. Consequently, I conclude that Petitioner's use of the Ocutech will make his left-eye field of vision substandard. Furthermore, by simply wearing the Ocutech, Petitioner's upper field of vision for both eyes will be decreased because of the awning effect of the telescope's housing above the Ocutech's spectacle lens carrier [Finding 30(b)].

In light of the foregoing, I conclude that neither the Ocutech lens system nor other types of bioptic telescope lenses can correct Petitioner's vision to the standard specified by § 391.41(b)(10).

As for the second issue in this proceeding, whether the Ocutech lens system constitutes "corrective lenses" within the meaning of §§ 391.41(b)(10) and 392.9a, I conclude that it does not.[7]

In the Determination of Qualification, Respondent considered the language and intent of the FHWA's vision standard for commercial drivers as revealed by the history of the agency's regulations and held that the term "corrective lenses" is used in §§ 391.41(b)(10) and 392.9a only as an equivalent for glasses or spectacles or contact lenses. See D.Q. at 10–13. Respondent further found that the FHWA "neither contemplated nor authorized the use of any other vision-enhancing device, such as bioptic telescopes." *Id.* at 13.

In this review proceeding, I am directed to determine whether the Ocutech lens system is something different from glasses or contact lenses, or whether it is a sophisticated or technologically advanced set of glasses. If the former, under Respondent's ruling in the D.Q., the Ocutech would not be a corrective or vision-enhancing device for purposes of the regulations; if the latter, it would be.

I stated my concern at the hearing that aside from whether the Ocutech can be defined as "glasses", confining "corrective lenses" specifically to glasses, or spectacles or contact lenses, may unreasonably and inappropriately eliminate the use by commercial drivers of new developments for vision correction and enhancement, see Tr. 114. Counsel for Respondent also stated at the hearing that if the Ocutech lens system were able to correct Petitioner's vision to the standard required by the regulations, Respondent would take the position in the proceeding that the Ocutech was a corrective lens for purposes of §§ 391.41(b)(10) and 392.9a, see Tr. 32, 107–108. See also CPF–15.

Regrettably for Petitioner, the record, as found above, unquestionably demonstrates that the Ocutech will not correct his vision to the required standard.[8] The record further demonstrates that the Ocutech is not considered to be corrective lenses within the field of ophthalmology; more specifically, it is not considered by practitioners to be comparable to the simple lens system constituting prescription glasses and contact lenses, services which are used correct vision problems (Findings 15–16).

The Ocutech lens system, therefore, wholly apart from the FHWA regulations, is not commonly accepted as a sophisticated or technologically advanced set of glasses; it is thought of as something different from glasses and contact lenses: in particular, as an aid for persons with severe and unimprovable vision loss to see something in certain kinds of situations rather than as a means of correcting their vision (Finding 13). In light of this, as well as the fact that, in this case, the Ocutech has been shown not to correct Petitioner's vision, I conclude that the Ocutech is not a corrective lens in accordance with Respondent's ruling in

[7] As indicated at the outset of my conclusions, whether the Ocutech lens system is a kind of bioptic telescope is obviously an issue in this case. The Associate Administrator raised some specific questions about the Ocutech as a corrective lens and these are the questions addressed, *infra*.

[8] Although decision in this case is unfavorable to Petitioner, I am not unsympathetic to his position, especially since he has a commendable driving record.

the Determination of Qualification. Indeed, two of the expert witnesses in the proceeding, Drs. Helveston and Keeney, do not consider the Ocutech suitable for anyone while driving (Findings 34–35), and the third expert witness, Dr. Windsor, only recommends its possible driving use as a back-up safety device for emergency situations (Finding 33). Petitioner, himself, has indicated for the record that he has doubts about his ability to use the Ocutech for driving (Finding 36).

In sum, the Ocutech lens system which Petitioner proposes to use to meet the vision requirements in the FHWA regulations fails to correct his vision to the required levels and does not constitute "corrective lenses" within the meaning of the regulations.

I am compelled to add the final comment that in this proceeding the record shows that neither Drs. Helveston and Windsor nor Petitioner believe that Petitioner needs to use the Ocutech for driving a commercial vehicle (Findings 32, 34, 36). They feel that Petitioner's vision, as corrected by his regular glasses, is sufficient for safe driving irrespective of the requirement in the regulations for a minimum distant acuity level for binocular vision as well as one for distant monocular acuity in each eye (*see, e.g.*, Finding 32). By contrast, Dr. Keeney disagrees (Tr. 83–84).

However, the propriety of the regulations is not an issue in this proceeding. *See*, Tr. 11–13, 73. The FHWA's Associate Administrator for Motor Carriers has stated in the Order Appointing Administrative Law Judge that, at another time, the agency will be considering changes in commercial driver qualifications including issues relating to low vision and monocular drivers, *id.* at 1. I would simply call the agency's attention, therefore, to the fact that the record before me indicates that there are differences of opinion among highly qualified experts in ophthalmology about the need to require compliance with minimum standards for both the binocular and monocular distant acuity levels in all circumstances. See, *e.g.*, Helveston, Tr. 47, 65–67; Keeney, Tr. 83–84; Win. Aff. 2; Win. Ans. See also CPF–12; CPF–13; CPF–14. This issue must be resolved at a different time and in a different forum.

I conclude that Petitioner's use of an Ocutech or other bioptic telescopic lens will not enable him to meet the vision requirement in 49 CFR § 391.41(b)(10) and that such lenses are not corrective lenses within the meaning of 49 CFR 391.41(b)(10) and 392.9a.

Dated at Washington, DC., this 28th day of May 1991.

Robert L. Barton, Jr.,

Administrative Law Judge.

Federal Highway Administration

[Docket No. R5–89–174]

In the matter of Robert Hansen Trucking, Inc., Respondent

Order in Response to Respondent's Motion to Dismiss or, in the Alternative, to Amend Reply, and Regional Director's Motion for Summary Judgment

Background

This matter comes before me on motions filed by Robert Hansen Trucking, Inc. (hereafter "Hansen" or Respondent), and the Regional Director, Office of Motor Carriers, Region 5, under part 386 of the Federal Highway Administration's (FHWA) Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (49 CFR part 386).

This is a civil forfeiture proceeding initiated by the Regional Director by Notice of Claim dated February 15, 1990. See 49 CFR 386.11(b). The Regional Director has alleged that Hansen committed 37 violations of the Federal Motor Carrier Safety Regulations (FMCSRs). These violations consist of one count of failing to report an accident, in violation of 49 CFR 394.9(a), and 36 (thirty six) counts of "requiring or permitting" drivers to make false entries on their records of duty status, in violation of 49 CFR 395.8(e). The Regional Director assessed a civil penalty of $400 for the one violation of § 394.4(a) and $450 for each of the 36 violations of § 395.8(e), for a total civil penalty of $16,600.

On March 20, 1990, Hansen, through counsel, replied to the Notice of Claim. Hansen admitted that it failed to report the accident cited by the Regional Director in count 1 of the Notice of Claim, but "affirmatively alleges that it did not report the accident in question due to its understanding that the accident was 'non-reportable' as only the carrier's equipment sustained property damage." Hansen denied that it required or permitted any of the drivers cited in counts 2 through 37 of the Notice of Claim to falsify their records of duty status. Hansen alleged in its Reply that it has a "comprehensive safety program * * * designed to discover violations, notify drivers of violations, reward drivers for compliance and discipline drivers for violations," and that "there is no evidence that the respondent 'required or permitted' falsification of logs."

Hansen's March 20 Reply further indicated that Hansen did not request a formal, trial-type hearing, but rather requested the Associate Administrator to decide the matter based on the evidence submitted "herein." See 49 CFR 386.14(b)(2) and 386.16(a). The relief requested by Hansen is (1) dismissal of count 1, because Hansen "properly reported all other accidents and failed to report the accident in question due solely to a mistaken, but good faith, interpretation of the reporting criteria," or, alternatively, reduction in the assessed forfeiture amount to $50.00, and (2) dismissal of counts 2 through 37 because "there is no evidence that the respondent 'required or permitted' falsification of logs," or, alternatively, reduction in the assessed forfeiture amount to $50.00.

On May 25, 1990, Hansen moved to dismiss the Notice of Claim or, in the alternative, to amend its Reply and request an oral hearing.

On October 25, 1990, the Regional Director answered Hansen's May 25 Motion to Dismiss urging the Associate Administrator to deny Hansen's motion in all respects and to grant summary judgment in favor of the Regional Director. On November 7, 1990, Hansen replied, and on November 19, 1990, the Regional Director submitted his "Final Response."

Discussion

This case presents several procedural and substantive issues for resolution which have become entwined. For the reasons set forth below, I have decided to permit Respondent Hansen to amend its Reply of March 20, 1990, and to accept its Amended Reply of May 25, 1990, but to deny its request for a hearing; to grant summary judgment in favor of the Regional Director on count 1, failing to report an accident in violation of 49 CFR 394.9(a); and to dismiss counts 2 through 37, requiring or permitting drivers to make false entries on their records of duty status, in violation of 49 CFR 395.8(e).

Amended Reply and Request for Hearing

The Regional Director initiated this civil forfeiture case by issuing a Notice of Claim to Hansen alleging 37 violations of the FMCSRs on February 15, 1990. See Exhibit 1 of Regional Director's October 25, 1990, Motion for Summary Judgment; "Record" at 95–99. Service is completed upon mailing. 49 CFR 386.31(a). Under the FHWA's rules of practice, Hansen's reply was due within 15 days after the claim letter was served. 49 CFR 386.14(a). The Regional

Director has stated that he agreed that the Respondent could have until March 21, 1990, to reply. Respondent Hansen in fact replied on March 20, 1990. Because of the agreement of the parties, I deem Hansen's initial reply of March 20, 1990, to be timely.

In its initial reply, Hansen waived its right to a hearing and requested that the Associate Administrator render a decision based on the evidence submitted.

On May 25, Hansen filed a "Motion to Dismiss Notice of Claim; In the Alternative, Motion to Amend Reply and Request Oral Hearing." Hansen's May 25 motion suggests that it believes that the receipt of a "Satisfactory" safety rating from the FHWA is new or additional evidence that supports its defense to counts 2 through 37 that it did not "require or permit" drivers to falsify their records of duty status.

The Regional Director did not reply to Hansen's May 25 motion until October 25, 1990. The Regional Director then opposed Hansen's motion to amend its reply and to request a hearing on purely procedural grounds; *i.e.*, that Hansen's request is untimely. I disagree that Hansen's request is untimely. I view Hansen's May 25, motion as an attempt to amend or withdraw a pleading. See 49 CFR 386.51. I believe that § 386.51 permits parties to amend their pleadings to conform to the facts of the case as they are developed.

I also believe that I have inherent authority to refer a matter for oral hearing, if a party submits the matter to me for decision based on evidence submitted and I determine that a hearing is warranted. I do not believe that I should read § 386.14 so mechanically or rigidly as to deny a respondent a hearing in a case, for example, where a respondent discovers exculpatory evidence that might tend to negate allegations of violations.

Hansen's original Reply contained a denial of counts 2 through 37 of the Notice of Claim, and requested that the Associate Adminstrator decide the matter based on the evidence submitted. The Amended Reply primarily differs from the initial reply by referring to a recently received safety rating from the FHWA and by requesting a hearing. The Regional Director does not state in what way he would be prejudiced by permitting the requested amendment. Hansen's original Reply put the Regional Director on notice that Hansen denied counts 2 through 37.

In this case, I do not believe it is necessary to determine whether a safety rating constitutes "evidence," in order to rule on Hansen's motion. However, it is my view that a "Satisfactory" safety rating is not a defense to a charge that a violation occurred, nor does it preclude the initiation of an enforcement action by a Regional Director. The factors which are considered in assigning safety ratings relate to the total level of a carrier's compliance with applicable regulations. It is intended primarily to be a management tool for the FHWA to prioritize the allocation of its resources to focus on those carriers which may require special attention.

A Regional Director's decision to initiate enforcement action, on the other hand, is based on violations discovered and a determination that enforcement action is required to induce compliance with the regulations. This decision is not necessarily based on a review of a carrier's overall compliance record. Indeed, at times the subject of an enforcement action may be in satisfactory compliance with applicable regulations, except for the area in which violations were discovered. In this sense, a Regional Director's decision to initiate an enforcement case against a motor carrier may be unrelated to the carrier's overall safety rating.

Because I believe that the Regional Director will not be prejudiced by granting Hansen leave to amend its Reply in this case, I will permit Respondent Hansen to amend its Reply to the Notice of Claim, although I am today denying Hansen's request for a hearing and giving no weight to the "Satisfactory" safety rating received from the FHWA. By admitting Hansen's Amended Reply in this proceeding, I believe that the parties will be treated fairly, and I will be aided in fully considering the issues and the argument's of the parties. Similarly, I am considering the Regional Director's Motion of October 25, in order to complete the record before me.

Count 1

With respect to count 1, failing to report an accident, Hansen has admitted that it committed this violation. In defense or mitigation, Hansen argues that its failure to report was due to a mistake of law, allegedly not realizing that accidents involving damage only to the carrier's own property are nonetheless reportable to the FHWA.

I find nothing in part 394 of the FMCRs that would lend support to such an interpretation of the FHWA's accident reporting requirements, nor does Hansen cite to anything in its pleadings that would support such an interpretation. Indeed, because of the detailed definition of "reportable accident" contained in these regulations (49 CFR 394.3(b)), I do not find Hansen's argument plausible either as a defense or as further mitigation of the penalty assessed. The definition of "reportable accident" not only clearly states what is reportable, it states what is not reportable. Because this definition expressly provides that accidents involving, for example, only the boarding and alighting or loading and unloading of a vehicle are not reportable, I do not find it credible that Hansen believed that any accident resulting only in damage to the carrier's equipment was not reportable.

The evidence submitted by Hansen indicates that it has hired a "safety director" who is purportedly familiar with the applicable regulations. The record also reveals that Hansen was visited by agents of the FHWA at least twice before the visit which resulted in the instant Notice of Claim. See "Record" at 139–150. This evidence suggests that Hansen is familiar with the requirements of the regulations. While Hansen's mistake may have been "innocent," I do not find it to be reasonable given the evidence of its knowledge of the regulations.

With respect to Hansen's defense of count 1, I do not find that a formal, trial type hearing is warranted. Hansen has admitted the violation occurred, and I, therefore, do not find that a material factual issue is in dispute with reference to count 1. I also do not believe that an oral hearing will aid in my resolving this quesiton. It is my view that Respondent may have made a mistake of law, but I do not believe this mistake to have been reasonable under all the circumstances. Mere ignorance of the law cannot be a defense or an excuse for violating the law. See Luck Trucking, Inc., FHWA Docket No. 85–50H, Final Order, January 27, 1988, 55 Fed. Reg. 2962 (1990). In this case I must hold that Hansen knew, or should have known, that accidents such as that cited by the Regional Director are reportable to the FHWA under 49 CFR part 394.

Because Hansen has admitted that it failed to report the accident cited by the Regional Director in count number 1 of the Regional Director's Notice of Claim, I find that Hansen committed this violation. For the reasons outlined above, I also find Hansen's argument in further mitigation of the penalty assessed to be unpersuasive. The penalty assessed by the Regional Director is 80 percent of the maximum allowed for this paperwork requirement. I also note that Hansen has been the subject of a previous enforcement action initiated by a notice of claim letter dated April 28, 1986. See "Record" at 108–119. I find that the assessed penalty to be reasonable and as tending to induce this

carrier to comply with the accident reporting requirements in the future. Accordingly, I find Hansen liable to the Regional Director for the full amount of the $400 civil penalty assessed for count number 1.

Counts 2 through 37

Counts 2 through 37 represent 36 alleged instances of "requiring or permitting" drivers to make false entries on their records of duty status, in violation of 49 CFR 395.8(e). Hansen has denied these violations in its original Reply of March 20, 1990, and again in its Amended Reply of May 25, 1990. In both instances, Hansen has asked that the Associate Administrator dismiss counts 2 through 37 "upon the grounds that there is no evidence that the respondent 'required or permitted' falsification of logs, as alleged.

In its initial Reply, Hansen asked that the Associate Administrator decide this matter based on the evidence submitted "herein." March 20 Reply at 2. The agency's regulations provide that, "If a notice of intent to submit evidence without formal hearing is filed [as was done in this case] or if no hearing is requested under paragraph (b)(2) of this section and the respondent contests the claim, *all* evidence must be served in written form no later than the 40th day following the service of claim letter." 49 CFR 386.14(c) (emphasis supplied). Thus, all evidence was due to be submitted to me by the parties by March 27, 1990, *i.e.*, the 40th day after February 15, 1990, the date the Notice of Claim was served. But the Regional Director did not produce any evidence to support its allegations during that time.

Similarly, on May 25, 1990, Hansen moved to dismiss the notice of claim, in part, because "there is no evidence to support the complainant's requested finding * * *." Hansen's Motion to Dismiss at 2. Again, the Regional Director did not reply by offering evidence to support its allegations.

Finally, the Regional Director moved for summary judgment on October 25, 1990. And yet the record before me remains devoid of evidence to support a *prima facie* case that Hansen violated the regulations as alleged by the Regional Director. Unsupported allegations are not ony inadequate for summary judgment, but they will not do to avoid a respondent's motion to dismiss after a denial of the allegations of a notice of claim.

In his Motion for Summary Judgment, the Regional Director proposes certain findings of fact, including that Hansen's drivers falsified the records of duty status cited in counts 2 through 37. Regional Director's Motion for Summary Judgment at 10–11. The Regional Director states that Hansen "doesn't deny and therefore admits" these violations, citing pages 4, 12, and 25 of the "Record." Page 4 of the "Record" appears to be page 1 of Hansen's proposed Amended Reply. And yet, I find that Hansen unambiguously denies these alleged violations on this page. ["In response to the allegations contained in Counts 2 through 37 alleging a violation of 49 CFR 395.8(e), the respondent denies that it required or permitted any of the drivers referred to in Counts 2 through 37 to falsify his record of duty status."] Also, on page 3 of this proposed Amended Reply (page 6 of the "Record") Hansen states, "The respondent respectfully requests dismissal of Counts 2 through 37 of the complaint in this proceeding upon the grounds that there is no evidence that the respondent 'required or permitted' falsification of logs, as alleged."

Page 12 of the "Record" cited by the Regional Director appears to be page 1 of Hansen's original Reply, and what has been said about pages 4 and 6 of the "Record"*supra* applies equally to pages 12 and 14 of the "Record," since in this respect Hansen's initial and amended replies are the same.

Finally, the Regional Director cites to page 25 of the "Record." This page appears to be page 9 of the affidavit of Larry Hartung, the Director for Safety of Hansen. This "evidence," however, appears to be ambiguous, and I believe falls short of an admission by a party to this proceeding. Indeed, I am reluctant to read this Affidavit by an employee of the Respondent as admitting to violations which have been expressly denied in Respondent's Reply to which it is appended, thereby contradicting the Reply itself.

I recognize that there is an issue lurking here as to whether Hansen has denied that the records of duty status cited by the Regional Director were falsified by it (or by its drivers for whom it is responsible or, viewed another way, who act as agents for it), or whether Hansen is merely denying that it "required or permitted" such violations to occur. However, I believe that Hansen is denying the charges as alleged in the Regional Director's Notice of Claim, and I do not believe that the Regional Director should be heard to complain that the Respondent has chosen to reply in the words used by the Regional Director.

The Regional Director's opposition to a hearing rests in large part on Hansen's "knowing" waiver of its right to a hearing. Yet, it seems to me that Hansen's pleadings in this case call into question whether there in fact was such a "knowing" waiver.

Hansen has twice expressly denied the allegations of counts 2 through 37. The Regional Director has had ample opportunity to present evidence supporting the violations alleged. The first time was when the Respondent chose to submit the matter on evidence; a second time was when the Regional Director moved for summary judgment. Because Hansen has denied the allegations of counts 2 through 37 and the Regional Director has failed to produce evidence to support his allegations, I conclude that I must dismiss counts 2 through 37. Because I am dismissing counts 2 through 37 for lack of evidence supporting these allegations, the oral hearing requested by Hansen is unnecessary. Moreover, as outlined above, it is not necessary for me to further consider Hansen's argument that a "Satisfactory" safety rating exonerates Hansen from violations which may have been committed or otherwise serve to mitigate the penalty assessed.

While I am today dismissing counts 2 through 37 of the Regional Director's Notice of Claim, Hansen must be aware that I am also today finding that it violated Part 394 of the FMCSRs, as alleged by the Regional Director. This, then, is at least the second enforcement case brought against Hansen, and I am concerned about Hansen's compliance with the FMCSRs. The record in this case indicates that in 1986 Hansen was cited for 26 instances of false records of duty status and 6 hours of service violations. It has not escaped my notice that these include the same violations cited by the Regional Director in his 1990 Notice of Claim. Hansen should be on notice that I expect the Regional Director to continue to monitor Hansen's compliance with the FHWA's hours of service regulations, and, if warranted, to take necessary action to ensure compliance therewith.

Order

Therefore, it is ordered, That Respondent's Motion to Amend its Reply is granted; Respondent's request for a hearing is denied; the Regional Director's motion for summary judgment on count 1 is granted, and Respondent Hansen is hereby directed to pay a civil penalty of $400 to the Regional Director within 30 days of the date of this Order; and Respondent's Motion to Dismiss counts 2 through 37 is hereby granted

Dated: May 20, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Office of Hearings

[FHWA Docket No. R1-90-014 Motor Carrier Safety]

Crossroads Freight Ways, Inc.

Order Canceling Hearing and Terminating Proceeding

Served April 4, 1991.

The only party that responded to my pretrial order of December 20, 1990 was the Regional Director, the complainant in this matter. Accordingly, the pretrial schedule proposed by the Complainant was adopted, and the hearing was scheduled to be held in Rochester, New York on May 23, 1991.

On March 5, 1991 the Regional Director moved "to dismiss this matter in the interest of justice * * *. In light of respondent's dissolution of the company and discontinuance of all transportation operations, attempts to collect any civil penalties would be futile * * *. Therefore, termination of these proceedings would be appropriate and Regional Counsel seeks such relief." I agree. Accordingly, the hearing is canceled and these proceedings are terminated.

Burton S. Kolko,

Administrative Law Judge.

Federal Highway Administration

[Docket No. R1-90-285]

In the matter of Greater Syracuse Moving & Storage Co., Inc.

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 1, for a Final Order finding the facts to be as alleged in a Notice of Claim dated September 28, 1990, and assessing a civil penalty in the amount of $4,500. Respondent failed to request a hearing to contest the charges and in fact admits that the violations did occur. Respondent does, however, request mitigation or forgiveness of the penalty.

Respondent attempts to advance an economic hardship argument in support of its request. Nevertheless, its argument is unsupported by hard facts, such as financial data. It relies on a tough economic environment, the need to expand its business, the hardship which might be visited upon its drivers and its now apparent attempt to comply with the regulations.

The record is clear that this is not the first encounter of Respondent with the Agency. Respondent should have known of its obligations under the regulations. It is inexcusable to rely on the rationale that Respondent is not culpable until such time that the Agency points out that Respondent is operating in violation of the regulations.

Although I am acutely aware of the economic environment and seek to relieve the burden on smaller operations and those in some economic difficulty, I have repeatedly emphasized in my Orders that the Regional Director is in the best position to make an assessment of the need for a stringent penalty, for mitigation of that penalty following settlement discussions and of the validity of Respondent's arguments. I have in the past reduced some penalties; I have even found that no compelling case has been made by the Agency in finding and alleging violations. But this administrative process is not an oriental bazaar—the process is not, and never will become one where the Agency audits a carrier, discovers violations, assesses a penalty, the carrier comes forward and pleads mea culpa, and all parties kiss and make up. The agency's mission is safety. We are interested in saving human life and just because some carriers may feel that records are unimportant or that a civil penalty assessed by the U.S. Government should have no more effect than a parking ticket, we feel no obligation to minimize our search for perfect compliance.

Respondent has not made a case for any reduction in the amount assessed.

Therefore, it is ordered, That the request for a Final Order is granted. Respondent shall pay to the Regional Director the sum of $4,500 within 30 days of the date of this Order.

Dated: March 25, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. 90-FL-027-SF]

In the matter of All Time Transport, Inc.

Final Order

This matter comes before me upon request of the Regional Director, Region 4, Office of Motor Carriers, for a Final Order finding the facts to be as alleged in a Notice of Claim dated June 28, 1990, and imposing a penalty of $3,400.

The Notice of Claim alleges that Respondent committed several violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and the Financial Responsibility Regulations. Respondent is a small carrier, involved in what he views as local cartage. In essence, Respondent picks up and delivers merchandise moving in foreign trade—either picking up merchandise at a port and delivering it to a warehouse or making the trip the other way around.

At a previous review, Respondent was informed of the need to comply with the regulations. At that time, Respondent had one tractor and three smaller vehicles, albeit over 10,000 pounds. Respondent sold the tractor and was under the belief that he was not subject to our regulations.

The violations alleged include failing to keep driver qualification files, records of duty status and failure to have the requisite insurance.

Respondent is clearly within the jurisdiction of this Agency and suject to the requirements of the FMCSRs and the Financial Responsibility requirements. Respondents must obtain the requisite level of insurance, must establish proper files and must keep records of duty status. If he needs assistance in this regard, he should contact the Officer-in-Charge.

Therefore, it is ordered, That the request for a Final Order is granted. Respondent is subject to and has violated the regulations as alleged. Respondent shall pay the sum of $3,400 to the Regional Director within 30 days of the date of this Order.

Dated: March 21, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R10-91-9]

In the matter of Western Pneumatics Install, Inc.

Final Order

This matter comes before me upon request of the Respondent for a hearing and objection thereto and request for a Final Order filed by the Regional Director, Office of Motor Carriers, Region 10. The Regional Director also requests the imposition of a civil penalty in the amount of $4,200.

These motions originate in a Notice of Claim, dated October 18, 1990, alleging violations of the Federal Motor Carrier Safety Regulations (FMCSRs) (there was also an allegation of violation of the Federal Hazardous Materials Regulations, which has been conceded and disposed of). The alleged violations include using a driver without a medical examination, failing to maintain complete driver qualification files and failing to require a driver to make a record of duty status.

As Respondent notes, these violations relate to a "self-contained, self-propelled crane." Respondent interprets the applicable law as conferring jurisdiction over those vehicles which transport property or passengers, and seeks to interpret that transportation of property or passengers in such a manner

as to exclude its vehicle. Respondent avers there are no factual disputes and contends that it seeks to levy a jurisdictional challenge.

The Agency has interpreted this statute to confer jurisdiction over commercial motor vehicles moving in interstate commerce in furtherance of a commercial purpose. The Agency has not limited its jurisdiction to the transportation of freight, nor is there any apparent rationale in the law, or its legislative history, which would support such a narrow interpretation, absent the Agency's own finding of that limitation.

I find that the Agency has proper jurisdiction. The Regional Director's Motion sets forth the underlying legal rationale. No purpose would be served in appointing an Administrative Law Judge without factual differences. Respondent's proper forum, should he wish to contest the Agency's interpretations or jurisdiction, is in the Federal Court system.

Therefore, it is Ordered, That Respondent's request for a hearing is denied and the Regional Director's request for a Final Order is granted. The Agency has interpreted commercial motor vehicles in interstate commerce to include all vehicles used in furtherance of a commercial purpose, including those self-propelled vehicles meeting the weight threshold which transport only themselves. These vehicles are obviously designed for road usage, are licensed under State laws for highway transport, and do not fall under any waiver or exception interpretations issued by the Agency. The Respondent is directed to pay the sum of $4,200 to the Regional Director within 30 days of the date of this Order.

Dated: March 20, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R1-90-10; Formerly R1-90-150]

In the Matter of Autotrans, Inc.

Order Denying Petition for Review

This matter comes before me upon Petition for Review submitted on behalf of Respondent, dated January 28, 1991. The Petition seeks reversal of a Decision of an Administrative Law Judge granting a Summary Judgment to Complainant, remand and reassignment to another Administrative Law Judge.

Complainant, Regional Director, objects to the Petition for Review.

The Order of the Administrative Law Judge was issued on January 16, 1991. It canceled the hearing which was scheduled for February 5, 1991, granted Complainant's Motion for Summary Judgment and assessed a Civil Penalty of 15,500.

The basic requirement of these proceedings is procedural regularity. At best Respondent's approach to this entire matter has been somewhat cavalier. The regulations governing these proceedings are explicit in their requirements. The Judge appointed to hear a matter under these regulations is granted broad power to establish the forum, to entertain motions and to dispense of the proceedings. In this case, the Judge has extended every opportunity to Respondent to participate in the hearing process which Respondent requested. Respondent's obligations were to comply; Respondent did not. Respondent advances no compelling argument supporting this request for reversal and remand.

Therefore, it is ordered, That Respondent's Petition for Review is denied and the Order of the Administrative Law Judge is adopted as the Final Order. Respondent shall pay the sum of $15,500 to the Regional Director within 30 days of this Order.

Dated: March 19, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R5-91-04; Formerly R5-90-379]

In the Matter of Delta Transportation, Ltd.

Order Appointing Administrative Law Judge

This matter comes before me upon request of the Respondent for Dismissal, More Definite Statement or Formal Administrative Hearing. These Motions are made in response to allegations of violations of the Federal Motor Carrier Safety Regulations (FMCSRs) which were stated in a Notice of Claim dated January 28, 1991.

The alleged violations are two counts of using a driver to transport property in interstate commerce even through the driver had not been medically reexamined within the last 24 months, and 49 counts of requiring or permitting drivers to falsify their records of duty status.

The Regional Director requests a penalty of $23,250 for these alleged violations.

Respondent seeks Dismissal of two counts, permitting or using a driver to transport property in interstate commerce even though the driver has not been medically reexamined within the last 24 months. The reason advanced is that Exhibit A enclosed with the Notice of Claim is mislabeled and the caption actually references another section of the regulations and a totally separate violation. However, the description of the violation, the caption on the Notice of Claim, the allegation of the violation within the body of the Notice of Claim, and the assessment of penalty in the Notice of Claim all correctly state the alleged violation. Certainly Respondent has sufficient notice of the allegation on which to make a reasoned response. Although we might characterize the preparation of the Exhibit as sloppy, Respondent has in no way been prejudiced and I can find no reason to dismiss these claimed violations.

Respondent then seeks Dismissal of the remaining counts on the basis that they lack the necessary brief statement of facts. The Exhibit lists in tabular form the driver, date, origin and destination of the trip and type of receipt used in reviewing the log. This appears to meet the basic requirement to give notice to Respondent of the violation alleged and to allow Respondent to examine the records to obtain any information necessary to raise a defense.

Respondent next contends that the notice is deficient on the issue of whether Respondent required or permitted the drivers to make the alleged false entries constituting the violation. Respondent contends that the facts relevant to this question include the carrier's overall safety program and is not a standard requiring 100 percent compliance. This is not the standard upon which the Agency alleges violation, nor is it an acceptable legal standard. The Administrative Law Judges, as well as my prior Orders, have addressed this issue. It is well-established that if a carrier has within its means the ability to detect violations, then the knowing or permitting standard has been met, see the opinion of Administrative Law Judge Burton S. Kolko in the matter of Trinity Transportation, Inc., Docket No. R9-90-001, February 27, 1991. Nevertheless, the totality of the Respondent's program may constitute sufficient basis for some mitigation of the penalty assessed.

Similarly, Respondent seeks a More Definite Statement which, it is argued, is necessary for the Associate Administrator to evaluate the severity of the violations. The Agency has been delegated wide powers in recommending an assessment, confined only by the statutory dictates of the factors to be considered in making that assessment. Absent a showing of reasoning by Respondent as to why the penalty should be reduced or modified, the Notice of Claim provides sufficient basis upon which to prepare a reply and to prepare for a hearing.

Finally, in requesting a hearing, Respondent denies the allegations. Respondent contends that the two counts involving the medical records are the result of an inadvertent failure to enter the drivers when it converted from a manual monitoring system to a computer operated procedure.

Likewise, Respondent denies that it required or permitted its drivers to make false entries on the records of duty status, that it has a comprehensive system of identifying violations and disciplining drivers. Respondent contends that the logs of the drivers are contradicted or contrary to the corresponding receipt noted in the Notice of Claim, that if discrepancies exist, there are factual differences as to whether they are minor or substantial, and that Respondent's safety program is adequate to rebut the alleged violation that Respondent permitted drivers to make false log entries. These contentions do appear to establish that there are material factual issues in dispute, and that there may be some cause for mitigation of the penalty assessed.

Therefore, it is ordered, that Respondent's Motion for Dismissal is denied, that the Motion for More Definite Statement is denied, that the Motion for a Formal Hearing is granted. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Officer in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b) and to ascertain and recommend to me if mitigation is warranted based on the totality of the Respondent's safety program.

Dated: March 19, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R3-90-139]

In the matter of Chincoteague Seafood Co., Inc.

Denial of Motion for Reconsideration

This matter comes before me upon request of the Respondent for reconsideration of my Final Order issued on January 2, 1991. In that Order I denied Respondent's request for a hearing on the basis that nothing had been presented to me upon which I might appoint an Administrative Law Judge. I granted Complainant's request for an Order assessing a penalty of $4,200 for violations of the Federal Motor Carrier Regulations (FMCSRs).

The current request before me again fails to present any facts upon which I might base any reconsideration and appointment of a Judge. The assertion that there are mitigating circumstances is insufficient in itself either to warrant a hearing or a reduction of the penalty.

The fact that the parties have been unable to agree upon a mutual time to meet and consider information which may, or may not be relevant to the charges, is something to be considered by the Regional Director in a request for a Final Order or in opposing any motion by Respondent. The record does not indicate that any of Respondent's rights have been prejudiced in any way by the Complainant. It behooves the Respondent to make available material in favor of his argument to Complainant at some time in the process before the issuance of a Final Order. Having failed to do so, Respondent wishes to prolong this process for an indeterminate time on the basis of unspecified valid mitigating circumstances. I cannot agree with the prolongation of the disposition of this matter.

Therefore, it is ordered, that the Respondent's Motion for Reconsideration is denied and the terms of the Final Order remain in effect.

Dated: March 19, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R3-90-241]

In the matter of Bill Cress Trucking

Final Order

This matter comes before me upon request of the Regional Director, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated August 23, 1990.

Having reviewed the Motion and supporting documents appended thereto, I find that no valid request for a hearing has been made. I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is Ordered, That Respondent is directed to satisfy the penalty assessment by paying to the Regional Director the full amount of $15,200 within 30 days of the date of this Order.

Dated: March 19, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Office of Hearings

[FHWA Docket No. R1-90-013 Motor Carrier Safety]

Independent Food Co., Inc.

Order Terminating Proceeding

Served March 14, 1991.

On March 11, 1991 regional counsel transmitted the settlement reached by the parties in this matter. The parties having agreed to settle and compromise this action prior to hearing, *It is therefore ordered,* That this proceeding is terminated in accordance with the terms and conditions of the settlement agreement.

Burton S. Kolko,

Administrative Law Judge.

Federal Highway Administration

[Docket No. R9-90-049]

In the matter of Swift Transportation Co., Inc.

Final Order Reissue

On January 16, I issued a partial Final Order in this matter finding for the Petitioner on all but 4 counts and assessing a penalty of $6,000. I requested additional information from the parties before deciding the remaining four counts.

On January 21, Respondent filed additional information, which can be viewed as a request for reconsideration, or a submission of additional evidence. The Regional Director filed a response thereto opposing the Respondent's request.

Having reviewed the new submissions and having revisited the earlier documents available to me, I am not inclined to grant the Respondent's request. However, it appears that the interests of safety have been served by the grant of the initial Final Order. The Respondent is certainly aware of its obligations to comply with the Federal Motor Carrier Safety Regulations.

As violations have been documented, and as such violations are recurring violations, the Petitioner's request for the imposition of some penalty is warranted. With respect to the 4 undecided counts, failure to properly notify the Agency of an accident, sufficient material is present for me to find that such failure was either clerical, the result of misunderstanding or based on lack of sufficient information to make a notification.

As a result, there appears to be no further reason for the Respondent to produce additional information or to delay this proceeding any additional time. These 4 counts are dismissed.

Therefore, it is ordered, that the initial decision of January 16, 1991, is reaffirmed. The total penalty imposed for violations found in that Order is $6,000. Due to possible confusion engendered by the exchange of Motions in the interim, Respondent is granted an

additional 30 days, from the date of issuance of this Order to pay that sum to the Regional Director.

Dated: March 4, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Office of Hearings

[FHWA Docket No. R9-90-001; Motor Carrier Safety]

Trinity Transportation, Inc.

Decision of Administrative Law Judge Burton S. Kolko

Served February 27, 1991.

Complainant Assistant Regional Counsel, Federal Highway Administration (FHWA), has charged Respondent Trinity Transportation, Inc. (Trinity), a motor carrier, with twenty-five violations of the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR part 350 *et seq.* The FMCSRs are issued under the authority of 49 U.S.C. 3102 of the Motor Carrier Safety Act of 1984 (the Act), Public Law 98-554, 98 Stat. 2829. After careful consideration I find the violations as charged and assess a civil penalty in the amount of $14,850.

A. Procedural Background

The Government initiated this proceeding by filing a Notice of Claim under 49 CFR 386.11(b) on August 14, 1989 (Exh. 29). The Notice cited the Respondent for violations of three rules under part 395 of the FMCSRs. It charged Trinity with a) seven violations of 49 CFR 395.3(a)(1), which prohibits requiring or permitting a driver to drive more than 10 hours following eight consecutive hours off duty (the "10-hour" rule); b) six counts of violating 49 CFR 395.3(a)(2), which prohibits requiring or permitting a driver to drive after 15 on-duty hours following eight consecutive hours off duty (the "15-hour" rule); and c) fourteen violations of 49 CFR 395.8(e) which outlaws requiring or permitting a driver to make false entries upon a driver's record of duty status (the "false log" rule). The Regional Director later dismissed two of the false-log counts, leaving twelve.

Complainant seeks civil penalties under 49 U.S.C. 521(b). That statute sets out a maximum penalty of $1,000 per offense involving a "serious pattern of safety violations" up to a $10,000 maximum per pattern, and a maximum of $500 for violation of a "recordkeeping" requirement. The 10-hour and 15-hour charges are considered safety violations, and the duty to keep a truthful log is a recordkeeping requirement. Complainant seeks a civil penalty of $750 for each 10-hour violation; $800 per 15-hour violation; and $400 per false-log violation, for a total civil penalty of $14,850.

Respondent denied that it had required or permitted the violations to occur and requested a hearing. It does not dispute that the violations occurred (Tr. 278). By Order dated February 20, 1990, the Associate Administrator appointed an Administrative Law Judge to preside over the action in accordance with 49 CFR 386.54. The hearing was held on August 28-29, 1990, in Memphis, Tennessee, and the parties filed briefs on November 16. FHWA also filed proposed findings of fact and conclusions of law.

B. The Safety Review

The Notice of Claim arose following two reviews of Trinity's operations by Danny L. Swift, then Officer-in-Charge (OIC) in the Nevada division of FHWA's Office of Motor Carrier Safety (see Tr. 14-15). Trinity had been formed in late 1987 and became operational in January, 1988 (Tr. 158, 374). On June 24, 1988, OIC Swift performed an initial evaluation—a "Safety Review"—at Trinity's Fernley, Nevada headquarters (Tr. 18, 333; Exh. 27). A Safety Review ordinarily constitutes the first contact of a new motor carrier entity with the Federal Highway Administration (Tr. 78-79). It involves a limited inspection of motor carrier operations undertaken pursuant to the Federal requirement to establish a current safety rating for all such carriers. The on-site FHWA official reviews selected records and the carrier's safety management systems. He also speaks to company representatives and receives answers to a 75-question form concerning carrier operations (§ 385.3(2); Tr. 25, 77-79, 87, 415-16). The Safety Review will not ordinarily result in the institution of an enforcement proceeding. Its purpose is primarily educational (§ 385.3(2); Tr. 87, 416).

Having been established less than six month earlier, Trinity was an unrated motor carrier at the time of OIC Swift's visit. Swift made a cursory check of relevant documents and interviewed Trinity's Western Regional Manager, Luther Hopkins, and its then-Safety Director, Larry Winkles. These matters formed the basis for his report (Tr. 85-86). Swift's Safety Review made five recommendations under Parts 387-96, among which was that the company not require or permit drivers to exceed maximum allowable hours of service (Exh. 27, p. 4: Tr. 25-26). His comments noted that Trinity had a point system for its drivers which tallied "good and bad behavior. Drivers are subject to suspension or termination depending on the accumulated points" (Exh. 27, p. 4). Swift then went over his findings with Hopkins (Tr. 415). Hopkins and Winkles each received copies of the Safety Review. Hopkins acknowledged receipt by his signature on the document (Exh. 27, pp. 1, 2); and Winkles did so by letter (EXH. 28; Tr. 28).

FHWA officials in Washington establish carrier safety ratings based on these field reports (Tr. 80, 414). Carriers are rated either satisfactory, conditional, or unsatisfactory (§ 385.3(2)). The Agency gave Trinity a conditional rating (Tr. 417), meaning that carrier safety management controls are inadequate to ensure compliance with safety fitness standards and may result in one or more violations of FHWA safety requirements (§ 385.3(2)). A motor carrier's safety rating is available to the public. An adverse determination can affect carrier relationships with shippers, insurers, and the Interstate Commerce Commission, which grants operating authority to motor carriers (53 FR 50962, December 19, 1988; Tr. 372).

Trinity's conditional rating put it into FHWA's Selective Compliance and Enforcement Program (Tr. 86, 414, 417; see 53 F.R. 50964). Trinity was notified that FHWA agents would make a followup visit in not less than four months. Federal officials would then determine whether compliance had been brought up to acceptable levels (Tr. 414, 416-17).

Trinity understood that it had compliance difficulties and needed to correct them. As I have noted, OIC Swift personally informed Western Regional Manager Hopkins of his findings. In addition, Safety Director Winkles' July 12, 1988 letter to Swift's Carson City office, acknowledging receipt of the Safety Review, also stated that Trinity had "reviewed your comments and recommendations and [is] presently changing our system to correct these problems" (Exh. 28). Three days later Winkles circulated a memo to all drivers stating that a Department of Transportation audit found that "we still have problems in some of the following areas: Logging over 10 hours; * * * falsification of logs * * *" (Exh. 42; Tr. 266-68).

C. The Compliance Review

A year passed before Trinity underwent a second FHWA evaluation. In late June 1989, OIC Swift returned to perform a more in-depth assessment of Respondent's motor carrier operations known as a Compliance Review. A Compliance Review encompasses an investigation of such safety related facets of motor carrier operations as

drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, and other relevant records (§ 385.3(1)). In this instance it was also undertaken to determine if Trinity had raised its safety fitness standards to acceptable levels (*Id.*; Tr. 416).

On June 21, 1989, OIC Swift began the Compliance Review by requesting that Trinity produce 20 driver qualification files and records of duty status for one month.[1] This was in accordance with agency sampling procedures for medium-sized carriers, *i.e.* those which utilize more than 19 drivers but less than 99. At the time 59 individuals were driving for Trinity (Tr. 18, 88–90, 94). Accessing Respondent's own records, Swift determined that 15 of the 20 drivers sampled had violated the 10-hour rule. He recorded a total of 47 violations of the rule (Tr. 20, 21). He also determined that nine drivers had generated a total of 15 violations of the 15-hour rule (Tr. 20) and that nine of the twenty had committed 41 false-log violations (T. 21–22; Exh. 1).

Swift discussed his findings with Hopkins and Winkles. Winkles explained that Trinity's point system, noted in Swift's comments on the Safety Review (p. 3), was designed to prevent and discipline violations of the regulations. Swift was also told that some drivers who were found to be violators during 1988's Safety Review, had since been terminated—although the carrier offered no evidence to show that any dismissal resulted from a Part 395 violation (Tr. 24–25, 96).

Trinity again promised to implement an effective disciplinary system. Winkles, while acknowledging that no one was assigned to scrutinize records of duty status, assured Swift that an assistant would be trained to do so (Tr. 23–24). In the fall of 1989 Respondent hired an independent safety consultant, who suggested that too little effort had been made to prevent violations from occurring and too much reliance placed on discipline after the fact (Tr. 393–94). The consultant also specifically recommended that the company control the drivers' hours at the point of dispatch (Tr. 208–09). The carrier installed a new computer system in October or November of 1989 which was designed to closely supervise its drivers and to minimize compliance difficulties (Exh. 43, pps. 3, 5; Tr. 163–64, 168–69, 383).

However, Respondent's efforts again fell short. In December, 1989, the Tennessee Public Service Commission, a state agency, looked into Trinity's operations pursuant to the Respondent's request to secure intrastate authority (Exh. 54, p. 1; Tr. 400). Tennessee, operating under the same standards and utilizing the same form as FHWA, also found 10 hour, 15 hour, and false-log violations under part 395 (Exh. 51; Tr. 205–06, 276).

OIC Swift concluded following the Compliance Review that Trinity Transportation either required or permitted its drivers to exceed hours-of-service regulations and to falsify entries on their records of duty status in violation of part 395 of the FMCRSs. He based his findings on the ratio of violations discovered to the total number of records checked; the ratio of drivers determined to have violated the FMCSRs to the total number of drivers surveyed; and the period of time over which the violations occurred (Tr. 26–27). Swift concluded that the carrier had failed to institute the proper procedures necessary to ensure compliance with the regulations (Tr. 26). He forwarded the Compliance Review to Washington with a recommendation that Trinity be the subject of an enforcement action (Tr. 27). This proceeding followed.

D. Respondent Permitted the Violations Charged

I conclude that Respondent Trinity Transportation permitted the violations charged to occur.[2] Following the Safety Review, the company knew that it had an ongoing problem with hours-of-service and false-log violations, yet it made no reasonable attempt to induce compliance. Its preventive programs, moreover, were ineffective on their face. Further, the violations were discoverable with a minimum of effort. Trinity's posture was essentially reactive throughout the Safety Review, the Compliance Review, and after. These factors alone demonstrate that it had permitted the violations to occur. But Trinity had known of compliance problems previously. It has been aware of the kind of safety shortcomings at issue since 1982 and throughout five regulatory reviews. These circumstances also compel the conclusion that Respondent permitted the violations to occur.

1. Actions of Trinity's Drivers Must Be Imputed to It

Initially, I find that the actions of drivers operating on behalf of Trinity must be imputed to Trinity. Respondent suggests that because every driver charged with violations—indeed, every driver operating on behalf of Trinity—was an independent owner-operator or an employee of an independent owner-operator, their actions are not chargeable to Trinity (Tr. 247, 346; Resp. Br., pps. 6–7). The law, however, explicitly provides otherwise. Congress defined an "employee" under the Motor Vehicle Safety Act of 1984 to include an independent contractor who is employed by anyone owning or leasing a commercial motor vehicle in a business affecting interstate commerce (49 U.S.C. App. 2503; see also implementing regulation 49 CFR 390.5). It is undisputed that each driver cited in this proceeding was operating a commercial motor vehicle in interstate commerce on behalf of Respondent at the time of the violations in question (see Exhs. 2–26; Tr. 18–19). The drivers cited in this case, therefore, are employees of Trinity Transportation under the Act.

Further, it is well-settled that a corporation is charged with the acts of its employees. It cannot insulate itself from liability when its employees act within the scope of their employment. A corporation acts only through its agents; it is accountable for their actions.[3] The Administrator has affirmed specifically that commercial motor carriers are responsible for the actions of their drivers, stating that "[T]he regulations do not condone a carrier's violations because its drivers do not comply with the requirements" (*Horizon Transportation, Inc.*, Docket No. R3–89–114, Final Order dated February 20, 1990).

Finally, case law and FHWA decisions, including the Order Appointing Administrative Law Judge in this case, establish that Respondents may be charged with knowledge of employee violations if the means were present to detect them.[4] Such means

[1] In the end, Swift's inspection of driver logs encompassed periods shorter and longer than one month. A lesser period of review results when, for example, a carrier produces logs only for that shorter peiod. A driver showing violations over the standard one-month period, on the other hand, would cause evaluating officials to further review that driver's records for up to three months. Tr. 22–23.

[2] The parties have "stipulated" that Trinity did not "require" the violations that are the subject of this action. See Tr. 318. Since the parties cannot "stipulate" legal issues that are properly within the purview of this action, I take the parties' statement to mean that FHWA would not contend that Respondent required the violations. I stated at the hearing that I agreed that Trinity did not require the violations charged (*Id.*) and I reiterate that conclusion here.

[3] *Riss & Company* v. *United States*, 262 F.2d 245, 250 (8th Cir. 1958); *United States* v. *Illinois Central Railroad Company*, 303 U.S. 239, 244 (1938).

[4] See *e.g.*, *Riss & Company* v. *United States*, 262 F.2d 245, 250 (8 Cir. 1958); *Propane Transportation*

Continued

were present in this case. Respondent, of course, had unfettered access to its own records. OIC Swift determined the infractions at issue here simply by sifting through them. His task was not especially difficult (see Tr. 19, 93–94). I conclude, therefore, that Respondent had the capability to detect the violations charged. For all these reasons, Respondent is charged with FMCSR violations by its drivers.

2. The Point System

Trinity knew that it had compliance problems and yet it chose a method of internal enforcement—a point system—which was essentially useless. This system was designed neither to prevent violations nor to discipline drivers effectively once infractions occurred. The inadequacy of the program was, or should have been, obvious, and yet nothing was done to alter or improve it. The results of the Safety Review and Compliance Review also signalled the utter failure of the system. Yet Trinity continued to adhere to it. The Tennessee investigation again showed that the point system did not work. Respondent's failure to improve or scrap its point system in the face of its obvious inadequacy compels me to conclude that it permitted the violations charged to occur.

Safety Director Larry Winkles instituted Trinity's point system at its inception.[5] Under the system, points would accrue to a driver's record for violations of the regulations. Certain named point totals would trigger driver probation or suspension (Exh. 50; Tr. 300–02). Credits were also awarded, permitting point totals to be offset. Actions such as attendance at safety meetings and the submission of complete maintenance reports triggered credits (Tr. 294–95, 298–300).

The point/credit system was completely ineffective in forestalling violations or in punishing infractions. A driver could accumulate 90 consecutive days of 10-hour violations before landing on probation (Tr. 302). Further, he could falsify records of duty status for 18 months without risking probation (Tr. 303)—that is, if anyone at Trinity was reviewing logs. In fact, as we have seen, no one was (Tr. 23–24; p. 6). Even in the unlikely event that probation loomed, credits could reduce or eliminate the possibility. Yet the credits could be awarded for actions bearing no rational disciplinary relationship to the points. A driver continually violating hours of service requirements, for instance, could delay or escape any punitive action by turning in complete maintenance reports for the month (Tr. 300), even though such reports are required under part 396.[6] The system had other weaknesses. Despite OIC Swift's comments in the Safety Review (see p. 3), it lacked any specific provision for termination (Tr. 303). Additionally, the system's rules were not consistent. Its point/credit totals seemed to fluctuate. Then-Safety Director Winkles could not explain why attendance at a safety meeting triggered ten credits at certain times and five at other times (Exhs. 47–49; Tr. 294–99). In addition, automatic probation resulted either from 10 penalty points—if one subscribed to the terms of a February 22, 1988 memo—or 18 points, if the written policy was in force (*Cf.* Exh. 47 *with* Exh. 50; Tr. 306).

Respondent stubbornly clung to the point system, even in the face of its demonstrated inadequacy. The June 1988 Safety Review, which disclosed numerous compliance problems, effected no changes to it (Tr. 238; see pps. 3–4). Nor had the point system changed following June 1989's Compliance Review, whose results again brought home its ineffectiveness. The record shows that Winkles issued a memo one month later to all drivers/owners, stating that attendance at a July 29 safety meeting would "qualify each driver for 5 violation credits (which some need badly). If you presently have 3–10 log violations this meeting will reduce your present violations" (Exh. 49; Tr. 297–98). It was business as usual at Trinity.

Further, Trinity officials' testimony was confused and contradictory concerning what, if any, disciplinary system was in effect at the time of the hearing. Vice President and operations chief Fred L. Jones initially testified that the policy had not changed through the August 1990 hearing date (Tr. 397), but his January 15, 1990 letter to the Tennessee Public Service Commission states that the carrier was then beginning a new program, outlined therein (Exh. 54, p. 2; Tr. 400). That program in any event also contained severe deficiencies. Although providing for termination, a driver could accumulate violations over more than six months before dismissal. Furthermore, there is no indication that the policy concerning credits had changed. Credits could still apparently forestall dismissal indefinitely (see Exh. 54, p. 2). Yet it is doubtful, in fact, that either policy is in effect at Trinity today. The carrier's Safety Director since May 1990, Dennis Finley, testified that he is not using the point system (Tr. 320, 326–28).

Trinity Transportation's point system was not only toothless but obviously so. Any observer should have been able to recognize that the system's method of issuing points and credits was designed neither to enforce safety standards *ab initio* nor to weed out those who could or would not reasonably conform to them. Further, it effected an irrational connection between behavior on the one hand and punishment or reward on the other. Indeed, Trinity's own officials recognized the system's utter fecklessness. Vice President Fred L. Jones acknowledged in a letter to the Associate Administrator that the carrier lacked an effective compliance system at the time of the Compliance Review (Exh. 43, p. 7; Tr. 212). He further agreed with the findings of the company safety consultant that too little effort had been expended toward prevention and too much on discipline after the fact (Exh. 53; Tr. 393–94).

Trinity did terminate drivers. But it failed to show that any driver later terminated had been forewarned that hours-of-service or false-log violations could lead to dismissal (Tr. 286–87). As we have seen, termination was not a feature of the point system in any case. Moreover, Trinity never established a direct connection between FHWA violations and termination (see Exh. 46).

In sum, Trinity's reliance on a system that was not designed to and could neither prevent violations nor enforce compliance with safety standards amounted to permitting violations to occur.

3. Respondent Knew that it had Significant Compliance Problems as Far Back as 1982

a. *Summary of findings.* Further, Trinity was aware for seven years and two previous investigations that its drivers were incurring material numbers of FMCSR violations. These findings reinforce my conclusion that Respondent permitted the violations to occur.

As we have seen, Respondent understood and acknowledged at the time of the June 1988 Safety Review that

Corp., Docket No. R1–90–09, Order dated September 11, 1990; *Wisconsin Protein Carriers, Inc.*, Docket No. R5–90–07, Order dated July 10, 1990.

[5] Tr. 251–52, 292–93. Winkles had actually been hired some months earlier by B & L Truckline, Inc., and had instituted the point system there in response to a FHWA Compliance Review of that motor carrier (Tr. 363–64). In December 1987–January 1988 B & L ceased operations and in effect transformed itself into a "new" motor carrier, Trinity. See discussion below, pps. 14–17.

[6] Additionally, the Safety Review recommended that Trinity "establish and maintain complete maintenance and inspection records for all vehicles subject to the carrier's control" (Exh. 27, p. 4).

it had a compliance problem that needed to be addressed properly and resolved satisfactorily.[7] However, Trinity's knowledge of these compliance problems significantly antedated the Safety Review. It knew as far back as 1982 that it was not sufficiently adhering to hours-of-service and records-of-duty-status requirements. While the Respondent in this proceeding, Trinity Transportation, Inc., was not formed until late 1987 and did not begin operations until January 1988 (Tr. 158), it is in substance a mere continuation of B & L Truckline, Inc. (B & L), a company that had been cited for FMCSR violations in 1982 and again in 1987. B & L's violations and knowledge of them are properly chargeable to Trinity.

b. *The B & L connection.* Respondent attempts to attenuate the connection between B & L and itself (Tr. 69, 156–58, 408). Yet the evidence shows that Trinity and B & L is the same chameleon, albeit showing different colors. B & L was a commercial motor carrier whose primary shipper was the Moltan Company, a clay absorbing business (Tr. 156). Both B & L and Moltan were located in the same building in Middleton, Tennessee (Tr. 177). The owner of B & L and majority shareholder was W.M. Gurley (Tr. 155, 170, 364–65). B.J. Gurley, W.M. Gurley's wife, was Vice President (Exh. 41; Tr. 178, 188). In early 1987 Gurley decided to shutter B & L at the end of the year (Tr. 156, 161), and the carrier ceased operations on December 31, 1987. Two days later Trinity started up—at the identical address and telephone number vacated by B & L.[8] Further, Trinity employed all the key personnel of B & L in the same positions and functions each had held at the former outfit. Larry Winkles was Safety Director at B & L on December 31, 1987; on January 1, 1988, he became Safety Director of Trinity (Tr. 248, 262). His office, telephone number, and supervisor remained the same (Tr. 262–63); he took on identical responsibilities (Tr. 251). B & L Vice President Fred L. Jones was in charge of company operations through December 31, 1987. He assumed the same duties at Trinity the following day (Tr. 256, 330, 333, 360). Luther Hopkins and M.D. McCormick, Western and Southern Regional Managers, respectively, for B & L, assumed the same positions at Trinity (Tr. 180–81, 183–84, 312). Indeed, all B & L key personnel continued in identical capacities at Trinity (Tr. 185–86). B & L drivers were retained as well (Tr. 272–74). Further, Trinity took on B & L's position as the Moltan Company's in-house and exclusive carrier (Tr. 167, 173, 177, 232, 333–35). Finally, the President of Trinity is B & L's Vice President and the wife of B & L's owner, B.J. Gurley. These circumstances show, to an overwhelming degree, that Trinity is merely a continuation of B & L under a different name. Personnel, functions, and location of the two companies are nearly identical. Knowledge gained by B & L, then, may be imputed to Trinity. *See Oman International Finance Ltd.* v. *Hoiyong Gems Corporation,* 616 F.Supp. 351 (D.C.R.I. 1985).

In this light, Winkles' assertion that "B & L had nothing to do with Trinity" (Tr. 274) is nothing short of incredible. Indeed, his own actions while Safety Director indicate his understanding that Trinity and B & L shared the same corporate identity. Winkles' memo to owner/operators and drivers of December 29, 1987, announcing the beginning of Trinity effective January 4, 1988, states that Trinity would "operate under simular [sic] rules and regulations as before" (Exh. 44). The reference to "before" suggests an earlier incarnation of Trinity—namely, the drivers' former employer, B & L. Indeed, the memo later notes that "Many of you have received violations while driving for B & L" (*Id.*). Further, Winkles' July 15, 1988 memo to the drivers states that a recent DOT audit (the Safety Review ending June 30, 1988) found that "we *still* have some problems" in the areas of, *inter alia,* hours of service and false logs (emphasis supplied) and that Trinity showed "improvement over past evaluations" (Exh. 42; Tr. 94; see p. 5). Since there were no enforcement investigations of Trinity antedating the Safety Review, the backward-looking references in the memo must refer to an earlier probe or probes undertaken at B & L.[9] Further, Winkles sought FHWA's permission to use B & L's driver qualification files for Trinity (Tr. 263–64, 407–09)—an action consistent with an understanding that Trinity merely sought to pick up where B & L left off.

c. *B & L's compliance problems.* B & L had had compliance problems concerning hours of service and records of duty status as far back as 1982. FHWA undertook a Safety Management Audit in April, 1982, which found violations involving, among other things, the 10-hour rule and the use of false logs (Exhs. 31, 34; Tr. 74). The carrier was given a conditional rating (see Exh. 34). In response President W.M. Gurley promised FHWA officials, in a letter dated May 14, 1982, that "Logs will be checked * * * to make sure they are in compliance" and that "each driver will be informed in writing that he cannot travel more than 500 miles in 10 hours" (Exh. 33). Yet the problems continued. In April, 1987, perhaps in response to pressure from its insurance carrier, B & L Vice President and operations director Fred L. Jones advised the company's drivers in writing that anyone caught falsifying records of duty status could expect to pay a fine in the $6,000–$10,000 range (Exh. 40; Tr. 223–24, 373–74). Copies were furnished to Wayne Vander Steeg and M.D. McCormick, two B & L officials who, along with Jones, later transitioned to Trinity (Tr. 374). Three months later the carrier underwent a Compliance Review in order to upgrade its conditional rating (Tr. 371–72). The July 1987 Review indicated that B & L was not properly complying with the 10-hour rule, other hours-of-service rules, and falsification of drivers' logs—difficulties similar to those found in 1982 and later in Trinity. The report recommended, *inter alia,* that drivers' hours be controlled; that a Safety Director be hired; and that owners and drivers be "closely reviewed" (Exh. 30; Tr. 71, 251–57, 358, 365). It suggested that B & L's safety rating remain at "conditional" (Exh. 30, p. 5; Tr. 372). The Compliance Review was signed on behalf of B & L by Vice President Fred L. Jones (Exh. 30; Tr. 256). It also indicated that Southern Regional Manager M.D. McCormick had been interviewed (Exh. 30, p. 1).

d. *Conclusion.* Respondent, then, had evidenced compliance problems for seven years following Trinity's Compliance Review. Between April, 1982 and June, 1989 it had been the subject of four FHWA investigations. Significant numbers of driver infractions had been called to its attention on each occasion. But the problems persisted. Indeed, as we have seen, they extended even beyond the Compliance Review to the Tennessee Public Service Commission investigation of December, 1989 (p. 6). Respondent, then, has carried institutional knowledge of its safety and regulatory shortcomings for over seven years. This knowledge has been reinforced with every new investigation—five in all. If "permitting" violations to take place is to have any

[7] See pps. 4–5 Exh. 28; Exh. 42. In this light, Trinity's later attempt to deny that it had been warned of these difficulties until the Compliance Review a year later is not credible (see Exh. 53; Tr. 205, 267–68, 382; pps. 26–27).

[8] Tr. 184, 374. Trinity's headquarters are in Fernley, Nevada, but it maintains offices and much of its operations at Middleton, Tennessee. See Tr. 374–75.

[9] Tr. 265–72. When Winkles was asked if the references were to evaluations of B & L, he replied, "I don't know, sir * * * That's two years ago. I can't remember why I put it in there" (Tr. 272). In fact FHWA undertook investigations of B & L in 1982 and 1987, which I discuss below.

meaning at all, it must in this proceeding be accorded to the Respondent. Respondent's knowledge over a period of seven years and five investigations without reasonable attempts at improving compliance warrants the conclusion that it permitted the violations to occur.

Moreover, I reiterate my conclusion that Trinity permitted the violations to occur even if the carrier is not considered to be a mere continuation of and charged with all actions and knowledge of B & L. The existence of B & L and its regulatory history are not relevant to my conclusions concerning Trinity's role in establishing and maintaining its point system. Additionally, Trinity's reactive posture following the Safety Review, Compliance Review, and the Tennessee investigation more than sufficiently demonstrates that it permitted the violations at issue to take place.

E. Penalty

1. "Pattern" of Violations

Complainant has requested a penalty of $750 per 10- and 15-hour violation. In order to assess a fine of greater than $500 for each such violation, I must find that Respondent has permitted a "serious pattern of safety violations" (49 U.S.C. 521(b)(2)(A); see p. 2). the Administrator has specifically requested that I discuss what constitutes a "pattern" (see Order Appointing Administrative Law Judge, February 20, 1990, p. 3).

I agree with agency counsel that the legislative history of the Motor Carrier Safety Act has largely determined the meaning of "pattern" in the statutory context (see FHWA Br., pps. 3–4). The Committee on Commerce, Science, and Transportation stated that "serious patterns of safety violations" are violations that are "not isolated * * * but are tolerated patterns * * * that any reasonable business entity could detect and correct." The nature of these violations are such that "individually (they) would not have a high probability of causing an immediate accident, but collectively demonstarte an unwillingness to exercise proper safety supervision or control * * *" S. Rep. No. 98–424, issued May 2, 1984, reprinted in U.S. Code Cong. & Admin. News 4785, 4796. The Administrator has also shed light on the meaning of the term, recently stating that "[i]f violations are continuing, then a clear pattern case will have been established * * *" *(Tonawanda Tank Transport Service, Inc.*, Docket No. R–1–88–130, Final Order dated July 5, 1990; see also *Drotzmann, Inc.*, Docket No. R10–89–11, Final Order dated June 20, 1990, p. 2). Thus a "serious pattern" under the Act connotes violations that are both repeated and detectable by reasonable diligence. Against this background, I find that a serious pattern of 10-hour and 15-hour violations by Respondent has been established in this case.

The record shows 10- and 15-hour violations that are repeated both in the senses of being found in a large number of drivers and of continuing over time. OIC Swift's Compliance Review found that fifteen of twenty drivers surveyed—75%—violated the 10-hour rule, and that 9 of 20, or 45%, stood in violation of the 15-hour rule. He further tallied 62 total violations of these rules, or an average of 2–3 per driver over a maximum of three months (Exh. 1; see p. 6). These numbers indicate that driver violations at Trinity were widespread. In the other sense of "repeated", we have seen a continuous failure to adhere to FHWA requirements by Trinity and its corporate *alter ego*, B & L. The companies have been cited five times since 1982—four times in the last three years—for hours-of-service violations. As I have discussed, FHWA uncovered numerous such infractions at B & L in 1982 and 1987; at Trinity in 1988 and 1989; and most recently, in December 1989, Tennessee made similar discoveries. It is obvious that Respondent has had an ongoing problem in controlling drivers' hours.

Additionally, these infractions could have been detected with a minimum of reasonable effort. Respondent has had custody, and thereby obvious access, to the documents from which OIC Swift and other investigators were able to conclude that the 10- and 15-hour requirements were being violated in significant measures. Moreover, Respondent was advised on several occasions—at least as far back as B & L's 1987 Compliance Review—concerning the prevention of driver violations at the point of dispatch (Exh. 30; p. 13). Instead, Respondent chose to implement and continue a system which was designed to be, and was, completely ineffective in inducing compliance. Rather than acting on the obvious signals from these investigations and sifting through its own records for evidence of violations, Respondent continually chose to be reactive. In these circumstances, I conclude that a serious pattern has been established.

I note also that all the violations are themselves serious. False entries on records of duty status are no less serious than excess-driving infractions for the fact of being so-called "recordkeeping" violations (see p. 2). See *Alamo Distributing Service, Inc.*; Docket No. R6–89–63, Order dated July 23, 1990.

2. Mitigating Factors are Absent

a. *Summary.* The determination of the amount of civil penalty is based on

> the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.

49 U.S.C. 521(b)(2)(C).

Complainant requests that Trinity Transportation be assessed a civil penalty in the amount of $14,850 (see p. 2). The violations that are at issue are themselves not contested. I have concluded that Respondent has permitted them to occur. Further, I have concluded that a serious pattern of 10- and 15-hour violations is present. I agree that the full amount should be levied.

Complainant's suggested fines are 75–80% of the maximum allowable. OIC Swift testified that the extent of Respondent's violations put them roughly in the midrange of his investigatory experience (Tr. 413), and I have no reason to doubt his testimony. More to the point, FHWA has demonstrated that Respondent and its corporate predecessor, as well as key officials common to both entities, have witnessed five regulatory reviews in seven years without a reasonable attempt at minimizing hours-of-service and false-log violations. In particular they have expended little effort in prevention, despite this awareness and a stream of regulatory advice. Moreover, they have at times evaded their regulatory responsibilities through a combination of disingenuousness and misrepresentation. In these circumstances I think the suggested penalty is appropriate. I find no mitigating factors.

b. *Failure to improve system of detection.* Responsible officials of Trinity had direct, actual knowledge at least as far back as 1987—and the company knew as far back as 1982—that it was inadequately policing drivers' hours and records of duty status. Trinity Transportation itself had actual notice following the June 1988 Safety Review that its point system of regulating driver hours was not working. While the carrier showed that it terminated drivers, it never instituted a system of controlling drivers' hours at the point of dispatch. Nor did it warn drivers that compliance difficulties

could result in termination (Tr. 286–87). Indeed, Trinity failed to show that termination resulted directly from FMCSR violations.[10] After the Safety Review and prior to the Compliance Review, moreover, Respondent lacked a system of log review despite the certainty of regulatory scrutiny (see pps. 3–6). Respondent, then, failed to concern itself with improving compliance, particularly *ab initio*—even after admonition. In these circumstances no mitigation is warranted.

The *Drotzmann* case, relevant in this connection, does not avail Respondent. There the Administrator agreed that the beginnings of a safety program which followed the filing of a complaint ought to be considered a mitigating factor, at least until the effectiveness of the program could be determined (Docket No. R10–89–11, Order dated June 20, 1990). Here, however, we have the benefit of a subsequent regulatory determination. Five months after the Compliance Review was completed, the Tennessee Public Service Commission found violations of a nature similar to those that are the subject of this action. Moreover, as we have seen, the Safety Review and Compliance Review had already furnished verdicts on the efficacy of the point system—which, of course, had not changed at the time of the Tennessee review. Respondent's program clearly was not working, yet it did little or nothing to change it. Plainly, *Drotzmann* is not applicable.

c. *Respondent's sincerity.* Yet even without Tennessee's demonstrated inadequacy of the point system I would have difficulty countenancing a penalty reduction under *Drotzmann.* In this connection I detect another kind of pattern in this case. In every instance following regulatory review Respondent and its predecessor have wrung their hands, offered up *mea culpas,* and promised to do better. But left alone they returned to business as usual. Respondent's current cries of impending improvement, then—a new computer system, renewed vigilance—have a distinctly hollow ring. Trinity's record of insincerity is another factor that distinguishes this case from *Drotzmann* and persuades me that no mitigation is warranted.

d. *Disingenuousness/misrepresentation.* The record also shows that Trinity has attempted to avoid the full brunt of its regulatory history by disclaiming responsibility for the activities and knowledge of its predecessor, B & L. Its actions, falling somewhere between disingenuousness and misrepresentation, disqualify it from any considerations of penalty mitigation.

The advent of Trinity permitted its former B & L drivers to wipe the slate clean. B & L drivers with outstanding violations were allowed to accumulate 10 new violations at Trinity before being placed on probation—effectively permitting them to start anew (Exh. 44; Tr. 273–74; see p. 13). Winkles' memo on January 4, 1988 confirmed the company attitude that the new year "brings with it the opportunity to clear old problems" (Tr. 202–03). The switch from B & L to Trinity, then, enabled Respondent to hire drivers with known compliance difficulties, yet claim it was a "new" company, presumably without knowledge of those difficulties. This disingenuous attitude compromises enforcement policy and the agency's Congressional mandate to promote safety and to penalize violators. It certainly does not warrant mitigation of the suggested penalty.

Further, Trinity has actively misrepresented before the Department the nature of its institutional knowledge. In a letter to the Associate Administrator dated March 7, 1990 seeking dismissal of the charges now before me and a satisfactory safety rating, Trinity Vice President Fred L. Jones referred to Respondent as a "start-up carrier", a "relatively new company * * * learning and growing" (Exh. 43). Jones, having been associated with B & L and Trinity since December 1, 1982 (Tr. 330), knew, regardless of the nature of the actual legal connection between B & L and Trinity, that Trinity was not a "new company, learning and growing" in the sense that it was unfamiliar with the FMCSRs and FHWA enforcement policy. By 1990 he had had a hand in four evaluations of B & L/Trinity and 30 years' experience in the industry (Tr. 331). He had actual knowledge of the companies' repeated shortcomings. So had, for that matter, several other key B & L/Trinity officials such as Winkles, Hopkins, and Vander Steeg. To suggest that the reasons put forth by Jones in his letter warranted dismissal and a satisfactory rating is a disingenuous contention at best and may constitute deliberate misrepresentation and a fraud upon the agency.

Other instances of Respondent's disingenuousness bordering on misrepresentation pepper the record. I have already dismissed Winkles' incredible claim that B & L and Trinity had nothing to do with each other (see pps. 16–17). In addition, Trinity (in response to FHWA interrogatories) and Vander Steeg both claimed that Trinity officials were not aware of the compliance problems of their drivers before the Compliance Review (Exh. 53; Tr. 205, 382). Written record evidence establishes the untruth of these claims (pps. 4–5).

e. *Conclusion.* These circumstances show that Respondent has attempted to evade its regulatory responsibilities. Instead of owning up to its safety obligations it has attempted to ignore and avoid them. Further, its testimony and actions have rendered its sincerity and credibility suspect. Against this background, mitigation is manifestly inappropriate. Respondent needs a wake-up call. The best way to induce compliance and to effect justice in accordance with the civil penalty statute is to levy the full amount sought by Complainant.[11]

F. Assessment

Trinity Transportation, Inc. is hereby ordered to pay a civil penalty in the amount of $14,850 for violating Federal Motor Carrier Safety Regulations 49 CFR 395.3(a)(1), 395.3(a)(2), and 395.8(e).

This decision is issued pursuant to 49 CFR 386.61. This decision becomes the final decision of the Associate Administrator 45 days after it is served unless a petition or motion for review is filed under 49 CFR 386.62.

Burton S. Kolko,

Administrative Law Judge.

Attachment—Service List

Office of Hearings

[FHWA Docket No. R3–89–016]

Wonder Chemical Company

Initial Decision of Administrative Law Judge Ronnie A. Yoder

Served Feb. 22, 1991.

Upon:

Samuel Dennis, 2000 Market Street,[1] Tenth Floor, Philadelphia, Pennsylvania 19103

[10] Driver Huard was dismissed at least in part for late deliveries, and was afforded no prior notice of co pliance problems. See Exh. 46.

[11] Complainant also suggests that I raise the penalty beyond the amount sought (Br., p. 39). I decline to consider such an action for fear that it would violate due process guarantees. Respondents must know what they are defending against. To set out just one illustration of the problems inherent in Complainant's request, a greater assessment may have an impact on Respondent's ability to pay, an argument it has not made with respect to the penalty currently sought. *Cf.* Federal Aviation Administration Rules of Practice for Civil Penalty Actions: "The FAA decisionmaker may assess a civil penalty but shall not assess a civil penalty in an amount greater than that sought in the complaint" (14 CFR 13.6(h)).

[1] This initial decision is rendered pursuant to authority delegated to the administrative law judge under the Federal Motor Carrier Safety Regulations (49 CFR 386.61) and constitutes the judge's findings of fact and conclusions of law.

James W. Scouten, Assistant Regional Counsel, Federal Highway Administration, 31 Hopkins Plaza, room 1625, Baltimore, Maryland 21021

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I. Statement of Proceeding

This proceeding was initiated by a Notice of Claim from the Regional Director, Region 3, Office of Motor Carriers ("Complainant") dated September 9, 1988, to Wonder Chemical Company ("Respondent"), proposing a penalty of $18,000 for six violations in failing to maintain the minimum levels of financial responsibility required by § 387.7(a).[1] Respondent replied on September 14, 1988, reserving its right to a hearing. Thereafter, the parties signed and submitted an Agreed Statement of Facts and requested determination of Respondent's liability by the Associate Administrator pursuant to 49 CFR 386.14.

On December 21, 1989, the Associate Administrator for Motor Carriers appointed an administrative law judge in accordance with 49 CFR 386.54(a) to be designated by DOT's Chief Administrative Law Judge, and the undersigned was assigned to the proceeding by Notice dated January 17, 1990.

On December 27, 1989, Complainant moved for reconsideration of the Order Appointing an Administrative Law Judge, noting that both parties agreed that there were no factual issues in dispute and wished to avoid the time and expense of a hearing. The Associate Administrator took no action on that motion, and accordingly this proceeding remains before the Judge for determination.

Pursuant to the Judge's Order dated January 22, 1990, both parties submitted a list of witnesses, a summary of proposed testimony, and proposed procedural schedules. On March 12, 1990, a telephone prehearing conference was held to determine what factual and legal issues remained to be determined. At that time, both parties reaffirmed that a hearing was unnecessary, and they subsequently submitted Joint Exhibits for the record pursuant to the Judge's Order.[2] The parties have submitted briefs on the issues, and the case is ready for decision.

II. Facts

On six separate occasions between April 27, 1988, and June 17, 1988, Respondent, a company in the household chemical business (Exhibit O, p. 2), transported hypochlorite solution, a corrosive chemical substance containing more than 7% chlorine by weight, in intrastate commerce in motor vehicles leased from Bucks County Container Corporation (Hereinafter "Bucks") of Fairless Hills, Pennsylvania (Exhibit K). Each of those vehicles had a capacity of, and transported at least, 3500 gallons of hypochlorite solution (Exhibit K, p. 1, para. 1-7). During that period, Bucks had "financial responsibility" in the amount of $5,000,000 (Exhibit K, p. 2, para. 9), and Respondent had in its possession an MCS-90 prescribed by 49 CFR 387.15 in Bucks' name.[3] Respondent also had in its possession an MCS-90 in its own name in the amount of $500,000 and an umbrella policy in the amount of $42,000,000 (Exhibit K, p. 2, para. 10). However, between April 27 and June 17, 1988, Respondent did not have either an insurance policy of $45,000,000, or an MCS-90 in its own name.

On June 20, 1988, Safety Specialist John Gavas conducted a compliance review of Respondent's operations (Exhibit C, p. 2 para. 4), and filed an Investigation Report, dated August 8, 1988 (Exhibit O). The report alleged six violations of 49 CFR 387.7(a) and charged Respondent with "operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage of $45,000,000" (Exhibit O, p. 1). When Gavas requested that Respondent produce proof of insurance in the amount of $5,000,000, Respondent produced MCS-90's totaling $2.5 million in its own name covering the vehicles in question (Exhibit C, p. 2, para 6). Also at that time, Frank Banas, Respondent's President and Chief Executive Officer, stated that (1) Bucks had a $5,000,000 Liberty Mutual policy which insured the vehicles leased to Respondent (Exhibit C, p. 2, para. 6); (2) Bucks corporation was "affiliated" with Respondent (Exhibit L, p. 1, para. 2); (3) he is president of both companies; and (4) two different companies were used because the insurance company would not issue Respondent a $5,000,000 public

[1] 49 CFR 387.7(a) provides: "No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.9 of this subpart." 49 CFR 387.9 provides that for commodities transported after January 1, 1985, in intrastate commerce, the minimum level of financial responsibility is $5,000,000 for (for-hire and private) (carriers) of "hazardous substances, as defined in 49 C.F.R. 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons."

[2] Prehearing Conference Transcript, March 1, 1990 ("PHC Tr."), p. 62. The parties submitted Joint Exhibits A through W, April 9, 1990, including the affidavits of Walter H. Johnson, Federal Programs Manager, Federal Highway Administration, Region 3, Office of Motor Carriers (Exhibit A); Morris Schwalb, Controller of Wonder Chemical Company (Exhibit B); and John Gavas, Motor Carrier Safety Specialist, Pennsylvania Division, Region 3, Philadelphia Office, Office of Motor Carriers (Exhibit C). Those exhibits are hereby marked and admitted in evidence as the evidentiary record in this proceeding.

[3] Exhibit K, p. 2, para. 11; see also PHC Tr. 13. 49 CFR 387.15 provides:

"Endorsements for policies of insurance (*i.e.*, an MCS-90) * * * must be in the form prescribed by the BMCS (Bureau of Motor Carrier Safety) and approved by the OMB. Endorsements to policies of insurance shall specify that coverage thereunder will remain in effect continuously until terminated, as required in § 387.7 of this subpart. The endorsement * * * shall be issued in the exact name of the motor carrier."

liability policy.[4] Respondent had ordered and obtained the $5,000,000 Liberty Mutual policy through its insurance agent, Johnson, Kendall & Johnson (Exhibit B, p. 1, para. 2) and reimbursed Bucks for all the premiums (Exhibit B, p. 1, para. 3). Nevertheless, despite repeated requests, Liberty Mutual refused to name Respondent on the MCS-90 (Exhibit K, p. 2, para. 13).

On September 9, 1988, the Regional Director sent Respondent a Notice of Claim, citing it for six violations of 49 CFR 387.7(a) and proposing a civil forfeiture of $18,000 (Exhibit N). The proposed civil forfeiture was said to take into account, among other factors, the carrier's history of noncompliance, identified by the FAA (Exhibit A, pp. 2-5) to include (1) Respondent's prior violations of the Motor Carrier Safety, Financial Responsibility and Hazardous Materials Regulations in 1983 for, *inter alia*, failing to have proof of financial responsibility,[5] (2) violations of the Federal Motor Carrier Safety Regulations listed in safety compliance reports sent to Mr. Banas on October 11, 1963,[6] April 24, 1968, and May 3, 1973,[7] and (3) the carrier's conviction and civil forfeiture in motor carrier safety enforcement actions in 1974 and 1985; [8] as well as Respondent's solvency and apparent ability to pay the proposed forfeiture [9] and the Office of Motor Carrier's treatment of similarly situated carriers in Region 3, under the agency's internal assessment guidelines.

In response to the Notice of Claim, Respondent denied the alleged violation and produced a copy of the Liberty Mutual policy in Buck's name (Exhibit P) and a Certificate of Insurance, issued November 14, 1988 (Exhibits M-1). The certificate states that between July 1, 1987, and July 1, 1988, Respondent was insured while using Buck's vehicles "under all terms and conditions of the policy noted under the Automobile Liability Section." [10] The certificate also provided that the insurer would try to give Respondent ten days notice prior to cancellation or termination of the policy, but that "failure to mail such notice shall impose no obligation or liability of any kind upon the company (Liberty Mutual), its agents or representatives." Exhibit M, p. 1.

In his Order appointing an administrative law judge the Associate Administrator summarized the agreed facts and noted the remaining issues to be resolved:

Throughout the discussions between the parties leading up to this request for a determination, Respondent has maintained that it (a) did have the required level of financial responsibility under the regulations, and (b) that the MCS-90 issued to its lessor was sufficient to comply with the regulations. There are two subsections of the regulation involved here. In § 387.7(a) motor carriers are required to obtain and have in effect the minimum levels of financial responsibility set forth. In § 387.7(d) it is required to maintain proof thereof at the principal place of business (Form MCS-90 issued by an insurer).

The Agreed upon Statement of Facts do (sic) not resolve this matter. There remain two significant material issues in dispute here. Firstly, does the acknowledgment by the insurer that Respondent is covered by the insurance policy issued to the lessor meet the requirements of the regulations, specifically § 387.7(a)? Respondent contends it has the required levels of insurance and has proffered proof of such through this Certificate of Accord issued by the insurer. Petitioner apparently contends no insurance or less than the required level of insurance has been shown to exist.

Secondly, notwithstanding the establishment of the required levels of insurance, it appears that there is a dispute as to whether Respondent has an MCS-90 albeit issued in the name of its lessor. Petitioner has failed to allege a violation of the regulations, to wit § 387.7(d). However, the answer to this question has a bearing on the alleged violation and the quantum of the penalty." (Exhibit I, pp. 1-3).

III. Statutory Provisions

Section 30 of the Motor Carrier Act (49 U.S.C. 10927) provides:

(b)(1) The Secretary of Transportation shall establish regulations to require minimal levels of financial responsibility sufficient to satisfy liability amounts to be determined by the Secretary covering public liability, property damage, and environmental restoration for the transportation of hazardous materials (as defined by the Secretary), oil or hazardous substances (as defined by the Administrator of the Environmental Protection Agency), or hazardous wastes (as defined by the Administrator of the Environmental Protection Agency) by motor vehicle in interstate or intrastate commerce;

(d)(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and opportunity for a hearing, to have knowingly violated this section shall be liable to the United States for civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business and such other matters as justice may require.

Section 387.7(a) of 49 CFR provides:

No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of *financial responsibility* as set forth in § *387.9* of this subpart." (Emphasis added.)

Section 387.9 (49 CFR 387.9), which is referenced in section 387.7(a), sets forth the following requirements:

The minimum levels of *financial responsibility* referred to in § 387.7 of this subpart are hereby prescribed as follows: * * * (2) for-hire and private [carriers] (in interstate, foreign, or intrastate commerce)

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[4] Exhibit O, pp. 75-76; see also Exhibit C, pp. 2-3, para. 6. Although Bucks' policy was issued pursuant to an assigned risk pool in the commonwealth of Pennsylvania (Exhibit L, p. 2, para. 6), the record does not show whether Mr. Banas attempted to procure insurance in Respondent's name through another insurer or through an assigned risk pool.

[5] In 1983, Respondent was cited for failing to have an MCS-90 at its principal place of business. Exhibit A, p. 2, para. 4a; see also Exhibit O, p. 103. Mr. Banas, then Respondent's Treasurer, refused to sign for a copy of the Safety Management Audit, and a copy was sent to Respondent by certified mail, and Respondent was notified by letter, dated March 7, 1984, that "considering * * * the October 3, 1983, Safety Management Audit, its rating was 'Unsatisfactory.'" Exhibit A, pp. 2-3, para. 4a.

[6] Respondent was notified by letter from the BMCS, dated August 8, 1963, that it was subject to the Federal Motor Carrier Safety Regulations. Exhibit A, p. 3, para. 4b. After receiving and signing for a copy of the BMCS safety compliance report, dated October 11, 1963, Mr. Banas received a letter from the Interstate Commerce Commission (ICC), dated October 21, 1963, which notified Respondent again of its responsibility to comply with the Federal Motor Carrier Safety Regulations. *Ibid.* Mr. Banas then wrote the ICC on November 6, 1963, advising them that corrective action had been taken. *Ibid.*

[7] In 1973 Respondent received a hazardous materials compliance report, which cited Respondent for violations of the hazardous materials regulations and stated its need to comply with those regulations. Exhibit A, pp. 3-4, para. 4b.

[8] In 1974 Respondent was convicted and paid a $1000 fine in United States District Court for permitting drivers to falsify daily duty status records. Exhibit A, p. 4, para. 4c. In 1985 the carrier paid a civil forfeiture of $3500 for again permitting drivers to falsify daily duty status records. Exhibit A, p. 4, para. 4c.

[9] Section 30(d)(1) of the Motor Carrier Act authorizes the Secretary or his delegee, to consider, *inter alia*, the motor carrier's "ability to pay, effect on ability to continue to do business, and such other matters as justice may require" in determining the amount of the civil penalty. 49 U.S.C.A. 10927, Historical and Revision Notes, p. 445 (Partial Revision 1985); see also PHC Tr. 51-55. Complainant argues that the civil penalty is justified, since Respondent's gross revenue for the period January 1, 1987, through December 31, 1987 was $10,100,000. Exhibit A, p. 5, para. 4e.

[10] Exhibit M, p. 1. See Exhibit K, p. 2, para. 12. The Liberty Mutual policy, Automobile Liability Section, Part IV, D2, includes as an insured anyone using the vehicles with the permission of the named insured. Exhibit P, p. 22. Since Respondent used the vehicles with Bucks' permission, Respondent was covered by the policy and the provision in the policy endorsement (MCS-90) (Exhibit M, p. 2) for environmental restoration. See Exhibits L, p. 1; P-22; M, p. 1; and PHC Tr. 30.

[of] hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons [is] $5,000,000 [as of] January 1, 1985. (Emphasis added.)

"Financial responsibility" is defined as

the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart covering *public liability*," *i.e.*, "liability for bodily injury or property damage and includes liability for *environmental restoration*." 49 CFR 387.5 (emphasis added).

"Environmental restoration" is defined in the endorsement required by 49 CFR 387.15 as

restitution for the loss, damage or destruction of natural resources arising out of the accidental discharge * * * upon the land, atmosphere, watercourse, or body of land, atmosphere, watercourse, or body of water of any commodity transported by a motor carrier." 49 CFR 387.5.

Section 387.7(d)(1) (49 CFR 387.7(d)(1)) requires "proof" of financial responsibility and provides that:

Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business, [and] shall consist of *Endorsement(s)* for Motor Carrier Policies of Insurance for Public Liability Under sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-90) issued by an insurer(s)." (Emphasis added.)

Section 387.15 (49 CFR 387.15) requires that:

Endorsements for policies of insurance * * * must be in the form prescribed by the BMCS and approved by the OMB. Endorsements to policies of insurance * * * shall specify that coverage thereunder will remain in effect continuously until terminated as required in § 387.7 of this subpart. *The endorsement * * * shall be issued in the exact name of the carrier.* (Emphasis added.)

Section 387.7(b)(1) (49 CFR 387.7(b)(1)) provides that:

Policies of insurance * * * and endorsements required under this section shall remain in effect continuously until terminated. Cancellation may be effected by the insurer or the insured motor carrier giving 35 days' notice in writing to the other.

A. Complainant's Position

Complainant argues that Bucks' insurance is irrelevant to the alleged violations, since § 387.7(a) on its face requires that a motor carrier obtain insurance as a named insured. Secondly, Complainant argues that § 387.7(a), when read in the context of part 387 as a whole, requires a motor carrier to obtain insurance in its own name. Thus § 387.15 requires that a carrier have an MCS-90 in its own name, apparently intending the carrier to be the named insured; the requirement in the MCS-90 for environmental restoration coverage indicates an intent to require the motor carrier to obtain insurance in its own name; and the requirement in § 387.7(b)(1) that the "insured motor carrier" or insurer provide the other with 35 days prior notice of cancellation of the policy or endorsement indicates an intent that the carrier be the named insured to provide control over the public liability coverage (PHC Tr. 32-33). Complainant also alleges that the legislative history of the Motor Carrier Act and the administrative history of part 387 indicate an intent that the carrier obtain insurance in its own name and that in any event Respondent had sufficient notice that § 387.7(a) requires a carrier to obtain insurance in its own name to warrant the imposition of civil penalties.

B. Respondent's Position

Respondent argues that § 387.7(a) on its face does not require a carrier to obtain insurance in its own name; that Respondent is charged with violating § 387.7(a), not other sections or part 387 as a whole; that Respondent is not charged with a violation of § 387.15, which requires a carrier to have an MCS-90 in its own name; and that the legislative and administrative history do not indicate that section 387.7(a) requires a carrier to obtain insurance in its own name. Respondent also argues that it was not given sufficient notice that § 387.7(a) requires a motor carrier to obtain insurance in its own name in order to support the imposition of civil penalties (PHC Tr. 58). Finally, Respondent argues that it did not "knowingly" violate § 387.7(a), since it did not have the specific intent to violate that section by not obtaining insurance in its own name.

IV. Discussion

After a careful consideration of the entire record, the Motor Carrier Act and regulations and their legislative and administrative history, we conclude that 49 CFR part 387 was intended to require a motor carrier to obtain insurance in its own name. However, we also conclude that section 387.7(a) does not state such a requirement on its face or give sufficient notice to Respondent in that section that it must obtain insurance in its own name to permit imposing civil penalties.

A. Section 387.7(a) does not require on its face that a motor carrier obtain insurance in its own name.

Section 387.7(a) states that no motor carrier may operate a motor vehicle until the "carrier obtains and has in effect the minimum levels of financial responsibility as set forth in section 387.9." That referenced section (§ 387.9) merely specifies $5,000,000 as the minimum level of financial responsibility. Neither section refers to insurance or to having insurance in the carrier's own name.

Section 387.5 defines "financial responsibility" as the "financial reserves (*e.g.*, insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart." 49 CFR 387.5. Since Respondent was covered by the Liberty Mutual policy of $5,000,000 during the periods in question (PHC Tr. 15), Respondent had "financial reserves sufficient to * * * cover public liability" and hence was financially responsible within the literal requirements of 49 CFR 387.5. As Complainant conceded during the prehearing conference, section 387.9 does not require that the motor carrier have an insurance policy of $5,000,000, or say anything about an insurance policy. PHC Tr. 25. In fact, section 387.5, in defining financial responsibility, suggests that under some circumstances, financial reserves other than insurance policies or surety bonds may satisfy the minimum levels of financial responsibility.[11] Accordingly, we conclude that § 387.7(a) on its face does not require that a carrier obtain or have insurance in its own name, but only that a carrier obtain and have in effect financial reserves sufficient to cover public liability amounts.

Complainant asserts that the section has been administratively interpreted to require that the motor carrier obtain any necessary insurance, citing a letter from the Director of the FHWA Bureau of Motor Carrier Safety in Washington, DC to the Regional Federal Highway Administrator in Atlanta, Georgia, dated April 7, 1983 (Exhibit S). That letter stated that an owner-operator (lessor) cannot provide the minimum levels of financial responsibility by supplying the carrier (lessee) a copy of a policy and MCS-90, even though the carrier is covered under an endorsement on the policy:

Question: Is it permissible for an owner-operator (lessor) to furnish the carrier (lessee) a copy of the policy and MCS-90 where the carrier is covered under an endorsement on

[11] "E.g." (*exempli gratia*)" means "for the sake of an example." *Black's Law Dictionary*, p. 462 (5th ed. 1979). "I.e." ("id est") means "that is to say." *Id.* at 672. Thus, in choosing the former, less restrictive definition, the FHWA apparently did not intend that § 387.7(a) on its face require a carrier to obtain insurance in its own name in order to be "financially responsible," since, as noted above, § 387.5 allows financial reserves in forms other than insurance policies.

the policy? The motor carrier may or may not carry an additional policy.

Answer: It is not permissible for an owner-operator to furnish the minimum levels of financial responsibility for a motor carrier. Section 387.7(a) states; 'No motor carrier shall operate a motor vehicle until the *motor carrier* (emphasis added) has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.9 of this part.'

In no section of part 387 is there a reference to a lessor's responsibility, or a provision for the arrangement you describe." (emphasis in original.)

Complainant acknowledges, however, that this letter is not binding, since it is not an interpretation of the Associate Administrator and has not been published in the **Federal Register** (PHC Tr. 27–28). Moreover, that letter refers only to obtaining insurance, not to the name of the insured, and here Respondent did "obtain" the insurance. Although the Liberty Mutual policy was issued in Bucks' name as the vehicle title holder, that policy was ordered by Respondent through its insurance agent (Johnson, Kendall & Johnson), was paid for by Respondent (which reimbursed Bucks for all the premiums), and consequently was "obtained" by Respondent, the sole user of the vehicles between April and July, 1988 (Exhibit B, pp. 1–2, para. 2–4).

Accordingly, we conclude that § 387.7(a) on its face does not require a motor carrier to obtain insurance in its own name and that Respondent had financial responsibility within the literal language of that section.

B. Section 387.7(a), when read in the context of part 387 and its administrative history and the legislative history of the Motor Carrier Act, indicates that the regulatory scheme was intended to require a *motor carrier to obtain insurance in its own name.*

When section 387.7(a) is read in the context of part 387, including sections 387.15, 387.5 and 387.7(b)(1) and its administrative history and the legislative history of the Motor Carrier Act, we conclude that the entire regulatory scheme was intended to require a carrier to obtain insurance in its own name. We also find that Congress, in enacting section 30 of the Motor Carrier Act, intended the insurance industry to monitor a motor carrier's safety performance in determining at what price, if any, to provide public liability coverage, so that "unsafe carriers will incur higher premiums, or will be unable to obtain coverage." (Exhibit W, p. 13).

1. Sections 387.15 and 387.7(d), in requiring that a carrier have an MCS–90 in its own name and maintained at the carrier's principal place of business, apparently intended *the carrier to be the named insured.*

Section 387.15 requires an "endorsement for policies of insurance * * * must be in the form prescribed by the BMCS and approved by the OMB" [*i.e.*, MCS–90] and must "be issued in the exact name of the motor carrier" (49 CFR 387.15). The MCS–90 provides that:

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property with sections 29 and 30 of the Motor Carrier Act and the rules and regulations * * *. 49 CFR 387.15, Illustration I, Form MCS–90, OMB No. 2125–0074 (Exhibit M, p. 2).

Since an MCS–90 "must be in the form prescribed by the BMCS" and "be in the carrier's name" (49 CFR 387.15) and section 387.15 provides for the amendment of the insurance policy "to assure compliance by the *insured*" to provide public liability coverage, § 387.15 apparently intended the carrier to be the named insured on the policy.[12] Moreover, section 387.7(d)(1) requires that such an MCS–90 be maintained at the motor carrier's principal place of business as "proof" of financial responsibility.

Respondent admittedly violated this section, but, as noted by the Associate Administrator's Order, such a violation was not alleged and cannot be found here. Respondent points out that § 387.15 and § 387.7(a) are separate and distinct sections; the former is concerned with the "form" and the latter with the "substance" (*i.e.*, the existence) of financial responsibility coverage,[13] not whether the insurance policy was in the carrier's name (PHC Tr. 36–37). Moreover, section 387.7(d)(1) is concerned with the "proof," rather than the "fact" of financial responsibility. Nevertheless, if sections 387.15 and 387.7(d)(1) are read together they indicate a regulatory scheme intended to require that insurance be in the carrier's name.

2. The requirement for environmental restoration coverage indicates an intent that the carrier obtain *insurance in its own name.*

The requirement for environmental restoration coverage also indicates an intent that the carrier obtain insurance in its own name. As noted above, section 387.7(a) requires a carrier to obtain "the minimum levels of financial responsibility" and section 387.5 defines "financial responsibility" as "the financial reserves sufficient to satisfy liability amounts * * * covering public liability," which by definition includes "liability for environmental restoration." Although Respondent was covered for environmental restoration in the present case (PHC Tr. 12, 15), FHWA is generally concerned that, if the policy is not in the carrier's name, no environmental restoration will be in effect.[14] In fact, "environmental restoration" coverage in this case is apparently only provided by the MCS–90 which amends the policy [15] and provides for payment for public liability, *i.e.* environmental restoration.[16] Since

[12] Accord letter, dated May 23, 1985,. from the Director of BMCS in Washington, DC to the Regional Director of Motor Carrier Safety in Atlanta, Georgia. Exhibit Q, p.1.

[13] Respondent's brief, p.4. Respondent argues that the Inspector in this case saw a violation of §§ 387.7(d) and 387.15 but he merely assumed the carrier had no public liability coverage in the amount of $5,000,000, since the MCS–90 was not in the carrier's name (PHC Tr. 36), and that the alleged "substantive" violation of § 387.7(a) was a result of that misunderstanding. Respondent's brief, p. 5. However, the compliance review, dated June 23, 1988, signed by Investigator Rodgers and Assistant Investigator Gavas stated, *inter alia*, that:

"during the course of the investigation it was also discovered that the carrier had another insurance policy with enough public liability insurance but the policy was in another name * * * Bulk [sic] County Container Corporation. When speaking with Mr. Banas, president of * * * both companies, he stated that the reason for two different companies was because the insurance company would not cover the $5,000,000 public liability required. Mr. Banas also stated that he grounded Respondent's tractors and used common carriers for a month to ensure that he maintained enough insurance." Exhibit 0, pp. 57–76:

Thus the investigators knew that Respondent had an insurance policy with enough public liability coverage, albeit not in its own name, and intended to charge Respondent with a violation of § 387.7(a) for failing to obtain insurance in its own name.

[14] PHC Tr. 29–30. Since the MCS–90 indicates that "the insurance policy to which the MCS–90 is attached provides automobile liability insurance and is amended to assure compliance by the insured * * * with sections 29 and 30 of the Motor Carrier Act," one of the purposes of the MCS–90, insurance policy, is to assure that environmental restoration will be provided. See also Washington, DC, BMCS Director's Letter dated May 23, 1985, to the Regional Director of Motor Carrier Safety in Atlanta, Georgia, which stated that:

The endorsement amends an insurance policy to cover environmental restoration, a term which is not used in liability policies. Without the endorsement, an insurance company can refuse to pay for environmental restoration, as required by the statute and regulation, thus leaving both the motor carrier and the damaged party without recourse. Exhibit Q, p. 1.

[15] The MCS–90 provides that "the insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured * * * with sections 29 and 39 of the Motor Carrier Act and rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety * * * and the Interstate Commerce Commission * * *." Exhibit M, p. 2.

[16] PHC Tr. 22. Although Respondent was covered by the Liberty Mutual policy for property damage and bodily injury caused by an accident of one of the vehicles in question (Exhibit P, p. 22), the basic policy does not specifically provide coverage for

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the MCS-90 requirements only apply to endorsements in the name of the carrier, and environmental restoration requirements appear only in the MCS-90, the importance of those requirements underscore the apparent intent that the policy be issued in the name of the carrier.

3. The requirement in § 387.7(b)(1) that "the insured motor carrier" or the insurer provide the other with 35 days prior notice of cancellation of the policy and endorsement, indicates an intent that the carrier be the *named insured.*

Section 387.7(b)(1) requires that "insurance policies, endorsements and surety bonds required under part 387 remain in effect continuously until terminated," and that "cancellation (of these items) may be effected by the insurer or the insured motor carrier giving 35 days * * * notice to the other" (49 CFR 387.7(b)(1)). These provisions are apparently intended to require a carrier to have control over the public liability coverage. Consequently, these provisions also indicate an intent that the carrier be the named insured on the policy in order to enable that control.

Here the Liberty Mutual policy of $5,000,000 could be cancelled without Respondent's knowledge or control, since it was not the named insured. Indeed, the Certificate of Insurance provides that, while Liberty Mutual will attempt to give Respondent 10 days prior notice of cancellation or termination of the policy, it will not be subject to "liability of any kind" for failure to comply therewith. Exhibit M, p. 1. Accordingly, we conclude that § 387.7(b)(1), in requiring that the insurer provide "the insured motor carrier" with 35 days prior notice of cancellation of the policy, indicates an intent that the carrier obtain insurance in its own name.

4. The legislative history of the Motor Carrier Act and the administrative history of part 387 indicate an intent that *a motor carrier obtain insurance in its own name.*

The legislative history of the Motor Carrier Act and the administrative history of part 387 also indicate an intent that a motor carrier obtain insurance in its own name. The Committee on Public Works and Transportation, in recommending passage of the Motor Carrier Act stated:

> Insurance companies are equipped to evaluate the performance of the motor carriers. The premiums they assess are in direct relation to the risks they assume. Therefore, an unsafe carrier will have an increased premium, and a totally unsafe carrier may not be able to obtain the insurance necessary to operate, or at best will be at an insurance cost disadvantage." H.R. Rep. No. 1069, 96th Cong., 2nd Sess., *reprinted in* 1980 U.S. Code. Cong. & Admin. News. 2283, 2325 (Exhibit W, p. 13).

Thus, the Committee apparently assumed that insurance companies would monitor each motor carrier's safety performance in deciding at what price, if any, to issue it insurance. Such monitoring could be effective only if each motor carrier obtains insurance in its own name.

Respondent argues that it obtained insurance pursuant to an assigned risk plan under which an insurer is obligated to issue insurance and such plans are in force in every state and that insurance companies in assigned risk cases have "absolutely no regulatory power over motor carriers in deciding at what price, if any, to issue insurance, except in cases of revocation of operators' license or nonpayment of a premium" (Respondent's Brief, p. 9). However, as noted by the FHWA in its Final Rule promulgating Part 387, the price of insurance for assigned risk plans in most states is higher than that in the voluntary market.[17] Consequently, motor carriers that obtain insurance under an assigned risk plan have an additional incentive to operate safely in order to be eligible for the cheaper insurance available in the voluntary market:

> The Congress expected that motor carriers which maintain high levels of safety would be evaluated in a favorable light by insurance or surety companies. Since generally the premiums that insurance or surety companies actually charge are directly related to the insured motor carrier's record of loss experience, the minimum levels of financial responsibility for public liability, property damage, and environmental restoration required in the Act should initiate a new and major focus on motor carrier safety." Final Rule, 46 FR 30974 (June 11, 1981) (Exhibit T, p. 2).

This incentive would apply to motor carriers unless they obtain insurance in their own name.[18] The FHWA, in promulgating the Final Rule, also noted that the MCS-90 would "provide the assurance needed by an owner-operator leasing a motor vehicle to the motor carrier that the minimum levels of financial responsibility have been met by the motor carrier," [19] thereby indicating an intent that the carrier obtain insurance in its own name.

Accordingly, we conclude that the legislative history of the Motor Carrier Act and the administrative history of part 387 indicate an intent that the motor carrier obtain insurance in its own name.

C. Respondent was not given sufficient notice that § 387.7(a) requires a motor carrier to obtain insurance in its own *name to warrant the imposition of civil penalties.*

While we find that part 387 was intended to require a carrier to obtain insurance in its own name, we also conclude that section 387.7(a) did not afford Respondent sufficient notice of that requirement to permit the imposition of civil penalties under that section. As noted above, there is no such requirement in section 387.7(a) itself. Moreover, the analysis above to discern the apparent intent of part 387 as a whole suggests by its very complexity the lack of adequate notice in section 387.7(a).

The Respondent in a quasi-criminal civil penalty proceeding may not appropriately be obliged to undertake such an analysis to attempt to discern intent from a regulatory requirement. If section 387.7(a) (as distinct from part 387 as whole) were intended to require that the carrier obtain insurance in his own name, it would have been a simple matter to have said so in that section. Instead the regulation states such a requirement in section 387.7(d)(1) by requiring an MCS-90; but that section relates specifically only to "proof" of financial responsibility, not to the requirement of financial responsibility itself.

Moreover, as noted by the Associate Administrator, the Complainant deliberately chose not to charge a violation of section 387.7(d)(1)—

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environmental restoration. Indeed, the policy excludes any loss to each covered auto "arising out of or during its use for the transportation of any * * * hazardous materials" (Exhibit P, p. 14, para. 1.10) and "bodily injury or property damage caused by the dumping, discharge or escape of irritants, pollutants or contaminants [unless] * * * the discharge is sudden and accidental" (Exhibit P, p. 22, Part IV, para. C.9). The MCS-90 endorsements, however, provides that "in consideration of the premium stated in the policy * * * the insurer * * * agrees to pay * * * any final judgment recovered against the insured for public liability * * *." Exhibit M, p. 2.

[17] Final Rule, 46 FR 30975 (June 11, 1981) (Exhibit T, p. 3). Although the Final Rule listed some states in which the cost of insurance pursuant to an assigned risk plan was competitive with the cost of insurance in the voluntary market, Pennsylvania was not among the states listed. *Ibid.*

[18] Exhibit T, p. 3, citing NPRM, 46 FR 8186-87 (Jan. 26, 1981) (Exhibit U, pp. 2-3). The Final Rule stated that although the financial responsibility requirements will not mean that unsafe carriers will incur higher premiums or not be denied insurance in all instances (*i.e.*, in states where the voluntary market premiums equal those in the assigned risk pool), the financial responsibility requirements will generally lead to improved safety performance, since the voluntary market in a majority of states is cheaper than assigned risk charges. Exhibit T, p. 3.

[19] Final Rule, 46 FR 30979 (June 11, 1981) (Exhibit T, p. 7).

apparently because it wished a larger penalty under section 387.7(a) or wished to litigate the meaning of that section. Indeed, Complainant persisted in refusing to charge a violation of section 387.7(d)(1) after the question was raised by the Associate Administrator in his order and by the Judge at the prehearing conference (PHC Tr. 9).

Instead the Complainant pursued a charge that Respondent had failed to "obtain * * * financial responsibility." The Respondent, however, did have financial responsibility within the definition provided in section 387.7(a), since a $5 million insurance policy covering the Respondent was admittedly in force during the period in question—the only specification contained in section 387.9, which is referenced by section 387.7(a). Indeed that policy even provided environmental restoration protection, which was one of Complainant's stated concerns. Moreover, Respondent "obtained" the policy through its broker with its payments for the premiums.

When the Respondent was informed by Complainant that this arrangement was unsatisfactory to Complainant, Respondent eventually obtained an MCS-90 in its own name (PHC Tr. 16). Failure to do so previously exposed Respondent to liability for violation of section 387.7(d)(1), but violation of that section does not automatically cause that failure to constitute a violation of every other related section of the regulations. Indeed, the fact that Respondent's action was a clear violation of section 387.7(d)(1) means that the violation does not "fall between the cracks" and reduces any policy argument for reading a violation into section 387.7(a) where it does not appear on its face.

In *Astro Containers, Inc.*, RSPA Docket No. 87-06-DM, Decision dated September 19, 1989, the Research and Special Programs Administrator reduced to $100 a requested $4000 penalty for violation of an ambiguous hazardous materials regulation, noting, *inter alia*, that "clear notice of one's obligations is all the more important when civil penalties, which are quasi-criminal in nature, are sought," citing *First American Bank of Virginia* v. *Dole*, 763 F.2d 644, 651 (4th Cir. 1985). Accord *Ricks* v. *United States*, 414 F.2d 1111, 1115, 1117 (D.C. Cir. 1968) (vagrancy conviction overturned for unconstitutional vagueness under the 5th Amendment—"loitering," "failing to give good account" and "without visible means of support" had no legislative definition and failed to provide a degree of specificity that would enable citizens of ordinary intellect to distinguish right from wrong).

Due process requires that a quasi-criminal regulation be sufficiently definite to give notice of the required conduct, in order to permit one to avoid violation and to guide the judge in its application and the lawyer defending one charged with its violation.[20] Since Respondent complied with § 387.7(a) on its face, we cannot find that civil penalties are warranted. Although there are indications in part 387 and the administrative history thereto, and in the legislative history to the Motor Carrier Act, that part 387 was intended to require a carrier to obtain insurance in its own name, we cannot subject Respondent to civil penalties under section 387.7(a), absent notice to Respondent in advance that the conduct in question is prohibited by that section. Accordingly, we hold that § 387.7(a)'s requirement that "a carrier obtain * * * financial responsibility," without more, fails to provide sufficient notice to warrant finding a violation and imposing civil penalties.[21]

Complainant argues that Respondent had sufficient notice that it must obtain insurance in its own name pursuant to § 387.7(a), because the interpretation letter from the BMCS Director in Washington, DC to the Regional Federal Highway Administrator in Atlanta, Georgia, dated April 7, 1983 (Exhibit S), stated that an owner-operator may not furnish the carrier-lessee with the minimum levels of financial responsibility (*i.e.*, with a copy of the policy and an MCS-90) where the carrier is covered under an endorsement on the policy. However, as conceded by Complainant, the letter was not an interpretation of the Associate Administrator or published in the Federal Register. PHC Tr. 28. Therefore, the letter is not binding on the Administrator or the Respondent and provides no basis for finding a violation of section 387.7(a) or imposing civil penalties. Finally, in *Ricks, supra*, the Court found that a "blunderbuss statute" cannot be rendered constitutional by an "unpublicized" administrative policy practice which limited its scope. 414 F.2d at 1118. Similarly, we conclude that the unpublished interpretation letter does not provide notice that section 387.7(a) requires a carrier to obtain insurance in its own name.

VI. Ultimate Findings and Conclusions

For the reasons set forth above, we conclude that part 387 was intended to require a carrier to obtain insurance in its own name, but that respondent was not afforded sufficient notice that section 387.7(a) included such a requirement to warrant the imposition of civil penalties under that section. While Respondent's conduct violated section 387.7(d)(1), violation of that section was not alleged. Accordingly, we conclude that this proceeding should be and hereby is dismissed with prejudice.

Dated: February 22, 1991.

Ronnie A. Yoder,

Administrative Law Judge.

Office of Hearings

[FHWA Docket No. R5-90-07; Motor Carrier Safety]

Wisconsin Protein Carriers, Inc.

Order Canceling Hearing and Terminating Proceeding

Served February 20, 1991.

The hearing that was scheduled to take place in Chicago, IL on March 12, 1991 is canceled. By motion dated February 15, 1991, Regional Counsel, with Respondent's concurrence, moves to have the proceeding dismissed based upon the parties' settlement agreement that is attached to the motion. That settlement agreement does not appear to be inconsistent with the public interest. Accordingly, the motion to dismiss is granted, and these proceedings are terminated.

Burton S. Kolko,

Administrative Law Judge.

[20] See generally *Boyce Motor Lines* v. *United States*, 342 U.S. 337, 342 (1952). Criminal statutes ought by their very nature be more definite than civil statutes. *Winters* v. *New York*, 333 U.S. 507, 515 (1948). See generally 62 Harv. L. Rev. 77, 85, n. 55 (1948).

[21] We do not accept Respondent's argument that the statute or the regulations require proof that Respondent knew it was violating the regulation in order to prove that the violation was done "knowingly" within the meaning of section 30(d)(1) of the Act. Since we conclude that section 387.7(a) did not prohibit the conduct in question, the issue of whether such a violation was done "knowingly" does not rise. It is, however, well established that such public welfare regulations only require proof that acts constituting the violation were done knowingly, not that the acts were known to be a violation. See, *e.g.*, *The Glidden Co.*, FAA Docket No. 84-30 (HM), Order dated December 19, 1986, pp. 8-9 (Hazardous Materials Transportation Act, 49 U.S.C. 1809(a)(1); *Select Industries Legal Enforcement Proceeding*, FAA Docket No. 79-131 (HM), Order dated October 18, 1985, pp. 9-14. See *United States* v. *International Minerals Corp.*, 402 U.S. 558, 560 (1971); *United States* v. *Freed*, 401 U.S. 601, 607 (1971) ("only knowledge required to be proved was knowledge that instrument possessed was a firearm"); *United States* v. *Flores*, 753 F.2d 1499, 1505 (9th Cir. 1985).

Federal Highway Administration

[Docket No. 90-TN-028-SA]

In the Matter of E.L.Thomas & Sons, Inc.

Final Order

This matter comes before me upon request of the Respondent for a hearing to contest the alleged violations cited in a Notice of Claim dated September 20, 1990. Those alleged violations include failing to maintain a driver qualification file on each driver employed and also failing to preserve driver's records of duty status for 6 months.

Respondent requests a hearing on the basis that there was an incomplete understanding of the regulations, that there are mitigating circumstances and that all alleged violations have been abated.

Petitioner files in opposition to this request and seeks the issuance of a Final Order finding the facts to be as alleged and imposing a penalty of $4,500. Petitioner correctly cites the requirements of the regulations that there be material factual issues in dispute and that such issues be identified prior to the appointment of an Administrative Law Judge. The reasons cited by Respondent do not appear to constitute material factual issues in dispute.

Respondent has had prior contact with the Agency, is presumed to have knowledge of the regulations and could have made efforts to secure a more complete understanding of those points where possible confusion existed. Although the points advanced could be construed as mitigating circumstances, the examination of the documents before me indicates that some convincing was necessary before Respondent saw fit to come into compliance. That convincing took the form of the filing of the Notice of Claim. As set forth in many prior Orders, the initial determination of the Regional Director with respect to the penalty will not be disturbed in the absence of compelling evidence supporting a request for mitigation. I find no such compelling reasoning here.

Therefore, it is ordered, That Respondent's request for a hearing and mitigation of the penalty is denied and Petitioner's request for a Final Order is granted. Respondent shall pay to the Regional Director within 30 days of the date of this Order the full assessed amount of $4,500.

Dated: February 15, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Office of Hearings

[FHWA Docket No. R5-89-137; Motor Carrier Safety]

Ronald William Dreyer

Initial Decision of Administrative Law Judge Ronnie A. Yoder

Served February 14, 1991.

By motion dated September 5, 1990, Complainant Regional Director, Office of Motor Carriers, Region 5, moves for summary judgment pursuant to 49 CFR 386.54(b)(6). As grounds for that motion, Complainant asserts that no questions of fact remain to be determined and that any remaining questions of law should be resolved in favor of Complainant. Respondent has failed to answer the motion for summary judgment, and we conclude that the motion should be granted and judgment should be entered against Respondent.[1]

This proceeding was initiated by a Notice of Disqualification issued to Respondent on August 28, 1989, and Respondent's request for a hearing dated September 2, 1989. That Notice was based on Respondent's conviction on July 28, 1989, for driving under the influence of an alcoholic beverage and purported to confirm that under 49 CFR 391.15(c)(2)(i) he was disqualified for one year from his conviction.[2]

On January 5, 1990, the Regional Director issued an amended Notice of Disqualification, citing 49 CFR 383.51 as additional authority for Respondent's disqualification.[3] A cover letter of the same date accompanying the Amended Notice of Disqualification notified Respondent's attorney of the new notice and Complainant's decision to treat Dreyer's original review request as timely filed and applicable to the Amended Notice. (Record, p. 6.) The Regional Director acknowledged that Respondent had raised a question of material fact; and on February 2, 1990, Dreyer's request for a hearing was forwarded to the Associate Administrator for Motor Carriers.

By Order dated July 27, 1990, the FHWA Associate Administrator for Motor Carriers granted Dreyer's request for a hearing and referred this matter to an administrative law judge, noting that "there is a substantial issue of fact in dispute in the case. The circumstances surrounding the Petitioner's disqualifying offense are not clear." The undersigned Judge was assigned to this proceeding by Notice dated August 14, 1990.

Following a prehearing telephone conference on August 23, 1990, during which the issues in the proceeding were discussed (*infra*, p. 5), the Judge's Order dated August 27, 1990, directed that:

> If either party proposes that this matter should proceed to hearing, each party shall file a list of witnesses; a summary of their proposed testimony; a joint or separate proposed procedural schedule including proposed dates for stipulations, exchange of exhibits, and discovery, if any; a statement concerning the status of settlement efforts; and any proposed hearing site other than Washington, DC, including a justification of any such proposed site. Each submission shall include a telephone number for the party or counsel.

Complainant's motion was filed in response to that order. No filing was made by Respondent.

In view of Respondent's failure to comply with the Judge's Order dated August 27, 1990, or to answer the motion for summary judgment, we conclude that entry of judgment against Respondent is appropriate.[4] Accordingly, we adopt the following findings of fact proposed by Complainant:

1. Respondent, Ronald W. Dreyer, was involved in a motor vehicle accident while driving a 1979 Kenworth tractor unit on July 1, 1989. See Affidavit of Ronald W. Dreyer (Record, pp. 13-15); Minnesota Police Department Accident Report (Record, pp. 26-27); D&T Trucking Accident Report (Form MCS-50T) (date); letter of D&T Trucking dated July 22, 1989 (Record, p. 25).

2. On July 28, 1989, Dreyer signed a "Petition to Plead Guilty In a DUI Misdemeanor Case" (District Court—Third Judicial District, State of Minnesota) (Record, p. 23), wherein he admitted his "driving ability was impaired or alcohol concentration was .24." Respondent pled guilty to DUI and failing to stop and report an accident. (Record, p. 22.)

3. On July 28, 1989, Dreyer was convicted of DUI and sentenced to a 30-day jail term for DUI and fined $405. On

[1] Complainant's motion attached as a "Record" in the proceeding 30 pages of documents. Absent objection we admit those documents in evidence as the evidentiary record in this proceeding.

[2] Section 391.15(c)(2)(i) provides that "operating a motor vehicle under the influence of alcohol" is a disqualifying offense.

[3] Record, pp. 7-8. Section 383.51(b)(2)(i) provides that "operating a commercial motor vehicle under the influence of alcohol" is a disqualifying offense.

[4] This initial decision is rendered pursuant to authority delegated to the administrative law judge under the Federal Motor Carrier Safety Regulations (49 CFR 386.61) and constitutes the Judge's findings of fact and conclusions of law.

the "failing to stop" count, Respondent was fined $100. The DUI jail term was suspended on condition Respondent complete DUI classes and remain a law abiding citizen for two years. (Record, p. 22.)

4. On August 28, 1989, a Notice of Disqualification was issued to Dreyer by the Regional Director, Office of Motor Carrier Safety, FHWA, informing Respondent that pursuant to 49 CFR 391.15, he was disqualified from driving in interstate commerce for a period of one year from the date of his conviction on the DUI charge. (Record, pp. 18–19.)

5. By letter dated November 22, 1989, and affidavit attached thereto, Dreyer, through his attorney, Kevin A. Lund, filed a "Petition to Review" initiating driver disqualification proceedings pursuant to 49 CFR 386.13. For the purposes of an oral hearing, Dreyer submitted the factual issue of whether he was "on duty" at the time of the offense. Dreyer claimed that he was "off-duty" from 6 p.m., June 30, 1989, until July 5, 1989, and that he was not engaged in interstate commerce. (Record, pp. 11–17.)

The Order of the Associate Administrator noted that Respondent asserted that he was not "on duty" or engaged in interstate commerce when he was arrested for DUI, since he was merely moving his semitractor four blocks from his residence to a truck parking lot. During the prehearing conference on August 23, 1990, there also appeared to be a question concerning the delay of the FAA in processing Respondent's request for a missing hand waiver during the pendency of this proceeding. Accordingly, the Judge's Order dated August 27, 1990, directed the parties to serve and file a statement addressing the following questions:

1. Whether 49 CFR 391.15(c)(2)(i) should be dropped from the amended notice of disqualification?

2. What legal and factual issues remain to be determined under that section, if any, or under 49 CFR 383.51(b)(2)(i)?

3. What is the status of the missing hand waiver application, and why has it not been acted on?

4. What is Mr. Dreyer's position or defense with respect to disqualification under § 383.51(b)(2)(i)?

5. Is the burden of proof on Mr. Dreyer as stated in the Associated Administrator's order dated July 27, 1990, p. 3?

6. At what point does the disqualification referred to in the disqualification letter and the amended disqualification letter commence, *i.e.*, July 28, 1989, or upon "a final determination that you are not qualified."

7. If disqualification ran from July 28, 1989, is the period of disqualification ended and how is the delay in this proceeding explained, and how is such delay to be avoided in the future?

8. If disqualification occurs only upon final determination, how is the delay and the intervening inchoate public risk explained, and how are such delays and risks to be avoided in the future?

9. Should an order be entered dismissing this proceeding and, if so, what are the implications with respect to delay of the pending waiver application?

Discussion

Based upon the submissions of the parties, the findings of fact, and the entire record, we conclude that Respondent was disqualified under 49 CFR 383.51(b). That section provides that:

> A driver who is convicted of a disqualifying offense specified in paragraph (b)(2) of this section, is disqualified for the time specified in paragraph (b)(3) of this section, if the offense was committed while operating a commercial motor vehicle.[5]

The record establishes that Respondent was convicted of a disqualifying offense on July 28, 1989. Section 383.5 (49 C.F.R. 383.5) defines "conviction" as:

> An unvacated adjudication of guilt, or determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended or probated.

Section 383.51(b)(2) provides that:

> The following offenses are disqualifying offenses: (i) Driving a commercial motor vehicle while under the influence of alcohol. This shall include:
>
> (A) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 percent or more; or
>
> (B) Driving under the influence, as prescribed by state law * * *."

At the time of the incident in question, Respondent was operating a commercial vehicle (a 1979 Kenworth semi-tractor unit with a gross vehicle weight rating of 49,000 pounds); he was arrested for driving under the influence of alcohol and subsequently pled guilty to that charge; and he admitted that his blood alcohol concentration was more than .04 (*i.e.* .24). Thus Respondent's July 18, 1989, conviction for driving his Kenworth tractor unit, while under the influence of alcohol as defined by the State of Minnesota, constituted a disqualifying offense under section 383.51(b).

Section 391.15

The original Notice of Disqualification dated August 28, 1989, and the amended Notice issued January 5, 1990, cited 49 CFR 391.15(c)(2)(i) for Dreyer's disqualification (the amended notice also cited 49 CFR 383.51(b)(2)(i)); but on brief and during the prehearing conference the Complainant acknowledged that violation of 49 CFR 391.15(c)(2)(i) would require demonstration by the Complainant that Respondent was "on duty" [6] and in interstate commerce at the time of the incident.[7] Respondent's reply to the

[5] The definitions section of Part 383 (49 CFR 383.5)—defines "commercial motor vehicle" as "a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

"(a) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

"(b) has a gross vehicle rating of 26,001 or more pounds * * *."

[6] Section 391.15 provides:

"(1) General Rule. A driver who is convicted of (or forfeits bond or collateral upon a charge of) a disqualifying offense specified as paragraph (c)(2) of this section is disqualified for the period of time specified in paragraph (c)(3) of this section, if—

"(i) The offense was committed during *on-duty time* as defined in section 395.2(a) of this subchapter or as otherwise specified * * *." (Emphasis added.) Section 391.15 is based on authority transferred to the Department of Transportation from the Intrastate Commerce Commission under the Motor Carrier Act of 1935. That authority is focused on regulating *carriers* during their interstate operations and delegates the power to an administrative agency to "prescribe requirements for qualifications and maximum hours of service of employees of * * * a motor carrier." 49 U.S.C. 3102. Although the authority to set qualifications is not restricted to drivers, it has been interpreted to be limited to employment situations, and consequently Section 391.15 encompasses only "on duty" conduct.

[7] Although the Associate Administrator's Order dated July 27, 1990, p. 3, stated that the burden of proof in this proceeding was on the Respondent, Complainant acknowledged on brief that the burden of proof is in the Government. Although Associate Administrator cited sections 386.58(b) and 391.47(e), the latter provision refers to cases in which there is a conflict in medical opinion which must be resolved. Such is not the case here, and consequently Respondent does not bear the burden to show, in this proceeding, that he is medically qualified. Rather, it is the Complainant's burden to show that Respondent was disqualified under 49 CFR 383.51.

original Notice of Disqualification (August 28, 1989), which was predicated upon 49 CFR 391.15, asserted as a defense and material issue of fact that Respondent was not "on duty" or in interstate commerce. On brief Complainant agreed with that position and acknowledged that the reference to section 391.15 should be dropped from the notice of disqualification (Br., p. 15). Accordingly, Respondent was not disqualified under that section, and Complainant's original notice of disqualification was erroneous.

As a driver of a commercial motor vehicle with a GVWR in excess of 26,000 pounds, however, Respondent is subject to both Parts 383 and 391. Section 383.51 ("Commercial Driver's License Standards; Requirements and Penalties") has no requirement that the disqualifying offense occur while the driver is "on duty" and requires only that the offense be committed "while operating a commercial motor vehicle."[8] That section also applies to intrastate commerce.[9] Hence Respondent was disqualified under the terms of section 383.51.

Commencement and Extent of Disqualification

The Regional Director contends that disqualification under section 383.51 occurs automatically by operation of law based on the proscribed conduct while driving a commercial motor vehicle and that Respondent's disqualification ran automatically for one year from his conviction and has now terminated. The Complainant asserts that the Regional Director's letter of disqualification merely advised Respondent of the fact that he had been disqualified and was not necessary to effectuate the disqualification.

We question those assertions. Section 391.15 (which was included in the Notice of Disqualification and does not apply to Respondent) states that:

> A driver who *is convicted* of (or forfeits bond or collateral upon a charge of) a disqualifying offense specified in paragraph (c)(2) of this section [operating a motor vehicle under the influence of alcohol] is disqualified for the period of time specified in paragraph (c)(2) of this section [1 year after the date of conviction or forfeiture of bond or collateral] if the offense was committed during on-duty time * * * and * * * the driver is employed by a motor carrier or is engaged in activities that are in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce." (Emphasis added.)

Thus disqualification under that section operates from the date of *conviction*—leaving aside the possibility of needing to resolve questions relating to the "if" clause.

Section 383.51(b)(3), on the other hand, provides:

> Duration of disqualification for driving while under the influence, leaving the scene of an accident, or commission of a felony.
> (i) First Offenders. A driver is disqualified for 1 year after the date the driver *is found* to have committed an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section." (Emphasis added.)

Section 383.51(b) provides that "a driver who is convicted of a disqualifying offense specified in paragraph (b)(2) of this section [operating a commercial motor vehicle under the influence of alcohol] is disqualified for the time specified in paragraph (b)(3) of this section." Thus in section 383.51 "conviction" is the disqualifying event, but the operative *time* of the disqualification is the date the driver is "found" to have committed a disqualifying offense. Such a "finding" must be made by the FHWA, and consequently disqualification must await an FHWA "finding." Under 49 CFR 386.13 Respondent is entitled to petition for review of a notice of disqualification, and such a notice "becomes the final decision of the Associate Administrator" only after the time to petition has expired or the petition is determined adversely.

Moreover, we are concerned about the implications of a conclusion in this case that section 383.51 calls for an automatic disqualification from the date of conviction. If disqualification were automatic, Respondent's right to a review of such an automatic disqualification would be nullified where as here the request for hearing is not referred to the Office of Hearings until after the full suspension period has run. Here the Respondent filed a petition to review his disqualification on November 22, 1989, Complainant amended the basis for the disqualification on January 5, 1990, and the case was not forwarded to the Associate Administrator until February 2, 1990, and was not referred for hearing until July 27, 1990—one day before the disqualification expired. That Order was not served until eleven days later, August 7, and the Judge was appointed by Notice dated August 14, 1990—17 days after the full suspension had run. While we can understand the policy reasons for implementing an immediate disqualification in the interest of public safety, if such a policy were to be enforced, petitions for review of such disqualifications should also be referred to a judge for hearing automatically and immediately in order to protect the rights of the Respondent.[10]

We also question the efficacy of a notice of disqualification which recites the wrong section of the regulations as a basis for disqualification. Complainant acknowledges that the original reference to section 391.15 was incorrect and should have been dropped from the Notice of Disqualification. Hence no notice of the section under which Respondent was disqualified was given until January 5, 1990, more than 5 months after the disqualification began on July 28, 1989.[11] Failure to provide

[8] Section 383.51 is based on authority in the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), which seeks to assure that drivers of commercial motor vehicles are tested and licensed according to Federal standards and that unqualified or unsafe drivers are excluded. See H.R. Rep. No. 901, 99th Cong., 2d Sess., p. 9, and Sen. Rep. No. 411, 99th Cong., 2d Sess., p. 2 (1986). Hence, the Act provides that "the Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 1 year each person who is found to have committed a first violation of driving a commercial motor vehicle while under the influence of alcohol * * *." 49 U.S.C. App. § 2707(a)(1)(A)(i)(I). The Act requires a lifetime disqualification for the second such offense. 49 U.S.C. App. § 2707(a)(2)(A)(i).

[9] Section 383.3 titled "Applicability" states that "the rules in this part apply to every person who operates a commercial motor vehicle in interstate, foreign, or *intrastate* commerce, and to all employers of such persons." (Emphasis added.) Section 383.5 defines "commerce" to include "(a) any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and (b) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (a) of this definition."

[10] Delay in processing Respondent's petition for review also prevented consideration of Respondent's missing-hand waiver application. As noted by Complainant, that waiver could not be considered while Respondent's disqualification was pending. Moreover, Respondent's status vis-a-vis disqualification, the status of his waiver application, and his ability to renew that application were apparently not clarified until the August 23, 1990, prehearing telephone conference—nearly one month after the disqualification ended on July 28, 1990. Complainant states on brief that "the Regional Director has initiated discussion with various agency officials to prevent such delays in the future." Brief, p. 16. Where disqualification is immediate, however, a rule change may be required to give Respondent an automatic right to a hearing.

[11] On brief Complainant states that the reference in the notice of disqualification to "a final determination that you are not qualified" is a reference to a medical qualification case and does not apply to this proceeding. Br., p. 7. If that language does not relate to automatic disqualification cases, it should not be included in such notices in order to avoid confusion concerning the effective date of the disqualification. As noted above, disqualification under section 383.51 appears to occur only upon a final determination; and the notice tends to support that conclusion.

notice of the section under which disqualification occurs effectively denies Respondent any ability to obtain review of the disqualification. Indeed failure to provide such notice would appear to require granting of the petition for review of disqualification.

Finally, sections 391.15 and 383.51 appear to be overlapping and inconsistent and hence a trap for the unwary regulator or respondent. Both sections apparently would disqualify an "on-duty" driver for a carrier in interstate commerce. One apparently operates automatically on conviction and the other only after a "finding" by the FHWA. In this case FHWA staff were apparently confused about the appropriate applicability of the two sections. Still the regulations are not cross-referenced, and they reflect no effort to avoid this confusing regulatory overlap.

Nevertheless, none of these issues have been pursued by Respondent in this proceeding. Accordingly, we find no reason to explore them further here and merely highlight these concerns for consideration by the Associate Administrator. Since Respondent does not contest the fact of his conviction, and Complainant asserts and acknowledges that Respondent has already sustained his full year disqualification, and he has not contested those matters further, we conclude that imposing a disqualification from the conclusion of this proceeding would be inequitable and unwarranted.

At the same time we agree with the Complainant that the matter should not be treated as moot, since Respondent's disqualification history may have some bearing on future disqualification or on his waiver application. Firstly, as the Complainant notes, any subsequent offense would result in a lifetime disqualification. See 49 CFR 383.51(1)(3)(iv). Moreover, if Respondent operated a commercial motor vehicle during the period between July 28, 1989, and July 28, 1990, while he was deemed to be disqualified, he and any motor carrier that employed him during this period might be subject to penalties for violations of parts 383 and 391. Finally, Complainant asserts that the question of whether Respondent possessed the basic qualifications for a handicap waiver during the period of the purported disqualification has not been resolved, and his disqualification herein could be a relevant factor in future consideration of such a waiver. See 49 CFR 391.46(b)(4).

Conclusion

Accordingly, for all the foregoing reasons, we conclude that the Regional Director's motion for summary judgment should be granted and Respondent's petition for review should be and hereby is denied.

So Ordered.

Dated: February 13, 1991.

Ronnie A. Yoder,

Administrative Law Judge.

Federal Highway Administration

[Docket No. R3-90-08]

In the Matter of Browning Services, Inc.

Final Order

This matter comes before me once again in what can only be described as a bizarre and unfortunate manner. On September 6, 1990, I assigned this case to an Administrative Law Judge to provide Respondent with the most definitive answer to his questions concerning the applicability of the Financial Responsibility requirements to his operation. I did so in an effort to be responsive to the concerns of a small business entity and to ensure that every opportunity to afford due process had been made.

Somewhere along the way, the parties entered into a Consent Agreement which was submitted to the Judge assigned to this matter. On the basis of this Consent Decree, the Judge issued a Decision finding that Respondent had committed the violations alleged. No recommendation on penalty was included as the Judge was not requested to make any findings on the amount of penalty.

The Decision was followed by a Motion for Reduction of Forfeiture filed by Petitioner based on an apparent belief that Respondent had now obtained the required insurance. Next arrived a Request for Reduction Or Abatement of Penalty filed by the Respondent. Attached thereto is a Request for Final Order, Resume of Respondent and other materials. The pleadings are argumentative, subjective and caustic.

More follows. Petitioner now files a Withdrawal of Motion for Reduction of Forfeiture. Enough is enough.

Respondent has been found to have violated the provisions of the Financial Responsibility Regulations. The determination of applicability is not Respondent's; it is the Agency's. The Agency has attempted to share prior interpretations with Respondent, has answered his questions, has discussed this matter with his Attorney. Still, Respondent insists his interpretation is correct.

I have expressed my feelings over the need to treat smaller business operations deferentially. Many have not encountered the Motor Carrier Regulations in the past. Many are encumbered by the requirements of the regulations. Some will not be able to operate in the modern commercial environment as a result of new requirements added by the Congress each year. Respondent has a law enforcement background. He should understand these considerations.

I can go no further in attempting to explain, convince, cajole or otherwise secure Respondent's understanding of the need to comply with the regulations. The Agency has interpreted its jurisdiction as extending to operators of tow truck services. I am not going to enter into a semantic argument with Respondent as to what his business is as opposed to what it appears to be, as opposed to what he chooses to call it. If he wishes to carry this matter to the next level, he is free to ask a Court of competent jurisdiction to entertain his plea.

Respondent is subject to the regulations. He has operated in interstate commerce without the requisite levels of insurance. He is a small operation. Taking all these facts into account, I am willing to reduce the amount of the penalty substantially, pending proof of compliance. Without compliance there can be no reduction.

Therefore, it is ordered, That Respondent is found to be in noncompliance with the requirements of the Financial Responsibility regulations. Petitioner has requested a penalty assessment of $2,900. This sum must be paid to the Regional Director within 30 days of the issuance of this order. However, if Respondent produces proof, by MCS-90 of obtaining the required insurance within 10 days of the date of this Order, the penalty will be reduced to $250.

Dated: February 7, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. 90-02D]

In the Matter of Charles G. Newman, Driver Qualification.

Final Order

This matter comes before me upon request of the Petitioner, Charles G. Newman, for reconsideration of a Determination of Medical Qualifications, issued on July 18, 1990, and for a formal hearing before an Administrative Law Judge.

Petitioner has been found unqualified to drive a commercial motor vehicle in interstate commerce because he fails to meet the requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to have "distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses." The Determination of Medical Qualifications was based on an examination of the records including submissions by medical specialists. A finding was made in that determination that no evidence was presented to refute the finding that Petitioner's vision did not meet this standard.

There are certain givens present in any administrative process. Procedural regularity is the most basic foundation. The FMCSRs have been duly promulgated and published in the Federal Register and the Code of Federal Regulations. Many of the medical standards are of a long-standing nature. They have withstood the test of time. Others have undergone reevaluation in light of medical advances and they have been changed or are being changed to conform to present medical considerations.

The charge of enhancing highway safety for the traveling public as well as for the drivers of these commercial motor vehicles is not one taken lightly by this Agency. Every death on the highways is a needless death. Therefore, it is our intent to exercise great caution in carrying out our statutory duties. Individual determinations place a great strain on this system. For these reasons, among others, the FMCSRs have not been promulgated with waiver, or exception provisions. This is a conservative position, in keeping with the requirements of the duty to enhance highway safety. It is not a procedurally irregular position nor does it deny due process to any individual or group of individuals affected by the regulations.

Although each of the physicians who has made a submission in this matter supports a medical waiver or exception for Petitioner, they are consistent in their findings that Petitioner does not meet the standards set forth in the FMCSRs. There thus appears to be a consensus and there is nothing in the record which would constitute material medical factual issue, resolution of which might allow for an interpretation of the current regulation which would be applicable to Petitioner's circumstance. Without a factual issue in dispute, there is nothing in the regulation which would justify the appointment of an Administrative Law Judge, see *In the Matter of Ambrogini*, Docket No. 77-15, August, 1977.

Therefore, it is ordered, That Petitioner's Request for Review of the Determination of Medical Qualifications and for an oral hearing before an Administrative Law Judge is denied on the basis that he has not presented any material factual issues in dispute in accordance with 49 CFR 386.13

Dated: January 29, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R1-91-03; Formerly R1-90-332]

In the matter of Used Equipment Sales, Inc. d/b/a/ U.E.S. Transport.

Order Appointing Administrative Law Judge

This matter comes before me upon request of the Respondent for an administrative hearing to determine the facts surrounding allegations of violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Those alleged violations were raised in a Notice of Claim letter dated November 21, 1990. They include counts of using a disqualified driver, failing to report an accident, requiring or permitting a driver to drive after having been on duty more than 70 hours in 8 consecutive days, failing to require a driver to forward within 13 days of completion the original record of duty status and failing to retain a driver vehicle inspection report for at least 3 months. Some of these violations are alleged to constitute a substantial health and safety violation and others to constitute a serious pattern of safety violations. The fines for such violations are considerably higher than for record-keeping violations. The total assessment levied in the Notice of Claim is $75,500 for the 32 alleged violations.

In its request for a hearing, Respondent denies the violations and represents that there are extenuating circumstances, excusable error, lack of sufficient knowledge, and active efforts to promote compliance with the regulations. This reply is sufficient to appoint an Administrative Law Judge. The Petitioner does not object.

Therefore, it is ordered, That in accordance with 49 CFR 386(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R1-91-02; Formerly R1-90-337]

In the Matter of Compaction Systems Corp. of L.I.

Order Appointing Administrative Law Judge

This matter comes before me upon request of the Respondent for a hearing. The Regional Director, Office of Motor Carrier Safety, Region 1, concurs in this request. This matter arises out of allegations in a Notice of Claim dated November 21, 1990, of violations of the Federal Motor Carrier Regulations, including 10 instances of scheduling a run which necessitates operating a vehicle at speeds in excess of the limit, failing to report an accident and 15 instances of failing to require a driver to submit a record of duty status.

The alleged scheduling violations have been assessed as a serious pattern of violations.

There has been a previous case involving Respondent which was resolved by a Stipulation of Compromise and Consent Order, served on October 26, 1989. In that Agreement, Respondent and Petitioner agreed to certain scheduling changes and record retention arrangements.

Respondent contends that it has made scheduling changes and that its runs may be completed within the required time and speed limits. Petitioner has apparently observed sample runs but disagreement remains as to the ability of Respondent to comply with the regulations.

Respondent has also entered a Motion for More Definite Statement and Request for Production of Documents. As I am appointing an Administrative Law Judge to hear this matter, I am asking him to consider and rule on this Motion.

Therefore, it is ordered, That in accordance with 49 CFR 86.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: January 24, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R1-91-01; Formerly R1-90-131]

In the Matter of Martin Paint Stores, Inc.

Order Appointing Administrative Law Judge

This matter comes before me upon request of the Respondent for an administrative hearing to determine whether the violations alleged in a Notice of Claim dated June 6, 1990, have in fact occurred. The Regional Director, Office of Motor Carrier Safety, Region 1, has raised no objection to such a hearing.

In the Notice of Claim, the Regional Director alleged violations including requiring or permitting a driver to drive after having been on duty 15 hours and transporting a shipment of hazardous material not accompanied by a properly prepared shipping paper. The notice alleged that the violations involving excessive hours constitute a serious pattern, which results in an increase in the penalty.

Respondent denies any violations, contends that it is not subject to the jurisdiction of the Agency on some counts, has an exemption for others and that there has been no serious pattern of violations.

Therefore, it is ordered, That in accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: January 22, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R10-90-39]

In the Matter of Tres Rios Cattle Company.

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 10, for a Final Order finding the facts to be as alleged in a Notice of Claim letter dated April 24, 1990, and imposing a civil penalty of $11,000.

The Notice of Claim alleges 22 violations of the Federal Motor Carrier Safety Regulations for requiring or permitting a driver to make false entries upon a record of duty status. Respondent entered a preliminary denial and request for hearing, not accompanied by any specific factual information.

It appears that at least two follow-up attempts have been made to elicit any information which the Respondent cared to offer and to inform Respondent of the requirements of the regulation. Respondent has failed to reply.

There is no indication of material factual issues in dispute and there is no rebuttal of the Agency's claims.

Therefore, it is ordered, That Petitioner's request for a Final Order is granted and Respondent's request for a hearing, having failed to comply with the requirements of the regulations, is denied. Respondent is directed to pay the full amount of the claim, $11,000, to the Regional Director within 30 days of the date of this Order.

Dated: January 22, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Office of Hearings

[FHWA Docket No. R1-90-10 Motor Carrier Safety]

Autotrans, Inc.

Order Canceling Hearing, Granting Motion for Summary Judgment, and Assessing Civil Penalty

Served Jan. 16, 1991.

The Regional Director, the Complainant in this proceeding, has filed a motion for summary judgment. Answers to that motion were due on January 2, 1991. No answer has been received.

In the motion for summary judgment the Regional Director points out that notwithstanding my order of September 12, 1990, Respondent has never filed a witness list, a proposed exhibit list, or, most importantly, a response to the requests for admissions that pursuant to section 386.44 of the Rules of Practice, 49 CFR 386.44, were due October 25, 1990. Nor has Respondent responded to a second set of requests for admission that were due on December 6, 1990. As the motion points out, the only communication from Respondent that has been received is Respondent's unsupported "Objection to Notice of Admissions" and a further unsupported request that "it be afforded until January 15, 1991 to file objections or responses", filed on December 16, 1990. Even the January 15th date has come and gone without a filing by Respondent.

I deny the request of Respondent and grant the motion for summary judgment. This case has been scheduled for hearing on February 5, 1991 since early November, and by this time discovery and prehearing matters were to have been completed. Contrary to the requirement in Rule 44 of the Rules of Practice, Respondent has offered no justification for its dilatoriness in responding to the Regional Director's requests for admissions, and by not responding to those requests is deemed to be admitting the truth therein, 49 CFR 389.44. Therefore, there remains no genuine issue of material fact to be determined at a hearing, and summary judgment lies. See Rule 56, Federal Rules of Civil Procedure. The allegations in the Notice of Claim are deemed proved. Accordingly, *It is Ordered* That the civil penalty of $15,500 stated in the Notice of Claim be assessed against the Respondent. This decision becomes the final agency decision unless appealed pursuant to 49 CFR part 386, subpart E.

Burton S. Kolko,

Administrative Law Judge.

Federal Highway Administration

[Docket No. R9-90-049]

In the Matter of Swift Transportation Co., Inc.

Final Order

This matter comes before me upon request of the Regional Director, Region 9, Office of Motor Carrier Safety, for a Final Order finding the facts to be as alleged in a Notice of Claim dated October 15, 1990, and ordering Respondent to pay the sum of $8,000.

The Notice of Claim alleged violations of the regulations requiring the report of all qualifying accidents within 30 days and of the regulation prohibiting the making of false entries on records of duty status.

The record and documents before me indicate that during the course of a compliance review, an agency Safety Specialist discovered that the respondent failed to timely report 13 out of 41 reportable accidents and 167 false or inaccurate Drivers' records of Duty Status out of 627 records reviewed. Eight counts of each violation have been documented and are the subject to this Notice of Claim.

Respondent does not seek a hearing but contests the allegations. With respect to the failure to report accidents, Respondent filed late written reports. Four of the alleged violations are admitted but Respondent requests reduction of the penalty. Four of the alleged violations are denied with explanatory reasoning.

Although Respondent's filing is not documented in any way by affidavits from mechanics or repair persons, it appears that the basic claim in the denials is that additional repair work was done in each case and that the actual damage was below the reportable threshold. Respondent should be given the opportunity to establish these contentions. I am directing the Regional Director to meet with Respondent and to review these counts, to make an independent examination, if necessary. If the contentions can be substantiated, the alleged violations should be

dropped. If there remains a question as to facts involved, the Regional Director shall provide me with such information as he believes adequate to substantiate the alleged violations.

With respect to the false log violations, the Respondent admits 7 alleged violations occurred and denies one. Respondent's denial is inadequate and has been rebutted by the Regional Director. With respect to the other 7 admitted violations, disciplinary action might constitute a reason for reducing the penalty, see *DROTZMAN*, however, in this case the record indicates continued violations over a period of years. Also, Respondent's own statements indicate only cursory attention has been paid to this important record review up to the time of this audit.

Therefore, it is ordered, That Petitioner's request for a Final Order is granted, in part, and Respondent is directed to pay the sum of $6,000 to the Regional Director within 30 days of the date of this Order. With respect to the remaining 4 alleged violations of failing to timely report an accident, the Regional Director shall meet with Respondent and review what information Respondent may submit to substantiate his explanation.

Date: January 16, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R3-90-139]

In the matter of Chincoteague Seafood Co., Inc.

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 3, for a Final Order and in opposition to a request for a hearing made by the Respondent.

Respondent has been sent a Notice of Claim on April 2, 1990, alleging 12 violations of the Federal Motor Carrier Safety Regulations (FMCSRs), which included failure to maintain complete drivers files and failure to require drivers to prepare and submit records of duty status.

In a response of April 13, 1990, Respondent maintained that the charges were incorrect and that there are mitigating circumstances. Respondent requested a hearing. There is nothing in the response upon which I might assign the matter to an Administrative Law Judge. The regulations require a denial and statement of some particulars concerning the material issues to be in dispute. This record is devoid of even minimal compliance therewith.

Upon review of the record before me I find that the documents presented support the findings of violations.

Therefore, it is ordered, That the motion for a Final Order is granted. Respondent shall pay the sum of $4,200 to the Regional Director within 30 days of the date of this Order.

Dated: January 2, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R3-90-123]

In the matter of H&D Hardwoods, Inc.

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 3, for a Final Order finding the facts to be as alleged and imposing a penalty of $5,250.

Respondent was sent a Notice of Claim on March 15, 1990, alleging 15 violations of the Federal Motor Carrier Safety Regulations (FMCSRs). The violations included failure to maintain drivers' files, failure to report an accident and requiring or permitting drivers to make false entries upon records of duty.

Respondent by letter of March 20, 1990, indicated that it had completed and updated all forms and would begin reviewing all log sheets.

Having reviewed the record and supporting documents, I find that the violations have occurred. Respondent requests some mitigation based upon its small size and economic operating conditions. There is little supporting documentation for this position and the Regional Director opposes the request as the individual penalties are all in the low range. Notwithstanding the low assessment, I do recognize the difficulty of operating a small business in a difficult economic climate. This Agency has repeatedly stated that the purpose of our reviews is to bring about compliance. A cooperative and compliant attitude will receive consideration. Accordingly, I am granting the Regional Director's motion for a Final Order. However, I am reducing the penalty to $100 for each of the file violations. As the failure to report an accident and the log violations are relatively more severe, no reduction is warranted.

Therefore, it is ordered, That the Motion for a Final Order is granted. The penalty is assessed at $100 for each of the file violations and $350 for each of the other violations. The Respondent shall pay to the Regional Director the sum of $3,750 within 30 days of the date of this Order.

Dated: January 2, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Office of Hearings

[FHWA Docket No. R1-90-09; Motor Carrier Safety]

Propane Transportation, Inc.

Order of Dismissal

Served: December 28, 1990.

On December 10, 1990 Regional Counsel sent me the Stipulation of Compromise and Settlement that the parties had signed in their determination to settle the case. No objection to the request to dismiss this proceeding based upon that settlement has been received.

The parties having agreed to settle this matter prior to its being heard and having entered into a settlement agreement, *It is hereby ordered* That this matter be dismissed in accordance with the terms of the attached Stipulation of Compromise and Settlement.

Burton S. Kolko,

Administrative Law Judge.

Office of Hearings

[FHWA Docket No. R3-89-011 Motor Carrier Safety]

V. R. Mowry, Inc.

Consent Judgment

December 27, 1990.

The parties hereto have submitted a settlement stipulation and petition for consent judgment which has been duly signed by the attorney for the Regional Director and counsel for Respondent V.R. Mowry, Inc., on December 3, 1990 and December 15, 1990, respectively. The settlement agreement provides for the payment of $5,000 by Respondent in full settlement and compromise of the civil forfeiture claim against it, in the manner more fully described below. The request for consent judgment is hereby interpreted as providing me with the authorization to make all necessary jurisdictional findings in connection with the entrance of such a decision as are required by 49 CFR 386.21.

Accordingly, I make the following findings of fact and law:

1. Respondent admits to all jurisdictional facts underlying this proceeding.

2. Respondent waives all further procedural steps, including the requirement that the decision and order must contain findings of fact and conclusions of law, as well as all right to

challenge or contest the validity of the order herein.

3. The notice of claim may be used in construing the terms of the agreement underlying this decision.

4. The order herein has the same force and effect, becomes final, and may be modified, altered, or set aside in the same manner as other orders issued under 49 U.S.C. 501 *et seq.*, 2501 *et seq.*, 3101 *et seq.*, and 10927, note.

5. The agreement between the parties, as aforesaid, will not become a part of the record in this proceeding unless and until the Associate Administrator executes it.[1]

Order

1. Respondent shall pay $5,000 in full settlement and compromise of the civil forfeiture claim initiated by the Notice of Claim dated October 2, 1989, said payment to be made in three installments. The first installment of $1,666.66 is to be made within 60 days of the issuance of an Order adopting this consent agreement; the second installment of $1,666.67 is to be made within 90 days of the issuance of an Order adopting this agreement; and the third installment of $1,666.67 is to be made within 120 days of the issuance of an Order adopting this agreement. The $5,000 settlement is inclusive of the $3,200 forfeiture ordered to be paid in the Associate Administrator for Motor Carrier's Order of October 17, 1990.

2. Each party shall bear its own costs of this proceeding.

So ordered.

John J. Mathias,

Chief Administrative Law Judge.

Office of Hearings

[FHWA Docket No. R1-88-1; Motor Carrier Safety]

In the Matter of Woodbury Horse Transportation, Inc.

Order of Administrative Law Judge

Served December 27, 1990.

By motion dated October 29, and filed October 30, 1990, Arthur J. Piken, Kenneth M. Piken, and Piken & Piken, P.C. ("the Pikens") move for the Judge to recuse himself in this proceeding or to transfer the proceeding to the Queens County Bar Association. Alternatively, the Pikens seek an extension, until 45 days after the ruling on their motion, of their time to file answers to the charges and 45 days thereafter for a hearing on the charges. The regional Director has filed an answer opposing those requests and suggesting that a show cause hearing on the charges be scheduled.

We find no basis for the Piken's motions, and in the face of the Pikens' failure to file an answer to the Regional Director's statement of charges as required by the Judge's order dated September 4, 1990, and its continued failure to comply with the Judge's orders and the rules of the FHWA in this proceeding, we conclude that the charges are deemed to be admitted and the sanctions requested therein are recommended to the Associate Administrator for Motor Carriers pursuant to the direction in his order dated September 25, 1989.

The history of this proceeding is set forth fully in the Judge's order dated September 4, 1990. Following the failures by Piken & Piken to file timely responses to requests for admissions, interrogatories, requests for production, motion to compel, motion for summary judgment, and motion for summary judgment on remand, judgment was entered against Woodbury Horse by the September 4 Order, adopting with modifications a settlement agreement between the parties.[1] That Order made the Pikens parties to this proceeding, directed that the Regional Director file a specification of charges against the Pikens by September 28, and directed the Pikens to file an answer to each such charge by October 29, 1990.[2]

The September 4 Order was entered pursuant to the direction of the Associate Administrator that:

> should the Judge determine that his original findings are correct and that Respondent did, in fact, receive and have ample opportunity to reply to the Motion for Summary Judgment, I would welcome his recommendation on possible disciplinary action. Order dated September 25, 1989.

The Judge's Order found that the findings in his original Order dated June 13, 1989, were correct and that Respondents did receive notice of the original summary judgment motion. Respondents had the original opportunity to answer that motion, an opportunity on remand to explain and justify their failure to answer, an opportunity to answer the summary judgment motion on remand, and Respondent Woodbury Horse had a further opportunity pursuant to the Judge's order dated March 28, 1990. Respondents failed in each instance; and none of those failures was explained or justified. The Pikens have now continued their prior failures to file timely answers by failing to answer the specification of charges as required by the Judge's order dated September 4, 1990.

The Pikens' filing in response to the order was dated November 29, but was not filed until November 30, 1990. As grounds for that late filing, the motion attaches a "supplemental certificate of service" by the Pikens' counsel, stating that he attempted to deliver the motion to the Judge and the Docket Clerk on October 29, 1990, but that the building was closed and he was denied entry at 4:35 p.m. on that day. We find that submission difficult to understand or accept, since there are four entrances to the building which are open until 6 p.m. on weekdays and one entrance to the building which is open 24 hours a day, 365 days a year. Moreover, as noted by the Regional Director, the motion could have been timely filed by mail, which automatically extends the due date by five days (49 CFR 386.32(c)).

Accordingly, we do not find that good cause has been shown for that late filing. Moreover, in any event, that filing was not responsive to the Judge's order and did not provide an answer to the specification of charges. While that motion sought additional time in which to file an answer, the motion provided no basis for the requested extension, other than the motion itself; and the FHWA rules provide that the filing of a motion does not itself extend a period of time set by an order or rule.[3]

The Pikens have once again failed to file a timely response in this proceeding, without any acceptable explanation. Although the Regional Director requests that a show cause hearing be set, we find no basis or need for such a hearing, since the Pikens have failed to answer the specification of charges. Without such an answer, no hearing could be held; and we find no reason to continue to provide additional opportunities for the Pikens to explain their conduct or to evidence their inability or unwillingness to comply with the Rules and Orders in this proceeding. There must be some limit to the number of defaults permitted by the Pikens in this case. Accordingly,

[1] Copy of the agreement is attached hereto.

[1] That Order found that judgment should be reentered on any and all of at least four separate grounds: (1) Failure to answer the allegations of the proposed findings on remand (p. 11); (2) failure to file complete or verified answers to interrogatories (pp. 11, 13); (3) failure to answer the motion for judgment on remand (p. 11); and (4) failure to rebut the presumption of valid service arising from the postal receipt (p. 18).

[2] The Order originally read "October 28" and was amended to read "October 29" by Errata dated September 5, 1990.

[3] The rules require a showing of good cause for an extension of time (49 CFR 386.33) and provide that the pendency of a motion does not affect any time limits unless expressly ordered by the judge. 49 CFR 386.35(f). Although the Regional Director's answer to the motion pointed out these deficiencies in the Pikens' position, the Pikens have still filed no answer to the charges.

pursuant to the Order of the Associate Administrator we find that the allegations in the specification of charges should be deemed admitted and that those admissions warrant a finding of violation of the FHWA's rules and the Standards of Professional Responsibility as alleged and the imposition of the sanctions requested in the specification of charges.

We find no basis for the Pikens' suggestion that any disciplinary questions covering them should be referred to the Queens County Bar Association, because it is the Bar Association to which the Pikens belong and because the Judge allegedly lacks expertise in matters of professional responsibility. Each of these assertions is baseless.

The Pikens cite no support for the assertion that disciplinary matters are appropriately handled by the Queens County Bar Association. Moreover, Complainant points out that under New York law discipline of attorneys is exercised by the Appellate Division of the Supreme Court [4] and that the Queens County Bar Association is a voluntary professional association without plenary jurisdiction over such matters. Further, the Associate Administrator has clearly indicated that such disciplinary jurisdiction can and should be exercised by the FHWA with respect to practice by attorneys before it.

Finally, as noted in the September 4, Order, the Pikens have previously acknowledged the authority of the FHWA and the Judge to consider such sanctions in this proceeding:

> Kenneth and Arthur Piken filed an answer dated May 23, 1990, asserting that the remand order 'clearly indicated that Administrative Law Judge, the Honorable Ronnie Yoder, is free to explore this possibility' ['specific relief against Kenneth and Arthur Piken as to why sanctions should not be imposed'] 'at such time as is ascertained by the Judge presiding in this matter that the original motion for summary judgment was, in fact, served upon this office in a proper and timely fashion.' * * * No objection was made to the pendency of the sanction question or the FHWA's jurisdiction in that regard, or to the power of the Judge to add the Pikens as parties under 49 CFR 386.54 and the remand order.
>
> * * * * *

While the Pikens have questioned the applicability of the *Zola* case to this proceeding, they have never denied the jurisdiction of the FHWA to impose disciplinary sanctions or the judge to consider such sanctions. Moreover, we tentatively conclude that the imposition of such sanctions is within the authority of the FHWA and that consideration of such sanctions is within the mandate of the Judge in this proceeding. Order, pp. 22–23, 25–26 (footnotes omitted).

The Pikens' assertion that the Judge lacks subject matter expertise is equally devoid of merit. Administrative law judges are appointed by an agency to hold hearings of any type which come before that agency and are assigned to the Judge. There are no subject matter limitations in selection or appointment of judges to individual regulatory agencies.[5] Moreover, the conduct of attorneys before judges is a question common to all judges.[6] Indeed, the ABA Code of Judicial Conduct and the Model Code of Judicial Conduct for Federal Administrative Law Judges (ABA 1989) both recognize in Canon 3B(3) the duty of the judge to "take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware."[7]

We find no basis for the Pikens' motion for disqualification. The Administrative Procedure Act (APA) provides that:

> A presiding * * * employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding * * * employee, the agency shall determine the matter as a part of the record and decision in the case. 5 U.S.C. 556(b).

The Pikens have filed neither a timely nor a sufficient affidavit. As indicated above, the Pikens' motion was not timely filed under the Judge's September 4 Order. Moreover, none of the matters alleged occurred less than 55 days before the filing. None of the matters were complained of until the time to respond to the specification of charges had come (and expired). Certain of the matters relate to events on November 30, 1989—nearly a year before the motion was filed. Moreover, we conclude that the Pikens' motion fails to set forth matters of significant or substantial relevance to the matters at issue in the proceeding or a reasonable basis for finding personal bias or an appearance of such bias.

The Pikens and Complainant refer to the federal recusal statute (28 U.S.C. 144) as a guide in evaluating the disqualification motion. That statute provides:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term [session] at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

That statute is not applicable to federal administrative law judges; but as noted in the Judge's order dated September 4, 1990, previous decisions have recognized the possible applicability of the ABA Code of Judicial Conduct to administrative law judges. Order, p. 26, n. 23. That Code, as reflected in the Model Code of Judicial Conduct for Federal Administrative Law Judges (ABA 1989), provides that:

> An administrative law judge should disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
>
> (a) the judge has a personal bias or prejudice concerning the proceeding * * *."[8]

Whichever of these standards is applied, no basis for disqualification has been shown. The Pikens assert that disqualification is required because:

> [1] the ALJ directed the specification of charges to be submitted by the Regional Director, [2] the ALJ participated in some of the matters that are the subject of the charges, [3] the ALJ has already decided some, if not all, of the charges, [4] the ALJ

[4] N.Y. Judiciary Law, sec. 90, para. 2.

[5] The Administrative Law Judge Announcement (No. 318, May 1984, p. 8) states that agencies may seek to demonstrate a need for subject matter expertise at that agency, *i.e.*, that "special qualifications enhance job performance," but no such need has ever been found by the Office of Personnel Management, which administers the examination and appointment of administrative law judges under the APA. See 5. U.S.C. 1104(a)(2); 5 CFR part 930(B).

[6] See generally *The Judicial Response to Lawyer Misconduct*, American Bar Association Standing Committee on Professional Discipline, Center for Professional Responsibility (May 1984); Levinson "Professional Responsibility Issues in Administrative Adjudication," 2 BYU Journal of Public Law 219 (1988)

[7] Model Code of Judicial Conduct for Federal Administrative Law Judges (ABA 1989). As noted in that publication this judge served as the Chair of the Committee on Ethics and Professional Responsibility of the National Conference of Administrative Law Judges, Judicial Administration Division of the ABA (p. 5) and as Chair of the Joint Association Drafting committee which prepared the Model Code (Appendix A).

[8] Canon 3(C)(1)(a). Canon 3(C)(1)(c) refers to disqualification where a judge has "served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy," but that provision relates to conduct in government employment before becoming a judge and is inapplicable here.

may have made an ex parte communication to the Piken office, [5] the ALJ may be a witness in the disciplinary proceeding or at the very least be subjected to a witness deposition, [6] the ALJ suggested a charge of contempt that involves comments that were not made in the ALJ's presence, but were brought to the ALJ's attention in an ex parte communication that the ALJ chose to publish in part, highlighting the alleged scurrilous and unfounded accusations and providing editorial comments which were obviously developed through the ALJ's research of certain records. Motion, p. 5.

Each of these allegations is unfounded and/or provides no basis for disqualification:

(1) The specification of charges was implicitly suggested by the Associate Administrator in his remand order and was explicitly required by the Judge "in order to ensure a complete and appropriate statement of the violation at issue and assure the availability of any appropriate defense and process to the Pikens before recommending sanctions in accordance with the direction of the remand order." Order dated September 4, 1990, p. 29.

(2) Without further specification this allegation adds nothing to the other allegations. The Judge was necessarily involved in circumstances where the Pikens failed to comply with orders or rules.

(3) The Judge had not ultimately determined any of the questions referred for charges in the context of a determination of whether the facts in question could be rebutted by the Pikens or whether those facts warranted disciplinary sanctions. While the September 4, 1990, Order recited the facts concerning the Pikens' defaults of record, that Order left open the final determination of those facts pending a hearing on sanctions and repeatedly referred to the record in precatory terms—*i.e.*, "the *question* of multiple violations" (p. 26), "the following derelictions * * * are *raised* (p. 27), "those derelictions present *possible violations*" (p. 29)—and afforded the Pikens an opportunity to answer each charge (pp. 30–31).

(4, 5) The allegation that the Judge "may have made an ex parte communication to the Piken office," and that the Judge may be deposed as a witness in any disciplinary proceeding, reflects a curious ignorance of the record. The motion refers to the affidavit of a Piken employee stating that the judge spoke to her on November 30, 1989, and asked her "questions about certain documents" and states that "it may be necessary to take the ALJ's deposition to explore the full details of such ex parte communication." That communication related to an attempt by the Judge to determine whether the Pikens had failed to answer the motion for summary judgment on remand, and the full details of that communication were set forth on the record at the prehearing conference (PHC Tr. 12) and cited in the Judge's order (p. 5). The issue with respect to the Pikens involves the question of what *they and their employees did* with respect to service, not what the Judge said in seeking to determine whether an answer had been sent or whether another default had occurred.

(6) The Pikens' objection concerning their letter to their client states no coherent complaint. The letter in question was their letter, was provided to the Judge by their client, was delivered to all parties to avoid an *ex parte* communication from their client and was compared in the September 4 order to the actual facts of record. That order reflects no "research of certain records," as asserted by the Pikens.

None of these allegations show personal prejudice or bias or warrant disqualification. As noted by the Regional Director, none of the allegations contain the type of specific allegation of personal bias which would be required to sustain disqualification under the federal recusal statute.[9] Moreover, it is well established that the bias alleged must result from an extrajudicial source and not from adverse rulings in the proceeding in question.[10] As summarized in *United States* v. *Thomas*, 299 F. Supp. 494, 499 (E.D. Mo. 1968), the case law under the federal recusal statute provides the following guidelines:

> At the onset of the inquiry the judge is presumed to be qualified to hear the case, and there is a substantial burden upon the defendant to demonstrate that such is not the case. As stated in *Ex parte American Steel Barrel Co., supra*, 230 U.S., at 43, 33 S Ct., at 1010: '[T]he basis of disqualification is that 'personal bias or prejudice' exists, by reason of which the judge is unable to impartially exercise his function in the particular case.' The burden upon the affiant to provide this basis is threefold. First, the affidavit must state *facts* with sufficient particularity. Only the facts contained therein are relevant, not conclusions.
>
> Second, the facts must be such as to convince a reasonable man that a bias or prejudice exists. Third, '[I]n addition to establishing that a prejudice or bias harbored by a judge is of such a nature that it has, or may have, closed his mind to justice, the factual allegations must also show that this bias is *personal*, as opposed to *judicial* in nature.' That the bias demonstrated must be personal is of the greatest significance. The bias or prejudice complained of must relate to *this* individual as such. Judicial 'bias' is not sufficient." (Cites omitted.) (Emphasis in original.)

The Pikens' efforts to establish disqualification under the recusal statute fall far short of these standards. Moreover, the Pikens have made no effort to establish disqualification under the Code of Judicial Conduct and for the reasons indicated above, we find that no such grounds exist.[11]

Accordingly, it is ordered that: 1. The motion of the Pikens is denied.

2. The allegations in the specification of charges are deemed admitted.

3. The sanctions proposed by the Regional Director are recommended to the Associate Administrator pursuant to this order of September 25, 1989, to wit, that

a. The Pikens be debarred from practice before the Department of Transportation.

b. The record in this matter be referred to the New York State Disciplinary Committee, the Interstate Commerce Commission, and the Department of Justice for consideration and appropriate action.

Dated: December 27, 1990.

Ronnie A. Yoder,

Administrative Law Judge

Federal Highway Administration

[Docket No. R1–90–013; Formerly R1–90–308]

In the Matter of Independent Food Co., Inc.

Order Appointing Administrative Law Judge

This matter comes before me upon request of Respondent for a formal administrative hearing to contest the allegations of violations of the Federal Motor Carrier Safety Regulations. These alleged violations are provided in a Notice of Claim dated October 29, 1990, which documents the Compliance Review of Respondent done in October, 1990. The alleged violations include failure to maintain a complete driver qualification file, nine counts of requiring or permitting a driver to drive in excess of the 70 hour rule, and 7 counts of failing to require a driver to make and submit a record of duty status.

[9] See, *e.g.*, *Bumpus* v. *Uniroyal Tire Co.*, 385 F. Supp. 711 (E.D. Pa. 1974), *U.S.* v. *Thomas*, 299 F. Supp. 494 (E.D. Mo. 1968); *Harris* v. *Britton*, 361 F. Supp. 528 (W.D. Okl. 1973); *Johnson* v. *Trueblood*, 629 F.2d 287 (3d Cir. 1980). Personal bias must be demonstrated by objective and well-supported facts and not merely conclusory allegations. *Ibid.*

[10] *United States* v. *Grinnell Corp.*, 384 U.S. 563, 583 (1966); *Johnson* v. *Trueblood*, 629 F.2d 287, 291 (3d Cir. 1980).

[11] See generally *Braniff International Airways Employee Protection Program Investigation*, Docket 38978, Order dated December 16, 1985; *Competitive Marketing Investigation*, Docket 36595, Order 36595–418 dated July 1, 1982.

The alleged violations of requiring or permitting drivers to drive excess hours, in violation of 49 CFR 395.3 are alleged to constitute a serious pattern of safety violations.

Respondent denies each of these alleged violations. Petitioner does not raise any objection to the assignment of an Administrative Law Judge.

Therefore, it is ordered, That Respondent's request for a hearing is granted. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: December 12, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R5-90-07; Formerly R5-89-140]

In the Matter of Wisconsin Protein Carriers, Inc.

Denial of Motion for Reconsideration

On July 10, 1990, I issued an Order which appointed an Administrative Law Judge to hear argument on certain alleged violations in this matter and which dismissed certain other violations. Petitioner seeks reconsideration of that part of the Order dismissing certain counts alleging violations of the regulation requiring preservation of records of duty status.

Petitioner acknowledges that the inadequacy of the original record may have been a contributory factor in the decision to dismiss. Petitioner seeks to cure this deficiency by this motion. Petitioner also states that the original Order may send the message to the industry that motor carriers may choose not to maintain driver's records of duty status, and they can do so without any duty to demonstrate compliance with the requirements of the 100 air-mile exemption of the regulations.

Petitioner seeks to afford "the Associate Administrator the opportunity to review the complete record in this case, and to avoid such a result." I thank Petitioner for that opportunity. I have reviewed the record and find that such a message has not been conveyed in my original Order and that no new or valid reason for reversal of that Order exists.

However, to ease Petitioner's mind on this matter, let me state that no motor carrier should seek solace in this original Order and read into it in any way the message that the requirements of the regulation may be dismissed at will. In cases where a clear and unequivocal violation exists, a penalty will be imposed. In other cases, where colorable argument is present, I will appoint an Administrative Law Judge to sort out the factual differences.

The message of the original Order is that, as a matter of policy, I feel that Petitioner failed to make a proper case on these violations. Reliance on the statement of Respondent, which has been contradicted by a later explanation of Respondent is a weak pillar on which to verify an alleged violation. No affidavit is present to support the findings of the investigating officer. No third party affidavits are present. Nor is there anything in the record which countermands Respondent's assertions that this has been the practice at Respondent's operation for many years, through several audits.

My previous Order was clear on this point. I stated specifically that either the records are maintained or they are not. I also expressed a sense of concern over the manner of assessment. I never stated that no violations were in fact present. I did mean to convey the express sense that Petitioner has failed to lay a proper basis to substantiate both the allegation and the penalty sought therefore. I stated clearly that I was giving the Respondent the benefit of the doubt in this instance and that Petitioner must establish a consistent and orderly understanding of the regulations and audit procedures with the Respondent.

These Orders are not the place to argue policy. My intent here is to respond to Petitioner's invitation to clarify the record. I believe this has been done. I find no reason to change the earlier Order.

Therefore, It is ordered, That Petitioner's Motion for Reconsideration is denied and the Administrative Law Judge should proceed with the matters before him.

Dated: December 12, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R1-90-014; Formerly R1-90-218]

In the Matter of Crossroads Freight Ways, Inc.

Order Appointing Administrative Law Judge

This matter comes before me upon request of Respondent for a formal hearing to contest the alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and the penalty assessment claimed in a Notice of Claim letter dated August 6, 1990. Respondent is a Canadian carrier. Following an initial Safety Review, Respondent was visited for a Compliance Review in 1989. Several violations of the FMCSRs were found and the Respondent paid a civil penalty assessment at the time. A follow-up Compliance Review has resulted in these alleged violations. The alleged violations of 49 CFR 395.3 have been charged as constituting a serious pattern of safety violations.

Petitioner opposes the request for a hearing on the basis that Respondent failed to comply with the procedural requirements for requesting a hearing.

In its request, Respondent denied the alleged violations. Respondent states that it is company policy to operate in compliance with the regulations and that it does not deliberately violate the regulations. Respondent notes that it has had some personnel difficulty but that its files are now in proper order. Respondent contends that it spot-checked its files and they were in order.

Likewise, I note that the Investigator in this case notes the attitudes of the company has been cooperative and that improvement has been made over the course of these reviews.

Although Respondent's denial could have been more specific, I find that sufficient response has been made to raise factual issues in difference. In light of Respondent's averments with respect to its operating policy and in view of the discussions in a previous matter, *In the Matter of Drotzmann, Inc.*, I would like the appointed Judge in this matter to address the allegations of patterns of serious violations.

It is therefore ordered, That Respondent's request for a hearing is granted. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: December 12, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Office of Hearings

[FHWA Docket No. R3-90-08 Motor Carrier Safety]

Browning Services, Inc.

Decision

Served December 7, 1990.

John J. Mathias, Chief Administrative Law Judge

Appearances:

Timothy P. Kane, Esq., Kane and Pichini, 255 N. Washington Street, Suite 303,

Rockville, Maryland 20850, for Browning Services, Inc.

James W. Scouten, Esq., Counsel for the Regional Director, Federal Highway Administration, 31 Hopkins Plaza, rm. 1625, Baltimore, Maryland 21201.

Pursuant to the Notice of Claim in this matter, dated July 16, 1990, the Order Appointing Administrative Law Judge, dated September 6, 1990, and the Consent Decree entered into between FHWA counsel and Respondent on November 25, 1990 (copy attached), this is the Administrative Law Judge's decision under Rule 386.61 of the Federal Highway Administration's rules of practice and procedure, 49 CFR 386.61. The Order Appointing Administrative Law Judge herein limited the authority of the Administrative Law Judge in this case to a consideration of the factual nature of Respondent's position only, and provided, in effect, that I should make no findings concerning the appropriate level of any penalty in this proceeding.

This decision is based upon, and adopts, the Consent Decree entered into between FHWA counsel and Respondent on November 25, 1990, and attached hereto as appendix I.

Findings of Fact and Law

1. On January 2, 1990, Browning Services, Inc., operating as Browning Towing & Recovery, operated a tow truck having a G.V.W.R. in excess of 40,000 pounds. This tow truck was used to tow a disabled trailer from Landmark, Virginia to Mt. Airy, Maryland (Browning's Storage Lot). Browning Services, Inc., charged the owner of the disabled vehicle $318.75 for towing said vehicle from Landmark, Virginia to Mt. Airy, Maryland. Browning Services, Inc., did not have $750,000 in financial responsibility in effect on January 2, 1990, nor did it have in its files proof of financial responsibility of $750,000. The provisions of 49 CFR 387.7(a) required Browning Services, Inc., to have $750,000 in financial responsibility in effect on January 2, 1990.

2. On April 9, 1990, Browning Services, Inc., operating as Browning Towing & Recovery, operated a tow truck having a G.V.W.R. in excess of 40,000 pounds. This tow truck was used to tow a disabled trailer from Kingstowne, Virginia to Mt. Airy, Maryland (Browning's Storage Lot). Browning Services, Inc., charged the owner of the disabled vehicle $300 for towing said vehicle from Kingstowne, Virginia to Mt. Airy, Maryland. Browning Services, Inc., did not have $750,000 in financial responsibility in effect on April 9, 1990, nor did it have in its files proof of financial responsibility of $750,000. The provisions of 49 CFR 397.7(a) required that Browning Services, Inc., have $750,000 in financial responsibility in effect on April 9, 1990.

3. On April 17, 1990, Browning Services, Inc., operating as Browning Towing & Recovery, operated a tow truck having a G.V.W.R. in excess of 40,000 pounds. This tow truck was used to tow a disabled trailer from Stone River, Virginia to Mt. Airy, Maryland (Browning's Storage Lot). Browning Services, Inc., charged the owner of the disabled vehicle $337.50 for towing said vehicle from Stone River, Virginia to Mt. Airy, Maryland. Browning Services, Inc., did not have $750,000 in financial responsibility in effect on April 17, 1990, nor did it have in its files proof of financial responsibility of $750,000. The provisions of 49 CFR 387.7(a) required that Browning Services, Inc., have $750,000 in financial responsibility in effect on April 17, 1990.

4. On May 17, 1990, Browning Services, Inc., operating as Browning Towing & Recovery, operated a tow truck having a G.V.W.R. in excess of 14,000 pounds. This tow truck was used to tow a disabled automobile from Wisconsin & R Streets, NW., the District of Columbia, to 144 Automotive in the State of Maryland. Browning Services, Inc., charged $90.00 for towing said vehicle. Browning Services, Inc., did not have $750,000 in financial responsibility in effect on May 17, 1990, nor did it have in its files proof of financial responsibility of $750,000. The provisions of 49 CFR 387.7(d) required that Browning Services, Inc., have proof of financial responsibility in the amount of $750,000 on file at its principal office on May 17, 1990.

5. On March 7, 1990, Browning Services, Inc., received a Safety Review conducted by the Maryland State Police which pointed out the need for Browning Services, Inc., to obtain insurance (financial responsibility) in the amount of $750,000. As of March 7, 1990, Browning Services, Inc., knew or should have known that it was required to have $750,000 in financial responsibility in effect prior to transporting property (disabled motor vehicles) in interstate commerce.

6. On July 16, 1990, Regional Director Ronald G. Ashby mailed a Notice of Claim to Browning Services, Inc., making a civil forfeiture claim in the amount of $2,900 for 3 alleged violations of 49 CFR 387.7(a) and 1 alleged violation of 49 CFR 387.7(d).

7. Browning Services, Inc., operating as Browning Towing & Recovery, has now obtained financial responsibility in the amount of $750,000.

8. It is further found that Petitioner (FHWA counsel) and the Respondent consent to the entry of judgment finding that the Respondent did commit the violations set forth in the Notice of Claim dated July 16, 1990, based upon the foregoing findings of fact and law.

Accordingly, it is hereby found that Respondent, Browning Services, Inc., did commit the violations as charged in the Notice of Claim herein dated July 16, 1990.

John J. Mathias,

Chief Administrative Law Judge.

Office of Hearings

[Docket No. R3-90-08]

In the Matter of Browning Services, Inc.

Consent Decree

Petitioner and Respondent hereby consent to the entry of judgment finding that the Respondent did commit the violations set forth in the Notice of Claim dated July 16, 1990 and further finding the facts and applicable law in this proceeding to be as follows:

1. On January 2, 1990, Browning Services, Inc., operating as Browning Towing & Recovery, operated a tow truck having a G.V.W.R. in excess of 40,000 pounds. This tow truck was used to tow a disabled trailer from Landmark, Virginia to Mt. Airy, Maryland (Browning's Storage Lot). Browning Services, Inc. charged the owner of the disabled vehicle $318.75 for towing said vehicle from Landmark, Virginia to Mt. Airy, Maryland. Browning Services, Inc. did not have $750,000 in financial responsibility in effect on January 2, 1990, nor did it have in its files proof of financial responsibility of $750,000. The provisions of 49 CFR 387.7(a) required Browning Services, Inc. to have $750,000 in financial responsibility in effect on January 2, 1990.

Appendix I

2. On April 9, 1990, Browning Services, Inc., operating as Browning Towing & Recovery, operated a tow truck having a G.V.W.R. in excess of 40,000 pounds. This tow truck was used to tow a disabled trailer from Kingstowne, Virginia to Mt. Airy, Maryland (Browning's Storage Lot). Browning Services, Inc. charged the owner of the disabled vehicle $300 for towing said vehicle from Kingstowne, Virginia to Mt. Airy, Maryland. Browning Services, Inc. did not have $750,000 in financial responsibility in effect on April 4, 1990, nor did it have in its files proof of financial responsibility of $750,000. The provisions of 49 CFR 397.7(a) required that Browning Services, Inc. have

$750,000 in financial responsibility in effect on April 9, 1990.

3. On April 17, 1990, Browning Services, Inc., operating as Browning Towing & Recovery, operated a tow truck having a G.V.W.R. in excess of 40,000 pounds. This tow truck was used to tow a disabled trailer from Stone River, Virginia to Mt. Airy, Maryland (Browning's Storage Lot). Browning Services, Inc. charged the owner of the disabled vehicle $337.50 for towing said vehicle from Stone River, Virginia to Mt. Airy, Maryland. Browning Services, Inc. did not have $750,000 in financial responsibility in effect on April 17, 1990, nor did it have in its files proof of financial responsibility of $750,000. The provisions of 49 CFR 387.7(a) required that Browning Services, Inc. have $750,000 in financial responsibility in effect on April 17, 1990.

4. On May 17, 1990, Browning Services, Inc., operating as Browning Towing & Recovery, operated a tow truck having a G.V.W.R. in excess of 14,000 pounds. This tow truck was used to tow a disabled automobile from Wisconsin and R Streets, NW., the District of Columbia, to 144 Automotive in the State of Maryland. Browning Services, Inc. charged $90.00 for towing said vehicle. Browning Services, Inc. did not have $750,000 in financial responsibility in effect on May 17, 1990, nor did it have in its files proof of financial responsibility of $750,000. The provisions of 49 CFR 387.7(d) required that Browning Services, Inc. have proof of financial responsibility in the amount of $750,000 on file at its principal office on May 17, 1990.

5. On March 7, 1990, Browning Services, Inc. received a Safety Review conducted by the Maryland State Police which pointed out the need for Browning Services, Inc. to obtain insurance (financial responsibility) in the amount of $750,000. As of March 7, 1990, Browning Services, Inc. knew or should have known that it was required to have $750,000 in financial responsibility in effect prior to transporting property (disabled motor vehicles) in interstate commerce.

6. On July 16, 1990, Regional Director Ronald G. Ashby mailed a Notice of Claim to Browning Services, Inc., making a civil forfeiture claim in the amount of $2,900 for 3 alleged violations of 49 CFR 387.7(a) and 1 alleged violation of 49 CFR 387.7(d).

7. Browning Services, Inc., operating as Browning Towing & Recovery, has now obtained financial responsibility in the amount of $750,000.

Respectfully Submitted,

Dated: October 17, 1990.

James W. Scouten,

Attorney for the Regional Director, Region 3 Office of Motor Carriers, 31 Hopkins Plaza, Rm. 1625, Baltimore, Maryland 21201, (301) 962-2483.

Dated: November 25, 1990.

Timothy P. Kane, Esq.,

255 N. Washington Street, Suite 303, Rockville, Maryland 20850.

Federal Highway Administration

[Docket No. R6-90-49]

In the Matter of Feizy Import and Export Company

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 6, for a Final Order finding the facts to be as alleged in a Notice of Claim dated April 18, 1990, and imposing a civil penalty of $6,500 on Respondent. Respondent has requested a hearing to dispute some of the alleged violations. Petitioner opposes this request as falling short of the procedural requirements of the regulations.

On April 23, 1990, in its request for a hearing, Respondent contested certain of the allegations and forwarded to Petitioner documents from the files in support of its contentions. Respondent also states that company officials, who had knowledge of the files were not contacted at the time of the audit. Although the existence of the required documents does not conclusively establish that compliance with the cited regulation was present, there is sufficient ambiguity in this case in both arguments for the appointment of a hearing officer.

Notwithstanding these uncertainties, I do not find that a hearing is necessary. Failure to maintain a complete driver's file as required by the regulations is a serious violation. There is an indication in the record that the files were not in order. This does not appear to be contested by any information submitted by the Respondent. Therefore, I find that a hearing would establish nothing with respect to these violations of 49 CFR 391.51(c), and I am granting Petitioner's request for a Final Order on these two counts in the amount of $500 for each count for a total of $1,000.

With respect to the 11 alleged violations of failing to require a driver to forward within 13 days the original record of duty status, 49 CFR 395.8(i), I note that all of the allegations involve only two drivers. Sufficient confusion exists in the record as to the location of the records, the presence of knowledgeable company officials at audit, and the understanding of the violations to reduce the penalty. It appears that Petitioner could have alleged as many violations as there were records examined. Not having done so, I can only construe these allegations as a warning to Respondent of the necessity to keep proper records, to require them in the time specified and to document its actions. My review of the record indicates that Respondent has gotten this message and we should not see these violations in the future. In addition, the receipt of a Satisfactory rating by Respondent concurrent with this action would appear to support this conclusion. I am granting the Petitioner's request for a Final Order with respect to these violations, but I am reducing the number of violations to 2, one for each driver, at $500 each, for a total of $1,000.

Respondent should understand that any future violations of this type will receive the maximum penalty under the law. There is no excuse in the future for improper understanding or lack of communication. Respondent has in place the necessary personnel to comply with the regulations and now should understand the importance of proper record-keeping.

Therefore, it is ordered, That Respondent's request for a hearing is denied. Petitioner's request for a Final Order is granted for four violations as discussed above, in the amount of $500 for each violation. Respondent shall pay to the Regional Director the sum of $2,000 within 30 days of the date of this Order.

Dated: October 29, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R6-89-63]

In the Matter of Alamo Distributing Service, Inc.

Final Order

On July 23, 1990, I issued an Order in response to a Motion for Reconsideration filed by Respondent seeking alteration of a Final Order issued on April 30, 1990. The original Order imposed a penalty of $11,000 on Respondent for violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

The Order of July 23 took into account a letter of May 25 by Respondent requesting a reexamination and stating that action was taken by the company to comply with all regulations. The Order directed a re-audit of Respondent within 30 days. The Order also directed a reduction in the penalty if Respondent was in compliance.

On September 11, 1990, Petitioner served on me and on Respondent a response to my Order. It indicated that a new audit was conducted on August 10, 1990. It revealed a substantial number of alleged violations. Respondent was on notice that this audit was to occur. If Respondent was in compliance, as asserted, then this was the time to produce an operation showing minimal violations. As this is not the case, it appears that Respondent has no ready defense, but seeks a reduction of the penalty on an economic basis.

I do not take these matters lightly. The FMCSRs have a purpose. The time and effort of the Agency's investigators cannot be wasted in frivolous efforts. Respondent has not lived up to its assertions. There is no rational basis on which to sustain a reduction of the original penalty requested.

Should Respondent wish to pursue this matter further, he must be advised of the requirements for procedural formality. I shall not entertain any further informal expressions in this case.

Therefore, it is ordered, That Respondent has not justified its request for a reduction in the amount of the penalty in the Final Order of April 30, 1990. That penalty amount is reinstated. Respondent has had an extension of the time due to the Reconsideration Order and shall therefore pay the amount due, $11,000, to the Regional Director within 10 days of the date of this Order.

Dated: October 25, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. 89-TN-031—SA]

In the Matter of Kenworth of Tennessee, Inc.

Order Withdrawing Final Order of July 5, 1990, and Establishing Time To Reply

On July 5, 1990, I issued a Final Order in this matter. On that same date, the Docket received a Motion for Extension of Time from Respondent seeking additional time to respond to Petitioner's Motion for a Final Order. On July 20, 1990, Respondent submitted a Petition for Reconsideration. This Petition was received by the Docket on July 23, 1990. On July 26 Petitioner submitted a Motion in Opposition to Respondent's Petition for Reconsideration.

For whatever reason, the Docket did not receive timely notice of the fact that Respondent had not received a full set of documents attached to Petitioner's original Motion, or that Respondent had orally requested an extension of time.

In the interests of equity, I am withdrawing my Final Order of July 5 and granting Respondent an additional 10 days in which to submit a response to Petitioner's Motion. Notwithstanding this withdrawal, Respondent should be on notice that a request for an administrative hearing will be granted only if there are material factual issues clearly identified as being in dispute, in accordance with the regulations.

Therefore, it is ordered, That the Final Order issued on July 5, 1990, is withdrawn and Respondent has 10 additional days in which to respond to the Motion for A Final Order.

Dated: October 25, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R9-90-026]

In the Matter of J.C. Road Transportation, Inc.

Final Order

This matter comes before me upon request of the Respondent for a hearing and Motion in Opposition thereto and for a Final Order submitted by the Regional Director, Office of Motor Carrier Safety, Region 9 (Petitioner). In a Notice of Claim dated July 23, 1990 (later amended by a Notice of Claim dated August 21, 1990), Petitioner alleged Respondent violated the Federal Motor Carrier Safety Regulations (FMCSRs).

Petitioner has documented 18 alleged violations and seeks the imposition of a civil penalty in the amount of $5,500. However, the record before me indicates that during the Compliance Review over 600 records were examined and each of them was in alleged violation of the regulations.

A business entity with over 600 violating records indicates to me one of two things: (1) A callous indifference to the regulations, or (2) a complete misunderstanding of the regulations. Examination of the record before me would tend to eliminate the first of these. It appears that the attitude of management throughout has been cooperative. Certain steps were taken following the Safety Review to bring about compliance.

I have repeatedly indicated in my written Orders over the past two years that we are entering new areas of jurisdiction every day. With a widening scope of authority and additional inspectors, we are contacting and impacting upon operations never previously visited. The burden of care to instruct such operators, including small, primarily local operations, intermodal drayage operations and entities which have not been considered traditional motor carrier operations rests heavily upon us. We are taking steps to familiarize such businesses with the requirements of the regulations.

In this matter before me it is apparent that some confusion has existed for management at J.C. Road as to these requirements. I find that there is an indication that some action was taken in response to the Safety Review Recommendations. However, it is apparent that complete understanding is not yet present. As a result of this willingness to comply, I am dismissing the claim with respect to the alleged violations of failing to preserve drivers' records of duty status and failure to meet the requirements for the 100-mile exemption. Management should now be aware of the necessity for accurate recordkeeping. If any questions remain in this respect, management should request assistance or clarification from the Regional Director.

With respect to the violations of failing to keep the medical certificates on file, I find that sufficient doubt exists as to their presence at the time of audit to grant Petitioner's Motion. Having the proper documentation is one thing. Having it in the required file is another. At best, the inability to produce such documents at the time of audit indicates some laxness in the attention devoted to instituting, maintaining and reviewing the files.

Therefore, it is ordered, That Respondent's request for a hearing is denied. Petitioner's request for a Final Order is granted with respect to the three violations of 49 CFR 391.51(b)(1). Respondent is directed to pay the sum of $1,050 as assessed to the Regional Director within 30 days of the date of this Order. With respect to the remaining 15 alleged violations, I am dismissing the claim. The Regional Director should review the corrective action taken by Respondent and inform the Respondent whether such action will comply with the regulations. This communication should be documented in Respondent's file. Respondent is hereby placed on notice that future noncompliance will receive the highest civil penalty provided under the law.

Dated: October 25, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R6-90-012; Formerly R6-90-66]

In the Matter of Mike Zachary

Order Appointing Administrative Law Judge

This matter comes before me upon request of the Respondent for a hearing

and Motion in Opposition thereto and Motion for Final Order by the Director, Office of Motor Carrier Safety, Region 6 (Petitioner).

In a Notice of Claim letter dated July 13, 1990, Petitioner alleged that Respondent violated the Federal Motor Carrier Safety Regulations (FMCSRs), to wit 49 CFR 390.13 and 395.8(e). The specific violations involve the aiding and abetting a motor carrier by requiring the preparation of false records of duty status in connection with duty activities.

Respondent has denied the allegations and requests a hearing. Respondent contends that he did not provide false information to complete drivers' logs. What is evident from the record before me is that Respondent acknowledges directing the reconstruction of logs for submission to Security Van Lines, for which entity Respondent is an agent, for the purpose of receiving payment for the transportation of household goods.

This is the first documented allegation presented to me charging an aiding and abetting violation. I am not satisfied that the record develops the charge completely. On previous occasions, I have alerted the parties to the fact that I will not go through the documents and construct an evidentiary chain for Counsel. If the documentation supports the allegations, then the link must be established in the pleadings.

The materials before me indicate a review of the records took place at Security Van Lines. No indication of alleged violations against Security are present. The materials indicate that one or more drivers may have been violating hours of service rules. There is no indication of alleged violations against any driver. To establish an aiding and abetting violation, a primary violation must first be shown. This has not been done here.

Further, there are no corroborating statements in the records that either Security or the drivers knew there were violations and that Respondent also knew there were violations. Respondent, as stated above, denies such. Instead, Respondent indicates that violations, if present, were inadvertent. Respondent admits to reconstructing drivers' logs, not to falsifying them, nor to instructing others to knowingly falsify them, nor to aid and abet in falsifying them.

The alleged factual issues in dispute are, in fact, factual issues in dispute, not matters of law. It may be that Petitioner can establish the necessary trail substantiating these allegations before an Administrative Law Judge. It may also be that Respondent can establish a bona fide ignorance of the requirements and as such dispute any knowing complicity in any violations which might be established. I simply do not have enough before me to make such determinations.

Therefore, it is ordered, That Respondent's request for a hearing is granted and Petitioner's request for a Final Order is denied. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Officer in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: October 17, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R6-90-04]

In the Matter of Universal Testing of Oklahoma

Final Order

This matter comes before me upon request of the Regional Director, Region 6, for a Final Order finding the facts to be as alleged in a Notice of Claim dated January 10, 1990.

Having reviewed the Motion and supporting documents appended thereto, I find that no valid request for a hearing has been made. I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Hazardous Materials Regulations.

Therefore, it is ordered, That Respondent is directed to satisfy the penalty assessment by paying to the Regional Director the full amount of $16,000 within 30 days of the date of this Order.

Dated: October 17, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R3-89-011; Formerly R3-89-217]

In the Matter of V.R. Mowry, Inc.

Final Order, in Part, and Order Appointing Administrative Law Judge, in Part

This matter comes before me upon request of the Respondent for a hearing and motion for Final Order and In Partial Opposition to Request for Hearing by the Regional Director, Office of Motor Carrier Safety, Region 3.

By Notice of Claim dated October 2, 1989, Petitioner alleged that Respondent was in violation of several provisions of the Federal Motor Carrier Safety Regulations. Respondent met with Petitioner in an attempt to resolve these allegations. Such meetings were apparently not fruitful and Respondent has now requested the appointment of an Administrative Law Judge.

Respondent admits a violation of certain allegations the first 8 counts in the Notice of Claim. These violations involve the failure to maintain various required documents in the files. All involved drivers' qualification files. However, in admitting the violations, Respondent has submitted mitigating explanations. The explanations all relate to the Respondent's personal knowledge of the drivers or careful control over the drivers.

In attempting to establish this somewhat 'folksy' defense, however, Respondent evidences a casual approach to the regulations which not only violates their specific intent, but which also is not in keeping with running a modern business. The basic requirements that a file be established, that records be included, and that drivers be reviewed, are designed to enhance highway safety. They apply with equal force to large business entities and to small ones. They apply to family as well as to casual employees. They apply to companies operating in large metropolitan areas and to those in small areas. The requirements have an intent and purpose.

This is not the first time the Agency has apparently sought to communicate this message to Respondent. I hope it is the last. A driver's file is Respondent's best guide to continued acceptability of a driver and it is our only method of ensuring that at least some minimum standards are being maintained with respect to drivers. In the case of a good driving record, a note to that effect is required. Any notation in the file indicates that management is interested and is reviewing its drivers.

Respondent seemingly would characterize these violations as minor. The files appear to be a nuisance. This attitude must be corrected. If Respondent wants to characterize compliance as a nuisance to his operations, then he should consider the considerable time and expense he has imposed on his fellow taxpayers, citizens, and business competitors who do comply by forcing the Government time and again to document these violations and to seek their correction.

I find that Respondent's offer of mitigating explanations is insufficient and I am granting the Petitioner's Motion for a Final Order in part, with respect to these first eight alleged violations.

With respect to the remaining violations, those of 49 CFR 395.8(e), both sides indicate that there are material

factual issues in dispute and that a Judge should be appointed.

Therefore, it is ordered, That Respondent's request for a hearing with respect to alleged violations of § 391.51 is denied and Petitioner's Motion for a Final Order, in Part with respect to these violations is granted.

To determine the violations of § 395.8(e), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in accordance with 49 CFR 386.54(a), The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Respondent is directed to pay the amount of $3,200 to the Regional Director within 30 days of the date of this Order in accordance with the terms of this Order as stated above.

Dated: October 17, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Federal Highway Administration

[Docket No. R3-90-207]

In the Matter of Atlantic Contracting & Materials Co.

Final Order

This matter comes before me upon request of the Regional Director, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated June 19, 1990.

Having reviewed the Motion and supporting documents appended thereto, I find that no valid request for a hearing has been made. I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

This operation of a motor vehicle after it has been placed out of service, constitutes a substantial health and safety violation. Although Respondent claims it is a small operation in which cash flow is critical, this is among the most serious violations under the regulations. I would defer to the Regional Director's assessment in this case, imposing a reduced penalty of $3,000. Respondent should understand this is a reduced assessment for this type of violation and such behavior will not be accepted on this Nation's highways, now or in the future.

Therefore, it is ordered, That Respondent is directed to satisfy the penalty assessment by paying to the Regional Director the full amount of $3,000 within 30 days of the date of this Order.

Dated: October 17, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

[FR Doc. 92-14928 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. 92-F]

Section 18 Circular Revision

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Transit Administration (FTA) is revising Circular 9040.1B: Section 18 Program Guidance and Grant Application Instructions. Before the circular is finalized, we seek comments from interested parties on the draft changes. This notice announces the availability of the circular for review.

DATES: Written comments will be accepted by FTA until July 28, 1992.

ADDRESSES: All requests for the draft circular should be addressed to Mary Martha Churchman, Office of Grants Management, Federal Transit Administration, 400 Seventh Street, SW., room 9301, Washington, DC 20590. Comments on the circular should be submitted to the FTA Docket Clerk, same address but room 9316.

FOR FURTHER INFORMATION CONTACT: Mary Martha Churchman, Section 18 Program Manager, Office of Grants Management, Federal Transit Administration, (202) 366-2053.

SUPPLEMENTARY INFORMATION: Section 18 of the Federal Transit Act, as amended, provides for a program of formula assistance for public transportation in non-urbanized areas. Funds are apportioned annually to the States, which then apply to FTA for approval of a program of projects for public transportation services in non-urbanized areas. Eligible recipients include public bodies and non-profit organizations. Private for-profit providers may participate under contract. Section 18 funds may be used for both capital and operating assistance.

Program guidance for the section 18 program currently is contained in FTA Circular 9040.1B, dated July 1, 1988, "Section 18 Program Guidance and Grant Application Instructions." FTA is revising the circular to incorporate new provisions included in the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240, October 28, 1991), particularly section 18(i) of the Federal Transit Act, which requires a percentage of each State's annual apportionment to be expended to support intercity bus transportation.

FTA values the experience of the States which administer the section 18 program and of the many public and private providers of section 18 service at the local level. Section 18(i) introduces a new program element, intercity bus service, along with a new group of potential recipients of assistance. FTA is making the draft circular available for comment by those affected by the changes in the program guidance. All comments received will be reviewed by FTA Section 18 program staff and taken into consideration in refining the guidance included in the final revised circular. We expect to issue the new circular, FTA C 9040.1C, before the end of the current fiscal year (September 30, 1992).

Parties interested in reviewing the draft may request a copy by writing to the Office of Grants Management, at the address listed in the **ADDRESSES** section of this document. The draft circular will be sent as soon as it is available. Comments should be sent to the FTA docket, also at the address listed in the **ADDRESSES** section of this document.

Issued on: June 22, 1992.

Brian W. Clymer,

Administrator.

[FR Doc. 92-15041 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-57-M

Maritime Administration

[Docket S-892]

American President Lines, Ltd.; Application for Extension of Two Existing Waivers of Section 804(a) of the Merchant Marine Act, 1936, as amended

American President Lines, Ltd. (APL), by application dated June 15, 1992, requests extension of two waivers of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended, for foreign-flag operations of APL, to December 31, 1997, the termination date of Operating-Differential Subsidy Agreement, Contract MA/MSB-417.

APL's Existing Services

APL now performs three subsidized containership services. Its Transpacific Trade Route (TR) 2 service covers (as now operated) the range of former TR 29 to/from California-Oregon-Washington for up to 188 annual sailings. Former TR 29 includes ports in the Far East on the

continent of Asia from Asian Russia to Thailand, inclusive, Japan, Taiwan, and the Philippines.

APL's two Extension services add authority to serve ports of Southeast and South Asia and the Persian Gulf-Red Sea on up to 28 sailings to/from California and up to 80 sailings to/from Oregon-Washington. APL is permitted by its contract to provide any part of the service by transfer or relay of cargo between subsidized vessels at any foreign port on the authorized services.

APL performs its TR 2 transpacific service primarily with line-haul vessels making direct calls at most major foreign TR 29 ports, including Yokohama, Kobe, Hakata, Nagoya, and Okinawa, Japan; Kaohsiung, Taiwan; Pusan, Korea; and Hong Kong. The Philippines are served by an APL subsidized feeder vessel.

The APL Extension services are currently performed by a feeder network that includes four subsidized U.S.-flag APL vessels providing service on a relay basis to Singapore, Colombo, and Fujayrah via Kaohsiung, and a fifth U.S.-flag APL owned vessel serving the Persian Gulf over Fujayrah.

APL also operates chartered foreign-flag feeders in and to Extension areas in the range Indonesia-Red Sea under authority of a section 804 waiver (Waiver 6 in appendix G to APL's operating subsidy contract, granted June 3, 1988, for a period of five years—Docket S-819). That waiver would expire June 3, 1993. One other waiver, number 7 in the appendix G, also expires June 3, 1993. Waiver 7 is for up to six foreign-flag feeders to the People's Republic of China.

The appendix G in APL's ODSA contains 10 waivers—all except numbers 6 and 7 are effective through the end of the subsidy contract, December 31, 1997. The effect of the change in termination of waivers 6 and 7 would be to establish a common termination date for all of APL's existing section 804 waivers.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on July 17, 1992. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By order of the Maritime Administration.

Dated: June 23, 1992.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 92-15062 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. 91-51; Notice 2]

The Clarity Group, Inc.; Grant of Petition for Temporary Exemption From Seven Federal Motor Vehicle Safety Standards

This notice grants the petition by The Clarity Group, Inc., of Glendale, Arizona, dba Electric Transportation Applications, for a temporary exemption from six Federal motor vehicle safety standards for passenger cars and trucks that it converts to electric power. The notice also denies the petition for exemption from three additional standards, with which the petitioner may already comply. The basis of the petition was that an exemption would facilitate the development and field evaluation of low-emission motor vehicles.

Notice of receipt of the petition was published on December 4, 1991, and an opportunity afforded for comment (56 FR 63546).

Petitioner intends to convert 1992 model Ford Escort LX station wagons, and Chevrolet S10/GMC S15 pickup trucks to electric power. Petition was therefore made on the basis that a temporary exemption would facilitate the development and field evaluation of a low-emission motor vehicle, as provided by 49 CFR 555.6(c).

The vehicles to be converted have been certified by their original manufacturers to conform to all applicable Federal motor vehicle safety standards. However, petitioner determined that the vehicles may not conform with all or part of nine Federal motor vehicle safety standards after their modification. The standards and sections for which exemptions were requested are discussed more fully below.

1. Standard No. 101, *Controls and Displays*

(a) S5.1: displays for fuel, engine coolant temperature, oil, and electrical charge.

(b) S5.3: illumination of controls and displays.

In the petitioner's view, these exemptions would not unreasonably degrade the safety of the vehicle because "the simplicity of the electric vehicle minimizes the safety impact of the instrumentation specific to the vehicle operation not meeting the standard."

2. Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*

(a) S3.1.2 Transmission braking effect.

(b) S3.1.3 Starter interlock.

Petitioner argued that these requirements do not apply to electric vehicles, and thus "there is no safety impact from the electric vehicle not meeting the standard."

3. Standard No. 103, *Windshield Defrosting and Defogging Systems*

Petitioner stated that the test criteria of this standard are inapplicable to an electric vehicle. "The engine coolant heater core is replaced with an electrical resistance heating element to provide a heat source. Other portions of the system are left essentially unchanged, minimizing the safety impact of the electric vehicle not meeting the standard."

4. Standard No. 105, *Hydraulic Brake Systems*

(a) S5.1 Service brake system.

(b) S5.2 Parking brake systems.

(c) S6 Test conditions.

(d) S7 Test conditions.

Petitioner's modifications are such that "the electric vehicle weight and proportioning between axles is different than that used in the certification testing of the original vehicle. However, the original vehicle's braking system is not modified minimizing the impact of the electric vehicle not meeting the standard," and petitioner maintains the same GAWRs and GVWR as the original Ford Escort.

5. Standard No. 124, *Accelerator Control System*

The petitioner requests exemption from the entire standard, "as a result of criteria inapplicable to an electric vehicle. The accelerator in the electric vehicle operates electronic components rather than a throttle assembly as with an internal combustion system. Therefore, the impact of the electric

vehicle not meeting the standard is minimal."

6. Standard No. 208, *Occupant Crash Protection*

(a) S5 Occupant crash protection requirements.

7. Standard No. 212, *Windshield Mounting*

8. Standard No. 219, *Windshield Zone Intrusion*

Exemption is requested from these three standards on the basis that modifications to the original vehicle, such as the addition of battery packs, invalidates the testing upon which the original certification was based.

Petitioner argued that the safety effect of these modifications may be minimal. Ten years ago, the petitioner conducted 30-mph frontal barrier testing of a 1981 Ford Escort liftback sedan that it had converted to electric power. The windshield retained 92% of its periphery, far exceeding the minimum of 75% imposed by Standard No. 212. There was no intrusion of the windshield into the protected zone established by Standard No. 219. The petitioner stated that, therefore, the effect upon the occupant protection requirements of Standard No. 208 should be minimal.

9. Standard No. 301, *Fuel System Integrity*

The petitioner represented that "no tanks are provided for on board storage of any fuels." Thus, the standard does not apply to electric vehicles, and no safety impact results.

According to the petitioner, an exemption would facilitate the development and field evaluation of a low-emission motor vehicle by enabling the petitioner to advance "the state of the art in electric vehicle traction systems through the application of electric vehicles in actual commercial uses", and deriving data from such uses. Developmental changes are frequent, "making testing for conformance to the standards impractical."

Further, argued the petitioner, granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act by reducing air pollution in urban areas and the use of oil products for transportation.

One comment was received on the petition. Ford Motor Company asked the agency not to provide a "wholesale exemption from the substance of key safety standards such as FMVSS 105—Brakes (sic) and FMVSS 208—Occupant Protection (sic) * * * in the absence of clear evidence demonstrating that petitioner's vehicles conform as fully to the standards' safety objectives as is practicable for an electrically powered vehicle."

It is NHTSA's policy to provide as narrow an exemption as is practicable given the demands of safety and the fact situation applicable to the petitioner. The Administrator must find, in accordance with the statute, that an exemption would not unreasonably degrade the safety of the vehicle if it is granted. Balancing the public interest in low-emission vehicles and the public interest in safety, Congress has conceded that a measure of degradation may result from exemptions but it must not be an unreasonable degradation. However, as an assurance of a measure of protection to the public, Congress drew a limit as to the duration of such exemptions (a maximum of 2 years) and their extent (no more than 2,500 vehicles in any 12-month period that the exemption is in effect). When certified conventionally-powered vehicles are converted to electric power, NHTSA's experience has been that resultant questions of conformance appear to be more apparent than actual. Therefore, NHTSA has been able to find that temporary exemption of a converted certified vehicle does not unreasonably degrade safety. The test suggested by Ford, "clear evidence" of conformance "as fully * * * as is practicable for an electrically powered vehicle", would require NHTSA to gather data from all manufacturers of electrically powered vehicles to determine what level is "practicable" with respect to each standard. In instances in which the subject of a petition is a converted vehicle, NHTSA does not believe that safety demands such a rigorous test. Different considerations may obtain where the vehicle to be exempted is new from the ground up and is produced by an entity new to the vehicle manufacturing business, but that is not the fact situation before the agency in this case.

However, with Ford's comment in mind, NHTSA has reviewed each of the nine standards from which exemption has been requested. With respect to Standard No. 101 *Controls and Displays*, it is apparent that the petitioner has misunderstood the requirements of S5.1. This section does not require a manufacturer to furnish "displays for fuel, engine coolant temperature, oil, electrical charge," but simply to ensure that they are visible to the driver if they are furnished. Petitioner has not argued that such displays as it furnishes that may be among those listed in S5.1 would not be visible to the driver. The requirement for illumination of controls and displays (S5.3) is appropriate regardless of the propulsion source of the vehicle. Because the original vehicle is certified as complying with Standard No. 101 before its conversion, NHTSA is uncertain as to how the vehicle may fail to meet the control and display illumination requirement after conversion. Assuming that the petitioner may be adding a gauge indicating electric power reserve, such a display is not an electric charge gauge within the meaning of Standard No. 101, and there is no requirement that an electric power reserve gauge be identified or illuminated. Accordingly, NHTSA cannot conclude that petitioner has shown a need for a temporary exemption from Standard No. 101, or that such exemption would facilitate the development of a low emission motor vehicle.

Concerning Standard No. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, NHTSA does not agree with petitioner's argument that S3.1.2 *Transmission braking effect*, and S3.1.3 *Starter interlock*, do not apply to electric vehicles. If the transmission of an electric vehicle has more than one forward transmission gear ratio, then the electric vehicle is subject to the transmission braking effect requirement of S3.1.2. However, requirements such as S3.1.1. requiring a neutral position, and S3.1.3 requiring a starter interlock may be inappropriate for the configuration of the power train of certain types of electric vehicles.

NHTSA believes that the transmission technology almost invariably used in contemporary electric vehicles is that of the single speed transmission, and that ETA's vehicle is so equipped. Thus, the requirement of S3.1.3 does not apply to it. Further, there is no need for a starter interlock when the drive train of a vehicle is such that, if the transmission lever is in the forward position, the turning on of electric current alone is insufficient to move the vehicle forward in the absence of some positive application of that current by the vehicle operator.

Thus, on the basis of the information available, NHTSA believes that the petitioner has not shown that an exemption from the requirements of S3.1.1. and S3.1.3 of Standard No. 102, would facilitate the development and field evaluation of a low emission motor vehicle.

As for Standard No. 103 *Defrosting and Defogging Systems*, the vehicles to be converted were originally equipped with defrosting and defogging systems. While the conversion to electric power may affect the performance of these

systems, the systems will remain in place, and no exemption shall be given from S4.1, the requirement that vehicles be equipped with these systems. However, the test requirements of S4.2 and demonstration procedures of S4.3 were written for vehicles powered by internal combustion engines. Standard No. 103 incorporates by reference SAE Recommended Practices J902 and J902a, *Passenger Car Windshield Defrosting Systems*, which specify a tachometer as an item of test equipment, and a test condition for "engine speed" of 1500 rpm. In a literal sense, it is impossible for the manufacturer of an electric vehicle to test according to S4.2 and S4.3, and an exemption is therefore required from these sections. In its ANPRM on electric vehicles (56 FR 67038), NHTSA has asked for comments on appropriate modifications to the test conditions and procedures of Standard No. 103 to allow the test requirements to be met.

Standard No. 105 *Hydraulic Brake Systems* consists primarily of service brake system performance requirements (S5.1) to be met through a series of stops and under a variety of conditions (S6. and S7), and parking brake performance (S5.2) to be determined on a grade of 30 percent. These four sections are those from which the petitioner has requested exemption.

With the exceptions noted below, the tests of S5.1 and S5.2 are performed with the vehicle loaded to its GVWR. Because the petitioner does not change the original vehicle's GVWR as part of its conversion, and because the original vehicle has been certified as meeting the requirements of S5.1 at that GVWR, it would appear that the conversion operations are immaterial as to the continuing compliance of the converted vehicle with Standard No. 105.

However, there are three consecutive tests in which the vehicle performs at lightly loaded vehicle weight (in this instance, unloaded vehicle weight plus 400 pounds, including driver and instrumentation). Here, the weight added to the unloaded vehicle by the conversion procedure, can affect the conformance of the original vehicle, and an exemption may be needed from these requirements. After testing the vehicle for conformance with the parking brake requirements of S5.2.1 at GVWR, pursuant to S7.7.3, the vehicle is again tested for conformance at lightly loaded vehicle weight. Following this, the third effectiveness test of S7.8, intended to demonstrate conformance with S5.1.1.3, is also conducted with the vehicle at lightly loaded vehicle weight. The final tests in the series, prescribed by S5.1.2.1 and conducted at lightly loaded vehicle weight according to S7.9.1, and S7.9.2, measures the performance of each of the subsystems of the service brake system under conditions of partial failure.

NHTSA lacks information as to how much weight is added to converted vehicles, and is thus unable to estimate the extent to which the conversion might affect conformance with the relevant sections of S5. Balancing the interest in the development and field evaluation of low emission motor vehicles against the need to ensure that its exemptions do not unreasonably degrade the safety of an exempted vehicle, NHTSA has decided to provide only a 1-year exemption from the pertinent requirements of S5.1 and S5.2. While this exemption is in effect, NHTSA expects ETA to reach a clearer understanding of the state of its compliance with these requirements. If further exemption is necessary, ETA may, as part of its petition for renewal be able to indicate the actual margins of noncompliance.

Standard No. 124, *Accelerator Control Systems*, contrary to petitioner's assertion, does contain criteria appropriate for electric vehicles. One paragraph, S4.2, is directly applicable: "In the case of vehicles powered by electric motors, the words throttle and idle refer to the motor speed controller and motor shutdown, respectively." Because of petitioner's possible misunderstanding of the standard, and the fact that it may comply with it, in NHTSA's opinion the petitioner has not demonstrated that an exemption would facilitate the development and field evaluation of a low-emission motor vehicle.

Petitioner has requested an exemption from S5 of Standard No. 208 *Occupant Crash Protection*. The appropriate section is S4.1.4.1, as exemption from this general compliance requirement includes an exemption from S5.

With respect to Standards Nos. 212 *Windshield Mounting* and 219 *Windshield Zone Intrusion*, Ford stated that petitioner's 10-year old test data showing compliance with those standards would "hardly do" for the purpose of demonstrating conformance to the Standards' objectives, since it pertained to a different version of the Escort. NHTSA disagrees. The point of petitioner's argument was that a Ford Escort of equivalent size to the converted Ford Escort for which petition is made and whose weight was increased by an equivalent amount, continued to conform to Standards Nos. 212 and 219 after a 30 mph frontal barrier impact. These similarities afford a reasonable basis upon which to conclude that an exemption from these standards would not unreasonably degrade the safety of the vehicle.

Petitioner, in requesting exemption from Standard No. 310 *Fuel System Integrity* regards it as inapplicable to electric vehicles. While it is true that electric vehicles are not powered by combustible fuels, the interior in some such vehicles is warmed by gasoline-fueled heaters. Therefore, it is appropriate for a manufacturer to petition for exemption from this standard until conformance can be demonstrated under its test conditions. Given the small quantity of fuel, a vehicle so exempted would appear to provide a lesser threat to safety than a conventionally powered vehicle so exempted.

For the reasons given above, the petitioner has failed its burden of persuasion that a noncompliance exists, or that a temporary exemption from Standard No. 101 *Controls and Displays*, Standard No. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, and Standard No. 124 *Accelerator Control Systems*, would facilitate the development and field evaluation of its product. Because the remaining noncompliances, if they exist, appear to be technical only, it is hereby found that exemption from each of the standards listed below would not unduly degrade the safety of the vehicle, and is consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. It is also found that the vehicle for which petition is made is a low emission motor vehicle, and that an exemption would facilitate this manufacturer's development and field evaluation of low emission vehicles. Finally, because an exemption would promote the use of a substitute for fossil fuels and a cleaner environment, it is found that an exemption is consistent with the public interest.

In consideration of the foregoing, petitioner is hereby granted NHTSA Temporary Exemption 92-4, expiring June 1, 1993, from S5.1.1.3, S5.1.2.1 (S7.9.1. and S7.9.2), and S5.2.1 (S7.7.3) of 49 CFR 571.105 Motor Vehicle Safety Standard No. 105 *Hydraulic Brake Systems*, and, expiring June 1, 1994, from the following Federal motor vehicle safety standards or portions thereof: S4.2 and S4.3 of 49 CFR 571.103 Motor Vehicle Safety Standard No. 103 *Windshield Defrosting and Defogging Systems;* S4.1.4.1 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection;* 49 CFR 571.212 Motor Vehicle Safety Standard

No. 212 *Windshield Mounting;* 49 CFR 571.219 Motor Vehicle Safety Standard No. 219 *Windshield Zone Intrusion;* and 49 CFR 571.301 Motor Vehicle Safety Standard No. 301 *Fuel System Integrity.*

Authority: 15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.

Issued on June 23, 1992.

Frederick H. Grubbe,

Deputy Administrator.

[FR Doc. 92-15085 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-31-No. 1]

PACCAR Inc; Receipt of Petition for Determination of Inconsequential Noncompliance

PACCAR Inc (PACCAR), of Bellevue, Washington, has determined that mattress part number K348-58, which was supplied to Kenworth Truck Company (Kenworth), a division of PACCAR, by C.E. White Co., fails to comply with 49 CFR 571.302, "Flammability of Interior Materials," (Federal Motor Vehicle Safety Standard (FMVSS) No. 302), and has filed an appropriate report pursuant to 49 CFR part 573. PACCAR has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

During the period of July 15, 1986 to November 5, 1991, PACCAR installed 3,430 mattresses (part no. K348-58) in the aerodyne sleepers of Kenworth truck models K100, W900, T600, and T800. The mattress is composed of a virgin foam core, outer cover or ticking, thread, and tape edging. When tested for compliance with FMVSS No. 302, all of these components passed with the exception of the tape edging.

Paragraph S4.3(a) of FMVSS No. 302 specifies that "When tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

PACCAR supports its petition for inconsequential noncompliance with the following:

The tape edging is certified by its manufacturer to meet all applicable fire retardancy standards pertaining to the bedding industry, including the cigarette burn test, which shows that a glowing ember will not ignite the tape or cause it to flame up.

The tape makes up only 1.9 percent of the mattress total construction and offers only a minimal surface area to carry a flame front.

PACCAR Inc believes that due to normal wear and tear most of the non-compliant mattresses have been replaced.

In order to ignite the tape edging, an open flame would be required and since the rest of the mattress as well as the other construction of the cab and sleeper are FMVSS 302 compliant the presence of an open flame is highly unlikely.

PACCAR added that on current production and for aftermarket parts, The C.E. White Co. is treating the tape edging to ensure compliance to the requirements of FMVSS 302.

Interested persons are invited to submit written data, views, and arguments on the petition of PACCAR, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 27, 1992.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on June 22, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-15086 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report the results of the sixth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods.

DATES: July 22, 1992 at 9:30 a.m.

ADDRESSES: Room 3200, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: This meeting will be held to describe the outcome of the sixth session of the Sub-Committee of Experts on the Transport of Dangerous Goods to be held July 6 to 17, 1992, in Geneva, Switzerland and to discuss the U.S. delegation's plans for participating in the seventeenth session of the Committee of Experts on the Transport of Dangerous Goods to be held December 1992. Topics to be covered include: Tests for classifying explosives, packaging requirements for explosives, classification criteria for corrosive substances, tests to determine the ability of flammable liquids to sustain burning, requirements for lithium batteries, definition of liquid and solid, packaging and risk levels for infectious substances including infectious wastes, classification criteria for aerosols, requirements for overpacks, documentation of performance packaging tests, packaging requirements for dangerous goods, requirements for intermediate bulk containers used to transport packing group I substances, classification of specific dangerous goods and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the sixth session of the UN Sub-Committee meeting and, when available, a copy of the Sub-Committee report may be obtained from RSPA. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202-366-4453). For more information on the use of the HMIX system, contact the HMIX information center; 1-800-PLANFOR (752-6367); in Illinois, 1-800-367-9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from Hazardous Matierals Advisory Council, suite 250, 1110 Vermont Ave.,

NW., Washington, DC 20005; telephone number (2) 728-1460.

Issued in Washington, DC, on June 22, 1992.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 92-15040 Filed 6-25-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 22, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0068

Form Number: IRS Form 2441

Type of Review: Revision

Title: Child and Dependent Care Expenses

Description: Internal Revenue Code (IRC) section 21 allows a credit for certain child and dependent care expense to be claimed on Form 1040 (reduced by employer-provided day care excluded under section 129). Day care provider must be reported to IRS for both the credit and exclusion. Form 2441 is used to verify that the credit and exclusion are properly figured, and that provider information is reported.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 4,666,830

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—40 minutes

Learning about the law or the form—24 minutes

Preparing the form—58 minutes

Copying, assembling and sending the form to the IRS—28 minutes

Frequency of Response: Annually

Estimated Total Reporting/Recordkeeping Burden: 11,573,738 hours

OMB Number: 1545-0123

Form Number: IRS Form 1120, Schedule D (Form 1120), Schedule H (Form 1120), Schedule PH (Form 1120)

Type of Review: Revision

Title: U.S. Corporation Income Tax Return (Form 1120) Capital Gains and Losses (Schedule D) U.S. Personal Holding Company (PHC) Tax (Schedule PH) Section 280H Limitations for a Personal Service Corporation (PSC) (Schedule H)

Description: Form 1120 is used by corporations to compute their taxable income and tax liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability. Schedule H (Form 1120) is used by personal service corporations to determine if they have met the minimum distribution requirements of section 280H. IRS uses these forms to determine whether corporations have correctly computed their tax liability.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents/Recordkeepers: 2,462,931

Estimated Burden Hours Per Respondent/Recordkeepers:

	Form 1120	Schedule D	Schedule H	Schedule PH
Recordkeeping	68 hours, 24 minutes	6 hours, 28 minutes	5 hours, 59 minutes	15 hours, 19 minutes.
Learning about the law or the form	39 hours, 51 minutes	3 hours, 41 minutes	35 minutes	6 hours, 6 minutes.
Preparing the form	70 hours, 38 minutes	3 hours, 41 minutes	43 minutes	8 hours, 29 minutes.
Copying, assembling, and sending the form to the IRS.	8 hours, 2 minutes	48 minutes		32 minutes.

Frequency of Response: Annually

Estimated Total Reporting/Recordkeeping Burden: 468,350,338 hours

OMB Number: 1545-0142

Form Number: IRS Form 2220

Type of Review: Extension

Title: Underpayment of Estimated Tax by Corporations

Description: Form 2220 is used by corporations to determine whether they are subject to the penalty for underpayment of estimated tax and, if so, the amount of the penalty. The IRS uses Form 2220 to determine if the penalty was correctly computed.

Respondents: Businesses of other for-profit, Small businesses or organizations

Estimated Number of Respondents/Recordkeepers: 702,000

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—25 hours, 21 minutes

Learning about the law or the form—35 minutes

Preparing and sending the form to the IRS—1 hour, 2 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 18,993,628 hours

OMB Number: 1545-0890

Form Number: IRS Form 1120-A

Type of Review: Revision

Title: U.S. Corporation Short-Form Income Tax Return

Description: Form 1120-A is used by small corporations, those with less than $500,000 of income and assets, to compute their taxable income and tax liability. The IRS uses Form 1120-A to determine whether corporations have correctly computed their tax liability.

Respondents: Farms, Businesses of other for-profit, Small businesses or organizations

Estimated Number of Respondents/Recordkeepers: 285,777

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—43 hours, 3 minutes

Learning about the law or the form—23 hours, 8 minutes

Preparing the form—40 hours, 41 minutes

Copying, assembling, and sending the form to the IRS—4 hours, 34 minutes

Frequency of Response: Annually

Estimated Total Reporting/Recordkeeping Burden: 31,846,989 hours

OMB Number: 1545-1127

Regulation ID Number: INTL-0338-89 NPRM

Type of Review: Extension

Title: Section 904(f) Separate Limitation Losses

Description: The Internal Revenue Service needs this information in order to insure the proper calculation of the foreign tax credit under section 901. Respondents will be individuals and corporations claiming a credit for foreign taxes paid.

Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents: 1
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: Annually
Estimated Total Reporting Burden: 1 hour
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. 92-15036 Filed 6-25-92; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 22, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0074
Form Number: IRS Form 1040 and Related Schedules A, B, C, D, EIC, F, R, and SE
Type of Review: Revision
Title: U.S. Individual Income Tax Return
Description: This form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistical use.
Respondents: Individuals or households
Estimated Number of Respondents/Recordkeepers: 69,119,859
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or form	Preparing the form	Copying, assembling, and sending, the form to the IRS
1040	3 hr., 8 min.	2 hr., 42 min.	3 hr., 37 min.	49 min.
Sched. A	2 hr., 32 min.	24 min.	1 hr., 9 min.	27 min.
Sched. B	33 min.	10 min.	17 min.	20 min.
Sched. C	6 hr., 13 min.	1 hr., 5 min.	1 hr., 57 min.	25 min.
Sched. C-EZ	46 min.	4 min.	20 min.	20 min.
Sched. D	51 min.	55 min.	1 hr., 8 min.	42 min.
Sched. D-1	13 min.	1 min.	13 min.	35 min.
Sched. E	2 hr., 52 min.	1 hr., 6 min.	1 hr., 16 min.	35 min.
Sched. EIC	39 min.	18 min.	48 min.	54 min.
Sched. F:				
Cash	4 hr., 2 min.	34 min.	1 hr., 14 min.	20 min.
Accrual	4 hr., 22 min.	25 min.	1 hr., 19 min.	20 min.
Sched. R	20 min.	15 min.	22 min.	35 min.
Sched. SE:				
Short	20 min.	13 min.	10 min.	14 min.
Long	26 min.	22 min.	38 min.	20 min.

Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 1,115,885,790 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. 92-15038 Filed 6-25-92; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 22, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0132.
Form Number: None.
Type of Review: Reinstatement.
Title: Application for Salvage Operation and Report of Salvage Operation.
Description: An individual or company wanting to engage in any salvage operation in territorial water of the United States, using a foreign vessel, must file an application with the Customs Service and receive approval.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Ralph Meyer (202) 566-9182, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
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. 92-15039 Filed 6-25-92; 8:45 am]
BILLING CODE 4820-02-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-88]

Request for Public Comment Concerning Proposed Determinations and Action Pursuant to Section 301; People's Republic of China, Market Access

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comment concerning (1) whether acts, policies, and practices of the People's Republic of China (China) are unreasonable or discriminatory and burden or restrict U.S. commerce; (2) if so, what action, if any, should be taken pursuant to sections 301(b) and 301(c) of the Trade Act of 1974, as amended (Trade Act); and (3) if action is taken in the form of increased duties, what items should be considered for the proposed list of products subject to such duties and whether the effective date of the increased duties should be delayed to take into account goods in transit.

SUMMARY: The United States Trade Representative (USTR) seeks public comment concerning proposed determinations pursuant to section 304 and proposed action pursuant to section 301 of the Trade Act with respect to the investigation of acts, policies and practices of China related to market access. In particular, the USTR requests public comment concerning the form and effective date of any proposed action pursuant to section 301(b).

DATES: Written comments from the public are due on or before 12 noon, on August 1, 1992.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Lee Sands, Director, China and Mongolian Affairs (202) 395-5050; or Catherine Field, Associate General Counsel (202) 395-3432. For information concerning filing procedures, contact Dorothy Balaban, Special Assistant to the section 301 Committee (202) 395-3432.

SUPPLEMENTARY INFORMATION: On October 10, 1991, at the direction of the President, the USTR initiated an investigation pursuant to section 302(b) to determine whether specific market access barriers in China are unreasonable or discriminatory and burden or restrict U.S. commerce. No later than October 10, 1992, the USTR must determine whether the acts, policies, and practices under investigation are unreasonable and burden or restrict U.S. commerce. If that determination is affirmative, the USTR must determine what action, if any, is appropriate in response. Unless expeditious action is required, the USTR must provide an opportunity for interested persons to make presentations concerning these determinations before they are made.

Since initiating this investigation, USTR has received comments concerning particular acts, policies, and practices of China that restrict market access for U.S. exports. Additionally, an interagency delegation, led by USTR, has conducted extensive consultations with Chinese government officials concerning these market access barriers. USTR anticipates that further negotiations will be held during the coming months.

In the event that these negotiations do not result in a commitment by China to remove access barriers, USTR intends to publish a proposed determination concerning the actionability of China's acts, policies, and practices, pursuant to section 304 of the Trade Act. At that time, USTR also intends to publish a proposed list of products upon which increased duties may be imposed pursuant to section 301(b) of the Trade Act.

Due to the broad scope of this investigation, covering several economic sectors and products, USTR currently seeks comments concerning products that should be considered for inclusion on the proposed list of products subject to trade action in case publication of a proposed list becomes necessary. In prior investigations, USTR has considered the following factors, among others, in selecting particular products for possible action: Where feasible, the foreign economic sector affected by the measures should be the same as, or closely related to, the sector benefiting from its government's unfair practice, and it should be a sector or industry with considerable leverage to persuade its government to change or eliminate the unfair policy or practice; and measures should be designed to minimize the adverse effect on U.S. domestic interests, while affecting industries or sectors in the foreign country for which the United States is an important market. Comments from interested persons should address these factors.

USTR also seeks comments concerning the effective date of any such action. In a recent investigation concerning China's intellectual property acts, policies, and practices (Docket No. 301-86), USTR received testimony and written comments concerning the treatment of goods subject to letters of credit and in transit when the determination of action is announced. Interested persons are invited to provide comments in this investigation concerning whether USTR should exercise its authority pursuant to section 305(a)(2)(A) to delay the effective date of any possible action to take into account transactions subject to previous contractual obligations and goods in transit, and if so, the extent of any such delay.

Public Comment

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed by 12 noon, August 1, 1992. Comments must be in English and provided in twenty copies to: Dorothy Balaban, Special Assistant to the section 301 Committee, Office of the General Counsel, room 223, USTR 600 17th Street NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301-88) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

[FR Doc. 92-15230 Filed 6-25-92; 8:45 am]

BILLING CODE 3190-01-M

Trade Policy Staff Committee (TPSC); the Effective Date, With respect to Ukraine, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the effective date, with respect to Ukraine, of the agreement on trade relations between the United States of America and the Union of Soviet Socialist Republics.

SUMMARY: In Proclamation 6352 of October 9, 1991 (56 FR 51317), the President proclaimed that the "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist

Republics" enters into force and nondiscriminatory treatment would be extended to products of the U.S.S.R. in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with Article XVII of the Agreement. Subsequently, the U.S.S.R. was succeeded by twelve independent states, including Ukraine. An exchange of diplomatic notes with Ukraine in accordance with Article XVII of the Agreement, as modified by technical adjustments and retitled "Agreement on Trade Relations between the United States of America and Ukraine," took place in Kiev, Ukraine on June 23, 1992. Accordingly, the Agreement became effective on June 23, 1992, with respect to Ukraine, and nondiscriminatory treatment is extended to products of Ukraine as of June 23, 1992 in accordance with the Agreement and as provided for in Proclamation 6352 of October 9, 1991.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.

[FR Doc. 92-15229 Filed 6-25-92; 8:45 am]
BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 124
Friday, June 26, 1992

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).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 22, 1992, 57 FR 27841.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 24, 1992.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added to Items CAE-17, CAG-2 and CAG-18 on the Agenda schedule for June 24, 1992:

Item No.	*Docket No. and Company*
CAE-17	ER92-532-000, Washington Water Power Co.
	ER92-473-000, Puget Sound Power & Light Co.
	ER92-529-000, Centerior Energy.
CAG-2	RP91-51-000, et al., CNG Transmission Corp.
CAG-18	RS92-52-000, Viking Gas Transmission Co.

Lois D. Cashell,
Secretary.

[FR Doc. 92-15161 Filed 6-23-92; 4:48 pm]

BILLING CODE 6717-02-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:00 p.m. (closed portion), 2:30 p.m. (open portion), Tuesday, July 14, 1992.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: The first part of the meeting from 1:00 p.m. to 2:30 p.m. will be closed to the public. The open portion of the meeting will commence at 2:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:00 p.m. to 2:20 p.m.):

1. President's Report.
2. Finance Project in Venezuela.
3. Insurance Project in Venezuela.
4. Insurance Project in Guatemala.
5. Insurance Project in Chile.
6. Proposed Defense Conversion Policy.
7. Proposed Budget Request for FY 1994.
8. Claims Report
9. Information Reports.
10. Approval of 4/21/92 Minutes (Closed Portion).

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 2:30 p.m.)

1. Approval of 4/21/92 Minutes (Open Portion).
2. Information Reports.
3. Recommendation for meeting through end of September 1992.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 336-8403.

Dated: June 24, 1992.

Dennis K. Dolan,
OPIC Corporate Secretary.

[FR Doc. 92-15174 Filed 6-24-92; 9:48 am]

BILLING CODE 3210-01-M

federal register

Friday
June 26, 1992

Part II

Department of Labor

29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts; Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

AGENCY: Office of the Secretary and the Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: This document removes § 5.5(a)(4)(iv) of 29 CFR part 5, relating to the maximum allowable ratio of semi-skilled "helpers" to journeymen to be utilized on federal and federally-assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA). On April 21, 1992, the United States Court of Appeals for the District of Columbia Circuit held that the fixed, maximum ratio of helpers to journeymen contained in this section was arbitrary and, therefore, invalid. All other provisions of the helper regulations were upheld. Section 5.5(a)(4)(iv) is, therefore, being removed to conform to the court of appeals decision.

EFFECTIVE DATE: June 26, 1992.

FOR FURTHER INFORMATION CONTACT: Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8305. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 27, 1989, the Department of Labor published a final rule governing the use and wage rates of semi-skilled helpers on federal and federally-assisted construction contracts subject to the DBRA (see 54 FR 4234, January 27, 1989). On December 4, 1990, the Department of Labor (DOL) published a notice implementing revised final regulations (see 55 FR 50148, December 4, 1990). The final rule became effective on February 4, 1991. In April 1991, section 303 of the Dire Emergency Supplemental Appropriations Act of 1991, Public Law No. 102-27, 105 Stat. 130, 151 (1991), prohibited DOL from spending any funds to implement or administer the final helper regulations. In compliance with this statutory provision, DOL did not implement or administer the final regulations during fiscal year 1991. Following the expiration of fiscal year 1991 and continuing resolutions, a new appropriations act was passed which did not contain the restrictive language. The Solicitor of Labor thereafter advised that the spending prohibition had expired and that implementation of the helper regulations was legally permissible. Accordingly, DOL began implementing the regulations. All Agency Memorandum No. 161 was issued on January 29, 1992, instructing contracting agencies to include the helper contract clauses in contracts for which bids were solicited or negotiations concluded after that date.

Various provisions of the final regulations had been challenged in litigation. On April 21, 1992, the United States Court of Appeals for the District of Columbia Circuit sustained all the challenged provisions of the regulation except for 29 CFR 5.5(a)(4)(iv), which had prescribed a maximum ratio of two helpers to every three journeymen on DBRA-covered construction projects. *Building & Construction Trades Department, AFL-CIO* v. *Martin*, Civ. No. 90-5345 (D.C. Cir. April 21, 1992). The court of appeals held that provision to be arbitrary and capricious.

In accordance with the decision of the court of appeals, DOL is removing 29 CFR 5.5(a)(4)(iv) from the Code of Federal Regulations.

Publication in Final

Pursuant to 5 U.S.C. 553(b)(B), the Department of Labor has determined that good cause exists for waiving public comment on this regulatory amendment. This finding is based upon the fact that the United States Court of Appeals for the District of Columbia has invalidated the portion of the current regulation which is the subject of this regulatory amendment. Accordingly, public comment is unnecessary.

Effective Date

Pursuant to 5 U.S.C. 553(d), the Department of Labor has determined that good cause exists for waiving the customary requirement to delay the effective date for 30 days following publication. This finding is based upon the fact that the United States Court of Appeals for the District of Columbia has invalidated the portion of the current regulation which is the subject of this regulatory amendment. Accordingly, the amendment to the regulation is effective upon publication.

Procedural Matters

Since the rule containing the ratio provision is enjoined, its removal will have no economic impact; therefore, it is not a major rule as defined by Executive Order 12291. Similarly, the removal of the rule will have no impact on small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 29 CFR Part 5

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Accordingly, part 5 of title 29 of the Code of Federal Regulations is amended as follows:

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

1. The authority citation for part 5 continues to read as follows:

Authority: 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 5 U.S.C. 301; and the statutes listed in § 5.1(a) of this part.

§ 5.5 [Amended]

2. Section 5.5 is amended by removing paragraph (a)(4)(iv).

Signed at Washington, D.C., on this 24th day of June, 1992.

Lynn Martin,

Secretary of Labor.

Cari M. Dominguez,

Assistant Secretary of Labor for Employment Standards.

Karen R. Keesling,

Acting Administrator, Wage and Hour Division.

[FR Doc. 92-15211 Filed 6-24-92; 1:07 pm]

BILLING CODE 4510-27-M

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Federal Register

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Friday, June 26, 1992

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